

# COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002

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## EXPLANATORY NOTES

### Part 3 – Health

#### Health Boards' lists

#### *Section 18 - Services lists and supplementary lists*

81. This section gives the Scottish Ministers power to make regulations to extend the medical list system to cover all general practitioners (GPs) working in NHS Scotland. Prior to this the system only covered GP principals, the GPs who undertake to provide general medical services (GMS) in their area under a contract negotiated nationally with GP representatives. To join the medical list, a GP principal has to satisfy rules on suitability and once on the list a GP is subject to discipline procedures relating to statutory Discipline Committees and the NHS Tribunal. The lists system does not currently cover GPs who perform personal medical services (PMS) either as independent contractors under contracts developed locally between the Health Board (in practice, each Island Health Board and each NHS Trust with primary care functions) or as GPs employed directly by a PMS practice or a Board. Nor does it cover GPs who assist GMS GP principals. The section is linked with paragraph 2(4) to (11) of schedule 2, which amends sections 29, 29A, 29B, 30, 31, 32A, 32B and 32D of the 1978 Act to attach provisions on the NHS Tribunal to GPs on services lists and supplementary lists.
82. Subsection (1) of section 18 provides the power in relation to GPs performing PMS. Subsection (2) provides the power in relation to GPs who assist GP principals in the provision of GMS.
83. Subsection (1) inserts new sections 17EA and 17EB into the 1978 Act. These sections provide enabling powers so that regulations may be made concerning the establishment of services lists of medical practitioners approved to perform PMS; and ensure that equivalent rules on knowledge of English and suitable experience as apply to applicants to join the medical list apply to applicants to join the services list.
84. Subsection (1) of section 17EA is the enabling power and provides that regulations may make provision for the preparation and publication by each Health Board of one or more lists of medical practitioners approved by the Board to perform PMS. PMS is provided under permanent contracts under the 1978 Act or on a pilot scheme basis under the 1997 Act. Subsection (1)(a) relates to the permanency option (PMS provided in accordance with arrangements under section 17C of the 1978 Act); and subsection (1)(b) relates to pilot schemes (PMS provided in connection with the provision of PMS under a pilot scheme made in accordance with Part I of the 1997 Act).
85. Subsection (4) of section 17EA enables regulations made in connection with medical lists of GMS principals to be applied to PMS performers; and/or regulations to be made for PMS performers analogous to regulations in connection with medical lists.

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Act 2002 (asp 5) which received Royal Assent on 12 March 2002*

86. Under paragraph (a) of that section, the regulations may make provision for the application (with such modifications as the Scottish Ministers think fit) to services lists or to persons who are, have been or seek to be included in a services list of any regulations made under the 1978 Act in relation to medical lists or to persons who are, have been or seek to be included in a medical list.
87. Further, under paragraph (b) of that section, the regulations may, in relation to such lists or persons, make provision analogous to any provision made by regulations under the 1978 Act in relation to medical lists or to persons who are, have been or seek to be included in a medical list.
88. The regulations under subsection (4) of section 17EA may make provision in terms of either or both paragraphs.
89. Thus, paragraphs (a) and (b) provide the Scottish Ministers with the power to apply to PMS performers, with modifications as necessary, the same requirements as apply from time to time to GP principals on the medical list. The Scottish Ministers will have two options to do this: by applying regulations which relate to medical lists also to services lists of PMS performers; and/or by making new regulations on service lists which are analogous to regulations which relate to medical lists.
90. Subsection (1) of section 17EB applies to GPs seeking entry to services lists similar tests on knowledge of English and on suitable experience as apply to GPs seeking to join the medical list.
91. Paragraph (a) of that subsection sets requirements about knowledge of English which a qualified medical practitioner from a member state of the European Union must meet before he or she can be included on a services list. The requirement is that the practitioner must satisfy the Board for the area concerned that he or she has the knowledge of English which, in the interests of both the practitioner and his or her patients, is necessary for the performance of PMS in the Board's area.
92. Under paragraph (b) of that subsection, a medical practitioner shall not be entitled to be included on a services list unless he or she is suitably experienced. Subsection (2)(a) of section 17EB enables Scottish Ministers to make regulations to prescribe what is meant by "suitably experienced"; and subsection (2)(b) enables the regulations to exempt a medical practitioner from the need to have acquired that experience.
93. Subsection (3) of section 17EB ensures that subsections (2) and (3) of section 22 in the 1978 Act apply in relation to regulations under subsection (2)(b) of section 17EB in a similar manner to the way in which they apply to applicants to join the medical list.
94. Subsection (2) of section 18 makes similar provision in connection with medical practitioners approved to assist in the provision of general medical services (GMS non-principals) as subsection (1) does in connection with medical practitioners approved to perform personal medical services.
95. Subsection (2) inserts new sections 24B and 24C into the 1978 Act. These sections provide enabling powers so that regulations may be made concerning the establishment of supplementary lists of medical practitioners approved to assist in the provision of general medical services; and ensure that equivalent rules on knowledge of English and suitable experience as apply to applicants to join the medical list apply to applicants to join the services list. Section 24B has four subsections and section 24C has three.
96. Subsection (1) of section 24B is the enabling power and provides that regulations may make provision for the preparation and publication by each Health Board of one or more lists of medical practitioners approved by the Board to assist in the provision of general medical services.

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97. Subsection (4) of section 24B enables regulations made in connection with medical lists of GMS principals to be applied to GMS non-principals; and/or regulations to be made for GMS non-principals analogous to regulations in connection with medical lists.
98. Under paragraph (a) of that subsection, the regulations may make provision for the application (with such modifications as the Scottish Ministers think fit) to supplementary lists or to persons who are, have been or seek to be included in a supplementary list of any regulations made under the 1978 Act in relation to medical lists or to persons who are, have been or seek to be included in a medical list.
99. Further, under paragraph (b) of that subsection, the regulations may, in relation to such lists or persons, make provision analogous to any provision made by regulations under the 1978 Act in relation to medical lists or to persons who are, have been or seek to be included in a medical list.
100. The regulations under subsection (4) of section 24B may make provision in terms of either or both paragraphs.
101. Thus, paragraphs (a) and (b) of subsection (4) provide the Scottish Ministers with the power to apply to GMS non-principals, with modifications as necessary, the same requirements as apply from time to time to GP principals on the medical list. The Scottish Ministers will have two options to do this: by applying regulations which relate to medical lists also to supplementary lists of GMS non-principals; and/or by making new regulations on supplementary lists which are analogous to regulations which relate to medical lists.
102. Subsection (1) of section 24C applies to GPs seeking entry to supplementary lists similar tests on knowledge of English and on suitable experience as apply to GPs seeking to join the medical list.
103. Paragraph (a) of that subsection sets requirements about knowledge of English which a qualified medical practitioner from a member state of the European Union must meet before he or she can be included on a supplementary list. The requirement is that the practitioner must satisfy the Board for the area concerned that he or she has the knowledge of English which, in the interests of the practitioner and his or her patients, is necessary for the practitioner to assist in the provision of general medical services in the Board's area.
104. Under paragraph (b) of that subsection, a medical practitioner shall not be entitled to be included on a supplementary list unless that person is suitably experienced. Subsection (2)(a) of section 24C enables Scottish Ministers to make regulations to prescribe what is meant by "suitably experienced"; and paragraph (b) of that subsection enables the regulations to exempt a medical practitioner from the need to have acquired that experience.
105. Subsection (3) of section 24C ensures that subsections (2) and (3) of section 22 of the 1978 Act apply in relation to regulations under subsection (2)(b) of section 24C in a similar manner to the way in which they apply to applicants to join the medical list.

***Section 19 - Representations against preferential treatment***

106. Paragraph 3(1) of Schedule 1 to the 1997 Act is amended to add "fraud" to the grounds on which a Health Board may refer to the NHS Tribunal a case involving a PMS provider who wishes to cease providing PMS under pilot arrangements and receive preferential consideration to return to the medical list.
107. Paragraph 4(1) of Schedule 1 to the 1997 Act is amended to add "fraud" to the grounds on which the NHS Tribunal may direct the disqualification from the medical list of a PMS provider who wishes to receive preferential consideration to return to that list on ceasing to provide personal medical services under pilot arrangements.

## **Miscellaneous**

### ***Section 20 - Amendment of Road Traffic Act 1988 and Road Traffic (NHS Charges) Act 1999: payment for treatment of traffic casualties***

108. This amendment is consequential on a change in UK legislation that broadened the definition of “road” for statutory motor insurance purposes. It amends sections 157(1)(a) and 158(1)(a) of the Road Traffic Act 1988 and section 1(1)(a) of the Road Traffic (NHS Charges) Act 1999 to the same effect to cover accidents that happen in public places as well as on the open road.
109. The [Road Traffic \(NHS Charges\) Regulations 1999 \(S.I. 1999/785\)](#), which came into effect on 5 April 1999, provide a scheme that enables the NHS to recover the costs incurred as a result of the treatment of road traffic casualties. The charges, recoverable from insurers and certain other persons, are payable only following an agreed compensation settlement.

### ***Section 21 - Amendment of 1978 Act: schemes for meeting losses and liabilities etc. of certain health bodies***

110. The amendment adds the Mental Welfare Commission for Scotland to the list of bodies covered by section 85B(2) of the 1978 Act. Section 85B provides for the establishment of schemes to meet specified losses and liabilities of the duly listed health bodies.
111. The amendment will enable the Mental Welfare Commission to be covered by the Clinical Negligence and Other Risk Indemnity Scheme (CNORIS), which was introduced by the [National Health Service \(Clinical Negligence and Other Risks Indemnity Scheme\) \(Scotland\) Regulations 2000 \(SSI 2000/54\)](#) on 1 April 2000. The scheme provides financial risk sharing arrangements for specified health bodies in respect of their clinical and certain other liabilities.