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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 33 (C. 3)**

**NATIONAL HEALTH SERVICE**

**The Community Care and Health (Scotland)  
Act 2002 (Commencement No. 3) Order 2004**

Made - - - - 30th January 2004

The Scottish Ministers, in exercise of the powers conferred by section 27(2) of the Community Care and Health (Scotland) Act 2002<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Order:

**Citation and interpretation**

1.—(1) This Order may be cited as the Community Care and Health (Scotland) Act 2002 (Commencement No. 3) Order 2004.

(2) In this Order—

“the Act” means the Community Care and Health (Scotland) Act 2002; and

“the 1978 Act” means the National Health Service (Scotland) Act 1978<sup>(2)</sup>;

**Appointed day**

2.—(1) The following provisions of the Act shall come into force on 4th March 2004—

- (a) section 19 (representations against preferential treatment);
- (b) section 25 (minor and consequential amendments) but only insofar as it relates to the provisions of schedule 2 to the Act specified in sub-paragraphs (c) and (d) below;
- (c) in schedule 2 (minor and consequential amendments) paragraphs 2(4)(b)(i), 2(5)(b), 2(7), 2(8)(a), 2(10), 2(11)(a) and 4; and
- (d) the provisions of schedule 2 specified in column 1 of the Schedule to this Order, but only for the purposes specified in column 2 of that Schedule.

(2) The following provisions of the Act, so far as not already in force, shall come into force on 1st April 2004—

- (a) section 25 but only insofar as it relates to the provisions of schedule 2 mentioned in sub-paragraph (b) below;

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(1) 2002 asp 5.  
(2) 1978 c. 29.

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(b) in schedule 2 paragraphs 2(4) to (6), (8), (9) and (11).

St Andrew's House, Edinburgh  
30th January 2004

*MALCOLM CHISHOLM*  
A member of the Scottish Executive

SCHEDULE

Article 2(1)(d)

| <i>(1)</i><br><i>Provisions of schedule 2 to the Act</i> | <i>(2)</i><br><i>Purpose</i>   |
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| Paragraph 2(4)(a)  | Only for the purpose of applying the first condition of disqualification to lists of persons approved to assist in providing services.   |
| Paragraph 2(4)(b)(iii)                                   | Only for the purpose of defining “list” to include one prepared by virtue of Part II of the 1978 Act.  |
| Paragraph 2(6)(a)  | Only for the purposes of providing that a local disqualification—<br>(i) in the case of a medical practitioner other than one mentioned in section 29(8)(b) of the 1978 Act, shall be disqualification of that practitioner from inclusion in any Health Board’s lists under section 29(8)(a) of the 1978 Act (whether or not including the list to which the case relates); and<br>(ii) in any other case, shall be disqualification in the list to which the case relates. |
| Paragraph 2(6)(b)  | Only for the purposes of providing that a national disqualification—<br>(i) in the case of a medical practitioner other than one mentioned in section 29(8)(b) of the 1978 Act, shall be disqualification of that practitioner from inclusion in all lists within section 29(8)(a); and<br>(ii) in any other case, shall be disqualification for inclusion in all lists within the same paragraph of section 29(8) as the list to which the case relates.                    |
| Paragraph 2(8)(b)(i)                                     | Only for the purposes of allowing the Scottish Ministers to impose conditions, imposed under the conditional disqualification provisions in England and Wales or Northern Ireland in relation to assistance in provision or performance of services by any person, in relation to the assistance in provision by that person of those services.  |
| Paragraph 2(9)(c)  | Only for the purpose of defining a relevant list so as to include a list of persons approved to assist in providing services.  |
| Paragraph 2(11)(b)                                       | Only for the purpose of disqualifying a practitioner for inclusion in any list prepared by virtue of Part II of the 1978 Act.  |
| Paragraph 2(11)(c)                                       | Only for the purposes of—  |

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| (1)<br>Provisions of schedule 2 to the Act | (2)<br>Purpose   |
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|  | (i) providing that, where a person is disqualified for inclusion in all lists of persons approved to assist in providing or approved to perform services in England and Wales or in Northern Ireland, section 32D of the 1978 Act applies; and<br>(ii) providing that such a person shall be disqualified for inclusion in any list of persons approved to assist in providing services. |

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force further provisions of the Community Care and Health Act 2002 (“the Act”).

Section 19 of the Act is brought into force on 4th March 2004, and makes amendments to the National Health Service (Primary Care) Act 1997 (“the 1997 Act”) relating to representations against preferential treatment on applications to be included in a Health Board or primary care NHS trust’s medical list, and the power of the NHS Tribunal to make directions after inquiry into such representations.

Section 25 (which gives effect to schedule 2 of the Act) is brought into force in so far as it relates to certain paragraphs of schedule 2. The paragraphs of schedule 2 which are brought into force, make amendments to the National Health Service (Scotland) Act 1978 as amended by the provisions of the Health Act 1999 specified in the Article 2(2) of the Health Act 1999 (Commencement No. 14) (Scotland) Order 2004 (S.S.I. 2004/ ) relating to the NHS Tribunal and the disqualification of practitioners. The provisions which are brought into force on 4th March 2004 relate to, or are limited in their purpose to, general amendments to the NHS Tribunal and the disqualification of practitioners, or the application of the NHS Tribunal to, and the disqualification of, practitioners assisting in the provision of services in Scotland. The provisions which are brought into force on 1st April 2004 relate to the application of the NHS Tribunal to, and the disqualification of, practitioners performing services in Scotland.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

The following provisions of the Act have been brought into force by commencement order made before the date of this Order:–

| Provision    | Date of Commencement | S.S.I. No |
|--------------|----------------------|-----------|
| section 1(1) | 1st July 2002        | 2002/170  |

| <i>Provision</i>            | <i>Date of Commencement</i> | <i>S.S.I. No</i> |
|-----------------------------|-----------------------------|------------------|
| section 1(2)                | 1st April 2002              | 2002/170         |
| section 1(3) to (6)         | 1st July 2002               | 2002/170         |
| section 1(7)                | 1st April 2002              | 2002/170         |
| section 2                   | 1st April 2002              | 2002/170         |
| section 3                   | 1st July 2002               | 2002/170         |
| section 4                   | 13th May 2002               | 2002/170         |
| section 6                   | 13th May 2002               | 2002/170         |
| section 7                   | 1st June 2003               | 2002/170         |
| section 8 to 17             | 1st September 2002          | 2002/170         |
| section 18(1) (partially)   | 28th February 2003          | 2003/62          |
| section 18(2) (partially)   | 28th February 2003          | 2003/62          |
| section 18(2) (partially)   | 31st May 2003               | 2003/62          |
| section 20 and 21           | 13th May 2002               | 2002/170         |
| section 22                  | 1st April 2002              | 2002/170         |
| section 24                  | 13th May 2002               | 2002/170         |
| section 25 (partially)      | 1st April 2002              | 2002/170         |
| section 25 (partially)      | 1st July 2002               | 2002/170         |
| Section 25 (partially)      | 28th February 2003          | 2003/62          |
| section 26                  | 1st April 2002              | 2002/170         |
| Schedule 1                  | 1st July 2002               | 2002/170         |
| Schedule 2                  |                             |                  |
| Paragraph 1(1)              | 1st April 2002              | 2002/170         |
| Paragraph 1(2) and (3)      | 1st June 2003               | 2002/170         |
| Paragraph 1(4)              | 1st April 2002              | 2002/170         |
| Paragraph 1(5)              | 1st July 2002               | 2002/170         |
| Paragraphs 2(3), (12) and 3 | 28th February 2003          | 2003/62          |