



# National Health Service (Amendment) Act 1949

## 1949 CHAPTER 93

### PART I

#### MEDICAL PARTNERSHIPS

#### **1 Application of Act to existing partnership agreements and modification of those agreements.**

(1) This section applies to any partnership agreement in force on and immediately before the appointed day between medical practitioners one at least of whose names was entered on that day on a list of medical practitioners undertaking to provide general medical services.

(2) In this section—

the expression " listed partner " means a partner whose name was entered on the appointed day on a list of medical practitioners undertaking to provide general medical services;

the expression " new listed partner " means a partner whose name was not entered on such a list as aforesaid on the appointed day but has been so entered before the relevant date;

the expression " outside partner " means a partner whose name was not entered on any such list as aforesaid on the appointed day and has not been so entered before the relevant date ;

and each of the said expressions shall, in the case of a deceased person who immediately before his death was a listed partner, a new listed partner or an outside partner, be construed, where the context so requires, as referring to the personal representative of that person.

For the purpose of the aforesaid definitions the relevant date shall, in relation to any obligation imposed or option conferred on any such partner by the partnership agreement, be deemed to be the date on which the obligation is required to be

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performed or would but for this section be required to be performed, or, as the case may be, the date on which the option is first exercisable.

- (3) Section thirty-five of the National Health Service Act, 1946 (hereafter in this Act referred to as " the Act of 1946 "), which prohibits the sale of medical practices, shall not affect, and shall be deemed never to have affected, the exercise or performance under any partnership agreement to which this section applies of any right or obligation of a partner to sell to, or purchase from, another partner any share in the goodwill of the partnership practice, but any such agreement shall have effect subject to the following provisions of this section.
- (4) Notwithstanding anything in section thirty-six of the Act of 1946 or in the last preceding subsection—
- (a) there shall be determined in accordance with regulations made under the said section thirty-six the compensation payable in respect of any share of the goodwill of the partnership practice carried on under any agreement to which this section applies, in all respects as if the said section thirty-five of the Act of 1946 prohibited the sale of any such share, whether under the agreement or otherwise; and
  - (b) the payment of the compensation so determined and of interest thereon shall be subject to the following provisions of this section. .
- (5) Where any agreement to which this section applies imposes an obligation or confers an option on a listed or new listed partner to purchase the share of another partner being a listed partner in the goodwill of the partnership practice, and, in the case of an option, the option has been exercised, that share shall be transferred at the time and on the terms (except as to the payment of the purchase price) provided in the agreement and there shall be paid to the partner from whom the share is transferred, on or as soon as possible after the completion of the transfer, in lieu of the payment of the purchase price by the partner to whom the share is transferred, the compensation determined as aforesaid in respect of that share.
- (6) Where any agreement to which this section applies—
- (a) imposes an obligation on an outside partner to purchase the share of a listed partner or a new listed partner in the goodwill of the partnership practice ; or
  - (b) imposes an obligation on a new listed partner, to purchase the share of another new listed partner in the goodwill of the partnership practice ;
- the obligation shall be deemed to be an option exercisable by notice in writing to purchase that share not later than three months after the time at which, and otherwise on the same terms as those on which, the obligation would have had to be performed.
- (7) Where the share of a listed partner in the goodwill of the partnership practice carried on under any agreement to which this section applies has been purchased by an outside partner in pursuance of an option conferred by the last preceding subsection or by the agreement, the compensation determined as aforesaid in respect of that share shall not be paid and the interest thereon shall cease to be payable as from the date when the option was exercised:

Provided that the amount of compensation payable in respect of any other medical practice or share thereof under section thirty-six of the Act of 1946 shall not be increased in consequence of the said compensation not being paid.

- (8) Where the share of an outside partner or new listed partner in the goodwill of the partnership practice carried on under any agreement to which this section applies has

been purchased by a listed partner in pursuance of an obligation imposed or option conferred by the agreement, there shall be paid to the listed partner out of moneys provided by Parliament (but not as part of the compensation payable under section thirty-six of the Act of 1946) compensation of an amount bearing to the compensation determined under subsection (4) of this section in respect of the share of the listed partner in such goodwill the same proportion as the share of the outside partner or, as the case may be, new listed partner in such goodwill bears to the said share of the listed partner:

Provided that—

- (a) if the compensation payable under this subsection exceeds the purchase price, the compensation shall be reduced by the amount of the excess;
- (b) if the share purchased is that of a new listed partner, and the purchase price exceeds the amount of the compensation payable to the listed partner under this subsection, the amount of that excess shall be deducted from the purchase price and, if already paid, shall be repaid;
- (c) this subsection shall not apply in a case where at the time of the purchase or, if the listed partner has died before the time of the purchase, at the time of his death, the name of the listed partner is or was no longer entered on such a list as aforesaid.

- (9) The compensation payable under the last preceding subsection shall be payable at or as soon as possible after the time when the purchase price for the said share is paid:

Provided that, if the purchase price is payable by instalments, the said compensation shall be payable at such times and in such manner as may be prescribed.

- (10) Where an agreement to which this section applies provides for the purchase of a part of any partner's share in the goodwill of the partnership practice by another partner, the preceding provisions of this section shall have effect, in relation to that purchase and to any right or obligation in respect thereof, as if references to a share of such goodwill were construed as references to a part of such a share and as if references to the compensation determined in respect of such a share were construed as references to a proportionate part of that compensation.
- (11) Where an agreement to which this section applies provides for the purchase of a share or part of a share in the goodwill of the partnership practice by two or more partners, the agreement shall have effect for the purposes of this section as if it provided for the separate purchase by each of those partners of such part of that share as will, in accordance with the agreement, be added to the existing share of that partner after the purchase, and the preceding provisions of this section shall apply accordingly.
- (12) Where any agreement to which this section applies contains provisions which take effect on the purchase of any share or part of a share of the goodwill of the partnership practice, those provisions shall take effect in like manner on the transfer of that share or part in accordance with this section, notwithstanding that the transfer does not constitute a purchase.
- (13) For the purposes of this section and the following provisions of this Act relating to medical partnerships, a member of a medical partnership shall, if the partnership agreement defines his share in the goodwill of the partnership practice and distinguishes that share from his share in the profits of the partnership, be deemed to have the share in the goodwill so defined, and in any other case his share in that goodwill shall be deemed to be the same as his share in the profits of the partnership:

Provided that, if the partnership agreement contains a provision which was in force immediately before the appointed day and divides into shares the aggregate compensation payable in respect of the goodwill of the partnership practice or, as the case may be, payable in respect of the shares in that goodwill of the persons entitled to such compensation, that provision shall be deemed to effect a corresponding division of the goodwill of the partnership practice or, as the case may be, the aggregate of those shares therein.

## **2 Effect of changes in partnership agreement.**

Where any partnership agreement to which the last preceding section applies is subsequently modified or is replaced by a subsequent agreement, the agreement as so modified or, as the case may be, the new agreement shall, so long as at least two of the partners to whom the agreement relates were partners under the original agreement on and immediately before the appointed day, be deemed for the purposes of the last preceding section to be the original agreement, and any subsequent modification or replacement shall be treated in like manner so long as the condition aforesaid remains satisfied:

Provided that the last preceding section shall only apply in relation to the purchase, and rights and obligations in respect of the purchase, of a share in the goodwill of a medical partnership carried on under any such agreement, if the persons who are or would be parties to the purchase were members of the partnership on and immediately before the appointed day and the provisions of the agreement relating to the purchase are substantially the same as they were immediately before the appointed day.

## **3 Right of medical partners to be entered on lists after appointed day.**

- (1) Where any medical practitioner was practising in partnership on and immediately before the appointed day but did not make an application before the appointed day for inclusion in a list of medical practitioners undertaking to provide general medical services, he shall, if he has made or makes on or at any time after the appointed day and before the expiration of the period of two months beginning with the date of the passing of this Act an application in the prescribed manner to the Executive Council for any area in which he was practising on the appointed day, be entitled to be included in the list of medical practitioners undertaking to provide general medical services for persons in that area, and section thirty-four of the Act of 1946 shall not apply to any such application and, if any such application made before the passing of this Act has been refused, the refusal shall not have effect and the application shall forthwith be granted.
- (2) For the purposes of section thirty-six of the Act of 1946 (which provides for the payment of compensation for the loss of rights to sell medical practices), any medical practitioner who was practising in partnership on the appointed day and whose name was subsequently, but before the expiration of the period aforesaid, entered on any such list as aforesaid (whether by virtue of the preceding subsection or otherwise) shall be treated in like manner as if his name had been so entered on the appointed day, and compensation shall be determined in respect of his share of the goodwill of the partnership practice as at the appointed day.
- (3) This Part of this Act shall apply, and shall be deemed always to have applied, to any such medical practitioner, and to the partnership agreement under which he carried on his practice on and immediately before the appointed day, in like manner as if his

name had been entered as aforesaid on the appointed day, and he shall be deemed, for the purposes of section one of this Act, to be a listed partner and not to be a new listed partner.

#### **4 Retrospective effect of s. 1 of Act.**

(1) Section one of this Act shall apply in relation to rights and obligations which were exercised or performed, or were required to be exercised or performed, on or after the appointed day and before the passing of this Act, under an agreement to which that section applies, subject to the following modifications:—

(a) for subsection (5) there shall be substituted the following subsection:—

“(5) Where, under an agreement to which this section applies, the share of a listed partner in the goodwill of the partnership practice has been purchased (whether before or after the passing of this Act) by another listed partner, the compensation determined under subsection (4) of this section in respect of that share shall be paid, as soon as possible after the completion of the transfer of the share or the passing of this Act (whichever is the later), to the partner by whom it was purchased:

Provided that if the amount of the compensation exceeds the purchase price, the excess shall be paid to the partner whose share was purchased”;

(b) subsection (6) shall not apply ;

(c) in subsection (7), the reference to an option conferred by the agreement shall include a reference to an obligation imposed by the agreement and the reference to the date when the option was exercised shall be construed as a reference to the passing of this Act;

(d) the reference in subsection (9) to the time when the purchase price is paid shall be construed as a reference to that time or the passing of this Act, whichever is the later ; and

(e) for subsection (11) the following subsection shall be substituted:—

“(11) Where an agreement to which this section applies provides for the purchase of a share or part of a share in the goodwill of the partnership practice by two or more partners, any purchase made in pursuance of such a provision shall be treated for the purposes of this section as if it were two separate purchases by the two respective partners of such parts of that share as will, in accordance with the agreement, be added to the existing shares of those partners after the purchase, and the preceding provisions of this section shall apply accordingly.”

(2) The preceding subsection shall, in relation to any agreement which, by virtue of subsection (3) of the last preceding section becomes, at any time after the passing of this Act and before the expiration of the period of two months beginning with the date of the passing of this Act, an agreement to which section one of this Act applies, have effect as if the references to the passing of this Act were references to the date on which the agreement becomes an agreement to which that section applies.

#### **5 Modification of other medical partnerships in force on appointed day.**

(1) Where, in the case of a medical partnership carried on under an agreement in force on and immediately before the appointed day, the name of none of the partners has, before

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the expiration of the period of two months beginning with the date of the passing of this Act, been entered on a list of medical practitioners providing general medical services, but the name or names of one or more of the partners has or have subsequently been entered on such a list, section thirty-five of the Act of 1946 shall not affect, and shall be deemed never to have affected, the exercise or performance under the agreement of any right or obligation of a partner to sell to, or purchase from, another partner any share in the goodwill of the partnership practice, but any such agreement shall have effect subject to the next following subsection.

- (2) Where any such agreement imposes an obligation on a partner to purchase the share or any part of the share of another partner whose name has, at any time before the obligation would have had to be performed, been entered on any such list as aforesaid in the goodwill of the partnership practice, the obligation shall be deemed to be an option exercisable by notice in writing to purchase that share not later than three months after the time at which, and otherwise on the same terms as those on which, the obligation would have had to be performed.

## **6 Existing agreements with medical assistants.**

- (1) Where an agreement in force on and immediately before the appointed day provides for the performance of services by a medical practitioner (hereafter in this section referred to as " the assistant") as an assistant to another medical practitioner (hereafter in this section referred to as " the employer "), and the name of the employer was on the appointed day, or has subsequently been, entered on a list of medical practitioners providing general medical services, section thirty-five of the Act of 1946 shall not affect, and shall be deemed never to have affected, the exercise or performance of any right or obligation conferred or imposed by the agreement on the assistant to purchase the goodwill or any part of the goodwill of the practice of the employer, or any right or obligation conferred or imposed by the agreement on the employer or his personal representative to sell the goodwill of his practice or any part thereof to the assistant, but any such agreement shall have effect subject to the following provisions of this section.
- (2) Where, in the case of any such agreement, the name of the employer was entered on the appointed day on a list of medical practitioners undertaking to provide general medical services, then, notwithstanding anything in section thirty-six of the Act of 1946 or in the preceding subsection—
  - (a) there shall be determined in accordance with regulations made under the said section thirty-six the compensation payable in respect of the goodwill of the practice of the employer, in all respects as if the said section thirty-five of the Act of 1946 prohibited the sale of that practice, whether under the agreement or otherwise f and
  - (b) the payment of the compensation so determined and of interest thereon shall be subject to the following provisions of this section.
- (3) Where any agreement to which the last preceding subsection applies imposes an obligation or confers an option on the assistant to purchase the goodwill of the practice of the employer or any part thereof and, in the case of an option, the option is exercised, that goodwill or part shall, if the name of the assistant has, before the time when the obligation is required to be performed or the option is first exercisable, been entered on a list of medical practitioners undertaking to provide general medical services, be transferred to him at the time and on the terms (except as to the payment of purchase price) provided in the agreement, and there shall be paid to the employer

or his personal representative, on or as soon as possible after the completion of the transfer, in complete satisfaction of the purchase price, the compensation determined as aforesaid in respect of the goodwill of his practice or, in the case of the transfer of a part of that goodwill, a proportionate part of that compensation.

- (4) Where any agreement to which subsection (2) of this section applies imposes an obligation on the assistant to purchase the goodwill of the practice of the employer or any part thereof and the name of the assistant has not, before the time when the obligation would have had to be performed, been entered on such a list as aforesaid, the obligation shall be deemed to be an option exercisable by notice in writing to purchase the goodwill or part not later than three months after the time at which, and otherwise on the same terms as those on which, the obligation would have had to be performed.
- (5) Where the goodwill of the practice of the employer or any part thereof has been purchased by the assistant in pursuance of an option conferred by the last preceding subsection or in pursuance of an option conferred by the agreement and exercised at a time when the assistant was not entered on such a list as aforesaid, the compensation determined under subsection (2) of this section in respect of that goodwill, or as the case may be, a proportionate part of that compensation, shall not be paid and, in so far as it has been paid, shall be repaid to the Minister, and the interest on the compensation shall cease to be payable as from the date when the option was exercised:

Provided that the amount of compensation payable in respect of any other medical practice or share thereof under section thirty-six of the Act of 1946 shall not be increased in consequence of the said compensation not being paid.

- (6) Where any agreement to which subsection (2) of this section applies contains provisions which take effect on the purchase of the goodwill of the employer's practice or any part thereof, those provisions shall take effect in like manner on the transfer of that goodwill or part in accordance with this section, notwithstanding that the transfer does not constitute a purchase.
- (7) Where any agreement, not being an agreement to which subsection (2) of this section applies, imposes an obligation on the assistant to purchase the goodwill of the practice of the employer or any part thereof, that obligation shall, if the employer enters his name on such a list as aforesaid after the appointed day but before the time when the obligation would have had to be performed, be deemed to be an option exercisable by the assistant by notice in writing to purchase that goodwill or part thereof not later than three months after the time at which, and otherwise on the same terms as those, on which, the obligation would have had to be performed.

## **7 Removal of hardships.**

- (1) Every agreement to which section one or either of the two last preceding sections of this Act applies shall be deemed to contain a provision entitling any person who was a party to the agreement on and immediately before the appointed day and who claims that he has suffered or will suffer hardship in consequence of the operation, in relation to the agreement, of the Act of 1946 or this Act or any regulations made under section thirty-six of the Act of 1946, to refer the matter to a single arbitrator to be appointed by agreement of all the parties or, in default of such agreement, to an arbitration committee appointed under this section.
- (2) On any such reference, the arbitrator or committee shall have power to modify the provisions of the agreement or the operation, as respects the relative rights and obligations of such parties to the agreement as aforesaid, of the Act of 1946 or this

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Act or any such regulations as aforesaid in any such manner as he or they may think equitable for the purpose of removing or preventing such hardship, including a power to direct the payment or repayment of money by any such party to the agreement as aforesaid:

Provided that no such modification shall have the effect of increasing or diminishing the aggregate amount of compensation payable under the Act of 1946 or this Act in respect of the shares of the partners in the goodwill of any partnership practice, being shares in respect of which such compensation is payable, or, in the case of an agreement to which the last preceding section applies, the amount of compensation payable under the Act of 1946 in respect of the goodwill of the employer's practice.

- (3) Where the arbitrator or committee acting under the powers conferred by the last foregoing subsection modifies the operation of the Act of 1946 or of this Act or any such regulations as aforesaid in relation to the provisions of the agreement, he, or they, as the case may be, shall immediately report any such modifications to the Minister who shall, from time to time, and in any event, not less than one year after receiving such a report, lay a statement before Parliament, giving the number and brief particulars of all such reports received by him.
- (4) On any such reference as aforesaid in the case of a partnership, the arbitrator or arbitration committee shall also have power to recommend that the partnership shall be dissolved and, if such a recommendation is made and proceedings are commenced, before the expiration of three months after the publication of the award, by any of the partners under section thirty-five of the Partnership Act, 1890, for the dissolution of the partnership, the recommendation shall, if made by a single arbitrator, be evidence, and, if made by the arbitration committee, be conclusive evidence, that it is just and equitable that the partnership should be dissolved; but, save as aforesaid, no such hardship as aforesaid shall be treated by the court under paragraph (f) of the said section thirty-five as a circumstance rendering it just and equitable that the partnership be dissolved.
- (5) On any such reference as aforesaid in the case of an agreement to which the last preceding section applies, the arbitrator or arbitration committee shall have power to determine the agreement on such terms, which may include the payment of money by either party, as the arbitrator or committee thinks just.
- (6) The said arbitration committee shall consist of three members, one of whom shall be a practising barrister, advocate or solicitor appointed by the Lord Chancellor, another shall be a medical practitioner appointed by the President of the British Medical Association who is or has been in general practice, and the third shall be appointed by the Minister and shall be a member of one or more of the following bodies:—
  - The Institute of Chartered Accountants in England and Wales,
  - The Society of Incorporated Accountants and Auditors,
  - The Society of Accountants in Edinburgh,
  - The Institute of Accountants and Actuaries in Glasgow,
  - The Society of Accountants in Aberdeen,
  - The Association of Certified and Corporate Accountants,
  - The Institute of Chartered Accountants in Ireland.
- (7) There shall be paid out of moneys provided by Parliament to the members of the said arbitration committee such remuneration and allowances and such other expenses (if any) of the committee as the Minister may, with the approval of the Treasury, determine.



- (8) The provisions of the Arbitration Acts, 1889 to 1934, with respect to—
- (a) the administration of oaths and the taking of affirmations ;
  - (b) the correction in awards of mistakes and errors;
  - (c) the summoning, attendance and examination of witnesses and the production of documents;
  - (d) the costs of the reference and award; and
  - (e) the enforcement of an award and the entry of judgment in terms thereof;
- shall, with any necessary modifications, apply in respect of any arbitration under this section, but, save as aforesaid, the said Acts shall not apply to any such arbitration.
- (9) On any reference under this section, the arbitrator or arbitration committee may, and if so ordered by the Court of Appeal shall, state in the form of a special case for determination by the Court of Appeal any question of law which may arise before the arbitrator or arbitration committee.

## **8 Removal of certain doubts as to operation of s. 35 of Act.**

It is hereby declared for the removal of doubts that section thirty-five of the Act of 1946 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 on a list 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 on such a list.

## **9 Application of Part I to Scotland.**

- (1) This Part of this Act shall apply to Scotland subject to the modifications set forth in the following subsections.
- (2) For references to sections thirty-four, thirty-five and thirty-six of the Act of 1946 there shall be respectively substituted references to sections thirty-five, thirty-six and thirty-seven of the National Health Service (Scotland) Act, 1947 (hereafter in this Act referred to as " the Act of 1947 " ) and for references to the Act of 1946 (without mention of any specific section) there shall be substituted references to the Act of 1947.
- (3) For references to the Minister of Health there shall be substituted references to the Secretary of State.
- (4) Section seven of this Act shall have effect as if—
- (a) for references to the Lord Chancellor there were substituted references to the Lord President of the Court of Session ;
  - (b) subsections (8) and (9) were omitted and there were inserted after subsection (7) the following subsections:—
- “(8) The arbitrator or arbitration committee to whom any matter is referred under this section shall have the like powers for securing the attendance of witnesses and the production of documents, and with regard to the examination of witnesses on oath and the awarding of expenses as if the arbitrator or committee were an arbiter under a submission.

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- (9) An arbitrator or arbitration committee to whom a matter is referred under this section may, and, if so directed by the Court of Session, shall, state a case for the opinion of that Court on any question of law arising in the proceedings on the reference, and the decision of the Court of Session thereon shall be final unless the Court of Session or the House of Lords give leave to appeal to the House of Lords, which leave may be given on such terms as to expenses or otherwise as the Court of Session or the House of Lords may determine.
- (10) An order or award on a reference under this section may be recorded for execution in the books of Council and Session and shall be enforceable accordingly.”