# Public Services Reform (Scotland) Act 2010

**2010 asp 8**

## PART 6

HEALTH CARE: SCRUTINY AND IMPROVEMENT

### 108 Healthcare Improvement Scotland

After section 10 of the National Health Service (Scotland) Act 1978 (c. 29) insert—

*"Healthcare Improvement Scotland*

**10A Healthcare Improvement Scotland**

(1) There is established a body to be known as Healthcare Improvement Scotland (in this Act referred to as "HIS") which—

(a) is to exercise the functions conferred on it by virtue of this Act and any other enactment; and

(b) has the general duty of furthering improvement in the quality of health care.

(2) In subsection (1)(b), "health care" means services for or in connection with the prevention, diagnosis or treatment of illness provided—

(a) under the health service; or

(b) by persons providing independent health care services.

(3) In carrying out its functions, HIS is to act subject to and in accordance with such directions as may be given by the Scottish Ministers.

(4) The Scottish Ministers may vary or revoke any direction given under subsection (3).

(5) Schedule 5A (which makes further provision about the status, constitution, proceedings etc. of HIS) has effect.

*Principles*

**10B Principles**

(1) HIS must exercise its functions in accordance with the principles set out in the following subsections.

(2) The safety and wellbeing of all persons who use services provided under the health service and independent health care services are to be protected and enhanced.

(3) Good practice in the provision of those services is to be identified, promulgated and promoted.

(4) The provision of those services in a manner which takes appropriate account of guidance and other information (including evidence) published or endorsed by HIS is to be promoted and encouraged.

*Functions related to the health service*

**10C Health service functions**

(1) HIS is to exercise the following functions of the Scottish Ministers—

(a) functions in relation to supporting, ensuring and monitoring the quality of health care provided or secured by the health service including, without prejudice to the foregoing generality, providing quality assurance and accreditation;

(b) functions in relation to supporting, ensuring and monitoring the discharge of the duty under section 2B by each body to whom that section applies;

(c) functions in relation to supporting, ensuring and monitoring the discharge of the duty under section 2D by each body to whom that section applies, other than HIS, insofar as the discharge of that duty is relevant to—

(i) the quality of health care provided or secured by the health service; or

(ii) the discharge of the duty under section 2B;

(d) functions in relation to the evaluation and provision of advice to the health service on the clinical and cost effectiveness of new and existing health technologies including drugs,

conferred on them by this Act including, without prejudice to the foregoing generality, those functions specified in section 1(1).

(2) HIS is to exercise the following functions of the Scottish Ministers subject to any limitations specified—

(a) the power of the Scottish Ministers under section 16(1) to assist voluntary organisations whose activities include the provision of a service similar to or related to the functions of HIS;

(b) the power of the Scottish Ministers under section 16B to give financial assistance to voluntary organisations whose activities consist of or

include the provision of services similar to or related to the functions of HIS; and such assistance may be given only on such terms and conditions as the Scottish Ministers determine;

(c) the power of the Scottish Ministers under section 42 to disseminate, in respect of the functions of HIS, information relating to the promotion and maintenance of health and the prevention of illness;

(d) the duties of the Scottish Ministers under section 47—

(i) to make available such facilities as appear to HIS to be reasonably required for undergraduate and post-graduate clinical teaching and research and for the education and training of persons providing or intending to provide services under this Act; and

(ii) to conduct, or assist by grants or otherwise under that section any person to conduct, research into matters relating to the functions of HIS;

(e) the powers of the Scottish Ministers under section 79(1) to take on lease or to purchase moveable property and land so far as required for the purposes of HIS and to use for those purposes and manage any heritable or moveable property so acquired;

(f) the powers of the Scottish Ministers under section 79(1A) to dispose of land no longer required for the purposes of HIS.

(3) HIS is to exercise the following functions—

(a) a duty to provide information to the public about the availability and quality of services provided under the health service;

(b) a duty to provide such information to a person in such form as that person may reasonably request;

(c) when requested by the Scottish Ministers, a duty to provide to the Scottish Ministers advice about any matter relevant to the health service functions of HIS;

(d) a power to provide such advice to Scottish Ministers at any time;

(e) when asked to do so, a duty to provide such advice to—

(i) persons who provide, seek to provide or may provide services under the health service;

(ii) persons, or groups of persons, representing those who use, or are eligible to use, such services;

(iii) persons, or groups of persons, representing those who care for those who use, or are eligible to use, such services;

(iv) local authorities;

(v) a Health Board, Special Health Board or the Agency (each a "body" for the purposes of subsection (4));

(vi) such other persons, or groups of persons as may be prescribed;

(f) a power to disseminate such information as HIS considers relevant of general or specific application arising out of or in connection with the exercise of its health service functions.

(4) HIS may charge a reasonable fee determined by it for any advice, forms or documents provided for the assistance of any such person, authority or body as is mentioned in subsection (3)(e).

(5) References in this Act to the health service functions of HIS are, subject to subsections (6) and (7), to the functions conferred by virtue of this section and section 10D (including any functions delegated by order under that section).

(6) Where a provision of this section which confers a function on HIS refers to the health service functions of HIS, that reference is to be construed as a reference to the functions conferred by virtue of this section and section 10D other than the function conferred by the provision.

(7) Where a provision of this section which confers a function on HIS refers to the functions of HIS, that reference is to be construed as including a reference to the functions conferred by virtue of this section and section 10D other than the function conferred by the provision.

**10D Health service functions: further provision**

(1) The Scottish Ministers may by order delegate to HIS such of their functions relating to the health service as they consider appropriate.

(2) HIS is to provide such services, and carry out such tasks, for bodies associated with the health service as the Scottish Ministers and those bodies may agree; and is to do so on such terms and conditions as may be so agreed.

(3) Notwithstanding that it is exercising functions relating to the health service on behalf of the Scottish Ministers or other bodies associated with the health service, HIS—

(a) is entitled to enforce any rights acquired in the exercise of those functions;

(b) is to be liable in respect of any liabilities incurred (including liability in damages for wrongful or negligent acts or omissions) in the exercise of those functions,

in all respects as if HIS were acting as a principal.

(4) All proceedings for the enforcement of such rights or liabilities are to be brought by or against HIS in its own name.

*Functions related to independent health care*

**10E Independent health care functions**

(1) HIS is to exercise the following functions—

(a) a duty to provide information to the public about the availability and quality of independent health care services;

(b) a duty to provide such information to a person in such form as that person may reasonably request;

(c) when requested by the Scottish Ministers, a duty to provide to the Scottish Ministers advice about any matter relevant to the independent health care functions of HIS;

(d) a power to provide such advice to the Scottish Ministers at any time;

(e) when asked to do so, a duty to provide such advice to—

(i) persons who provide, seek to provide or may seek to provide independent health care services;

(ii) persons, or groups of persons, representing those who use, or are eligible to use, such services;

(iii) persons, or groups of persons, representing those who care for those who use, or are eligible to use, such services;

(iv) local authorities;

(v) a Health Board, Special Health Board or the Agency (each a "body" for the purposes of subsection (2));

(vi) such other persons, or groups of persons as may be prescribed;

(f) a power to disseminate such information as HIS considers relevant of general or specific application arising out of or in connection with the exercise of its independent health care functions.

(2) HIS may charge a reasonable fee determined by it for any advice, forms or documents provided for the assistance of any person, authority or body as is mentioned in subsection (1)(e).

(3) References in this Act to the independent health care functions of HIS are, subject to subsection (4)—

(a) to the functions conferred on HIS, or on a person acting on behalf of HIS, by this section and by sections 10J, 10K, 10P to 10Z3, 10Z5, 10Z8 and 10Z19;

(b) to any functions delegated to HIS under section 10H(6) to the extent that such functions relate to standards and outcomes applicable to independent health care services;

(c) to the functions conferred on HIS by section 10M to the extent that such functions relate to inspections of independent health care services; and

(d) to the functions conferred on HIS by section 10N to the extent that such functions relate to reports on inspections of independent health care services.

(4) Where a provision of this section, or those sections, which confers a function on HIS refers to the independent health care functions of HIS, the reference is to be construed as a reference to the functions conferred by this section and those sections other than the function conferred by the provision.

*Meaning of "independent health care services"*

**10F Meaning of "independent health care services"**

(1) In this Act, an "independent health care service" is any of the following—

(a) an independent hospital;

(b) a private psychiatric hospital;

(c) an independent clinic;

(d) an independent medical agency;

(e) an independent ambulance service.

(2) In subsection (1)—

"independent hospital" means a hospital which is neither a health service hospital nor a private psychiatric hospital; and for the purposes of this

definition includes part of a health service hospital if (not being a private psychiatric hospital)—

(a) it is carried on as a separate unit;

(b) it does not provide treatment or nursing in pursuance of this Act;

(c) no part of it is contained within the same building as any such part which does provide treatment or nursing in pursuance of this Act;

"private psychiatric hospital" means any premises used or intended to be used for the provision of medical treatment to one or more patients subject to an order or direction under the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) or the Criminal Procedure (Scotland) Act 1995 (c. 46) (whether or not other persons are treated there), not being—

(a) a health service hospital;

(b) a state hospital; or

(c) otherwise an independent health care service;

"independent clinic" means a clinic which is not comprised in a hospital and in or from which services are provided, other than in pursuance of this Act, by a medical practitioner or dental practitioner;

"independent medical agency" means an undertaking which is neither an independent clinic nor an undertaking comprised in a hospital and which consists of or includes the provision of services, other than in pursuance of this Act, by a medical practitioner;

"independent ambulance service" means, subject to subsection (5), a service which consists of or includes—

(a) provision (other than provision falling within paragraph (b) below) of medical treatment, medical care or other care to relevant patients while such patients are being transported to or from a place of medical treatment;

(b) provision, at or in connection with a public event, of medical treatment outwith relevant premises under arrangements made between the provider of the service and another (whether or not the service includes a means of transport for transporting patients from the event to relevant premises).

(3) In paragraph (a) of the definition of "independent ambulance service" in subsection (2)—

"relevant patient" is a patient—

(a) whose condition or recovery would or might be impaired were the treatment or care mentioned in that paragraph not to be provided;

(b) whose condition affects the patient's mobility to such an extent that, were such treatment or care not to be provided while the patient is being transported as mentioned in that paragraph, the patient's condition or recovery would or might be impaired;

(c) whose mobility is such that, without such treatment or care, it would be difficult or impossible for the patient to be transported as mentioned in that paragraph;

"place of medical treatment" means a hospital or other premises used or intended to be used for the provision of medical or dental treatment, and includes an independent health care service mentioned in paragraphs (a) to (d) of subsection (1).

(4) In paragraph (b) of the definition of "independent ambulance service" in subsection (2)—

"public event" means an event, function or other organised activity of any kind to which members of the public have access;

"medical treatment" includes medical care and medical advice;

"relevant premises" means premises used or intended to be used for the provision of medical treatment, medical care or medical advice, but does not include—

(a) any means of transport as mentioned in that paragraph; or

(b) any temporary premises at or near, and provided in connection with, the public event.

(5) A service does not fall within the definition of "independent ambulance service" in subsection (2) if it is provided under the health service, unless it is so provided for remuneration.

(6) In subsection (5), "remuneration" does not include remuneration payable by a health service body under arrangements made for the provision of the service.

(7) Where, by virtue of payment of remuneration, the provider of a service under the health service acts as an independent ambulance service, HIS's independent health care functions are exercisable in relation to that provider only where, and to the extent that, the provider is so acting.

**10G Power to modify definitions**

The Scottish Ministers, after consulting such persons (or groups of persons) as they consider appropriate, may by order—

(a) modify the independent health care functions of HIS by amending, removing or adding to those functions;

(b) modify the definition of independent health care service in section 10F(1).

*Standards and outcomes*

**10H Standards and outcomes**

(1) The Scottish Ministers may prepare and publish standards and outcomes applicable to—

(a) services provided under the health service;

(b) independent health care services.

(2) The Scottish Ministers must keep any standards and outcomes so published under review and may under subsection (1) publish amended standards and outcomes whenever they consider it appropriate to do so.

(3) Before publishing under subsection (1) any—

(a) standards and outcomes;

(b) amended standards and outcomes which in the opinion of the Scottish Ministers are substantially different from the standards and outcomes (or amended standards and outcomes) last so published,

the Scottish Ministers must consult such persons, or groups of persons, as they consider appropriate.

(4) In relation to a service provided under the health service, or an independent health care service, any applicable standards and outcomes published under subsection (1) must be taken into account—
  (a) by HIS in making any decision under this Part;
  (b) in any proceedings on an appeal under section 10Z4; and
  (c) in any proceedings for an offence in relation to registration under section 10P.

(5) The Scottish Ministers may make different provision for different services under subsection (1).

(6) The Scottish Ministers may delegate their functions under subsections (1) to (3) to HIS or such other persons as they consider appropriate.

*Inspections*

**10I Inspections of services provided under the health service**

(1) HIS may, in pursuance of its general duty of furthering improvement in the quality of health care in Scotland, inspect any service provided under the health service.

(2) An inspection under this section must be conducted in accordance with a plan—
  (a) prepared in accordance with section 10L; and
  (b) approved by the Scottish Ministers.

**10J Inspections of independent health care services**

(1) HIS may inspect—
  (a) any independent health care service;
  (b) the organisation or co-ordination of any independent health care service.

(2) The purposes of an inspection under this section may include—
  (a) reviewing and evaluating the effectiveness of the provision of the services which are the subject of the inspection;
  (b) encouraging improvement in the provision of those services;
  (c) enabling consideration as to the need for any recommendations to be prepared as to any such improvement to be included in the report prepared under section 10N;
  (d) investigating any incident, event or cause for concern; and
  (e) enabling consideration as to the need for—
    (i) an improvement notice under section 10R;
    (ii) a condition notice under section 10U.

(3) An inspection under this section may be in relation to—
  (a) any independent health care service or combination of independent health care services;

(b) such of the services concerned provided to particular groups of persons;

(c) any part of Scotland.

(4) An inspection under this section must be conducted in accordance with a plan—

(a) prepared in accordance with section 10L; and

(b) approved by the Scottish Ministers.

(5) HIS may at any time require a person providing any independent health care service to supply it with any information relating to the service which it considers necessary or expedient to have for the purposes of its independent health care functions.

(6) References in this section to a person providing an independent health care service include, in the case of a service which is provided by a body corporate, a reference to a director, manager, secretary or other similar officer of the body.

(7) An inspection under this section may, subject to any regulations made under section 10O, take such form as HIS considers appropriate.

**10K Authorised persons**

(1) Any inspection under section 10J must be carried out by a person authorised by HIS (an "authorised person").

(2) A person may be authorised by HIS to carry out inspections in relation to any independent health care service or all of them.

(3) An authorised person may at any time enter and inspect premises which are used, or which the person has reasonable cause to believe are used, for the purpose of providing the independent health care service which is the subject of the inspection.

(4) Where an authorised person is in possession of confidential information which has been obtained for the purposes of an inspection under section 10J the authorised person must not use or disclose that information other than—

(a) for the purposes of that inspection;

(b) so as to comply with an enactment or court order requiring disclosure;

(c) to the extent considered necessary by the authorised person for the purpose of protecting the welfare of—

(i) any child under the age of 16 years;

(ii) any adult at risk (within the meaning of section 3 of the Adult Support and Protection (Scotland) Act 2007 (asp 10)); or

(d) to the extent considered necessary by the authorised person for the purpose of the prevention or detection of crime or the apprehension or prosecution of offenders.

(5) For the purposes of subsection (4), information is "confidential information" where—

(a) the identity of an individual is ascertainable—

(i) from that information; or

(ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person holding that information; and

(b) the information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.

**10L Inspections: best regulatory practice**

(1) HIS must prepare a plan for carrying out inspections in accordance with best regulatory practice.

(2) The plan—
(a) must set out arrangements for inspections to be so carried out (including inspections of those services subject to self evaluation);
(b) may make different provision for different purposes.

(3) For the purposes of subsection (1), "best regulatory practice" means practice under which (in particular) inspections should be carried out in a way that is transparent, accountable, proportionate and consistent.

(4) In preparing a plan under subsection (1), HIS must have regard to any guidance issued by the Scottish Ministers about those matters.

(5) HIS—
(a) must keep the plan under review; and
(b) may from time to time revise, with the approval of the Scottish Ministers, the plan.

(6) HIS must, in preparing a plan (or any revisal), consult such persons as it considers appropriate.

**10M Inspections at request of Scottish Ministers**

(1) HIS must, at the request of the Scottish Ministers, inspect—
(a) any service provided under the health service as they may specify;
(b) any independent health care service so specified;
(c) the organisation or co-ordination of any service mentioned in paragraph (a) or (b) so specified;
(d) any independent health care service so specified together with any service provided under the health service so specified.

(2) The Scottish Ministers may specify purposes for any inspection under this section.

(3) An inspection under this section is to be conducted in accordance with a timetable approved by the Scottish Ministers.

**10N Inspections: reports**

(1) Where an inspection under section 10I, 10J or section 10M has been completed, HIS—
(a) must prepare a report on the matters inspected; and
(b) must without delay send a copy of that report to the person providing the service which has been inspected.

(2) Before finalising a report prepared under subsection (1), HIS must give the person providing the service an opportunity of commenting on a draft of the report.

(3) HIS must make copies of any report prepared under subsection (1) available for inspection at its offices by any person at any reasonable time; and it must take such other steps as it considers appropriate for publicising any such report.

(4) Regulations may make further provision concerning the preparation, content and effect of reports under subsection (1), and in particular may make—

(a) different provision in relation to different independent health care services and different services provided under the health service;

(b) provision requiring copies of reports to be sent to the Scottish Ministers (or such other persons as may be specified in regulations) in such circumstances as may be so specified;

(c) provision (including provision modifying any duties under this section) specifying circumstances in which—

(i) any right to receive;

(ii) access to;

(iii) availability of,

copies of reports (or of parts of such reports) may be restricted, refused or withheld.

**10O Regulations relating to inspections**

(1) Regulations may make further provision concerning inspections under—

(a) section 10I;

(b) section 10J;

(c) section 10M.

(2) Regulations under subsection (1) may make different provision for different inspections provided for under the provisions mentioned in that subsection.

(3) Regulations under subsection (1) may, in particular, make provision—

(a) as to types of inspection which may be conducted;

(b) as to timing and frequency of inspections;

(c) as to seizure and removal of anything found during the course of an inspection;

(d) as to persons who may be authorised to carry out inspections;

(e) requiring or facilitating the sharing or production of information (including health records) for the purposes of an inspection;

(f) as to interviews and examinations (including physical and mental examinations) which may be carried out in connection with the inspections;

(g) requiring any person to provide to an authorised person an explanation of information produced to an authorised person;

(h) requiring information produced to an authorised person to be held in compliance with prescribed conditions and further disclosures to be made in compliance with such conditions;

(i) empowering an authorised person to disclose to a person prescribed for the purposes of this paragraph any information of a prescribed nature which the authorised person holds in consequence of an inspection;

(j) creating offences punishable on summary conviction by a fine not exceeding level 4 on the standard scale for the purpose of enforcing any provision of the regulations.

(4) In subsection (3)(e), "health records" means records relating to the physical or mental health of an individual (including dental records and medical records); and for the purposes of this subsection "medical records" means records which have been prepared by a medical practitioner who is, or has been, responsible for the clinical care of the individual.

*Registration*

**10P Registration of independent health care services**

(1) A person who seeks to provide a independent health care service must apply to HIS for registration of the service.

(2) An application must—

(a) give such information as may be prescribed about prescribed matters;

(b) identify an individual (who may be the applicant) who is to manage the service;

(c) give any other information which HIS may reasonably require the applicant to give;

(d) without prejudice to subsection (1)(b) of section 10Z5, be accompanied by the fee imposed under subsection (2)(a) of that section.

**10Q Grant or refusal of registration**

(1) HIS may grant or refuse registration of an independent health care service under section 10P.

(2) A grant of registration may be subject to such conditions as HIS considers appropriate.

(3) If HIS is satisfied, in relation to the application, that the requirements of—

(a) such regulations as are applicable under section 10Z7; and

(b) any other enactment which appears to HIS to be relevant,

will be complied with in relation to that service, it must give notice under section 10Z(1)(a), or as the case may be section 10Z2; otherwise it must give notice under section 10Z(1)(b).

(4) On granting a registration HIS must issue a certificate of registration to the applicant.

(5) The person for the time being providing the service must ensure that the certificate (or a copy of it) is, while the certificate is current, kept affixed in a conspicuous place in each of the premises in or from which that service is provided; and, if those premises do not include the principal (or only) office of the service, then in that office also.

*Improvement notices*

**10R Improvement notices: independent health care services**

HIS may at any time give a notice (an "improvement notice") to the person for the time being providing a registered independent health care service that, unless within such reasonable period as may be specified in the notice, there is a significant improvement, of such a nature as may be so specified, in the provision of that service, it intends to make a proposal under section 10S.

*Proposals and applications in relation to registered independent health care services*

**10S Cancellation of registration**

(1) HIS may, at any time after the expiry of the period specified in an improvement notice under section 10R given in respect of an independent health care service, propose to cancel the registration of the service—
  (a) on the ground that any person has been convicted of a relevant offence in relation to the service;
  (b) on the ground that the service is being, or has at any time been, carried on other than in accordance with the relevant requirements; or
  (c) on any other ground which may be prescribed.

(2) For the purposes of—
  (a) paragraph (a) of subsection (1) the following are relevant offences—
    (i) an offence under any of sections 10G to 10Z18 (in this section, "this group of sections");
    (ii) an offence under regulations made under this group of sections; or
    (iii) an offence which, in the opinion of HIS, makes it appropriate that the registration should be cancelled; and
  (b) paragraph (b) of that subsection, the following are relevant requirements—
    (i) any requirements or conditions imposed by or under this group of sections; or
    (ii) the requirements of regulations made under this group of sections.

(3) Where a person providing a registered independent health care service ceases to provide the service, HIS may cancel the registration of the service.

**10T Emergency cancellation of registration**

(1) HIS may apply to the sheriff for an order cancelling the registration of an independent health care service.

(2) The application may be granted if it appears to the sheriff that, unless the order is made, there will be a serious risk to the life, health or wellbeing of persons.

(3) The sheriff may make such interim order as the sheriff thinks fit.

(4) As soon as practicable after HIS has applied for an order under subsection (1), it must notify the appropriate authorities.

(5) Where the order applied for is made (or an interim order is made), HIS must as soon as reasonably practicable give a copy of it to the person who provides the independent health care service.

(6) The sheriff may determine an application under this section in the absence of the person providing the independent health care service to which the application relates.

(7) An order under this section has effect—
- (a) from the time at which it is made; or
- (b) from such other time as the sheriff considers appropriate.

(8) Within 14 days of the day on which an order under this section is made, an appeal may be made to the sheriff principal against the making of the order.

(9) On an appeal under subsection (8), the sheriff principal may—
- (a) confirm the order;
- (b) revoke the order;
- (c) modify the order;
- (d) make such other order as the sheriff principal thinks fit.

(10) The decision of the sheriff principal on an appeal under subsection (8) is final.

(11) An order under this section has effect notwithstanding the making of an appeal in relation to the order.

(12) For the purposes of this section, the appropriate authorities are—
- (a) each—
  - (i) local authority; and
  - (ii) Health Board,

  within whose area the independent health care service is provided; and
- (b) any other body established by or under an enactment whom HIS thinks it appropriate to notify.

**10U Condition notices**

HIS may at any time give notice (in sections 10V, 10W, 10Z1 and 10Z2 referred to as a "condition notice") to the person for the time being providing a registered independent health care service that it proposes to—
- (a) vary or remove a condition for the time being in force; or
- (b) impose an additional condition,

in relation to the registration.

**10V Emergency condition notices**

(1) Subsection (2) applies where—
- (a) a person is providing a registered independent health care service; and

(b) HIS believes that the absence of a condition in relation to the registration of that service poses a serious risk to the life, health or wellbeing of persons.

(2) HIS may at any time give notice (an "emergency condition notice") to the person providing the registered independent health care service specifying a condition, in relation to registration, in respect of that risk.

(3) The condition so specified takes effect immediately on receipt of the emergency condition notice.

(4) An emergency condition notice must—

(a) state that, within 14 days after service of the notice, the person to whom it is given may make written representations to HIS concerning any matter which that person wishes to dispute; and

(b) explain the right of appeal conferred by section 10X(1).

(5) HIS must consider any representations made under subsection (4)(a) and, following such consideration, must—

(a) give the person providing the registered independent health care service a condition notice stating that HIS proposes to vary or remove the condition specified in the emergency condition notice; or

(b) notify the person that it does not intend to give such a condition notice.

(6) When notifying a person under subsection (5)(b), HIS must explain the right of appeal conferred by section 10X(1).

(7) Where a condition notice has been given by virtue of subsection (5)(a) containing a proposal to remove the condition, HIS must implement the proposal unless it appears to it that it would be inappropriate to do so.

**10W Application of Act to condition notices following emergency condition notices**

(1) Section 10Z1 does not apply to a condition notice given by virtue of section 10V(5)(a).

(2) The reference in section 10Z2(5) to a proposal in relation to which a condition notice has been given does not include a reference to a proposal contained in a condition notice given by virtue of section 10V(5)(a) to remove the condition mentioned in that provision.

(3) The reference to a proposal in section 10Z4(1) does not include a reference to a proposal contained in a condition notice given by virtue of section 10V(5)(a) to remove the condition mentioned in that provision.

**10X Emergency condition notices: appeals**

(1) A person—

(a) who is given an emergency condition notice; and

(b) who—

(i) makes no written representations in accordance with section 10V(4)(a); or

(ii) makes such representations but is notified as mentioned in section 10V(5)(b),

may, within 14 days after the relevant date, appeal to the sheriff against the imposition of the condition.

(2) In subsection (1), "relevant date" means—

(a) where sub-paragraph (i) of subsection (1)(b) applies, the date of service of the emergency condition notice;

(b) where sub-paragraph (ii) of that subsection applies, the date notification mentioned in that sub-paragraph is given.

(3) The sheriff may, on an appeal under subsection (1)—

(a) direct that the condition specified in the emergency condition notice is to continue to have effect;

(b) direct that the condition is to cease to have effect;

(c) direct that the condition be varied as specified in the direction;

(d) impose an additional condition in relation to the registration.

**10Y Applications in respect of conditions**

(1) A person providing a registered independent health care service may apply to HIS—

(a) for the variation or removal of any condition for the time being in force, or for the addition of a condition, in relation to the registration; or

(b) for cancellation of the registration,

but no such application is competent in circumstances mentioned in subsection (2).

(2) The circumstances are that HIS has given the person notice—

(a) under section 10Z(2) of its proposal to cancel the registration (unless HIS has decided not to take that step); or

(b) under section 10Z2(3) of its decision to cancel the registration and the time within which an appeal may be brought has not expired or, if an appeal has been brought, that appeal has not been determined.

(3) An application under subsection (1) must be made in such manner and state such particulars as may be prescribed; and, without prejudice to subsection (1)(b) of section 10Z5, must be accompanied by the fee imposed under subsection (2)(a) or, as the case may be, (c) of that section.

(4) If HIS decides to grant an application under subsection (1)(a) it must give the applicant notice of its decision (stating, where applicable, the condition varied, removed or added) and issue a new certificate of registration.

**10Z Further provision as respects notice of proposals**

(1) If an application has been made under section 10P and HIS proposes—

(a) to grant that application but to do so subject to a condition which has not been agreed in writing between it and the applicant, it must give the applicant notice of the proposed condition;

(b) to refuse that application, it must give such notice of the proposed refusal.

(2) HIS must give any person who provides a registered independent health care service notice of a proposal to cancel the registration (other than in accordance with an application under subsection (1)(b) of section 10Y).

(3) HIS must give an applicant under subsection (1)(a) of section 10Y notice of a proposal to refuse that application.

(4) A notice under this section must give HIS's reasons for its proposal.

**10Z1 Right to make representations to HIS as respects proposals**

(1) A condition notice or a notice under section 10Z must state that, within 14 days after service of the notice, the person to whom it is given may make written representations to HIS concerning any matter which that person wishes to dispute.

(2) Where such a notice has been given—

(a) HIS may not decide to implement the proposal until (whichever first occurs)—

(i) where the person to whom the notice was given makes such representations as are mentioned in subsection (1), it has considered those representations;

(ii) that person notifies HIS in writing that such representations will not be made;

(iii) the period of 14 days mentioned in that subsection elapses without such representations being made and without HIS receiving such notification; and

(b) where the circumstances are as mentioned in paragraph (a)(ii) or (iii) above, HIS must implement the proposal unless it appears to it that it would be inappropriate to do so.

*Notice of decision on application for registration*

**10Z2 Notice of HIS's decisions**

(1) If HIS decides to grant unconditionally an application made under section 10P, or to grant such application subject only to a condition which has been agreed in writing between HIS and the applicant, it must give the applicant notice of its decision.

(2) A notice under subsection (1) must state the agreed condition.

(3) If HIS decides to implement a proposal in relation to which it has given a person a condition notice or a notice under section 10Z, it must give that person notice of the decision.

(4) A notice under subsection (3) must—

(a) explain the right of appeal conferred by section 10Z4; and

(b) in the case of a decision to implement a proposal—

(i) in relation to which a condition notice has been given, state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed; or

(ii) of which notice has been given under subsection (1)(a) of section 10Z, state the condition subject to which the application is granted.

(5) Subject to subsection (6), a decision to implement a proposal in relation to which a condition notice has been given or of which notice has been given under subsection (1)(a) or (2) of section 10Z does not take effect—

(a) if no appeal is brought, until the period of 14 days referred to in section 10Z4(1) has elapsed; and

(b) if an appeal is brought, until that appeal is finally determined or is abandoned.

(6) Where the decision is to implement a proposal of which notice has been given under subsection (1)(a) of section 10Z and the applicant notifies HIS in writing, before the period of 14 days referred to in section 10Z4(1) has elapsed, that there will be no appeal, the decision takes effect on receipt of that notification.

*Conditions as to numbers*

**10Z3 Conditions as to numbers**

Without prejudice to the generality of section 10Q(2) or 10U, a condition imposed under either of those provisions in relation to an independent health care service may limit the number of persons to whom the service may be provided.

*Appeal against decision to implement proposal*

**10Z4 Appeal against decision to implement proposal**

(1) A person given notice under section 10Z2(3) of a decision to implement a proposal may, within 14 days after that notice is given, appeal to the sheriff against the decision.

(2) The sheriff may, on appeal under subsection (1), confirm the decision or direct that is not to have effect; and where the registration is not to be cancelled may (either or both)—

(a) vary or remove any condition for the time being in force in relation to the registration;

(b) impose an additional condition in relation to the registration.

*Fees*

**10Z5 Registration fees**

(1) The Scottish Ministers, after consulting such persons, or groups of persons, as they consider appropriate on the potential effect of so prescribing on the services which the persons, or persons they represent, provide, may prescribe—

(a) maximum fees which may be imposed by HIS under this section;
(b) circumstances in which fees so imposed are or are not to be payable.

(2) Subject to the provisions of this section, HIS must impose fees in respect of—
(a) any application made for registration of an independent health care service or for cancellation of any such registration;
(b) the annual continuation of any such registration;
(c) any application made for the variation or removal of a condition for the time being in force in relation to any such registration;
(d) issuing to a person a new certificate of registration—
(i) at the instance of that person;
(ii) by virtue of any application by that person; or
(iii) by virtue of any new information provided by that person in pursuance of regulations under this group of sections (within the meaning of section 10S(2)(a)).

(3) Without prejudice to subsection (1)—
(a) HIS must, in fixing fees under this section, have regard to its reasonable expenses in carrying out its functions; but
(b) where it appears to HIS to be appropriate it may charge a nominal fee, or remit the fee altogether.

*Regulations*

**10Z6 Regulations: registers and registration**

(1) Regulations may—
(a) make provision about the keeping of registers by HIS;
(b) make provision about registration under section 10P and in particular about—
(i) the making of applications for such registration;
(ii) the content of certificates of registration;
(iii) categories of applicant who cannot competently make certain applications;
(c) require HIS to secure that, on such conditions, in such circumstances and, subject to subsection (2) on payment of such fees as may be specified in regulations, any person is to be afforded access to, and provided with a copy of an entry in or with an extract from, a register kept by HIS;
(d) except such part of a register as may be specified in the regulations from any requirement made by virtue of paragraph (c);
(e) confer additional functions on HIS in relation to registration under section 10P.

(2) Regulations under paragraph (c) of subsection (1) may specify circumstances in which the fees mentioned in that paragraph are not to be payable; and the fees must in any event not be payable in any case where HIS consider it appropriate to provide the copy or extract in question free of charge.

### 10Z7 Regulations: independent health care services

(1) Regulations may impose, in relation to independent health care services, any requirements which the Scottish Ministers consider appropriate for the purposes of this Part.

(2) Without prejudice to the generality of subsection (1) regulations may make it an offence to contravene or fail to comply with—
   (a) any specified provision of the regulations; or
   (b) a condition of registration for the time being in force.

(3) A person who commits an offence under the regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Before the Scottish Ministers make regulations containing provision as mentioned in subsection (2), they must consult such persons, or groups of persons, as they consider appropriate.

*Complaints about independent health care services*

### 10Z8 Complaints about independent health care services

(1) HIS must establish a procedure by which a person, or someone acting on a person's behalf, may make complaints (or other representations) in relation to the provision to the person of an independent health care service or about the provision of an independent health care service generally.

(2) The procedure must provide for it to be available whether or not procedures established by the provider of the service for making complaints (or other representations) about that service have been or are being pursued.

(3) Before establishing a procedure under subsection (1), HIS must consult the Scottish Public Services Ombudsman and such persons, or groups of persons, as it considers appropriate on its proposals for such a procedure.

(4) HIS must keep the procedure under review and must vary it whenever, after such consultation, it considers it appropriate to do so.

(5) HIS must give such publicity to the procedure (including the procedure as varied under subsection (4)) as it considers appropriate and must give a copy of the procedure to any person who requests it.

*Offences*

### 10Z9 Offences in relation to registration

(1) Any person who—
   (a) provides an independent health care service while it is not registered under section 10P; or
   (b) with intent to deceive, pretends that an independent health care service is so registered,

commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

(2) Any person who fails to comply with section 10Q(5) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

**10Z10 False statements in applications**

Any person who, in an application—

(a) for registration of an independent health care service; or

(b) for variation or removal of a condition in force in relation to such a registration,

knowingly makes a statement which is false or misleading in a material respect commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

**10Z11 Offences by bodies corporate etc.**

Where an offence under this group of sections (within the meaning of section 10S(2)(a)), or under regulations made under those sections, committed by—

(a) a body corporate other than a local authority, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(i) is a director, manager or secretary of the body corporate; or

(ii) purports to act in any such capacity;

(b) a firm, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(i) is a partner in the firm; or

(ii) purports to act in that capacity;

(c) an unincorporated association other than a firm, is committed with the consent or connivance of, or is attributed to any neglect on the part of, a person who—

(i) is concerned in the management or control of the association; or

(ii) purports to act in the capacity of a person so concerned,

the person (as well as the body corporate or, as the case may be, firm or association) commits the offence and is liable to be proceeded against and punished accordingly.

*Inquiries*

**10Z12 Inquiries**

(1) HIS may cause an inquiry to be held into any matter connected with—

(a) the exercise of its functions; or

(b) the provision of an independent health care service or a service provided under the health service.

(2) Before there is commenced an inquiry under subsection (1), HIS may direct that it be held in private; but where no such direction has been given the person holding the inquiry may if that person thinks fit hold it, or any part of it, in private.

(3) Subject to subsection (4), subsections (2) to (6) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (provisions relating to local inquires) apply in relation to an inquiry under subsection (1) as they apply in relation to a local inquiry under that section.

(4) For the purposes of an inquiry under subsection (1), any reference in those subsections which, by virtue of the Scotland Act 1998 (c. 46), falls to be construed as a reference to—

(a) the Scottish Ministers, is to be construed as a reference to HIS; and

(b) a member of the staff of the Scottish Ministers, is to be construed as a reference to a member of staff of HIS.

(5) The expenses incurred by HIS in relation to an inquiry under subsection (1) (including such reasonable sum as HIS may determine for the services of any of its staff engaged in the inquiry) must, unless HIS is of the opinion that those expenses should be defrayed in whole or in part by it, be paid by such party to the inquiry as it may direct; and HIS may certify the amount of the expenses so incurred.

(6) Any sum certified under subsection (5) and to be defrayed in accordance with a direction under that subsection is a debt due by the party directed and is to be recoverable accordingly.

(7) In relation to an inquiry under subsection (1), HIS may make an award as to the expenses of the parties and as to the parties by whom such expenses are to be paid.

*Arrangements to provide independent health care services: registration*

**10Z13 Arrangements entered into by certain bodies: services to be registered**

Where, in the performance of its functions—

(a) a local authority;

(b) a Health Board; or

(c) a Special Health Board,

makes arrangements with any person to provide an independent health care service, it must ensure that the service, when provided, is registered under section 10P.

*Duty of certain bodies to be aware of reports, etc.*

**10Z14 Local authorities and other bodies: awareness of HIS reports etc.**

(1) For the purposes of its functions as they relate to the provision of independent health care services (including the making of arrangements with other persons to provide such services)—
   (a) a local authority;
   (b) a Health Board;
   (c) a Special Health Board,

   must take into account the matters mentioned in subsection (3).

(2) In carrying out its duty under subsection (1), a local authority, Health Board or Special Health Board must have regard to any guidance issued by the Scottish Ministers in respect of that duty.

(3) The matters are such—
   (a) reports;
   (b) information;
   (c) notices,

   prepared, disseminated, given or otherwise produced by HIS as are relevant to the provision of the services mentioned in subsection (1) or, as the case may be, to the organisation or co-ordination of those services.

*Giving of notice*

**10Z15 Giving of notice**

(1) In this Part, any reference to a notice being given to a person providing, or seeking to provide, an independent health care service is to be construed as a reference to its being—
   (a) delivered, where the person is—
      (i) an individual, to that individual;
      (ii) a body corporate, to the secretary or clerk of that body; or
      (iii) a firm, to a partner of that firm; or
   (b) sent by post, properly addressed to the person, in a registered letter or by the recorded delivery service,

   but a notice sent by post is deemed not given until the third day after the day of posting.

(2) For the purposes of subsection (1), a letter is properly addressed to—
   (a) a body corporate, if addressed to the body at its registered or principal office;
   (b) a firm, if addressed to the firm at its principal office; or
   (c) any other person, if addressed to the person at the address last known.

*Scottish Health Council*

**10Z16 Establishment of Scottish Health Council**

(1) HIS must establish under paragraph 8(1) of Schedule 5A a committee to be known as the Scottish Health Council.

(2) When the Scottish Health Council is established—
  (a) HIS must delegate to the Council the functions mentioned in section 10C(1)(b) and (c); and
  (b) the Scottish Ministers are to appoint a member of HIS to chair the Council.

(3) The Scottish Ministers may, by order—
  (a) modify subsection (2)(a) in relation to the functions of HIS which must be delegated to the Scottish Health Council; or
  (b) dissolve the Council.

(4) Where the Scottish Ministers make an order under subsection (3)(b) dissolving the Scottish Health Council, subsection (1) has no effect for so long as the order is in force in that respect.

(5) This section is without prejudice to Schedule 5A.

*Miscellaneous*

**10Z17 Transfer of staff**

For the purposes of section 12CA, the functions conferred on, delegated to or otherwise exercisable by HIS are to be treated as functions transferred from a health service body; and for the purposes of that transfer—
  (a) NHS Quality Improvement Scotland is to be treated as the transferor authority;
  (b) HIS is to be treated as the transferee authority; and
  (c) the date on which section 10A is commenced is to be treated as the transfer date.

**10Z18 "Provide" in relation to independent health care services**

In this Part, "provide" in relation to an independent health care service, means to carry on or manage such a service; and related expressions are to be construed accordingly.

*Consultation with Mental Welfare Commission for Scotland*

**10Z19 Duty of HIS to consult the Mental Welfare Commission for Scotland**

HIS must, in the exercise of its functions relating to the provision of guidance, advice or information, consult the Mental Welfare Commission for Scotland

in every case in which it appears to HIS appropriate having regard to the Commission's functions under sections 5(b) and 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).".

**109 Transfer of staff etc. to Healthcare Improvement Scotland**

(1) This subsection applies to such persons employed by the Scottish Commission for the Regulation of Care as the Scottish Ministers may by order specify.

(2) An order under subsection (1) may specify any description of such employees or any individual such employee.

(3) Section 102(1)(a), (3), (4) and (5) applies to those persons to whom subsection (1) of this section applies with the effect that they are transferred into the employment of Healthcare Improvement Scotland; and any reference to "SCSWIS" in section 102 is to be read as a reference to "Healthcare Improvement Scotland" in relation to those persons.

(4) This subsection applies to such property (including rights) and liabilities of the Scottish Commission for the Regulation of Care as the Scottish Ministers may by order specify.

(5) An order under subsection (4) may specify any description of such property or liabilities or any particular property or liability; but such an order may not include liabilities under or in connection with any person's contract of employment.

(6) Section 102(1)(b) applies to such property and liabilities to which subsection (4) of this section applies with the effect that they are transferred to, and vest in, Healthcare Improvement Scotland.

(7) The power to make an order under subsection (1)—
   (a) must be exercised by statutory instrument,
   (b) may be exercised so as to make different provision for different purposes.

(8) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Parliament.

**110 Healthcare Improvement Scotland: constitution, etc.**

(1) Schedule 16 (which inserts Schedule 5A into the National Health Service (Scotland) Act 1978 (c. 29)) has effect.

(2) Schedule 17 (which contains modifications of enactments consequential on section 108) has effect.