



National Health Service (Scotland) Act 1978

1978 CHAPTER 29

PART II

PROVISION OF SERVICES

General services

18 Duty of Secretary of State

It shall be the duty of the Secretary of State to secure the provision of general medical, general dental and general ophthalmic services, and of pharmaceutical services, in accordance with the provisions of this Part.

General medical services

19 Arrangements and regulations for general medical services

- (1) It shall be the duty of every Health Board, in accordance with regulations, to make as respects their area arrangements with medical practitioners for the provision by them of personal medical services for all persons in the area who wish to take advantage of the arrangements; and the services provided in accordance with the arrangements are in this Act referred to as " general medical services ".
- (2) Regulations may make provision for defining 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;

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- (b) for securing a right to any person to choose or to change, in accordance with the prescribed procedure, the medical practitioner by whom he is to be attended, subject to the consent of the practitioner who is to give the attendance and to any prescribed limit on the number of patients to be accepted by any practitioner;
 - (c) for the distribution, among medical practitioners whose names are on the aforesaid lists, of any persons who have indicated a wish to obtain general medical services but who have not made any choice of medical practitioner or have been refused by the practitioner chosen;
 - (d) for the issue to patients or their personal representatives by medical practitioners providing such services as aforesaid 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 area of the name of a medical practitioner in whose case it has been determined in such manner as may be prescribed that he has never provided or has ceased to provide general medical services for persons in that area.
- (3) The remuneration to be paid under arrangements under this Part 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 the practitioner has undertaken to provide such services.

20 Applications to provide general medical services

- (1) All applications made in the prescribed manner to a Health Board for inclusion in a list kept by that Board of the names of medical practitioners undertaking to provide general medical services for persons in the Board's area shall be referred by the Board to the Medical Practices Committee and (except as mentioned in subsection (2)) any medical practitioner whose application is granted by that Committee shall be entitled to the inclusion of his name in the list.
- (2) That entitlement is subject to—
- (a) section 21 (requirement of suitable experience);
 - (b) section 23 (distribution of general medical services);
 - (c) section 29 (disqualification of practitioners).

21 Requirement of suitable experience

- (1) Where the Secretary of State has made regulations for the purposes of this section, and after a day prescribed as the appointed day for those purposes—
- (a) the Medical Practices Committee shall refuse any application under section 20 made after that day if the medical practitioner is not suitably experienced; and
 - (b) a Health Board shall not arrange under section 19 with a medical practitioner for him to provide general medical services for persons in its area unless the Medical Practices Committee have granted an application by him for the inclusion of his name in the list kept by the Board of medical practitioners undertaking to provide general medical services for persons in that area.
- (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 22 exempt from the need to have acquired that experience,
- and " medical experience " includes hospital experience in any speciality.

22 Regulations as to section 21

- (1) Regulations may for the purposes of section 21 provide—
- (a) for prescribing the medical experience needed to satisfy paragraph (a) of section 21(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;
 - (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 21(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 21 to be prescribed or otherwise provided for by regulations.

In this section—

" applicant " means a medical practitioner who has made or proposes to make an application to which paragraph (a) of section 21(1) applies;

" the prescribed experience " means the medical experience for the time being prescribed for the purposes of paragraph (a) of section 21(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 areas or different periods of time or in relation to different cases or different circumstances;

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- (b) includes power to make such incidental or supplemental provision in the regulations as the Secretary of State considers appropriate.

23 Distribution of general medical services

- (1) The Medical Practices Committee may refuse any application under section 20 on the ground that the number of medical practitioners undertaking to provide general medical services in the area of the Health Board concerned or in part of that area is already adequate.
- (2) If in the opinion of the Medical Practices Committee additional practitioners are required for any area or part, but the number of applications exceeds the number required, the Committee shall select the persons whose applications are to be granted and shall refuse the other applications.
- (3) Before selecting any persons under subsection (2) the Medical Practices Committee shall consult the Health Board concerned, and that Board shall consult the area medical committee (if any) for their area before expressing their views on the persons to be selected.
- (4) Except as provided in subsections (1) to (3), or as required by section 21, the Medical Practices Committee shall not refuse any application under section 20, but the Committee may grant an application subject to conditions excluding the provision of general medical services by the applicant in such part or parts of the area of the Health Board as the Committee may specify.
- (5) A medical practitioner who has made an application under section 20 which has been refused or has been granted subject to such conditions may appeal to the Secretary of State; and the Secretary of State may, on any such appeal, direct the Medical Practices Committee to grant the application either unconditionally or subject to such conditions as the Secretary of State may specify.

This subsection does not apply where an application has been refused under paragraph (a) of section 21(1).

- (6) Where the Medical Practices Committee select persons from a number of applicants, the persons selected shall not be included in the list in question during the period for bringing an appeal to the Secretary of State or pending the determination of any such appeal.
- (7) If the Secretary of State grants an appeal to which subsection (6) above relates, he may direct either that the application—
 - (a) shall be granted in addition to those already granted; or
 - (b) shall be granted instead of such one of those applications as he may specify.

In the latter case, he shall make the other applicant a party to the appeal, and no further appeal shall be brought by that applicant in respect of the application in question.

- (8) The Medical Practices Committee shall, in a case where persons have to be selected from a number of applicants, and the Secretary of State shall on an appeal in any such case—
 - (a) have regard to any desire expressed by any applicant to practise with other medical practitioners already providing general medical services in the area or part of an area concerned and to any desire expressed by such other practitioners to take any applicant into practice with them;

- (b) have special regard to such matters in cases where an applicant is related to any other such practitioner.

24 Regulations for Medical Practices Committee

Regulations may make provision 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—

- (a) for requiring Health Boards 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 areas and the different parts of those areas;
 - (ii) the occurrence of any vacancies in the lists of medical practitioners kept by them under this Part; and
 - (iii) the need for filling such vacancies ;
- (b) for prescribing the procedure for—
 - (i) the determination of applications by the Medical Practices Committee;
 - (ii) the making and determination of appeals to the Secretary of State under section 23 ; and
 - (iii) requiring Health Boards and applicants to be informed of the decisions of the Committee and the Secretary of State.

General dental services

25 Arrangements for provision of general dental services

- (1) It shall be the duty of every Health Board, in accordance with regulations, to make as respects their area arrangements with dental practitioners under which any person for whom a dental practitioner undertakes in accordance with the arrangements to provide dental treatment and appliances shall receive such treatment and appliances; and the services provided in accordance with those arrangements are in this Act referred to as " general dental services ".
- (2) Regulations may make provision as to the arrangements to be made under subsection (1), 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 the provisions of this Part relating to the disqualification of persons providing services, on any dental practitioner who wishes to be included in any such list to be so included ;
 - (c) for conferring a right on any person to choose in accordance with the prescribed procedure the dental practitioner from whom he is to receive general dental services, subject to the consent of the practitioner so chosen;
 - (d) for the removal from the list of dental practitioners undertaking to provide general dental services for persons in any area of the name of a dental practitioner in whose case it has been determined in such manner as may be prescribed that he has never provided, or has ceased to provide, general dental services for persons in that area.

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- (3) The remuneration to be paid under arrangements made under this section to a dental practitioner who provides general dental services elsewhere than at a health centre shall not, except in special circumstances, consist wholly or mainly of a fixed salary.

General ophthalmic services

26 Arrangements for provision of general ophthalmic services

- (1) It shall be the duty of every Health Board to make as respects their area, in accordance with regulations, arrangements with medical practitioners having the prescribed qualifications, with ophthalmic opticians and with dispensing opticians, for securing—
- (a) the testing of sight by such medical practitioners and ophthalmic opticians, and
 - (b) the supply by ophthalmic opticians and dispensing opticians of optical appliances;
- and the services provided in accordance with the arrangements are in this Act referred to as " general ophthalmic services ".
- (2) Regulations may make provision as to the arrangements to be made under subsection (1), and shall include provision—
- (a) for the preparation and publication of lists of medical practitioners, ophthalmic opticians and dispensing opticians respectively who undertake to provide general ophthalmic services;
 - (b) for conferring a right, subject to the provisions of this Act relating to the disqualification of practitioners, on any medical practitioner having the prescribed qualifications, any ophthalmic optician or any dispensing 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 and the ophthalmic or dispensing optician who is to supply the appliances;
 - (d) for the removal from the list of medical practitioners, ophthalmic opticians or dispensing opticians undertaking to provide general ophthalmic services for persons in any area of the name of a medical practitioner, ophthalmic optician or dispensing optician, as the case may be, in whose case it has been determined, in such manner as may be prescribed, that he has never provided or has ceased to provide general ophthalmic services for persons in that area.
- (3) The power conferred by this section to prescribe the qualifications to be possessed by any medical practitioner includes—
- (a) power 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) power 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 make provision for any matter for which it appears to the Secretary of State to be requisite or expedient to make provision in consequence of the conferring of that right.

Pharmaceutical services

27 Arrangements for provision of pharmaceutical services

- (1) It shall be the duty of every Health Board to make, in accordance with regulations, arrangements as respects its area for the supply to persons who are in that 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 health service for England and Wales, 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
 - (b) listed drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of such functions;

and the services provided in accordance with the arrangements are in this Act referred to as " pharmaceutical services ".

In this subsection—

" listed " means included in a list for the time being approved by the Secretary of State for the purposes of this subsection;

" the health service for England and Wales " and " the Northern Ireland health service " mean respectively the health service established in pursuance of section 1 of the National Health Service Act 1946 or any service provided in pursuance of Article 4(a) of the Health and Personal Social Services (Northern Ireland) Order 1972.

- (2) Regulations may make provision for securing that arrangements made under this section will be such as to enable any person for whom they are ordered as mentioned in subsection (1) to receive the drugs, medicines and appliances there mentioned from any persons with whom such arrangements have been made; and the regulations shall include provision—
- (a) for the preparation and publication of lists of persons who undertake to provide pharmaceutical services ;
 - (b) for conferring a right, subject to the provisions of this Part relating to the disqualification of practitioners, on any person who wishes to be included in any such list, to be included for the purpose of supplying such drugs, medicines and appliances as that person is entitled by law to sell; and
 - (c) for the removal from the list of persons undertaking to provide pharmaceutical services for persons in any area of the name of any person 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 pharmaceutical services for persons in that area.

28 Persons authorised to provide pharmaceutical services

- (1) Except as may be provided by regulations, no arrangements shall be made by a Health Board 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) Except as may be provided by regulations, no arrangements for the dispensing of medicines shall be made with persons other than persons who are registered pharmacists or are persons lawfully conducting a retail pharmacy business in

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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 shall be dispensed either by, or under the direct supervision of, a registered pharmacist.

Provisions as to disqualification of practitioners

29 Disqualification of persons providing services

- (1) There shall be constituted a tribunal (hereafter in this Act referred to as " the Tribunal ") for the purpose of inquiring into cases where representations are made in the prescribed manner to the Tribunal by a Health Board or any other person that the continued inclusion of any person in any list prepared under this Part—
 - (a) of medical practitioners undertaking to provide general medical services;
 - (b) of medical practitioners undertaking to provide general ophthalmic services;
 - (c) of dental practitioners undertaking to provide general dental services;
 - (d) of ophthalmic opticians undertaking to provide general ophthalmic services;
 - (e) of dispensing opticians undertaking to provide general ophthalmic services; or
 - (f) of persons undertaking to provide pharmaceutical services,
 would be prejudicial to the efficiency of the services in question.
- (2) Schedule 8 shall have effect in relation to the Tribunal.
- (3) The Tribunal, on receiving representations from a Health Board, shall, and in any other case may, inquire into the case and, if they are of the opinion that the continued inclusion of the said person in any list to which the representations relate would be prejudicial to the efficiency of the said 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 other Health Board under this Part.
- (4) An appeal shall lie to the Secretary of State from any direction of the Tribunal under subsection (3), and the Secretary of State may confirm or revoke that direction in whole or in part.
- (5) Where the Tribunal direct that the name of any person be removed from, or not included in, any list or lists, the Health Board or Boards concerned shall—
 - (a) if no appeal is brought, at the end of the period for bringing an appeal, or
 - (b) if an appeal is brought and the direction of the Tribunal as regards any such list or lists is confirmed by the Secretary of State, on receiving notice of the Secretary of State's decision,
 remove the name of the person concerned from the list or lists in question.
- (6) The references in subsections (1), (3) and (5) to a Health Board shall include a reference to such committee or joint committee as may be prescribed.

30 Removal of disqualification

- (1) Any person whose name has been removed by a direction under section 29 from any list or lists shall be disqualified for inclusion in any list to which that direction relates until the Tribunal or the Secretary of State 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 6 of Schedule 15) the Tribunal or the Secretary of State, as the case may be, may hold an inquiry.

31 Disqualification provisions in England or Wales or Northern Ireland

If—

- (a) under any provisions in force in England or Wales or Northern Ireland corresponding to the provisions of this Part, 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 29(1), 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 that kind or those kinds, and the name of that person shall be removed from any such list in which his name is included.

32 Regulations as to sections 29 to 31

Regulations shall make provision—

- (a) with regard to the procedure for the holding of inquiries by the Tribunal or the Secretary of State under sections 29 to 31 and for the making and determining of appeals to the Secretary of State under that procedure, and, in particular, for securing that any person who is the subject of such an inquiry shall be informed, as soon as may be, of the substance of any charge or complaint to which the inquiry relates and shall 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 that the hearing, whether by the Tribunal or the person so appointed, shall 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 for the purpose of holding such inquiries, including power to require the attendance of witnesses and the production of documents and to administer oaths; and
- (c) for the publication of decisions of the Tribunal and the Secretary of State under this section and of the imposition and removal of any disqualification imposed by virtue of this section, and for the intimation to any person who is the subject of such an inquiry of the grounds upon which any disqualification has been imposed in his case.

*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 any list prepared under this Part—

- (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 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.

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.

35 Prohibition of sale of medical practices

- (1) Where the name of any medical practitioner is or has been at any time on or after 5th July 1948 entered in any list of medical practitioners undertaking to provide general medical services, it shall be unlawful subsequently to sell the goodwill or any part of the goodwill of the medical practice of that medical practitioner.

This subsection is subject to subsections (2) and (3); and the additional provisions contained in Schedule 9 have effect for the purposes of this section.

- (2) Where a medical practitioner, whose name has ceased to be entered in any list of medical practitioners undertaking to provide general medical services, practises in an area for which he has never been on any such list, subsection (1) does not render unlawful the sale of the goodwill or any part of the goodwill of his practice in that area.
- (3) Subsection (1) does not prevent the sale of the goodwill or any part of the goodwill of a medical practice carried on in any area, being a sale by a medical practitioner whose name has never been entered in a list of a Health Board (or of an Executive Council) for that area of medical practitioners undertaking to provide general medical services, notwithstanding that any part of the goodwill to be sold is attributable to a practice previously carried on by a person whose name was entered in such a list.