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National Health Service (Scotland) Act 1978

1978 CHAPTER 29

An Act to consolidate certain enactments relating to the national health service in Scotland. [20th July 1978]

Modifications etc. (not altering text)

C1 Act extended by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **ss. 17(2)**, 114(2)

C2 Power to amend conferred by Health and Social Security Act 1984 (c. 48, SIF 113:1), **s. 28(2)**

C3 Power to modify conferred (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 39(8)**; S.I. 1991/607, **art.2(b)**

C4 By S.I. 1990/2639, **art. 4** certain functions of the Secretary of State are made exercisable (1.4.1991) by the Health Education Board for Scotland
Act: extended (15.8.1997) by 1997 c. 46, **s. 10(1)**; S.I. 1997/1780, art. 2(1), **Sch.**
Act: modified (15.8.1997) by 1997 c. 46, **s. 10(2)**; S.I. 1997/1780, art. 2(1), **Sch.**
Act: power to restrict conferred (1.4.1998) by 1997 c. 46, s. 13(9), **Sch. 1 para. 4(1)(b)(2)(3)**; S.I. 1998/631, art. 2(a), **Sch. 1**
Act: power to modify conferred (*prosp.*) by 1999 c. 8, **ss. 61(3)(4)**, 67(1)
Act: certain functions of the Scottish Ministers made exercisable by the Health Technology Board for Scotland (1.4.2000) by virtue of S.S.I. 2000/47, **art. 4**

C5 Act: certain functions transferred (31.3.2002) by S.S.I. 2002/103, **art. 4(1)(a)** (with art. 4(4))

C6 Act modified (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 288(4)**, 333(3); S.S.I. 2005/161, **art. 3** (as substituted by S.S.I. 2005/375, art. 2)

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PART I

ORGANISATION

Secretary of State

1 General duty of Secretary of State.

(1) It shall continue to be the duty of the Secretary of State to promote in Scotland a comprehensive and integrated health service designed to secure—
  (a) improvement in the physical and mental health of the people of Scotland, and,
  (b) the prevention, diagnosis and treatment of illness,

and for that purpose to provide or secure the effective provision of services in accordance with the provisions of this Act.

(2) The services so provided shall be free of charge, except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed.

[F1 1A Duty of the Scottish Ministers to promote health improvement

(1) It is the duty of the Scottish Ministers to promote the improvement of the physical and mental health of the people of Scotland.

(2) The Scottish Ministers may do anything which they consider is likely to assist in discharging that duty including, in particular—
  (a) giving financial assistance to any person,
  (b) entering into arrangements or agreements with any person,
  (c) co-operating with, or facilitating or co-ordinating the activities of, any person.

(3) Subsections (1) and (2) are without prejudice to section 1 and any other provision of this Act conferring or imposing functions on the Scottish Ministers.**]**

Textual Amendments

F1 S. 1A inserted (1.1.2005) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 9(1)**, 12(1); S.S.I. 2004/361, **art. 2(c)**

Administrative bodies

2 Health Boards.

(1) The Secretary of State
[F2(a)**]** shall by order constitute in accordance with Part I of Schedule 1 boards for such areas as he may by order determine, for the purpose of exercising **[F3**such of his functions **[F4**relating to the health service**]** as he may so determine**]**, and for the purpose of making arrangements on his behalf for the provision of the services mentioned in Part II; and those boards shall **[F5**, without prejudice to subsection (1B),**]** be called Health Boards **[F6**and**]**

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[F6](b) subject to subsections (1A) and (1C), may by order constitute boards, either for the whole of Scotland or for such parts of Scotland as he may so determine, for the purpose of exercising such of his functions **[**[F4]relating to the health service**]** as he may so determine; and those boards shall, without prejudice to subsection (1B), be called Special Health Boards.

[[F7](1A) An order made under subsection (1)(b) may determine an area for a Special Health Board constituted under that subsection which is the same as the areas determined—

(a) for any other Special Health Board; or

(b) for any Health Board or Health Boards constituted by an order or orders made under subsection (1)(a).

(1B) An order under subsection **[**[F8](1)**]** may specify the name by which a board constituted by the order shall be known.

(1C) The Secretary of State may by order provide that such of the provisions of this Act or of any other enactment, or of any orders, regulations, schemes or directions made under or by virtue of this Act or of any other enactment, as apply in relation to Health Boards shall, subject to such modifications and limitations as may be specified in the order, so apply in relation to any Special Health Board so specified.**]**

(2) The order or orders made under subsection **[**[F9](1)(a)**]** determining the areas for which the Health Boards are to be constituted shall be separate from the order or orders constituting those Boards; and, before making any order determining such an area, the Secretary of State shall consult with such bodies and organisations as appear to him to be concerned.

(3) The Secretary of State may by order vary the area of any Health Board, whether or not the variation involves the constitution of a new Board, or the termination of the functions of an existing Board; and, before making such an order, the Secretary of State shall consult with such bodies and organisations as appear to him to be concerned.

(4) Any order under subsection (3) may make provision for any supplementary and incidental matters for which it appears to the Secretary of State to be necessary or expedient to provide, in particular for the transfer of officers and of property and liabilities.

(5) In carrying out the purposes mentioned in subsection (1) **[**[F10]and in exercising any function otherwise conferred on them by or under this Act**]** each Health Board shall act subject to, and in accordance with, such regulations as may be made, and such directions as may be given, by the Secretary of State; and such regulations and directions may be made or given generally or to meet the circumstances of a particular area or matter.

(6) Regulations under subsection (5) shall make provision requiring each Health Board to submit to the Secretary of State a scheme for the exercise of their functions, and enabling the Secretary of State to approve any such scheme with or without modifications, and to make such a scheme in the event of the failure of any Health Board to do so.

(7) A Health Board may at any time, and if directed by the Secretary of State shall, within such period as he may specify, submit a new scheme for the exercise of their functions, and regulations making the provision mentioned in subsection (6) shall, with any necessary modifications, apply to any such scheme.

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(8) A Health Board shall, notwithstanding that it is exercising functions on behalf of the Secretary of State, be entitled to enforce any rights acquired, and shall 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 the Health Boared were acting as a principal; and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the Health Board in its own name.

[[F11](9) A Health Board shall not be entitled to claim in any proceedings any privilege of the Crown in respect of the recovery or production of documents; but this subsection shall be without prejudice to any right of the Crown to withhold, or procure the withholding from production of, any document on the ground that its disclosure would be contrary to the public interest.**]**

(10) Schedule 1 shall have effect in relation to the Boards constituted under this section.

(11) Where it appears to the Secretary of State to be expedient in the interests of efficiency that a joint committee should be established for the areas of two or more Health Boards for the purpose of exercising some but not all of their functions, the Secretary of State may by order constitute such a joint committee and provide for the exercise by that committee or such of those functions as may be specified in the order, and for the application, with such modifications as may be so specified, to that committee of any provisions of this Act relating to those functions, and for any of the matters for which, in relation to a Health Board, provision is or may be made by or under Part II of Schedule 1.

Textual Amendments

F2 "(a)" inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 28(a)(i)**

F3 Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 14(2), **Sch. 7 para. 1**

F4 Words in s. 2(1)(a)(b) substituted (6.8.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(2), **Sch. 2 para. 2(2)**

F5 Words in s. 2(1)(a) inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 11(1), 12(1), **Sch. 1 para. 1(2)(a)**; S.S.I. 2004/361, **art. 2(b)(iv)**

F6 S. 2(1)(b) and word “and" preceding it inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 28(a)(ii)**

F7 S. 2(1A)–(1C) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 28(b)**

F8 Word in s. 2(1B) substituted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 11(1), 12(1), **Sch. 1 para. 1(2)(b)**; S.S.I. 2004/361, **art. 2(b)(iv)**

F9 "1(a)" substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 28(c)**

F10 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(1)**

F11 S. 2(9) repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

Modifications etc. (not altering text)

C7 S. 2 modified (15.8.1997) by 1997 c. 46, **s. 10(2)**; S.I. 1997/1780, art. 2(1), **Sch.**

C8 S. 2(3)–(5), (8) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C9 S. 2(3)-(5),(8) applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 2(3)(4)(5)(8) applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)

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S. 2(3)(4)(5)(8) applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 2(3)(4)(5)(8) applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 2(3)(4)(5)(8) applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 2(3)(4)(5)(8) applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 2(3)(4)(5)(8) applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S. 2(3)(4)(5)(8) applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C10 S. 2(5) amended by Hospital Complaints Procedure Act 1985 (c. 42, SIF 113:2), **s. 1(1)**

[F12 2A Duty of Health Board, Special Health Board and the Agency to promote health improvement

(1) It is the duty of every Health Board and Special Health Board and of the Agency to promote the improvement of the physical and mental health of the people of Scotland.

(2) A Health Board, a Special Health Board or the Agency may do anything which they consider is likely to assist in discharging that duty including, in particular—
  (a) giving financial assistance to any person,
  (b) entering into arrangements or agreements with any person,
  (c) co-operating with, or facilitating or co-ordinating the activities of, any person.

(3) Subsections (1) and (2) are without prejudice to any other provision of this Act conferring or imposing functions on a Health Board, a Special Health Board or the Agency.

(4) Anything done by a Health Board or Special Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on—
  (a) the Health Board by the order under section 2(1)(a) which constituted the Board, or
  (b) the Special Health Board by the order under section 2(1)(b) which constituted the Board,

  as the case may be.**]**

Textual Amendments

F12 S. 2A inserted (1.1.2005) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 9(2)**, 12(1); S.S.I. 2004/361, **art. 2(c)**

[F13 2B Duty to encourage public involvement

(1) It is the duty of every body to which this section applies to take action with a view to securing, as respects health services for which it is responsible, that persons to whom those services are being or may be provided are involved in, and consulted on—
  (a) the planning and development, and
  (b) decisions to be made by the body significantly affecting the operation,

  of those services.

(2) This section applies to—
  (a) Health Boards,
  (b) Special Health Boards, and

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(c) the Agency.

(3) For the purposes of subsection (1) a body is responsible for health services if they are health services—

(a) which it is the function of the body to provide, or secure the provision of, and

(b) which are provided, or to be provided, to individuals by—

(i) the body, or

(ii) another person on the body's behalf, at the body's direction or in accordance with an agreement made by the body with that other person.**]**

Textual Amendments

F13 S. 2B inserted after s. 2A (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 7**, 12(1); S.S.I. 2004/361, **art. 2(b)(i)**

[F14 2C Functions of Health Boards: primary medical services

(1) Every Health Board—

(a) must, to the extent that they consider necessary to meet all reasonable requirements, provide or secure the provision of primary medical services as respects their area; and

(b) may, to such extent, provide or secure the provision of primary medical services as respects the area of another Health Board,

and primary medical services provided, or the provision of which is secured, by a Health Board under or by virtue of this subsection may be performed outside their area.

(2) For the purpose of securing the provision of primary medical services under subsection (1), a Health Board may make such arrangements for the provision of the services as they think fit (and may in particular make contractual arrangements with any person).

(3) A Health Board must publish information about such matters as may be prescribed in relation to the primary medical services provided under this Part.

(4) Without prejudice to **[**F15sections 12J and**]** 13, Health Boards must co-operate with one another in discharging their respective functions relating to the provision of primary medical services under this Part.

(5) Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary medical services for the purposes of this Act.

(6) Such regulations may in particular describe services by reference to the manner or the circumstances in which they are provided.

(7) Arrangements made under this Part by a Health Board for the provision of primary medical services may provide for such services to be performed outside Scotland.

(8) Anything done by a Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on the Health Board by an order under section 2(1)(a).**]**

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Textual Amendments

F14 S. 2C inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 1(2)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F15 Words in s. 2C(4) substituted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 11(1), 12(1), **Sch. 1 para. 1(3)**; S.S.I. 2004/361, **art. 2(b)(iv)**

VALID FROM 07/07/2010

[F16 2CA Functions of Health Boards outside Scotland

(1) Where it is the function of a Health Board to provide or to secure the provision of a service, the Health Board may secure the provision of that service outside Scotland.

(2) For the purposes of securing the provision of any service referred to in subsection (1), a Health Board may make such arrangements for the provision of the service as they think fit (and may in particular make contractual arrangements with any person).

(3) Anything done by a Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on the Health Board by an order under section 2(1)(a).**]**

Textual Amendments

F16 S. 2CA inserted (7.7.2010) by The National Health Service (Reimbursement of the Cost of EEA Treatment) (Scotland) Regulations 2010 (S.S.I. 2010/283), **reg. 3(2)**

PROSPECTIVE

[F17 2CB Functions of Health Boards: planning of pharmaceutical care services

(1) Regulations may make provision requiring every Health Board, in accordance with the regulations, to—
  (a) prepare a plan for the discharge of their duty under section 2CA(1);
  (b) keep a plan prepared under paragraph (a) under review;
  (c) prepare a revised plan; and
  (d) without prejudice to section 2CA(3), publish a plan so prepared or revised.

(2) Regulations under subsection (1) may in particular make provision as to—
  (a) identification by a Health Board in any such plan prepared by them of—
    (i) what pharmaceutical care services they consider are necessary in order to discharge their duty under section 2CA(1);
    (ii) whether as respects their area there is convenient access (as regards location and opening hours) to pharmaceutical care services; and
    (iii) any under-provision of pharmaceutical care services as respects their area;
  (b) the period within which a plan is to be prepared and published;

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(c) consultation which a Health Board must undertake in relation to the preparation of a plan;

(d) the duration of a plan;

(e) the frequency with which a plan must be reviewed and revised by a Health Board;

(f) the availability and accessibility of a plan to persons who are resident in a Health Board's area; and

(g) such other matters as the Scottish Ministers consider appropriate.

(3) Regulations making provision as to a matter referred to in subsection (2)(a) may provide that the matter is to be identified in accordance with such criteria as may be specified in directions given by the Scottish Ministers.**]**

Textual Amendments

F17 Ss. 2CA, 2CB inserted (prosp.) by virtue of Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 20(2)**, 43(3)

[F18 2D Equal opportunities

(1) Health Boards, Special Health Boards and the Agency must discharge their functions in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements.

(2) In this section "equal opportunities" and "equal opportunity requirements" have the same meaning as in Section L2 (equal opportunities) of Part II of Schedule 5 to the Scotland Act 1998 (c. 46).**]**

Textual Amendments

F18 S. 2D inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 4**, 12(1); S.S.I. 2004/361, **art. 2(b)(i)**

3 Scottish Medical Practices Committee.

F19 . . . . . .

Textual Amendments

F19 S. 3 repealed (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(2)**; S.S.I. 2004/148, **art. 2(c)**

4 Scottish Dental Estimates Board.

(1) For the purpose of carrying out such duties as may be prescribed with respect to . . . F20 dental treatment and appliances, regulations shall make provision for constituting a board, to be called the Scottish Dental Estimates Board, (hereafter in this Act referred to as "the Dental Estimates Board"), of whom the chairman and a majority of members shall be dental practitioners.

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[[F21](1A) Regulations may empower the Dental Practice Board—

(a) to direct a dental practitioner to submit to the Board, in relation to treatment which he has carried out or contemplates carrying out or to a description of such treatment specified in the direction, such estimates and information and such radiographs, models or other items as may be prescribed; and

(b) to direct a dental practitioner not to carry out treatment, or a description of treatment specified in the direction, without first obtaining approval of an estimate from the Board.

(1B) If regulations include any such provision as is mentioned in subsection (1A)(b) above, regulations shall confer on a dental practitioner in whose case a direction such as is mentioned in that paragraph has been given a right of appeal against the direction to a prescribed person or body, but before making regulations conferring such a right the Secretary of State shall consult such organisations as appear to him to be representative of persons providing general dental services.

(1C) Regulations may be made authorising or requiring the Dental Practice Board to carry on any such additional activity relating to the provision of general dental services as may be prescribed and, without prejudice to the generality of this subsection, to conduct or commission surveys or other research relating to the provision of such services.**]**

(2) Regulations made in pursuance of this section shall include provision, in relation to the Dental Estimates Board, for any of the matters for which, in relation to a Health Board, provision is or may be made by or under Part II of Schedule 1.

Textual Amendments

F20 Words repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

F21 S. 4(1A)–(1C) inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 12(3)**

[[F22]*Community health partnerships*

Textual Amendments

F22 Ss. 4A, 4B inserted (1.9.2004 for certain purposes otherwise 30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 2**, 12(1); S.S.I. 2004/361, **art. 2(a)(ii)(b)(ii)**

4A Community health partnerships

(1) Every Health Board shall establish, in accordance with a scheme under section 4B approved by the Scottish Ministers (an "approved scheme")—

(a) a community health partnership for the area of the Board, or

(b) two or more community health partnerships for districts which, taken together, include the whole area of the Board.

(2) Community health partnerships shall be established as committees or sub-committees of a Health Board.

(3) Where the area or district of a community health partnership includes all or part of the areas of two or more Health Boards, the community health partnership (a

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"joint community health partnership") shall be established jointly by those Boards in accordance with their approved schemes.

(4) Joint community health partnerships shall be established as joint committees of the Health Boards by which they are established.

(5) The functions of a community health partnership are—

(a) to co-ordinate, for its area or district, the planning, development and provision of—

(i) such of the services which it is the function of its Health Board to provide, or secure the provision of, as may be prescribed by regulations under section 4B(6) or specified in the approved scheme, and

(ii) such other of those services as its Health Board may specify,

with a view to improving those services,

(b) to provide, or secure the provision of—

(i) such of the services which it is the function of its Health Board to provide, or secure the provision of, as may be prescribed by regulations under section 4B(6) or specified in the approved scheme, and

(ii) such other of those services as its Health Board may specify, and

(c) to exercise such other functions of its Health Board—

(i) as may be prescribed by regulations under section 4B(6),

(ii) as may be specified in the approved scheme,

(iii) as the Health Board may delegate to it.

(6) In this section, references to the Health Board of a joint community health partnership are to each of the Health Boards by which it was established.

4B Community health partnerships: further provision

(1) Every Health Board shall, within such period as the Scottish Ministers may specify, prepare and submit to them a scheme for the establishment of one or more community health partnerships in pursuance of section 4A(1).

(2) In preparing a scheme under subsection (1) or (5) a Health Board shall—

(a) have regard to—

(i) any guidance issued under subsection (7),

(ii) community planning under section 15(1) of the Local Government in Scotland Act 2003 (asp 1) so far as relating to the area of the Board,

(b) consult—

(i) each local authority whose area includes all or part of the area or district of a community health partnership proposed by the scheme, and

(ii) any other person whom the Health Board think fit, and

(c) encourage the involvement of local authorities and other persons consulted under paragraph (b) in the preparation of the scheme.

(3) The Scottish Ministers may—

(a) approve (with or without modifications), or

(b) refuse to approve,

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a scheme submitted to them under subsection (1) or (5) or in pursuance of subsection (4).

(4) Where the Scottish Ministers refuse to approve a scheme, they must return it to the Health Board and may direct the Board to resubmit the scheme with—
  (a) such modifications (if any) as the direction may specify, and
  (b) any further modifications which the Board consider appropriate,

by such time as the direction may specify.

(5) A Health Board—
  (a) may, at any time,
  (b) if so directed by the Scottish Ministers, must, within such period as they may specify,

submit to the Scottish Ministers a new scheme under this section.

(6) Regulations may make provision in relation to—
  (a) the membership of a community health partnership,
  (b) the form and content of, and the procedure in relation to, schemes under this section,
  (c) the functions of a community health partnership and the exercise of those functions,
  (d) the application in relation to joint community health partnerships, with such modifications as may be specified, of the provisions of this Act, and any provision made under this Act, so far as applying in relation to community health partnerships,
  (e) such other matters with respect to community health partnerships as the Scottish Ministers think fit.

(7) The Scottish Ministers may, after consulting such persons as they think fit, issue guidance about community health partnerships and shall publish such guidance.

(8) For the purposes of establishing a joint community health partnership in pursuance of section 4A(3), any power to appoint committees conferred on Health Boards by virtue of this Act shall include power for two or more Health Boards jointly to appoint joint committees.

(9) Nothing in section 4A or this section affects the extent of any power under this Act so far as relating to committees or sub-committees of Health Boards.**]**

National advisory bodies

5—6. . . . . . [F23]

Textual Amendments

F23 Ss. 5, 6 repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 29(1), 66(2), **Sch. 10**

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Local advisory bodies

7 Local health councils.

(1) Every Health Board shall, within such period as the Secretary of State may specify, submit to him a scheme for the establishment of a local health council or councils for their area or for such districts covering their whole area as the Board thinks fit; and it shall be the general function of any such council to represent the interests of the public in the health service in the area or district for which they have been established.

(2) A scheme under subsection (1) shall provide for the appointment . . . [F24] by the Health Board, after consultation with such other organisations as may be specified in the scheme, of such number of members as may be so specified.

(3) The Secretary of State may approve, with or without modifications, any scheme submitted to him under subsection (1), or may refuse to approve it.

(4) A Health Board may at any time, and if directed by the Secretary of State shall, within such period as he may specify, submit a new scheme under this section, and subsection (3) shall apply to any such new scheme.

(5) The members of a local health council may appoint one of their own number as the chairman of the council.

(6) The Secretary of State shall pay to the members of a local health council, and of the committees and sub-committees thereof **[**[F25]and of any body established under subsection (9)(g),**]** such travelling and other allowances, including compensation for loss of remunerative time, as he may with the approval of the Minister for the Civil Service, from time to time determine.

(7) Allowances shall not be paid under subsection (6) except in connection with the performance of such powers or duties, in such circumstances, as the Secretary of State may determine.

(8) Health Boards shall consult with local health councils on such occasions and to such extent as may be prescribed.

(9) Regulations may make provision—

(a) enabling local health councils to consider questions relating to the health service in their area or district, whether at the request of their Health Board or otherwise, and to advise the Health Board thereon;

(b) enabling or requiring local health councils to submit reports to their Health Board on the operation of the health service in their area or district;

(c) requiring local health councils to submit annual reports on their activities to their Health Board and requiring Health Boards to transmit a copy of any such report to the Secretary of State;

(d) enabling local health councils to obtain information from their Health Board **[**[F26]and from any NHS trust in their area or district**]** on such subjects and subject to such conditions as may be prescribed;

(e) enabling or requiring members of a local health council to visit establishments administered by their Health Board **[**[F27]and establishments in their area or district administered by NHS trusts**]**, subject to such conditions as may be prescribed;

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(f) relating to the submission of schemes under subsection (1) and to the functions, procedures, staffing and expenses of local health councils;

[[F28](g) for the establishment of a body—

(i) to advise local health councils with respect to the performance of their functions, and to assist those councils in the performance of their functions; and

(ii) to perform such other functions as may be prescribed;

(h) relating to the membership, proceedings, staff, premises and expenses of any body established under paragraph (g).**]**

Textual Amendments

F24 Words repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 29(3)(a), 66(2), **Sch. 10**

F25 Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 1(1)**

F26 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 29(3)(b)**

F27 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 29(3)(c)**

F28 S. 7(9)(g)(h) inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 1(2)**

8 University Liaison Committees.

(1) The Secretary of State may by order constitute, in accordance with Schedule 4, for the area of a Health Board or for the combined areas of two or more Health Boards, a University Liaison Committee for the purpose of advising that Board or those Boards **[**[F29]and any NHS trusts in the area or combined areas**]** on the administration of the health service in **[**[F30]that area or those**]** areas so far as relating to the provision of facilities for undergraduate or post-graduate clinical teaching or for research, and for the purpose of advising that Board or those Boards **[**[F31], any such NHS trust**]** and the university or universities concerned on any matter of common interest to them.

(2) Paragraphs 11 to 15 of Schedule 1 (other than sub-paragraph (d) of paragraph 11) shall have effect in relation to the Committees constituted under this section.

Textual Amendments

F29 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 29(4)(a)**

F30 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 29(4)(b)**

F31 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 29(4)(c)**

9 Local consultative committees.

(1) Where, **[**[F32]a Health Board is satisfied that a committee formed for its area is representative**]**—

(a) of the medical practitioners of that area, or

(b) of the dental practitioners of that area, or

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(c) of the nurses and midwives of that area, or
(d) of the pharmacists of that area, or
(e) of the ophthalmic and dispensing opticians of that area,

the **[**[F33]Health Board**]** shall recognise that committee.

(2) Any committee so recognised shall be called—
(a) the area medical committee,
(b) the area dental committee,
(c) the area nursing and midwifery committee,
(d) the area pharmaceutical committee, or
(e) the area optical committee,

as the case may be, for the area concerned.

(3) Where, **[**[F32]a Health Board is satisfied that a committee formed for its area is representative**]** of any other profession engaged in the provision of care or treatment under this Act, and that it is in the interests of the health service to recognise that committee for the purposes of this Act, **[**[F34]the Board**]** may so recognise it.

(4) Where, **[**[F32]a Health Board is satisfied that a committee formed for its area is representative**]** of two or more of the professions mentioned in subsection (1) or (3), and that it is in the interests of the health service to recognise that committee for the purposes of this Act, **[**[F34]the Board**]** may so recognise it.

(5) It shall be the general function of a committee recognised under this section to advise the Health Board for its area **[**[F35]and, where the Secretary of State so directs, an NHS trust on the provision of services under this Act or under a pilot scheme under section 1 of the [M1]National Health Service (Primary Care) Act 1997**]**, being services with which that committee is concerned in that area, but, except in so far as regulations otherwise provide, in exercising functions conferred by or under this section, such a committee shall not concern itself with the remuneration and conditions of service of practitioners or other persons of whom it is representative.

(6) In addition to any other functions which committees recognised under this section may exercise, they shall exercise such functions as may be prescribed.

(7) In exercising their functions under this Act, Health Boards **[**[F36]or, where the Secretary of State so directs, NHS trusts**]**shall consult with committees recognised under this section on such occasions and to such extent as **[**[F37]the Secretary of State may direct**]**.

(8) Any committee recognised under this section may, with the approval of the Health Board for its area, delegate any of its functions, with or without restrictions or conditions, to sub-committees and may appoint to any sub-committee persons who are not members of the committee.

(9) Health Boards shall defray the reasonable expenses of committees recognised under this section and shall pay to members of such committees and sub-committees thereof such travelling and other allowances, including compensation for loss of remunerative time, as the Secretary of State may, with the approval of the Minister for the Civil Service, from time to time determine; but payments under this subsection may only be made as respects the exercise of functions conferred by or under this section.

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Textual Amendments

F32 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 29(5)(a)**

F33 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 29(5)(b)**

F34 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 29(5)(c)**

F35 Words in s. 9(5) substituted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 43(a)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F36 Words in s. 9(7) inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 43(b)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F37 Words in s. 9(7) substituted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 43(b)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

Marginal Citations

M1 1997 c.46.

Agency for Secretary of State and other bodies

10 Common Services Agency.

(1) There shall be constituted a body, to be called the Common Services Agency for the **[**[F38]Scottish Health Service**]** (hereafter in this Act referred to as "the Agency"), which shall have the functions conferred on it by this section.

(2) Schedule 5 shall have effect in relation to the Agency.

(3) The Secretary of State may by order delegate to the Agency such of his functions **[**[F39]relating to the health service**]** as he considers appropriate.

(4) After consultation with . . . [F40], the Health Boards **[**[F41]the NHS trusts**]**and any other interests which appear to the Secretary of State to be concerned, the Secretary of State, where he considers it expedient for the efficient discharge of the functions of the Health Boards **[**[F42]or of the NHS trusts**]**, may by order provide that the performance of such functions as he may determine shall stand referred to the Agency and be discharged by it on behalf of any or all of the Health Boards **[**[F43]or NHS trusts**]**.

(5) The Secretary of State may by order withdraw from the Agency any function delegated or referred to it under this section.

(6) The Agency shall provide such services and carry out such tasks for bodies associated with the health service as the Secretary of State and those bodies may agree, and on such terms and conditions as may be agreed.

(7) In carrying out its functions the Agency shall act subject to, and in accordance with, such directions as may be given by the Secretary of State.

(8) The Agency shall, notwithstanding that it is exercising functions on behalf of the Secretary of State or any other body associated with the health service, be entitled to enforce any rights acquired, and shall 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 the Agency were acting as a principal;

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and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the Agency in its own name.

[[F44](9) The Agency shall not be entitled to claim in any proceedings any privilege of the Crown in respect of the recovery or production of documents; but this subsection shall be without prejudice to any right of the Crown to withhold, or procure the withholding from production of, any document on the ground that its disclosure would be contrary to the public interest.**]**

Textual Amendments

F38 Words substituted by Health Services Act 1980 (c. 53), **Sch. 6 para. 2**

F39 Words in s. 10(3) substituted (6.8.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(2), **Sch. 2 para. 2(4)**

F40 Words repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

F41 Words in s. 10(4) inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 44(a)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F42 Words in s. 10(4) inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 44(b)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F43 Words in s. 10(4) inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 44(c)**; S.S.I. 1990/90, art. 2(a)(b), **Sch. 1**

F44 S. 10(9) repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

Modifications etc. (not altering text)

C11 S. 10(4) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C12 S. 10(4) applied (1.4.1993) by S.I. 1993/577, art. 5(1), **Sch. Pt. I** (with art. 6)
S. 10(4) applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 10(4) applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 10(4) applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 10(4) applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 10(4) applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 10(4) applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S. 10(4) applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

VALID FROM 01/08/2010

[[F45]*Healthcare Improvement Scotland*

Textual Amendments

F45 Ss. 10A-10Z19 and cross-headings inserted (1.8.2010 for the insertion of s. 10A for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 for specified purposes, 1.4.2016 for specified purposes with the exception of the insertion of s. 10Z9(1)(a), 1.4.2017 for specified purposes, 19.6.2024 for specified purposes) by Public Services Reform (Scotland) Act 2010 (asp 8), **ss. 108**, 134(7); S.S.I. 2010/221, art. 3(2)(3), **sch.**; S.S.I. 2010/321, art. 3, **sch.**; S.S.I. 2011/122, art. 2, **sch.**; S.S.I. 2016/22, art. 2(1)(2), sch. 1, **sch. 2**; S.S.I.2024/131, art. 2, **sch. 1**

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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.

VALID FROM 01/10/2010

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.

VALID FROM 01/10/2010

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

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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;

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(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,

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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.

VALID FROM 01/10/2010

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

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(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.

VALID FROM 01/10/2010

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—

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(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.

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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).

VALID FROM 01/10/2010

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.

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VALID FROM 01/10/2010

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.

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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—

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(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.

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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.

VALID FROM 01/10/2010

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;

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(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.

VALID FROM 01/10/2010

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.

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VALID FROM 01/10/2010

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

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(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).

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(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.

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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;

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(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.

VALID FROM 01/10/2010

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.

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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.

VALID FROM 01/10/2010

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.

VALID FROM 01/10/2010

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—

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(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.

VALID FROM 01/10/2010

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

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(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.

VALID FROM 01/10/2010

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.

VALID FROM 01/10/2010

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.

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(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.

VALID FROM 01/10/2010

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.

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(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.

VALID FROM 01/10/2010

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.

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VALID FROM 01/10/2010

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.

VALID FROM 01/10/2010

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

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(c) any other person, if addressed to the person at the address last known.

VALID FROM 01/10/2010

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.

VALID FROM 01/10/2010

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.

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VALID FROM 01/10/2010

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).**]**

Trusts

11 Scottish Hospital Trust.

[F46] . . . . . .

Textual Amendments

F46 S. 11 repealed (6.5.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(3)**; S.S.I. 2004/198, **art. 2(c)**

12 Scottish Hospital Endowments Research Trust.

(1) [F47] . . . . . .

(2) [F48] . . . . . .

(3) It shall be the duty of **[**[F49] the Scottish Hospital Endowments Research Trust (referred to in this Act as "the Research Trust")**]** to hold and administer funds on trust for the purpose of assisting the conduct of research into any matters relating to the causation, prevention, diagnosis or treatment of illness or to the development of medical or surgical appliances, including hearing aids.

(4) The Research Trust shall have power to accept, hold and administer, in accordance with Schedule 7, any property on trust for the purpose aforesaid.

[[F50](4A) The Research Trust shall have power to engage in activities intended to stimulate the giving of money or other property to assist them in carrying out the purpose aforesaid.

(4B) [F51]. . . the activities authorised by subsection (4A) include public appeals or collections, and the soliciting of sponsorship, donations, legacies, bequests and gifts.

(5) [F52] . . . . . .

(6) The Research Trust shall cause proper accounts to be kept of the capital, income and expenditure vested in, received by, and expended by them [F53]. . . .

(6A) [F54] . . . . . .

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[[F55](7) The Research Trust shall prepare an annual report of their proceedings which shall include an abstract of their accounts.**]**

[F56](8) **[** Schedule 7 shall have effect in relation to the Research Trust.**]]**

Textual Amendments

F47 S. 12(1)(2) repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(a)**, 43(3) ; S.S.I. 2005/492, **art. 3(b)**, Sch. 2

F48 S. 12(1)(2) repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(a)**, 43(3) ; S.S.I. 2005/492, **art. 3(b)**, Sch. 2

F49 Words in s. 12(3) substituted (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

F50 S. 12(4A)(4B) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(3)**

F51 Words in s. 12(4B) repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(c)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

F52 S. 12(5) repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(d)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

F53 Words in s. 12(6) repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(e)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

F54 S. 12(6A) repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(f)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

F55 S. 12(7) substituted (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(g)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

F56 S. 12(8) inserted (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(h)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

[[F57]**12A National Health Service trusts.**

[[F58](1) Subject to subsection (2), the Secretary of State may by order establish bodies, to be known as National Health Service trusts (in this Act referred to as "NHS trusts") **[**[F59]to provide goods and services for the purposes of the health service**]**

(2) The Secretary of State shall by regulations provide for such consultation as may be so prescribed to be carried out by a Health Board or the Agency, before he makes an order under subsection (1).

(3) Every NHS trust—

[[F60](a) shall be a body corporate having a board of directors consisting of a chairman who is not an employee of the trust, appointed by the Secretary of State; and, subject to paragraph 5(2) of Schedule 7A, executive directors (directors who, subject to subsection (5), are employees of the trust) and non-executive directors (directors who, subject to subsection (5), are not employees of the trust and who shall be known as "trustees")**]**

(b) shall have the functions conferred on it by an order under subsection (1) and by Schedule 7A.

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[[F61](4) The functions which may be specified in an order under subsection (1) include a duty to provide goods or services so specified at, from, or through a hospital or other establishment or facility so specified.**]**

[[F62](4A) The functions of an NHS trust also include power to provide services in accordance with section 17C arrangements, and to do so as a member of a qualifying body (within the meaning of section 17D).**]**

(5) Regulations may make general provision with respect to—

(a) the qualifications for and the tenure of office of the chairman **[**[F63], directors and trustees**]** of an NHS trust (including the circumstances in which they shall cease to hold, or may be removed from, office or may be suspended from performing the functions of the office);

(b) the persons by whom the directors **[**[F64], trustees,**]** and any of the officers are to be appointed and the manner of their appointment;

(c) the maximum and minimum numbers of the directors **[**[F65]and trustees**]**;

(d) the circumstances in which a person who is not an employee of the trust is nevertheless, on appointment as a director **[**[F66]trustee, to be regarded as an executive director rather than as a trustee**]**;

(e) the proceedings of the trust (including the validation of proceedings in the event of a vacancy or defect in appointment);

(f) the appointment, constitution and exercise of functions by committees and sub-committees of the trust (whether or not consisting of or including any members of the board); and

(g) the application of the seal of the trust and the constitution and proof of instruments.

(6) Part I of Schedule 7A shall have effect with respect to orders under subsection (1); Part II of that Schedule shall have effect, subject to subsection (7), with respect to the general duties and the powers and status of NHS trusts; the supplementary provisions of Part III of that Schedule shall have effect; and Part IV of that Schedule shall have effect with respect to the dissolution of NHS trusts.

(7) The specific powers conferred by paragraphs 14 and 15 in Part II of Schedule 7A may be exercised only to the extent that the exercise will not—

(a) interfere with the duty of the trust to comply with directions under paragraph 6 of that Schedule and

(b) to any significant exent interfere with the performance by the trust of its obligations under any NHS contract or any obligations imposed by an order under subsection (1).

(8) The Secretary of State may by order confer on NHS trusts specific powers additional to those contained in paragraphs 10 to 15 of Schedule 7A.**]]**

Textual Amendments

F57 Ss. 12A–12F inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 31**

F58 S. 12A repealed (1.9.2004 but only for the purpose stated in art. 2(a)(i) of the commencing S.S.I.) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 1(1)**, 12(1), S.S.I. 2004/361, **art. 2(a)(i)**

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F59 Words in s. 12A(1) substituted for s. 12A(1)(a)(b)(*retrospectively*) by 1999 c. 8, **s. 46(1)(a)(8)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**
F60 S. 12A(3)(a) substituted (1.10.1999) by 1999 c. 8, **s. 48**; S.S.I. 1999/90, art. 2(a), **Sch. 1**
F61 S. 12A(4) substituted (*retrospectively*) by 1999 c. 8, **s. 46(1)(b)(8)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**
F62 S. 12A(4A) inserted (5.3.2001) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 34**; S.S.I. 2001/58, **art. 2**
F63 Words in s. 12A(5)(a) substituted (1.10.1999) by 1999 c. 8, s. 65(1), Sch. 4 para. 45(a), **Sch. 1**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**
F64 Word in s. 12A(5)(b) inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 45(b)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**
F65 Words in s. 12A(5)(c) inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 45(c)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**
F66 Words in s. 12A(5)(d) substituted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 45(d)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

Modifications etc. (not altering text)
C13 S12A(1) extended (*retrospectively*) by 1999 c. 8, **s. 46(3)(b)(8)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

[[F67]12AAAdditional functions of NHS trusts.

The Secretary of State may direct a Health Board to delegate to an NHS trust or NHS trusts some or all of their functions—

(a) under section 2(1) of making arrangements on his behalf for the provision of services mentioned in Part II; or

(b) relating to pilot schemes under Part I of the National Health Service (Primary Care) Act 1997; or

(c) relating to arrangements under section 17C for the provision of personal medical services and personal dental services.**]**

Textual Amendments
F67 S. 12AA inserted (1.10.1999) by 1999 c. 8 s. 47; S.S.I. 1999/90, art. 2(a), **Sch. 1**

[[F68]12B Transfer of staff to NHS trusts.

(1) Subject to subsection (5), this section applies to any person who, immediately before an NHS trust's operational date—

(a) is employed by a Health Board or the Agency (in this section and section 12C referred to as a "transferor authority") to work solely at, or for the purposes of, a hospital or other establishment or facility which is to become the responsibility of the trust; or

(b) is employed by a transferor authority to work at, or for the purposes of, any such hospital, establishment or facility and is designated for the purposes of this section by a scheme made by the body specified as mentioned in paragraph 3(1)(f) of Schedule 7A.

(2) A scheme under this section shall not have effect unless approved by the Secretary of State.

(3) Subject to section 12C, the contract of employment between a person to whom this section applies and the transferor authority shall have effect from the operational date as if originally made between him and the NHS trust.

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(4) Without prejudice to subsection (3)—

(a) all the transferor authority's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the NHS trust on its operational date; and

(b) anything done before that date by or in relation to the transferor authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the NHS trust.

(5) In any case where—

(a) an order under section 12A(1) provides for the establish-ment of an NHS trust with effect from a date earlier than the operational date of the trust; and

(b) on or after that earlier date but before its operational date the NHS trust makes an offer of employment by the trust to a person who at that time is employed by a Health Board or the Agency to work, whether solely or otherwise, at, or for the purposes of, the hospital or other establishment or facility which is to become the responsibility of the trust; and

(c) as a result of the acceptance of the offer, the person to whom it was made becomes an employee of the NHS trust,

subsections (3) and (4) shall have effect in relation to that person's contract of employment as if he were a person to whom this section applies and any reference in those subsections to the operational date of the trust were a reference to the date on which he takes up employment with the trust.

(6) Subsections (3) and (4) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only of the change in employer effected by this section.

(7) A scheme under this section may designate a person either individually or as a member of a class or description of employees.**]**

Textual Amendments

F68 Ss. 12A–12F inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 31**

[F69 12C Supplementary provisions as to transfer of staff.

(1) In the case of a person who falls within subsection (1)(b) of section 12B, a scheme under that section may provide that, with effect from the NHS trust's operational date, his contract of employment (in this section referred to as "his original contract") shall be treated in accordance with the scheme as divided so as to constitute—

(a) a contract of employment with the NHS trust; and

(b) a contract of employment with the transferor authority by whom he was employed before that date.

(2) Where a scheme makes provision as mentioned in subsection (1)—

(a) the scheme shall secure that the benefits to the employee under the two contracts referred to in that subsection, when taken together, are not less favourable than the benefits under his original contract;

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(b) section 12B shall apply in relation to the contract referred to in subsection (1)(a) as if it were a contract transferred under that section from the transferor authority to the NHS trust;

(c) so far as necessary to preserve any rights and obligations, the contract referred to in subsection (1)(b) shall be regarded as a continuation of the employee's original contract; [F70]. . .

(d) . . . . . .

(3) Where, as a result of the provisions of section 12B, by virtue of his employment during any period after the NHS trust's operational date—

(a) an employee has contractual rights against an NHS trust to benefits in the event of his redundancy, and

(b) he also has statutory rights against the NHS trust under **[**[F71]Part XI of the Employment Rights Act 1976**]** (redundancy payments),

any benefits provided to him by virtue of the contractual rights referred to in paragraph (a) shall be taken as satisfying his entitlement to benefits under **[**[F72]that Part of that Act.**]]**

Textual Amendments

F69 Ss. 12A–12F inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 31**

F70 S. 12C(2)(d) and word "and" immediately preceding it repealed (6.2.1995) by S.I. 1995/31, reg. 6, **Sch.**

F71 Words in s. 12C(3) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 13(a)** (with ss. 191-195, 202)

F72 Words in s. 12C(3) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 13(b)** (with ss. 191-195, 202)

[F73]12CATransfer of staff among health service bodies.

(1) This section applies to any person who is—

(a) employed by a health service body (the transferor authority) and is transferred to another health service body (the transferee authority) because a function of the transferor authority is transferred to the transferee authority; and

(b) designated for the purposes of this section by a scheme made by the transferor authority.

(2) A scheme under this section shall not have effect unless approved by the Secretary of State.

(3) The contract of employment between a person to whom this section applies and the transferor authority shall have effect from the transfer date as if originally made between him and the transferee authority.

(4) Without prejudice to subsection (3)—

(a) all the transferor authority's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the transferee authority on the transfer date; and

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(b) anything done before the transfer date by or in relation to the transferor authority in respect of that contract shall be deemed from that date to have been done by or in relation to the transferee authority.

(5) Subsections (3) and (4) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only of the change in employer effected by this section.

(6) A scheme under this section may designate a person either individually or as a member of a class or description of employees.

(7) In this section—

a "health service body" is a body mentioned in section 17A(2); and

the "transfer date" is the date on which the function is transferred from the transferor authority to the transferee authority.**]**

Textual Amendments

F73 S. 12CA inserted (1.10.1999) by 1999 c. 8, **s. 50**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

[F74 12D Transfer of property rights and liabilities to NHS trusts.

(1) The Secretary of State may by order provide for the transfer to an NHS trust, with effect from such date as may be specified in the order, of such of the property, liabilities and obligations of a Health Board, the Agency or the Secretary of State as, in his opinion, need to be transferred to the NHS trust for the purpose of enabling it to carry out its functions.

(2) An order under this section may create or impose, or provide for the creation or imposition of, such new rights, liabilities or obligations in respect of what is transferred or what is retained by a Health Board or the Agency as appear to the Secretary of State to be necessary or expedient.

(3) Nothing in this section affects the power of the Secretary of State or any power of a Health Board or the Agency to transfer property, liabilities or obligations to an NHS trust otherwise than under subsection (1).

(4) Stamp duty shall not be chargeable in respect of any transfer to an NHS trust effected by virtue of an order under this section.

(5) Where an order under this section provides for the transfer—

(a) of land held on lease from a third party, that is to say, a person other than the Secretary of State; or

(b) of any other asset leased or hired from a third party or in which a third party has an interest,

the transfer shall be binding on the third party notwithstanding that, apart from this subsection, it would have required his consent or concurrence, or would have required to be intimated to him.

(6) Any property, liabilities and obligations which are to be transferred to an NHS trust shall be identified by agreement between, on the one hand, the NHS trust and, on the

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other hand, a Health Board or the Agency; or, in default of agreement, by direction of the Secretary of State.

(7) Where, for the purpose of a transfer pursuant to an order under this section, it becomes necessary to apportion any property, liabilities and obligations, the order may contain such provisions as apear to the Secretary of State to be appropriate for the purpose; and where any such property falls within subsection (5), the order shall contain such provisions as appear to the Secretary of State to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.

(8) Without prejudice to section 105(7), an order under this section may include provision for matters to be settled by arbitration by a person determined in accordance with the order.**]**

Textual Amendments

F74 Ss. 12A–12F inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 31**

[F75 12DA Stamp duty land tax

(1) A land transaction effected by virtue of an order under section 12D(1) is exempt from charge for the purposes of stamp duty land tax.

(2) Relief under this section must be claimed in a land transaction return or an amendment of such a return.

(3) In this section—

"land transaction" has the meaning given by section 43(1) of the Finance Act 2003;

"land transaction return" has the meaning given by section 76(1) of that Act.**]**

Textual Amendments

F75 S. 12DA inserted (1.12.2003) by The Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003 (S.I. 2003/2867), reg. 2, **Sch. para. 9(2)**

[F76 12E Originating capital debt of, and other financial provisions relating to NHS trusts.

(1) Each NHS trust shall have an **[**F77 originating capital**]** of an amount specified in an order made by the Secretary of State with the consent of the Treasury, being an amount representing, subject to subsection (2), the excess of the valuation of the assets which, on or in connection with the establishment of the trust, are or are to be transferred to it (whether before, on or after its operational date) over the amounts of the liabilities which are or are to be so transferred.

(2) In determining the **[**F77 originating capital**]** of an NHS trust, there shall be left out of account such assets or, as the case may be, such liabilities as are, or are of a class, determined for the purposes of this section by the Secretary of State, with the consent of the Treasury.

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(3) An NHS trust's **[**[F77]originating capital**]** shall be deemed to have been issued out of moneys provided by Parliament and shall constitute an asset of the Consolidated Fund.

[An NHS trust's originating capital shall be public dividend capital.**]**

[F78](4)

[F79](5) . . . . . .

[F79](6) . . . . . .

(7) With the consent of the Treasury, the Secretary of State may determine

[

[F80](a) the dividend which is to be payable at any time on any public dividend capital issued, or treated as issued, under this Act;

(b) the amount of any such public dividend capital which is to be repaid at any time;

(c) any other terms on which any public dividend capital is so issued, or treated as issued**]**

(8) Schedule 7B shall have effect with respect to—

(a) borrowing by NHS trusts;

(b) the limits on their indebtedness;

(c) the payment of additional public dividend capital to them; and

(d) the application of any surplus funds of NHS trusts.**]**

Textual Amendments

F76 Ss. 12A–12F inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 31**

F77 Words in s. 12E(1)-(3) substituted (1.10.1999) by 1999 c. 8, **s. 53(2)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

F78 S. 12E(4) substituted (1.10.1999) by 1999 c. 8, **s. 53(3)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

F79 S. 12E(5)(6) repealed (1.10.1999) by 1999 c. 8, ss. 53(4), 65(2), **Sch. 5**

F80 S. 12E(7)(a)-(c) substituted (1.10.1999) for words in s. 12E(7) by 1999 c. 8, **s. 53(5)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

[[F81]**12F Financial obligations of NHS trusts.**

(1) Every NHS trust shall ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account.

(2) It shall be the duty of every NHS trust to achieve such financial objectives as may from time to time be set by the Secretary of State with the consent of the Treasury and as are applicable to it; and any such objectives may be made applicable to NHS trusts generally, or to a particular NHS trust or to NHS trusts of a particular description.**]**

Textual Amendments

F81 Ss. 12A–12F inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 31**

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[F82 12G Trust property of NHS trusts.

(1) Subject to subsection (2), an NHS trust shall have power to accept, hold and administer any property on trust for purposes relating to any service which it is their function to make arrangements for, administer or provide.

(2) The Secretary of State may by order make such provision as he thinks appropriate in relation to the appointment of trustees in respect of an NHS trust for the purpose of holding in trust any property which is to be so held on behalf of the trust; and any such order may include provision as to the persons by whom, the manner in which, the conditions on which and the time within which, such trustees are to be appointed.

(3) Where—

(a) section 82 applies in relation to any endowment or property which is held on trust by a Health Board; and

(b) that endowment or property is, by virtue of an order under section 12D **[**F83 or a request under section 6(1) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)**]**, transferred to an NHS trust,

section 82 shall apply to the use of that endowment or property by the trust as it applied to the use thereof by the Health Board.

(4) Trustees appointed by virtue of subsection (2) shall cause proper accounts to be kept of the capital, income and expenditure vested in, received by and expended by them; and shall cause such accounts to be audited and an abstract thereof to be published in such manner as the Secretary of State may approve.**]**

Textual Amendments

F82 S. 12G inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 33**

F83 Words in s. 12G(3)(b) inserted (12.2.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), **ss. 10(1)**, 21(2); S.S.I. 2003/602, **art. 2(4)**

[F84 Quality

Textual Amendments

F84 S. 12H and cross-heading inserted (1.10.1999) by 1999 c. 8, **s. 51**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

12H F85 Duty of quality.

(1) It shall be the duty of each Health Board, Special Health Board and NHS trust and of the Agency to put and keep in place arrangements for the purpose of monitoring and improving the quality of health care which it provides to individuals.

(2) The reference in subsection (1) to health care which a body there mentioned provides to individuals includes health care which the body provides jointly with another person to individuals.

(3) In this section "health care" means services for or in connection with the prevention, diagnosis or treatment of illness.**]**

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Textual Amendments

F85 S. 12H inserted (1.10.1999) by 1999 c. 8, **s. 51**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

[F86 12I Duty in relation to governance of staff

It shall be the duty of every Health Board and Special Health Board and of the Agency to put and keep in place arrangements for the purposes of—

(a) improving the management of the officers employed by it;

(b) monitoring such management; and

(c) workforce planning.**]**

Textual Amendments

F86 S. 12I inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 3**, 12(1); S.S.I. 2004/361, **art. 2(b)(i)**

Co-operation and assistance

[F87 12J Health Boards: co-operation with other Health Boards, Special Health Boards and the Agency

(1) In exercising their functions in relation to the planning and provision of services which it is their function to provide, or secure the provision of, under or by virtue of this Act, Health Boards shall co-operate with one another, and with Special Health Boards and the Agency, with a view to securing and advancing the health of the people of Scotland.

(2) In pursuance of subsection (1) a Health Board may—

(a) undertake to provide, or secure the provision of, services as respects the area of another Health Board, and the other Health Board may enter into arrangements with the first Health Board for that purpose,

(b) undertake with one or more other Health Boards to provide, or secure the provision of, services jointly as respects their areas.

(3) A Health Board undertaking to provide, or secure the provision of, services under subsection (2) may—

(a) enter into arrangements with another Health Board, a Special Health Board or the Agency in relation to the provision of such services,

(b) do anything in relation to the provision of such services which they could do for the purpose of providing, or securing the provision of, such services as respects their area.

(4) This section is without prejudice to any other power which a Health Board may have.**]**

Textual Amendments

F87 S. 12J inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 5**, 12(1); S.S.I. 2004/361, **art. 2(b)(i)**

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13 Co-operation between Health Boards and other authorities.

In exercising their respective functions, Health Boards, **[**[F88]NHS trusts,**]** local authorities and education authorities shall co-operate with one another in order to secure and advance the health of the people of Scotland.

Textual Amendments

F88 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(4)**

Modifications etc. (not altering text)

C14 S. 13 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C15 S. 13 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 13 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 13 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 13 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 13 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 13 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 13 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S. 13 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

[[F89]13A Co-operation in planning of services for disabled persons, the elderly and others.

(1) The duty under section 13, in relation to persons to whom this section applies, includes—

(a) joint planning of—

(i) services for those persons; and

(ii) the development of those services,

[[F90]by Health Boards and such of the authorities as mentioned in that section as may be concerned**]**

(b) such consultation with voluntary organisations providing services similar to those mentioned in paragraph (*a*) as might be expected to contribute substantially to the joint planning of the services mentioned in that paragraph;

[[F91](c) the publication, at such times and in such manner as the bodies who have made joint plans under paragraph (*a*) consider appropriate, of those joint plans.**]**

(2) This section applies to—

(a) disabled persons within the meaning of the Disabled Persons (Services, Consultation and Representation) Act 1986;

(b) persons aged 65 or more; and

(c) such other categories of persons as the Secretary of State may by order specify.**]**

Textual Amendments

F89 S. 13A inserted by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), **s. 5(1)**

F90 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(5)**

F91 Section 13A(1)(c) repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

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Modifications etc. (not altering text)

C16 S. 13A applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 13A applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S. 13A applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C17 S. 13A applied (1.4.2003) by S.I. 1990/2639, art. 5(1), Sch. Pt. 1 (as amended by The Health Education Board for Scotland Amendment Order 2003 (S.S.I. 2003/154), **art. 6(a)(i)**)

[[F92]13B [[F93]Joint Liaison Committees.

(1) The Secretary of State may, after consultation with such Health Boards, local authorities, education authorities, associations of such authorities and other organisations and persons as appear to him to be appropriate, by order provide for the formation and as to the functions of committees, to be known as joint liaison committees, to advise Health Boards and local education authorities on the performance of such of their duties under section 13 as consist of co-operation in the planning and operation of services of common concern to Health Boards and such authorities.

(2) An order under subsection (1) may contain provisions relating to the role of voluntary organisations in joint liaison committees.**]**

Textual Amendments

F92 Section 13B repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

F93 S. 13B inserted (prosp.) by National Health Services (Amendment) Act 1968 (c. 66, SIF 113:2), **s. 5(1)**

14 Designated medical officers.

(1) Every Health Board shall, in accordance with regulations, designate a medical officer or officers of the Board for the purpose of exercising such functions on behalf of local authorities as may be assigned to him by or under any enactment and such other functions as local authorities may, with the agreement of the Health Board, assign to him.

(2) Any such medical officer shall, in any enactment, be known as "the designated medical officer".

(3) A designated medical officer may exercise any powers conferred by any enactment on an authorised officer of a local authority if the local authority authorises him in writing to do so.

(4) A designated medical officer may appoint one or more persons approved by the Board to act as his depute or deputes, and all things required or authorised by law to be done by or to the designated medical officer may be done by or to any depute so appointed by him; and any reference in any enactment or instrument made under any enactment to the designated medical officer shall, where the depute is acting for the officer, include a reference to the depute.

15 Supply of goods and services to local authorities, etc.

(1) The Secretary of State, a Health Board or the Agency may—

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(a) purchase and store and, on such terms and conditions as may be agreed, supply to persons **[**[F94]—

(i)**]** providing **[**[F95]primary medical services under a general medical services contract or**]**, general dental or general ophthamic services, or pharmaceutical services under Part II**[**[F96] or

(ii) providing, in accordance with section 17C arrangements, **[**[F97]primary medical services**]**, personal dental services or other services of a kind that may be provided under this Part or Part III,**]**

such equipment, goods or materials as may be prescribed;

[F98](b) purchase and store and, on such terms and conditions as may be agreed, supply to local authorities, education authorities, government departments and such public bodies or classes of public bodies as may be determined by the Secretary of State, any equipment, goods or materials of a kind used in the health service;

(c) provide local authorities and education authorities, on such terms and conditions as may be agreed, with any administrative, professional or other services of persons employed by **[**[F99]or having contracts with**]** the Secretary of State, a Health Board or the Agency;

(d) permit local authorities and education authorities, on such terms and conditions as may be agreed, to use premises occupied for the purposes of the health service;

(e) permit local authorities and education authorities, on such terms and conditions as may be agreed, to use any vehicle, plant or apparatus belonging to a Health Board or the Agency;

(f) permit education authorities, on such terms and conditions as may be agreed, and for the purpose of providing special education within the meaning of section **[**[F100]1(5)(c) of the [M2]Education (Scotland) Act 1980**]**, to use any premises or facilities provided under section 36;

(g) carry out, on such terms and conditions as may be agreed, maintenance work in connection with land or buildings for the maintenance of which a local authority or education authority is responsible.

(2) In paragraphs (a) and (b) of subsection (1), the power to supply equipment, goods and materials includes a power to make arrangements with third parties for the supply by them of those things.

(3) The Secretary of State may by order provide that, in relation to a vehicle which is made available by him in pursuance of this section and is used in accordance with the terms on which it is so available, **[**[F101]the Vehicles Excise and Registration Act 1994**]** and Part VI of the [M3]Road Traffic Act 1972 shall have effect with such modifications as are specified in the order.

Textual Amendments

F94 Words in s. 15(1)(a) renumbered as "(i)" (1.4.1998 for certain purposes, otherwise prosp.) by 1997 c. 46 s. 41(10), Sch. 2 Pt. I para. 35(a); S.I. 1998/631, art. 2(b), **Sch. 2**

F95 Words in s. 15(1)(a)(i) substituted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(2)(a)**; S.S.I. 2004/58, **art. 2(3)**.

F96 S. 15(1)(a)(ii) and preceeding word "or" inserted (1.4.1999 for certain purposes, otherwise prosp.) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 35(b)**; S.I. 1998/631, art. 2(b), **Sch. 2**

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F97 Words in s. 15(1)(a)(ii) substituted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(2)(b)**; S.S.I. 2004/58, **art. 2(3)**
F98 S. 15(2) applied in part (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art . 6)
S. 15(2) applied in part (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I**
S. 15(2) applied in part (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 15(2) applied in part (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch Pt. I**
F99 Words inserted by Health Services Act 1980 (c. 53), **s. 3(2)**
F100 Words substituted by Education (Scotland) Act 1980 (c. 44), **Sch. 4 para. 16**
F101 Words in s. 15(3) substituted (1.9.1994) by 1994 c. 22, s. 63, **Sch. 3 para. 13** (with s. 57(4))

Modifications etc. (not altering text)
C18 S. 15(1)(a) modified (1.4.2004) by The General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004 (S.S.I. 2004/163), **art. 96**
C19 S. 15(1)(b)–(e), (2) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
C20 S. 15(1)(b)-(e) applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 15(1)(b)-(e) applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 15(1)(b)-(e) applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 15(1)(b)-(e) applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

Marginal Citations
M2 1980 c. 44.
M3 1972 c. 20.

16 Assistance to voluntary organisations.

(1) The Secretary of State may assist any voluntary organisation whose activities include the provision of a service similar or related to a service provided under this Act by permitting them to use premises belonging to him on such terms as may be agreed, and by making available goods, materials, vehicles or equipment (whether by way of gift, loan or otherwise) and the services of any staff who are employed in connection with the premises or other things which he permits the organisation to use.

(2) The Secretary of State may by order provide that, in relation to a vehicle which is made available by him in pursuance of this section and is used in accordance with the terms on which it is so available, **[**[F102]the Vehicles Excise and Registration Act 1994**]**and Part VI of the [M4]Road Traffic Act 1972 shall have effect with such modifications as are specified in the order.

(3) . . . . . [F103]

Textual Amendments
F102 Words in s. 16(2) substituted (1.9.1994) by 1994 c. 22, s.63, **Sch. 3 para. 13** (with s. 57(4))
F103 Ss. 16(3), 20(2), 51, 52, 59–63, 65–68, 96(2), Sch. 16 paras. 25, 43 repealed by Health Services Act 1980 (c. 53), **Sch. 7**

Modifications etc. (not altering text)
C21 S. 16: by S.I. 1990/2639, **art. 4(2)(a)** certain functions of the Secretary of State under s. 16 are made exercisable (1.4.1991) by the Health Education Board for Scotland
C22 S. 16(1): functions transferred (31.3.2002) by S.S.I. 2002/103, **art. 4(2)(a)** (with art. 4(4))
S. 16(1): functions transferred (27.6.2002) by S.S.I. 2002/305, **art. 4(2)(a)** (with art. 4(4))

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Marginal Citations

M4 1972 c. 20.

[F104 16A Power to make payments towards expenditure on community services.

(1) A Health Board may, if they think fit, make payments in accordance with this section to any [F105 local authority] towards expenditure incurred or to be incurred by them in connection with the performance of the following functions—

(a) any function [F106 under any of the enactments mentioned in section 5(1B) of the Social Work (Scotland)Act 1968 (power of Secretary of State to issue directions to local authorities in respect of their functions under certain enactments), other than section 3 of the Disabled Persons (Employment)Act 1958];

(b) any F107. . .functions under section 1 of the Education (Scotland) Act M5 1980 in making provision for—

(i) F108. . . . . .

(ii) further education,

within the meaning of [F109 that term] in that section;

[F110 (ba) any functions under section 4 or 5 of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) in making provision for additional support needs;]

(c) any F107. . . functions under Part VII of the Housing (Scotland) Act M6 1966 (provision of housing accommodation); and

(d) any F107. . . functions under the following provisions—

(i) Part III of the National Assistance Act M7 1948;

(ii) section 116 of the Mental Health Act 1983;

(iii) section 1 or 2 of the Chronically Sick and Disabled Persons Act M8 1970;

(iv) section 23 or 297 of the Criminal Procedure (Scotland) Act M9 1975.

(2) A Health Board may, if they think fit, make payments in accordance with this section to any of the following bodies towards expenditure incurred or to be incurred by them in connection with the provision of housing accommodation—

[F111 (a) a registered housing association within the meaning of the Housing Associations Act 1985;]

(b) any development corporation established under section 2 of the New Towns (Scotland) Act M10 1968;

(c) the Housing Corporation; and

(d) the Scottish Special Housing Association.

(3) Where a voluntary organisation provides services similar to the functions referred to in this section, payments may be made in accordance with this section to any such organisation towards expenditure incurred or to be incurred in connection with the provision of those services and such payments may be made by-

(a) any Health Board either instead of or in addition to making payments under this section to any council, authority or other body in respect of such services; and

(b) any such council, authority or other body which has received payments from a Health Board under this section, out of the sums so received.

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(4) Any payments made under this section, whether in respect of expenditure of a capital or of a revenue nature, or of both, shall be made in accordance with conditions prescribed for payments of that description by the Secretary of State in directions given under this subsection.**]**

Textual Amendments

F104 S. 16A substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **s. 2**

F105 Words in s. 16A(1) substituted (1.4.1996) by S.I. 1996/974, art. 2(1), **Sch. 1 Pt. I para. 5**

F106 Words in s. 16A(1)(a) inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 112(2)(a)** (with s. 128(8); S.I. 1996/323, **art. 4**

F107 Words in s. 16A(1)(b)-(c) repealed (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 112(2)(b)-(d), **Sch. 14** (with ss. 128(8), 179); S.I. 1996/323, art. 4(1)(d), **Sch. 2**

F108 S. 16A(1)(b)(i) repealed (14.11.2005) by Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), ss. 33, 35(1), **Sch. 3 para. 2(a)(i)**; S.S.I. 2005/564, **art. 2**

F109 Words in s. 16A(1)(b) substituted (14.11.2005) by Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), ss. 33, 35(1), **Sch. 3 para. 2(a)(ii)**; S.S.I. 2005/564, **art. 2**

F110 S. 16A(1)(ba) inserted (14.11.2005) by Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), ss. 33, 35(1), **Sch. 3 para. 2(b)**; S.S.I. 2005/564, **art. 2**

F111 Paragraph (*a*) substituted by Housing (Consequential Provisions) Act 1985 (c. 71, SIF 61), s. 4(1), **Sch. 2 para. 41**

Modifications etc. (not altering text)

C23 S. 16A applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt I** (with art. 6)

Marginal Citations

M5 1980 c.44**(41:2).**

M6 1966 c.49.

M7 1948 c.29**(81:3).**

M8 1970 c.44**(81:3).**

M9 1975 c.21**(39:1).**

M10 1968 c.16**(123:4).**

[[F112]16B Financial assistance by the Secretary of State to voluntary organisations.

(1) The Secretary of State may, upon such terms and subject to such conditions as he may, with the approval of the Treasury, determine, give to a voluntary organisation to which this section applies assistance by way of grant or loan, or partly in the one way and partly in the other.

(2) This section applies to a voluntary organisation whose activities consist in or include the provision of a service similar to a relevant service, the promotion or publicising of a relevant service or a similar one or the giving of advice with respect to the manner in which a relevant service or a similar one can best be provided.

(3) In this section, "relevant service" means a service which must or may, by virtue of the National Health Service (Scotland) Act 1978, be provided or the provision of which must or may, by virtue of that Act, be secured by the Secretary of State, or a service for the provision of which a Health Board is, by virtue of that Act, under a duty to make arrangements.**]**

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Textual Amendments

F112 S. 16B inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **s. 3**

Modifications etc. (not altering text)

C24 S. 16B: by S.I. 1990/2369, **art. 4(2)(b)** certain functions of the Secretary of State under s. 16B are made exercisable (1.4.1991) by the Health Education Board for Scotland

C25 S. 16B: functions transferred (31.3.2002) by S.S.I. 2002/103, **art. 4(2)(b)** (with art. 4(4))
S. 16B: functions transferred (27.6.2002) by S.S.I. 2002/305, **art. 4(2)(b)** (with art. 4(4))

17 . . . . . [F113]

Textual Amendments

F113 S. 17 repealed by Overseas Development and Co-operation Act 1980 (c. 63), Sch. 2 Pt. I

[[F114]17AA Provision of certain services under NHS contracts.

(1) This section applies to any arrangement under which a Health Board or such other health service body as may be prescribed arrange for the provision to them—

(a) by a person on an ophthalmic list, or

(b) by a person on a pharmaceutical list,

of goods or services that they reasonably require for the purposes of functions which they are exercising under Part I of this Act.

(2) Any such arrangement is to be treated as an NHS contract for the purposes of section 17A (other than subsections (5) and (7)).

(3) In this section—

"health service body" means a person or body which is a health service body for the purposes of section 17A;

"ophthalmic list" means

(a) **[**[F115]in relation to a list published in accordance with regulations made under paragraph (a) of section 26(2) of this Act, the first part of the list which is referred to in sub-paragraph (i) of that paragraph; **]**

(b) **[**[F116]a list published in accordance with regulations made under**]** section 39(a) of the [M11]National Health Service Act 1977; or

(c) **[**[F116]a list published in accordance with regulations made under**]** article 62(2)(a) of the [M12]Health and Personal Social Services (Northern Ireland) Order 1972; and

"pharmaceutical list" means a list published in accordance with regulations made under—

(a) section 27(2) of this Act;

(b) section 42(2)(a) of the National Health Service Act 1977; or

(c) Article 63(2A)(a) of the 1972 Order.**]**

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Textual Amendments

F114 S. 17AA inserted (1.9.1997) by 1997 c. 46, **s. 31(2)**; S.I. 1997/1780, **art. 2(3)**

F115 S. 17AA(3): words in definition of "ophthalmic list" substituted (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(5)(a)**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2

F116 S. 17AA(3): words in definition of "ophthalmic list" inserted (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(5)(b)**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2

Marginal Citations

M11 1977 c. 49.

M12 S.I. 1972/1265 (N.I.14).

[F117 17A NHS contracts.

(1) The persons or bodies mentioned in paragraphs (a) to (e) of subsection (2) may, for the purpose of carrying out their functions under any enactment, and without prejudice to any other power they may have in that regard, enter into arrangements for the provision of goods or services to or by them with—

(a) one another; or

(b) any of the persons or bodies mentioned in [F118 paragraphs (*f*) to (*q*)] of that subsection.

(2) The persons and bodies referred to in subsection (1) are—

(a) Health Boards;

F119 (aa) [Special Health Boards]]

(b) the Agency;

(c) the Scottish Dental Practice Board;

F120 (d) . . . . . .

(e) NHS trusts established under section 12A;

[F121 (f) Health Authorities established under section 8 of the M13 National Health Service Act 1977;

F121 (ff) Special Health Authorities established under section 11 of the M14 National Health Service Act 1977;]

(g) F122 . . . . . .

[F123 (h) the Health Protection Agency;]

F124 (i) . . . . . .

F120 (j) . . . . . .

(k) NHS trusts established under section 5 of the National Health Service and Community Care Act 1990;

[F125 (ka) Primary Care Trusts established under section 16A of the National Health Service Act 1977]

(l) Health and Social Services Boards constituted under the Health and Personal Social Services (Northern Ireland) Order M15 1972; F126 . . .

(m) the Secretary of State.

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[[F127](n) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972;

(o) special health and social services agencies established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990;

(p) Health and Social Services trusts established under the Health and Personal Social Services (Northern Ireland) Order 1991; and

(q) the Department of Health and Social Services for Northern Ireland.**][**[F128] and in this Act "health service body" means any of those persons or bodies**]**

(3) In subsection (1)—

[F129](a) . . . . . .

(b) "services" includes services of any description,

and in this Act an arrangement falling within that subsection is referred to as an "NHS contract".

(4) Whether or not an arrangement which constitutes an NHS contract would, apart from this subsection, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities, but if any dispute arises with respect to such an arrangement, either party may refer the matter to the Secretary of State for determination under the following provisions of this section.

(5) If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to either of the prospective parties that—

(a) the terms proposed by the other party are unfair by reason that that party is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement; or

(b) for any other reason arising out of the relative bargaining positions of the prospective parties any of the terms of the proposed arrangements cannot be agreed.

that party may refer the terms of the proposed arrangement to the Secretary of State for determination under the following provisions of this section.

(6) Where a reference is made to the Secretary of State under subsection (4) or (5), the Secretary of State may determine the matter himself or, if he considers it appropriate, appoint a person to consider and determine it in accordance with regulations.

(7) By his determination of a reference under subsection (5), the Secretary of State or, as the case may be, the person appointed by him under subsection (6) may specify terms to be included in the proposed arrangement and may direct that it be proceeded with; and it shall be the duty of the prospective parties to the proposed arrangement to comply with any such directions.

(8) A determination of a reference under subsection (4) may contain such directions (including directions as to payment) as the Secretary of State or, as the case may be, the person appointed under subsection (6) considers appropriate to resolve the matter in dispute; and it shall be the duty of the parties to the NHS contract in question to comply with any such directions.

(9) Without prejudice to the generality of his powers on a reference under subsection (4), the Secretary of State or, as the case may be, the person appointed by him under

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subsection (6) may by his determination in relation to an arrangement constituting an NHS contract vary the terms of the arrangement or bring it to an end; and where the arrangement is so varied or brought to an end—

(a) subject to paragraph (b), the variation or termination shall be treated as being effected by agreement between the parties; and

(b) directions included in the determination by virtue of subsection (8) may contain such provisions as the Secretary of State or, as the case may be, the person appointed by him under subsection (6) considers appropriate in order satisfactorily to give effect to the variation or to bring the arrangement to an end.

[[F130](10) Where a body mentioned in subsection (2)(1), (n), (o), (p) or (q) is a party or prospective party to an arrangement or proposed arrangement which—

(a) falls within subsection (1); and

(b) also falls within the definition of HSS contract in Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991,

subsections (4) to (9) shall apply in relation to that arrangement or proposed arrangement with the substitution for references to the Secretary of State of references to the Secretary of State and the Department of Health and Social Services for Northern Ireland acting jointly.**]**

Textual Amendments

F117 Ss. 17A and 17B inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 30**; S.I. 1990/1793, art. 2(4), **Sch. II**

F118 Words in s. 17A(1)(b) substituted (1.4.1991) by S.I. 1991/195, **art. 4(2)**

F119 S. 17A(2)(aa) inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 46(a)(i)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F120 S. 17A(2)(d)(j) repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 46(a)(iii), **Sch. 5**; S.S.I. 1999/90, art. 2, Sch. 1, **2**

F121 S. 17A(2)(f)(ff) substituted s. 17A(f) (28.6.1998 for certain purposes and 1.4.1996 for all other purposes) by 1995 c. 17, ss. 2(1), 2(3), **Sch. 1 Pt. III para. 102(2)(a)**(with Sch. 2 para. 6)

F122 S. 17A(2)(g) repealed (1.4.2006) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 196, 199(1), **Sch. 14 Pt. 4**; S.I. 2005/2925, arts. 1(3), **11**

F123 Words in s. 17A(2)(h) substituted (1.4.2005) by Health Protection Agency Act 2004 (c. 17), ss. 11(1), 12(1), **Sch. 3 para. 9**; S.I. 2005/121, **art. 2(2)**

F124 S. 17A(2)(i) repealed (28.6.1995 for certain purposes and 1.4.1996 for all other purposes) by 1995 c. 17, ss. 2(1), 2(3), **Sch. 1 Pt. III para. 102(2)(b)** (with Sch. 6 para. 6)

F125 S. 17A(2)(ka) inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 46(a)(ii)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F126 Word in s. 17A(2) repealed (1.4.1991) by S.I. 1991/195, **art. 4(3)**

F127 S. 17A(2)(n)-(q) added (1.4.1991) by S.I. 1991/195, **art. 4(3)**

F128 Words in s. 17A(2) inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 36**; S.I. 1998/631, art. 2, **Sch. 2**

F129 S. 17A(3)(a) and the word "and" following it repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 46(b), **Sch. 5**; S.S.I. 1999/90, art. 2, Sch. 1, **2**

F130 S. 17A(10) added (1.4.1991) by S.I. 1991/195 art. 4(4)

Modifications etc. (not altering text)

C26 S. 17A applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I**.
S. 17A applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I**

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S. 17A extended (30.10.1997 for certain purposes and 11.5.1998 for all other purposes) by 1997 c. 46, **s. 16(5)**; S.I. 1997/2620, **art. 2(1)(b)**; S.I. 1998/631, **art. 2(2)**
S. 17A applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 17A applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 17A applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 17A applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 17A applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S. 17A applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
C27 S. 17A applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

Marginal Citations
M13 1977 c. 49.
M14 1977 c. 49.
M15 S.I. 1972/1265 (N.I. 14).

[F131]17B Reimbursement of Health Board's costs.

(1) Where a Health Board provide goods or services under this Act for an individual for whose health care it is not their function to provide by virtue of section 2(1), in circumstances where the condition of the individual is such that he needs those goods or services and, having regard to his condition, it is not practicable, before providing them, to enter into an NHS contract for their provision, that Health Board shall be remunerated in respect of that provision by the Health Board or Health and Social Services Board which has the function, or the **[**[F132]Health Authority or Special Health Authority**]** which has the primary functions, of providing those goods or services to that individual.

(2) The rate of any remuneration payable by virtue of subsection (1) shall be calculated in such manner or on such basis as may be determined by the Secretary of State.

(3) In any case where—
(a) a Health Board provide goods or services for the benefit of an individual; and
(b) the provision of those goods and services is not pursuant to an NHS contract; and
(c) the individual is resident outside the United Kingdom and is of a description (being a description associating the individual with another country) specified for the purposes of this subsection by a direction made by the Secretary of State,

the Health Board shall be remunerated by the Secretary of State in respect of the provision of the goods or services at such rate or rates as he considers appropriate.

(4) In subsection (1), "Health and Social Services Board" means such a Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 **[**[F133]and the reference to a function of a Health and Social Services Board is a reference to a primary function of such a Board within the meaning of Article 9 of the Health and Personal Social Services (Northern Ireland) Order 1991**]**.

Textual Amendments
F131 Ss. 17A and 17B inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 30**; S.I. 1990/1793, art. 2(4), **Sch. II**

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F132 Words in s. 17B(1) substituted (28.6.1995 for certain purposes and 1.4.1996 for all other purposes) by 1995 c. 17, ss. 2(1)(3), 4(2), 8(1), **Sch. 1 Pt. III para. 102(3)** (with Sch. 2 para. 6)

F133 Words in s. 17B(4) added (1.4.1991) by S.I. 1991/195, **art. 4(5)**.

[F134]17C Personal medical or dental services.

(1) A Health Board may make one or more agreements with respect to their area, in accordance with the provisions of regulations under section 17E, under which—

(a) **[**[F135]primary medical services**]** are provided (otherwise than by the Board); or

(b) personal dental services are provided (otherwise than by the Board).

(2) An agreement made under this section—

(a) may not combine arrangements for the provision of **[**[F135]primary medical services**]** with arrangements for the provision of personal dental services.

[[F136](2A) An agreement made under this section—

(a) for the provision of primary medical services may include arrangements for the provision of services which are not primary medical services and may provide for such other services to be performed in any place where, by virtue of section 2C, primary medical services may be performed;

(b) for the provision of personal dental services**]** may include arrangements for the provision of services—

(i) which are not **[**[F135]primary medical services**]** or personal dental services; but

(ii) which may be provided under this Part.

(3) Except to such extent as may be prescribed—

(a) [F137]. . . . . .

(b) a patient for whom personal dental services are provided under an agreement made under this section is not to count as a person for whom arrangements must be made by the Health Board concerned under section 25.

(4) This Act (and in particular section 2) has effect, in relation to [F138]. . . personal dental services provided under an agreement made under this section, as if those services were provided as a result of the delegation by the Secretary of State (by directions given under section 2) of functions of his under this Part.

(5) Regulations may provide—

(a) for functions which are exercisable by a Health Board in relation to an agreement made under this section to be exercisable on behalf of the Board by a **[**[F139]Strategic Health Authority or by a**]** Health Authority; and

(b) for functions which are exercisable by a **[**[F139]Strategic Health Authority or by a**]** Health Authority in relation to an agreement made under section 28C of the [M16]National Health Service Act 1977 to be exercisable on behalf of the Authority by a Health Board.

(6) For the purposes of this section—

[[F140]"Strategic Health Authority" and "Health Authority" have the same meaning as in the National Health Service Act 1977;**]**

[F141]. . . . . .

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"personal dental services" means dental services of a kind that may be provided by a general dental practitioner in accordance with arrangements made under Part II.

Textual Amendments

F134 S. 17C inserted (5.3.2001 for certain purposes only and otherwise*prosp.*) by 1997 c. 46, **ss. 21(2)**, 41(3); S.S.I. 2001/58, **art. 2**

F135 Words in s. 17C(1)(a)(2)(a)(b)(i) substituted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(2)(a)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F136 S. 17C(2A) substituted for words (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(2)(b)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F137 S. 17C(3)(a) repealed (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(2)(c)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F138 Words in s. 17C(4) repealed (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(2)(d)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F139 Words in s. 17C(5)(a)(b) inserted (1.10.2002) by 2002 c. 17, s. 4(3), **Sch. 3 Pt. 2 para. 12(a)**; S.I. 2002/2478, **art. 3(1)(a)** (with art. 3(3) and transitional provision in art. 4)

F140 Definition in s. 17C substituted (1.10.2002) by 2002 c. 17, s. 4(3), **Sch. 3 Pt. 2 para. 12(b)**; S.I. 2002/2478, **art. 3(1)(a)** (with art. 3(3) and transitional provision in art. 4)

F141 S. 17C(6): definition of "personal medical services" repealed (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(2)(e)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

Marginal Citations

M16 1977 c. 49.

VALID FROM 08/11/2010

[F142 17CA Primary medical services: persons with whom agreements can be made

(1) A Health Board may, subject to such conditions as may be prescribed, make an agreement under section 17C under which primary medical services are provided with—

(a) a medical practitioner,

(b) a health care professional (other than a medical practitioner),

(c) a qualifying partnership,

(d) a qualifying limited liability partnership,

(e) a qualifying company, or

(f) two or more of the persons mentioned in paragraphs (a) to (e).

(2) For the purposes of subsection (1)—

(a) a qualifying partnership is a partnership that satisfies both of the following conditions—

(i) at least one partner is a medical practitioner or other health care professional,

(ii) all other partners are individuals,

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(b) a qualifying limited liability partnership is a limited liability partnership that satisfies both of the following conditions—

(i) at least one member is a medical practitioner or other health care professional,

(ii) all other members are individuals,

(c) a qualifying company is a company which satisfies both of the following conditions—

(i) at least one member of the company is a medical practitioner or other health care professional,

(ii) all other members are individuals.

(3) A Health Board may only make such an agreement if the Board is satisfied that all the other parties to the agreement ("the contractors") have sufficient involvement in patient care.

(4) A contractor has sufficient involvement in patient care if—

(a) where the contractor is a medical practitioner or a health care professional, the contractor, or

(b) where the contractor is a partnership, limited liability partnership or a company, each partner or, as the case may be, member of the contractor,

regularly performs, or is engaged in the day to day provision of, primary medical services in accordance with section 17C arrangements, a general medical services contract or any other arrangement made in pursuance of section 2C(2) (or will so perform or be so engaged by virtue of the agreement in question).

(5) Regulations may—

(a) make provision as to what constitutes the regular performance of, or being engaged in the day to day provision of, primary medical services for the purposes of subsection (4),

(b) provide that references in subsection (4) to a person who is performing or is engaged in the provision of services include a person who has performed or been engaged in providing the services within such period as may be prescribed.

(6) Regulations under subsection (5)(a) may, in particular, provide that a period of time in which a person is not performing or is not engaged in the provision of primary medical services is, in prescribed circumstances, to be disregarded for the purposes of determining whether the person regularly performs or is engaged in the day to day provision of those services.

(7) In relation to an agreement under section 17C under which primary medical services are provided which is entered into with a partnership, regulations may make provision as to the effect on the agreement of a change in membership of the partnership.

(8) In this section, "health care professional" means a member of a profession which is regulated by a body mentioned (at the time the agreement in question is made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c.17).**]**

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Textual Amendments

F142 S. 17CA inserted (8.11.2010 for certain purposes otherwise 22.12.2010) by Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3), **ss. 38**, 43(3), S.S.I. 2010/372, **art. 2**, Schs. 1, 2

[F143F144F145 17D Persons with whom agreements may be made.

(1) A Health Board may make an agreement under section 17C only with one or more of the following—

(a) an NHS trust;

[F146(b) in the case of an agreement under which primary medical services are provided—

(i) a medical practitioner who satisfies the prescribed conditions;

(ii) a health care professional who satisfies the prescribed conditions;

(iii) a person who is providing primary medical services in accordance with a general medical services contract;

(iv) a person who is providing primary medical services in accordance with a section 28Q contract or an [F147Article 57 contract];

(v) a person who is providing primary medical services in accordance with section 17C [F148arrangements,] section 28C arrangements or F149. . . Article 15B arrangements;

(vi) an individual who is providing general dental services;

(vii) a person who is providing primary dental services in accordance with a section 28K contract or an individual who is providing general dental services in accordance with Article 61 of the 1972 Order;

(viii) a person who is providing personal dental services in accordance with section 17C arrangements;

(ix) a person who is providing primary dental services in accordance with section 28C arrangements or personal dental services in accordance with Article 15B arrangements;]

(c) in the case of an agreement under which personal dental services are provided—

(i) a qualifying dental practitioner;

(ii) an individual who is providing personal dental services in accordance with section 17C arrangements or [F150primary dental services in accordance with] section 28C arrangements;

(d) an NHS employee, a section 17C employee [F151, a section 28C employee or (in the case of an agreement under which primary medical services are provided) an Article 15B employee];

(e) a qualifying body.

F152(1A) [The power under subsection (1) to make an agreement with a person or, as the case may be, an individual falling within paragraph (b)(iii) to (ix), or (in the case of an agreement under which primary medical services are provided) paragraph (d) or (e), of that subsection is subject to such conditions as may be prescribed.

(1B) In relation to an agreement under section 17C under which primary medical services are provided which is entered into with a partnership, regulations may make provision as to the effect on the agreement of a change in the membership of the partnership.]

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(2) In this section—

[[F153]"the 1972 Order" means the Health and Personal Social Services (Northern Ireland) Order 1972 (1972 No. 1256 (N.I. 14));**]**

"the 1977 Act" means the [M17]National Health Service Act 1977;

[[F154]"Article 15B arrangements" means arrangements for the provision of services made under Article 15B of the 1972 Order;

"Article 15B employee" means an individual who, in connection with the provision of services in accordance with Article 15B arrangements, is employed by a person providing those services;

[[F155]"Article 57 contract" means a general medical services contract under Article 57 of the 1972 Order;**]**

"health care professional" means a member of a profession which is regulated by a body mentioned (at the time the agreement in question is made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17);

"Local Health Board" has the same meaning as in the 1977 Act;**]**

"NHS employee" means an individual who, in connection with the provision of services in the health service in Scotland or England and Wales **[**[F156]or, in relation to paragraph (b) below, Northern Ireland**]**, is employed by—

(a) an NHS trust;

(b) **[**[F157]in the case of an agreement under which primary medical services are provided—

(i) a Health Board;

(ii) a Primary Care Trust or a Local Health Board;

(iii) an NHS trust, an NHS foundation trust or (in Northern Ireland) a Health and Social Services Trust;

(iv) a person who is providing primary medical services in accordance with a general medical services contract or a section 28Q contract or an individual who is providing general medical services in accordance with Article 56 of the 1972 Order;

(v) an individual who is providing general dental services;

(vi) a person who is providing primary dental services in accordance with a section 28K contract or an individual who is providing general dental services in accordance with Article 61 of the 1972 Order;

and in this paragraph NHS foundation trust, NHS trust and Primary Care Trust have the same meanings as in the 1977 Act;**]**

(c) in the case of an agreement under which personal dental services are provided—

(i) a dental practitioner whose name is included in a list prepared in accordance with regulations made under section 25(2)(a) of this Act or section **[**[F158]28X**]** of the 1977 Act; or

(ii) a dental practitioner who is providing personal dental services in accordance with section 17C arrangements or **[**[F159]primary dental services in accordance with**]** section 28C arrangements;

"qualifying body" means—

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(a) a company which is limited by shares all of which are legally and beneficially owned by persons falling within paragraphs (a) to (d) of subsection (1); and also

(b) in the case of an agreement under which personal dental services are provided, a body corporate which, in accordance with the provisions of Part IV of the [M18]Dentists Act 1984, is entitled to carry on the business of dentistry;

"qualifying dental practitioner" means a dental practitioner who satisfies the conditions imposed by regulations made under section 17E(2)(b) of this Act or section 28E(2)(b) of the 1977 Act;

[F160] . . . . . .

"section 17C employee" means an individual who, in connection with the provision of services in accordance with section 17C arrangements, is employed by,

(a) **[**[F161]where the arrangements are for the provision of primary medical services, a person providing services in accordance with the arrangements;

(b) where the arrangements are for the provision of personal dental services, an individual providing services in accordance with the arrangements**]**;

"section 28C arrangements" means arrangements for the provision of services made under section 28C of the 1977 Act; [F162]. . .

"section 28C employee" means an individual who, in connection with the provision of services in accordance with section 28C arrangements, is employed by

(a) **[**[F161]where the arrangements are for the provision of primary medical services, a person providing services in accordance with the arrangements;

(b) where the arrangements are for the provision of personal dental services, an individual providing services in accordance with the arrangements

[[F163]"section 28K contract" means a general dental services contract under section 28K of the 1977 Act; and

"section 28Q contract" means a general medical services contract under section 28Q of the 1977 Act.

[F164](3) **[** The references in subsection (1)(b)(iii) to (ix) to a person or individual who is providing services include a person or, as the case may be, an individual who has provided them within such period as may be prescribed.**]]]]**

Textual Amendments

F143 By Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 184, 199(2), **Sch. 11 para. 46(1)(2)(a)**; S.I. 2004/288, arts. 1(5), **5(2)(r)** (as amended by S.I. 2004/866, art. 2(1)) it is provided that in s. 17D(1)(b)(ii) the words "primary medical services in accordance with" be inserted after "arrangements or" (1.4.2004) (which original words were substituted (13.2.2004 for certain purposes and 1.4.2004 otherwise) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(3)(a)**, 9(1); S.S.I. 2004/58, art. 2, Sch.)

F144 S. 17D inserted (5.3.2001 for certain purposes only and otherwise*prosp.*) by 1997 c. 46, **ss. 21(2)**, 40(3); S.S.I. 2001/58, **art. 2**

F145 By Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 184, 199(2), **Sch. 11 para. 46(1)(3)(a)**; S.I. 2004/288, arts. 1(5), **5(2)(r)** (as amended by S.I. 2004/866, art. 2(1)) it is provided that in s. 17D(2) the words "primary medical services in accordance with" be inserted after

"arrangements or" (1.4.2004) (which original words were substituted (13.2.2004 for certain purposes and 1.4.2004 otherwise) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(3)(d)(iv)**, 9(1); S.S.I. 2004/58, art. 2, Sch.)

F146 S. 17D(1)(b) substituted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(3)(a)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F147 Words in s. 17D(1)(b)(iv) substituted (1.2.2006) by The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(2)(a)(i)}

F148 Words in s. 17D(1)(b)(v) substituted (1.2.2006) by The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(2)(a)(ii)}

F149 Words in s. 17D(1)(b)(v) omitted (1.2.2006) by virtue of The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(2)(a)(ii)}

F150 Words in s. 17D(1)(c)(ii) inserted (1.4.2006) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 184, 199(1), **Sch. 11 para. 46(1)(2)(b)**; S.I. 2005/2925 arts. 1(3), {10}

F151 Words in s. 17D(1)(d) substituted (13.2.2004 for certain purposes otherwise 1.4.2004) by virtue of Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(3)(b)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F152 S. 17D(1A)(1B) inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(3)(c)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F153 S. 17D(2): definition of "the 1972 Order" inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by virtue of Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(3)(d)(i)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F154 S. 17D(2): definitions inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(3)(d)(ii)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F155 S. 17D(2): definition of "Article 57 contract" inserted (1.2.2006) by The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(2)(b)}

F156 S. 17D(2): words in definition of "NHS employee" inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(3)(d)(iii)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F157 S. 17D(2): definition of "NHS employee" para. (b) substituted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(3)(d)(iv)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F158 S. 17D(2): definition of "NHS employee" words in para. (c)(i) substituted (1.4.2006) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 184, 199(1), **Sch. 11 para. 46(3)(b)**; S.I. 2005/2925 arts. 1(3), {10}

F159 S. 17D(2): definition of "NHS employee" words in para. (c)(ii) inserted (1.4.2006) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 184, 199(1), **Sch. 11 para. 46(3)(c)**; S.I. 2005/2925 arts. 1(3), {10}

F160 S. 17D(2): definition of "qualifying medical practitioner" repealed (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(3)(d)(v)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F161 S. 17D(2) words in definitions of "section 17C employee" and "section 28C employee" substituted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(3)(d)(vi)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F162 Word in s. 17D(2) repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(3)**; S.S.I. 2004/58, **art. 2(3)**

F163 S. 17D(2): definitions of "section 28K contract" and "section 28Q contract" inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(3)(d)(vii)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

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F164 S. 17D(3) inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(3)(e)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

Marginal Citations

M17 1977 c. 49.

M18 1984 c. 24.

[F165 17E Personal medical or dental services: regulations.

(1) The Secretary of State may make regulations with respect to the provision of services in accordance with section 17C arrangements.

(2) The regulations must—

(a) include provision for participants other than Health Boards to withdraw from section 17C arrangements if they wish to do so;

(b) impose conditions (including conditions as to qualifications and experience) to be satisfied by F166... dental practitioners performing personal dental services, in accordance with section 17C arrangements.

In paragraph (b) "practitioner" does not include a practitioner who is undergoing training of a prescribed description.

(3) The regulations may, in particular—

(a) provide that section 17C arrangements may be made only in prescribed circumstances;

(b) provide that section 17C arrangements may be made only in prescribed areas;

(c) provide that only prescribed services, or prescribed categories of service, may be provided in accordance with section 17C arrangements;

F167 [(ca) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons performing primary medical services in accordance with section 17C arrangements;

(cb) provide for the circumstances in which a person providing primary medical services under section 17C arrangements—

(i) must, or may, accept a person as a patient to whom such services are provided under section 17C arrangements;

(ii) may decline to accept a person as such a patient;

(iii) may terminate responsibility for a patient;

(cc) make provision as to the right of patients to choose the persons from whom they are to receive primary medical services under section 17C arrangements;]

(d) require details of section 17C arrangements to be published;

(e) make provision with respect to the variation and termination of section 17C arrangements;

F168 (f) . . . . . .

F168 (g) . . . . . .

(h) provide for parties to section 17C arrangements to be treated, in such circumstances and to such extent as may be prescribed, as health service bodies for the purposes of section 17A;

(i) provide for directions, as to payments, made under section 17A(8) (as it has effect as a result of regulations made by virtue of paragraph (h)) to

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be enforceable in like manner as extract registered decrees arbitral bearing warrant for execution issued by the sheriff court of any sheriffdom in Scotland;

(j) confer powers or impose duties on the Dental Practice Board in relation to agreements made by virtue of section 17C(1) under which personal dental services are provided;

(k) authorise Health Boards to make payments of financial assistance for prescribed categories of preparatory work undertaken—

(i) in connection with preparing proposals for section 17C arrangements; or

(ii) in preparation for the provision of services under proposed section 17C arrangements.

[F169(3A) The regulations may also require payments to be made as respects the provision or performance of primary medical services under section 17C arrangements in accordance with directions given for the purpose by the Scottish Ministers.

(3B) A direction under subsection (3A) may make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.

(3C) The regulations may also include provision requiring a Health Board, in prescribed circumstances and subject to prescribed conditions, to enter into a general medical services contract on prescribed terms with any person providing services under section 17C arrangements who so requests.

(3D) The regulations may make provision for the resolution of disputes as to the terms of any proposed section 17C arrangements for the provision of primary medical services, including, without prejudice to that generality, provision for—

(a) the referral of the terms of the proposed arrangements to the Scottish Ministers; and

(b) the Scottish Ministers, or a person or panel of persons appointed by them, to determine the terms on which the arrangements may be made.**]**

F170(4) . . . . . .

F171(5) . . . . . .

F172(6) . . . . . .

F171(7) . . . . . .

(8) The power to make provision under this section of the kind mentioned in subsection (3)(j) includes power—

(a) to authorise or require the Dental Practice Board to perform on behalf of a Health Board functions of a prescribed description (including functions relating to remuneration) which have been delegated to the Dental Practice Board by the Health Board in accordance with a power conferred by the regulations;

(b) to provide that functions conferred by the regulations are only to be exercised by the Dental Practice Board in accordance with directions of the Secretary of State;

(c) to require information for the purpose of performing any functions conferred or imposed on the Dental Practice Board under this section.

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(9) In this Act "section 17C arrangements" means arrangements for the provision of services made under section 17C.**]**

Textual Amendments

F165 S. 17E inserted (5.3.2001 for certain purposes, otherwise prosp.) by 1997 c. 46, ss. 22(2), 41(3) (as amended by The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003 (S.I. 2003/1250), art. 31(5), **Sch. 9 para. 6(c)(ii)** (coming into force in accordance with art. 1(2)(3) of the amending S.I.); S.S.I. 2001/58, **art. 2**

F166 Words in s. 17E(2)(b) repealed (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(4)(a)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F167 S. 17E(3)(ca)-(cc) inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(4)(b)(i)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F168 S. 17E(3)(f)(g) repealed (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(4)(b)(ii)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F169 S. 17E(3A)-(3D) inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(4)(c)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F170 S. 17E(4) repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 47, **Sch. 5**; S.S.I. 1999/90, art. 2, **Schs. 1**, **2**

F171 S. 17E(5)(7) repealed (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(4)(d)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F172 S. 17E(6) omitted (30.9.2005 as notified in the London Gazette dated 26.8.2005) by virtue of The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003 (S.I. 2003/1250), arts. 1(2)(3), 31(5), **Sch. 9 para. 3(a)**

17EA Services lists

F173 . . . . . .

Textual Amendments

F173 S. 17EA repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(4)**; S.S.I. 2004/58, **art. 2(3)**

17EB Application for inclusion in services list

F174 . . . . . .

Textual Amendments

F174 S. 17EB repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(4)**; S.S.I. 2004/58, **art. 2(3)**

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PROSPECTIVE

[X1 17F Lists of persons performing personal dental services

(1) Regulations may provide that a person may not perform personal dental services under section 17C arrangements or a pilot scheme with a Health Board unless his name is included in a list maintained under the regulations by the Board.

(2) Regulations under subsection (1) may make provision in relation to such lists and in particular as to—

(a) the preparation, maintenance and publication of a list;

(b) eligibility for inclusion in a list;

(c) applications for inclusion (including provision for the procedure for applications to be made and dealt with and the documents to be supplied on application);

(d) the grounds on which an application for inclusion must be granted or refused;

(e) requirements with which a person included in a list must comply (including requirements as to standards of performance and patient care and as to declarations, consents or undertakings);

(f) suspension or removal from a list (including the grounds for and consequences of suspension or removal);

(g) circumstances in which a person included in a list may not withdraw from it;

(h) payments to be made by a Health Board in respect of a person suspended from a list (including provision for the amount of, or the method of calculating, the payment to be determined by the Scottish Ministers);

(i) criteria to be applied in making decisions under the regulations;

(j) disclosure of information about applicants for inclusion, refusals of applications, or suspensions, removals or references to the Tribunal, including in particular the disclosure of information about any such matter by a Health Board to the Scottish Ministers and by the Scottish Ministers to a Health Board.**]**

Editorial Information

X1 This is a new instance of s. 17F, inserted by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 18**, 43(3). A separate instance of s. 17F was inserted (1.4.1998) by National Health Service (Primary Care) Act 1997 (c. 46), s. 23(2); S.I. 1998/631, art. 2(a), Sch. 1, and repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(5)**; S.S.I. 2004/58, **art. 2(3)**

[F175 17G Right to choose dental practitioner.

(1) Provision shall be made in regulations for conferring a right on any person to choose the dental practitioner from whom he is to receive primary dental services, subject to the consent of the practitioner concerned.

(2) The regulations shall, in particular, prescribe the procedure for choosing a practitioner.

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) The regulations may, in particular, provide that the right to choose a dental practitioner conferred by the regulations shall, in the case of such persons as may be specified in the regulations, be exercised on their behalf by other persons so specified.

(4) In this section "primary dental services" means dental services which are—

(a) provided, in accordance with section 17C arrangements, as personal dental services; or

(b) provided under Part II as general dental services.**]**

Textual Amendments

F175 S. 17G inserted (1.10.1998) by 1997 c. 46, **s. 24(2)**; S.I. 1998/1998, art. 2(2)(a), **Sch. 1**

17H Immunisation.

F176 . . . . . .

Textual Amendments

F176 S. 17H repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(5)**, 9(1); S.S.I. 2004/58, **art. 2(3)**

[F177**17I Use of accommodation.**

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of **[**F178primary medical services**]** or personal dental services in accordance with section 17C arrangements, he may make the accommodation available on such terms as he thinks fit to persons providing those services.**]**

Textual Amendments

F177 S. 17I inserted (1.4.1998 for certain purposes, otherwise *prosp.*) by 1997 c. 46, s. 41(1), **Sch. 2 Pt. I para. 38**; S.I. 1998/631, arts. 2(b), 3(3), **Sch. 2**

F178 Words in s. 17I substituted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(6)**; S.S.I. 2004/58, **art. 2(3)**

[F179General medical services contracts

Textual Amendments

F179 Ss. 17J-17O and cross-heading inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 4**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

17J Health Boards' power to enter into general medical services contracts

(1) A Health Board may enter into a contract under which primary medical services are provided (whether directly or indirectly) by a contractor in accordance with the provisions of this Part.

(2) A contract under this section is referred to in this Act as a "general medical services contract".

(3) Subject to any provision made by or under this Part, a general medical services contract may make such provision as may be agreed between the Health Board and the contractor as respects—
- (a) the services to be provided under the contract;
- (b) the remuneration to be paid under the contract; and
- (c) any other matters.

(4) The services to be provided under a general medical services contract may include services which are not primary medical services; and the contract may provide for such other services to be performed in any place where, by virtue of section 2C, primary medical services may be performed.

(5) In this Part, "contractor", in relation to a general medical services contract with a Health Board, means the other party to the contract.

17K Mandatory contract term: provision of prescribed primary medical services

(1) A general medical services contract must require the contractor to provide for the contractor's patients primary medical services of such descriptions as may be prescribed.

(2) Regulations under subsection (1) may in particular describe the primary medical services by reference to the manner or circumstances in which they are provided.

17L Eligibility to be contractor under general medical services contract

(1) A Health Board may, subject to such conditions as may be prescribed, enter into a general medical services contract with—
- (a) a medical practitioner;
- (b) a partnership, where the conditions mentioned in subsection (2) are satisfied; or
- (c) a company limited by shares, where the conditions in subsection (3) are satisfied.

(2) The conditions referred to in subsection (1)(b) are that—
- (a) all of the partners are individuals;
- (b) at least one partner is a medical practitioner; and
- (c) any partner who is not a medical practitioner is—
  - (i) an NHS employee;
  - (ii) a section 17C employee;
  - (iii) a section 28C employee or an Article 15B employee;
  - (iv) a health care professional who is engaged in the provision of services under this Act, the 1977 Act or the 1972 Order;

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(v) an individual who is providing primary medical services in accordance with a general medical services contract;

(vi) an individual who is providing primary medical services in accordance with a section 28Q contract or **[**[F180]an Article 57 contract**]**;

(vii) an individual who is providing primary medical services in accordance with section 17C **[**[F181]arrangements,**]** section 28C arrangements or [F182]. . . Article 15B arrangements;

(viii) an individual who is providing general dental services;

(ix) an individual who is providing primary dental services in accordance with a section 28K contract or general dental services in accordance with Article 61 of the 1972 Order;

(x) an individual who is providing personal dental services in accordance with section 17C arrangements; or

(xi) an individual who is providing primary dental services in accordance with section 28C arrangements or personal dental services in accordance with Article 15B arrangements.

(3) The conditions referred to in subsection (1)(c) are that—

(a) at least one share in the company is legally and beneficially owned by a medical practitioner; and

(b) any share which is not so owned is legally and beneficially owned by an individual referred to in subsection (2)(c)(i) to (xi).

(4) Regulations may make provision as to the effect on a general medical services contract entered into with a partnership of a change in the membership of the partnership.

(5) In this section—

"health care professional" means a member of a profession regulated by a body mentioned (at the time the contract in question is entered into) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17);

"NHS employee" has the same meaning as it has in section 17D in relation to an agreement under which primary medical services are provided;

"the 1972 Order", "the 1977 Act", "Article 15B arrangements", "Article 15B employee", **[**[F183]"Article 57 contract",**]**"section 17C arrangements", "section 17C employee", "section 28C arrangements", "section 28C employee", "section 28K contract" and "section 28Q contract" each has the same meaning as in section 17D.

(6) The references in—

(a) subsection (2)(c)(iv) to a health care professional who is engaged in the provision of services include a health care professional who has been so engaged;

(b) subsection (2)(c)(v) to (xi) to a person or individual who is providing services include a person or individual who has provided the services,

within such period as may be prescribed.

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Textual Amendments

F180 Words in s. 17L(2)(c)(vi) substituted (1.2.2006) by The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(3)(a)(i)}

F181 Words in s. 17L(2)(c)(vii) substituted (1.2.2006) by The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(3)(a)(ii)}

F182 Words in s. 17L(2)(c)(vii) omitted (1.2.2006) by virtue of The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(3)(a)(ii)}

F183 Words in s. 17L(5) inserted (1.2.2006) by The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(3)(b)}

17M Payments by Health Boards under general medical services contracts

(1) The Scottish Ministers may give directions as to payments to be made under general medical services contracts.

(2) A general medical services contract must require payments to be made under it in accordance with directions for the time being in force under this section.

(3) A direction under subsection (1) may in particular—

- (a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;
- (b) provide for payments to be made by reference to—
  - (i) any scheme or scale specified in the direction;
  - (ii) a determination made by any person in accordance with factors specified in the direction;
- (c) provide for the making of payments in respect of individual practitioners;
- (d) provide that the whole or any part of a payment is subject to conditions (including a condition that the whole or any part of a payment is liable to be paid by a Health Board only if they are satisfied as to such conditions as may be specified in the direction);
- (e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.

(4) Before giving a direction under subsection (1), the Scottish Ministers—

- (a) must consult any body appearing to them to be representative of persons to whose remuneration the direction would relate; and
- (b) may consult such other persons as they think appropriate.

(5) References in this section to payments include fees, allowances, reimbursements, loans and repayments.

17N Other mandatory contract terms

(1) A general medical services contract must include (in addition to provisions required by or under other provisions of this Part) such provision as may be prescribed.

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(2) Regulations under subsection (1) may in particular make provision as to—
- (a) the manner in which, and the standards to which, services must be provided;
- (b) the persons who are to perform services;
- (c) the persons to whom services are to be provided;
- (d) the right of patients to choose the persons from whom they are to receive services;
- (e) the variation of terms of the contract (except terms required by or under this Part);
- (f) rights of entry and inspection (including inspection of clinical records and other documents);
- (g) the circumstances in which, and the manner in which, the contract may be terminated;
- (h) enforcement;
- (i) the adjudication of disputes.

(3) Regulations making provision in pursuance of subsection (2)(c) may make provision as to the circumstances in which a contractor—
- (a) must, or may, accept a person as a patient to whom services are provided under the contract;
- (b) may decline to accept a person as such a patient; or
- (c) may terminate the contractor's responsibility for a patient.

(4) Regulations making provision in pursuance of subsection (2)(e) may—
- (a) make provision as to the circumstances in which a Health Board may unilaterally vary the terms of a contract;
- (b) make provision suspending or terminating any duty under the contract to provide services of a prescribed description.

(5) Regulations making provision of the kind described in subsection (4)(b) may prescribe services by reference to the manner or circumstances in which they are provided.

(6) A general medical services contract must contain provision requiring the contractor to comply with any directions given by the Scottish Ministers for the purposes of this section as to the drugs, medicines or other substances which may, or may not, be ordered for patients in the provision of primary medical services under the contract.

17O Resolution of disputes and entry into NHS contracts

(1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general medical services contract, including, without prejudice to that generality, provision for—
- (a) the referral of the terms of the proposed contract to the Scottish Ministers; and
- (b) the Scottish Ministers, or a person or panel of persons appointed by them, to determine the terms on which the contract may be entered into.

(2) Regulations may make provision for any person entering, or who has entered, into a general medical services contract to be regarded as a health service body for any purposes of section 17A, in circumstances where the person so elects.

(3) Where a person is to be regarded as a health service body for any purposes of section 17A by reason only of an election by virtue of subsection (2) of this section,

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that section has effect in relation to that person with the omission of the words "under any enactment" in subsection (1) and with such other modifications (if any) as may be prescribed.

(4) Regulations under subsection (2) may include provision as to the application of section 17A in cases where—
   (a) a partnership is to be regarded as a health service body; and
   (b) there is a change in the membership of the partnership.**]**

[F184 Persons performing primary medical services

Textual Amendments

F184 S. 17P and cross-heading inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 5(2)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

17P Persons performing primary medical services

(1) Regulations may provide that a health care professional of a prescribed description may not perform any primary medical service which a Health Board is, under section 2C(1), under a duty to provide or secure the provision of unless that professional is included in a list maintained under the regulations by the Health Board.

(2) For the purposes of this section, "health care professional" means a member of a profession regulated by a body for the time being mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17).

(3) Regulations under subsection (1) may make provision in relation to such lists and in particular as to—
   (a) the preparation, maintenance and publication of a list;
   (b) eligibility for inclusion in a list;
   (c) applications for inclusion (including provision for the procedure for applications to be made and dealt with and the documents to be supplied on application);
   (d) the grounds on which an application for inclusion may or must be granted or refused;
   (e) requirements with which a person included in a list must comply (including requirements as to standards of performance and patient care and as to declarations, consents or undertakings);
   (f) suspension or removal from a list (including the grounds for and consequences of suspension or removal);
   (g) circumstances in which a person included in a list may not withdraw from it;
   (h) payments to be made by a Health Board in respect of a person suspended from the list (including provision for the amount of, or the method of calculating, the payment to be determined by the Scottish Ministers);
   (i) the criteria to be applied in making decisions under the regulations;
   (j) appeals against decisions made by a Health Board under the regulations;
   (k) disclosure of information about applicants for inclusion, refusals of applications, or suspensions, removals or references to the Tribunal.

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Regulations making provision as to the matters referred to in subsection (3)(k) may in particular authorise the disclosure of information—

(a) by a Health Board to the Scottish Ministers; and

(b) by the Scottish Ministers to a Health Board.

[F185 17Q Assistance and support

(1) A Health Board may provide assistance and support to—

(a) any person providing, or proposing to provide, primary medical services under a general medical services contract;

(b) any person providing, or proposing to provide, such services in accordance with section 17C arrangements.

(2) Assistance and support provided by a Health Board under subsection (1) is to be provided on such terms, including terms as to payment, as the Board think fit.

(3) In this section, "assistance" includes financial assistance.**]]**

Textual Amendments

F185 S. 17Q inserted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 6**, 8, 9(1); S.S.I. 2004/58, **art. 2(3)**

Modifications etc. (not altering text)

C28 Ss. 17Q-17V and preceding cross-heading substituted for s. 17Q (prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **s. 21**, 43(3)

PROSPECTIVE

[F186 Pharmaceutical care services contracts

Textual Amendments

F186 Ss. 17Q-17V and cross-heading substituted for s. 17Q (prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 21**, 43(3)

17R Mandatory contract term: provision of prescribed pharmaceutical care services

(1) A pharmaceutical care services contract must require the contractor to provide as respects the area of the Health Board pharmaceutical care services of such descriptions as may be prescribed.

(2) Regulations under subsection (1) may in particular describe the pharmaceutical care services by reference to the manner or circumstances in which they are provided.

17S Eligibility to be contractor under pharmaceutical care services contract

(1) A Health Board may, subject to such conditions as may be prescribed, enter into a pharmaceutical care services contract with—

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(a) a registered pharmacist; or

(b) a person other than a registered pharmacist who, by virtue of section 69 of the Medicines Act 1968 (c. 67), is taken to be a person lawfully conducting a retail pharmacy business in accordance with that section,

who undertakes that all pharmaceutical care services provided under the contract will be provided by, or under the supervision of, a registered pharmacist.

F187 **[** (1A) In such circumstances, and subject to such conditions, as may be prescribed, subsection (1) has effect with the omission of the words from "who undertakes" to the end.**]**

(2) Regulations may make provision as to the effect on a pharmaceutical care services contract entered into with a partnership of a change in the membership of the partnership.

Textual Amendments

F187 S. 17S(1A) inserted (prosp.) by Health Act 2006 (c. 28), **ss. 36(2)**, 83(2)

17T Payments by Health Boards under pharmaceutical care services contracts

(1) The Scottish Ministers may give directions as to payments to be made under pharmaceutical care services contracts.

(2) A pharmaceutical care services contract must require payments to be made under it in accordance with directions for the time being in force under this section.

(3) A direction under subsection (1) may in particular—

(a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;

(b) provide for payments to be made by reference to—

(i) any scheme or scale specified in the direction;

(ii) a determination made by any person in accordance with factors specified in the direction;

(c) provide that the whole or any part of a payment is subject to conditions (including a condition that the whole or any part of a payment is liable to be paid by a Health Board only if they are satisfied as to such conditions as may be specified in the direction);

(d) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.

(4) Before giving a direction under subsection (1), the Scottish Ministers—

(a) must consult any body appearing to them to be representative of persons to whose remuneration the direction would relate; and

(b) may consult such other persons as they think appropriate.

(5) The Scottish Ministers must publish directions given by them under subsection (1) in the Drug Tariff or in such other manner as they consider appropriate.

(6) References in this section to payments include fees, allowances and reimbursements.

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17U Other mandatory contract terms: pharmaceutical care services contracts

(1) A pharmaceutical care services contract must include (in addition to provisions required by or under other provisions of this Part) such provision as may be prescribed.

(2) Regulations under subsection (1) may in particular—
- (a) make provision as to the manner in which, and the standards to which, services must be provided;
- (b) provide that the Scottish Ministers may give directions as to the manner in which, and the standards to which, services must be provided;
- (c) make provision as to—
  - (i) the persons who are to perform services;
  - (ii) the area in which services are to be provided;
  - (iii) the persons to whom services are to be provided;
  - (iv) requirements to be complied with where a contractor provides any pharmaceutical care services indirectly (including requirements as to the pharmaceutical care services which may or may not be so provided);
  - (v) the variation of terms of the contract (except terms required by or under this Part);
  - (vi) rights of entry and inspection (including inspection of clinical records and other documents);
  - (vii) the circumstances in which, and the manner in which, the contract may be terminated;
  - (viii) enforcement;
  - (ix) the adjudication of disputes.

(3) Regulations making provision in pursuance of subsection (2)(c)(iii) may make provision as to the circumstances in which a contractor—
- (a) must, or may, accept a person as a person to whom services are provided under the contract;
- (b) may decline to accept a person as such a person; or
- (c) may terminate the contractor's responsibility for a person.

(4) Regulations making provision in pursuance of subsection (2)(c)(v) may—
- (a) make provision as to the circumstances in which a Health Board may unilaterally vary the terms of a contract;
- (b) make provision suspending or terminating any duty under the contract to provide services of a prescribed description.

(5) Regulations making provision of the kind described in subsection (4)(b) may prescribe services by reference to the manner or circumstances in which they are provided.

(6) A pharmaceutical care services contract must contain provision requiring the contractor to comply with directions for the time being in force given by the Scottish Ministers under regulations under subsection (1).

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17V Resolution of disputes and entry into NHS contracts: pharmaceutical care services contracts

(1) Regulations may make provision for the resolution of disputes as to the terms of a proposed pharmaceutical care services contract, including, without prejudice to that generality, provision for—
  (a) the referral of the terms of the proposed contract to the Scottish Ministers; and
  (b) the Scottish Ministers, or a person or panel of persons appointed by them, to determine the terms on which the contract may be entered into.

(2) Regulations may make provision for any person entering, or who has entered, into a pharmaceutical care services contract to be regarded as a health service body for any purposes of section 17A, in circumstances where the person so elects.

(3) Where a person is to be regarded as a health service body for any purposes of section 17A by reason only of an election by virtue of subsection (2) of this section, that section has effect in relation to that person with the omission of the words "under any enactment" in subsection (1) and with such other modifications (if any) as may be prescribed.

(4) Regulations under subsection (2) may include provision as to the application of section 17A in cases where—
  (a) a partnership is to be regarded as a health service body; and
  (b) there is a change in the membership of the partnership.**]**

PROSPECTIVE

[F188 Drug Tariff

Textual Amendments
F188 S. 17W and preceding cross-heading inserted (prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 22**, 43(3)

17W Drug Tariff

(1) The Scottish Ministers must prepare, maintain and publish a document (to be known as the " Drug Tariff ").

(2) The Scottish Ministers—
  (a) must include in the Drug Tariff, such information relating to pharmaceutical care services as may be prescribed;
  (b) may include in it such other information relating to such services as they consider appropriate.**]**

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PROSPECTIVE

[F189 Persons performing pharmaceutical care services

Textual Amendments

F189 S. 17X and preceding cross-heading inserted (prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 23**, 43(3)

17X Persons performing pharmaceutical care services

(1) Regulations may provide that a registered pharmacist may not perform any pharmaceutical care service which a Health Board is, under section 2CA(1), under a duty to provide or secure the provision of unless that pharmacist is included in a list maintained under the regulations by the Health Board.

(2) Regulations under subsection (1) may make provision in relation to such lists and in particular as to—

(a) the preparation, maintenance and publication of a list;

(b) eligibility for inclusion in a list;

(c) applications for inclusion (including provision for the procedure for applications to be made and dealt with and documents to be supplied on application);

(d) the grounds on which an application for inclusion must be granted or refused;

(e) requirements with which a person included in a list must comply (including requirements as to standards of performance and patient care and as to declarations, consents or undertakings);

(f) suspension or removal from a list (including the grounds for and consequences of suspension or removal);

(g) circumstances in which a person included in a list may not withdraw from it;

(h) payments to be made by a Health Board in respect of a person suspended from the list (including provision for the amount of, or the method of calculating, the payment to be determined by the Scottish Ministers);

(i) criteria to be applied in making decisions under the regulations;

(j) disclosure of information about applicants for inclusion, refusals of applications, or suspensions, removals or references to the Tribunal.

(3) Regulations making provision as to the matters referred to in subsection (2)(j) may in particular authorise the disclosure of information—

(a) by a Health Board to the Scottish Ministers; and

(b) by the Scottish Ministers to a Health Board.**]**

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PROSPECTIVE

[F190 Assistance and support: primary medical services and pharmaceutical care services

Textual Amendments

F190 S. 17Y and preceding cross-heading inserted (prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 24**, 43(3)

17Y Assistance and support: primary medical services and pharmaceutical care services

(1) A Health Board may provide assistance and support to—

(a) any person providing, or proposing to provide, primary medical services under a general medical services contract;

(b) any person providing, or proposing to provide, such services in accordance with section 17C arrangements;

(c) any person providing, or proposing to provide, pharmaceutical care services under a pharmaceutical care services contract.

(2) Assistance and support provided by a Health Board under subsection (1) is to be provided on such terms, including terms as to payment, as the Board think fit.

(3) In this section, " assistance " includes financial assistance. **]**

PART II

PROVISION OF SERVICES

Modifications etc. (not altering text)

C29 Pt II (ss. 18-35) restricted (1.4.1998) by 1997 c. 46, **s. 12(1)**; S.I. 1998/631, art. 2(2)(b), **Sch. 2**
Pt. II (ss. 18-35) power to modify conferred (1.4.1998) by 1997 c. 46, **s. 15(2)(a)**; S.I. 1998/631, art. 2(2)(b), **Sch. 2**
Pt. II (ss. 18-35) power to apply conferred (1.4.1998) by 1997 c. 46, **s. 15(2)(b)**; S.I. 1998/631, art. 2(2)(b), **Sch. 2**

General Services

18 Duty of Secretary of State.

It shall be the duty of the Secretary of State to secure the provision of [F191]. . . general dental and general ophthalmic services, and of pharmaceutical services, in accordance with the provisions of this Part.

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Textual Amendments

F191 Words in s. 18 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 1(3)**, 9(1); S.S.I. 2004/58, **art. 2(3)**

General medical services

19 Arrangements and regulations for general medical services.

F192 . . . . . .

Textual Amendments

F192 S. 19 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(7)**; S.S.I. 2004/58, **art. 2(3)**

19A Medical lists.

F193 . . . . . .

Textual Amendments

F193 Ss. 19-23 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(7)**; S.S.I. 2004/58, **art. 2(3)**

19B Vacancies for medical practitioners.

F194 . . . . . .

Textual Amendments

F194 Ss. 19-23 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(7)**; S.S.I. 2004/58, **art. 2(3)**

20 Applications to provide general medical services.

F195 . . . . . .

Textual Amendments

F195 Ss. 19-23 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(7)**; S.S.I. 2004/58, **art. 2(3)**

21 Requirement of suitable experience.

F196 . . . . . .

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F196 S. 21 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(7)**; S.S.I. 2004/58, **art. 2(3)**

22 Regulations as to section 21.

F197 . . . . . .

Textual Amendments

F197 S. 22 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(7)**; S.S.I. 2004/58, **art. 2(3)**

23 Distribution of general medical services.

F198 . . . . . .

Textual Amendments

F198 Ss. 19-23 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(7)**; S.S.I. 2004/58, **art. 2(3)**

24 Regulations for Medical Practices Committee.

F199 . . . . . .

Textual Amendments

F199 S. 24 repealed (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(10)**; S.S.I. 2004/148, **art. 2(c)**

24A Liabilities and obligations in relation to deputies.

F200 . . . . . .

Textual Amendments

F200 Ss. 24A-24C repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(7)**; S.S.I. 2004/58, **art. 2(3)**

24B Supplementary lists

F201 . . . . . .

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Textual Amendments

F201 Ss. 24A-24C repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(7)**; S.S.I. 2004/58, **art. 2(3)**

24C Application for inclusion in supplementary list

F202 . . . . . .

Textual Amendments

F202 Ss. 24A-24C repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(7)**; S.S.I. 2004/58, **art. 2(3)**

General dental services

25 Arrangements for provision of general dental services.

(1) It shall be the duty of every Health Board, in accordance with regulations, to make as respects their area arrangements with dental practitioners under which any person for whom a dental practitioner undertakes in accordance with the arrangements to provide dental treatment and appliances shall receive such treatment and appliances; and the services provided in accordance with those arrangements are in this Act referred to as "general dental services".

(2) Regulations may make provision as to the arrangements to be made under subsection (1), and shall include provision—

(a) for the preparation and publication of lists of dental practitioners who undertake to provide general dental services;

[F203(b) for conferring a right, subject to—

(i) **[**F204subsections (2A) and (2B)**]**

(ii) the provisions of this Part relating to the disqualification of persons providing services; and

(iii) section 8 (persons over retiring age) of the Health and Medicines Act 1988 and regulations made under that section,

on any dental practitioner who wishes to be included in any such list to be so included;**]**

F205(c) . . . . . .

(d) for the removal from the list of dental practitioners undertaking to provide general dental services for persons in any area of the name of a dental practitioner in whose case it has been determined in such manner as may be prescribed that he has never provided, or has ceased to provide, general dental services for persons in that area.

[F206(2A) No dental practitioner who is a national of a member State and is registered by virtue of a qualification granted in a member State shall be entitled to have his name included in the list kept by a Health Board unless he satisfies the Board that he has that knowledge of English which, in the interests of himself and his patients, is necessary for the provisions of general dental services in the Board's area.**]**

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[[F207](2B) Regulations may make the exercise of the right conferred by virtue of paragraph (b) of subsection (2) subject to any provision made by or under the regulations, and, in such cases as may be prescribed, may confer a right of appeal to a prescribed body in respect of a refusal to include a dental practitioner on such a list as is referred to in paragraph (a) of that subsection.**]**

(3) The remuneration to be paid under arrangements made under this section to a dental practitioner who provides general dental services elsewhere than at a health centre shall not, [F208], consist wholly or mainly of a fixed salary **[**[F209]unless either—

(a) the remuneration is paid in pursuance of arrangements made under section 33, or

(b) the services are provided in prescribed circumstances and the practitioner consents,

and it shall be the Secretary of State's duty, before he prescribes any circumstances for the purposes of paragraph (b), to consult such organisations as appear to him to be representative of the dental profession.**]**

[[F210]**[**[F211](4) Subsection (4B) applies where the registration of a dental practitioner in the dentists register is suspended—

(a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or

(b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner's fitness to practise is impaired.

(4A) For the purposes of subsection (4), a "relevant determination" that a practitioner's fitness to practise is impaired is a determination which is based solely on—

(a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);

(b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or

(c) both those grounds.

(4B) Where this subsection applies, the suspension shall not terminate any arrangements made with the dental practitioner for the provision of general dental services, but he shall not provide such services in person during the suspension.**]**

(5) Regulations may provide for the making of payments in consequence of suspension to a dental practitioner whose registration **[**[F212]is suspended as described in subsection (4)**]**.**]**

Subordinate Legislation Made

P1 S. 25: for previous exercises fo this power see Index to Government Orders.

P2 S. 25(1)(2): s. 25(1)(2) (with ss. 105(7) and 108(1)) power exercised by S.I. 1991/1349

P3 S. 25(1)(2)(2B): s. 25(1)(2)(2B) (with ss. 70(1A), 71(1), 71A, 75, 105(7), 108(1) and Sch. 11 paras. 2(6) and 3(3)(5)) power exercised by S.I. 1991/569

S. 25(2): s. 19 (with ss. 25(2), 26(2), 27(2), 105(7) and 108(1)) power exercised by S.I. 1991/1188

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F203 S. 25(2)(b) substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(6)**

F204 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 40(2)**

F205 S. 25(2)(c) repealed (1.10.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 43, **Sch. 3 Pt. I**; 1998/1998, art. 2(2)(b), Sch. 2

F206 S. 25(2A) inserted by S.I. 1981/432, **art. 4(3)**(*b*)

F207 S. 25(2B) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 40(3)**

F208 Words repealed by Health Services Act 1980 (c. 53), **Sch. 7**

F209 Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 4**

F210 S. 25(4)(5) added by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), **s. 16**(*a*)

F211 S. 25(4)(4A)(4B) substituted for s. 25(4) (coming into force in accordance with art. 1 of the amending S.I.) by The Dentists Act 1984 (Amendment) Order 2005 (S.I. 2005/2011), art. 49, **Sch. 6 para. 2(2)(a)** (with transitional provisions in Sch. 7 and S.I. 2006/1671)

F212 Words in s. 25(5) substituted (coming into force in accordance with art. 1 of the amending S.I.) by The Dentists Act 1984 (Amendment) Order 2005 (S.I. 2005/2011), art. 49, **Sch. 6 para. 2(2)(b)** (with transitional provisions in Sch. 7 and S.I. 2006/1671)

Modifications etc. (not altering text)

C30 S. 25 restricted (28.11.1997) by 1997 c. 46, **s. 1(5)(b)**; S.I. 1997/2620, **art. 2(2)**

C31 S. 25(2) extended by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 17(1)**

C32 S. 25(2)(b) modified (4.3.2004) by The National Health Service (Tribunal) (Scotland) Regulations 2004 (S.S.I. 2004/38), **reg. 26(2)(b)** (with regs. 32-34)

General ophthalmic services

26 Arrangements for provision of general ophthalmic services.

(1) It shall be the duty of every Health Board to make as respects their area, in accordance with regulations, arrangements with medical practitioners having the prescribed qualifications, **[**[F213]and with ophthalmic opticians**]**, for securing **[**[F214]the carrying out of eye examinations including where clinically necessary testing of sight.**]**

(1A) [F215]. . . . . .

(1B) [F215]. . . . . .

(1C) [F215]. . . . . .

(1D) [F215]. . . . . .

(1E) [F215]. . . . . .

(1F) Regulations shall define the services for the provision of which arrangements under this section are to be made and the services so defined are in this Act referred to as "general ophthalmic services".

[[F216](2) Regulations may make provision as to the arrangements to be made under subsection (1), and shall include provision—

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(a) as to the preparation, maintenance and publication by every Health Board of a list—

(i) the first part of which shall be of medical practitioners and ophthalmic opticians who undertake to provide general ophthalmic services under arrangements with the Board;

(ii) the second part of which shall be of persons who do not undertake to provide such services under such arrangements but who are approved by the Board to assist in the provision of such services provided under such arrangements;

(b) conferring on any person a right to choose in accordance with the prescribed procedure the medical practitioner or ophthalmic optician by whom his eyes are to be examined, his sight is to be tested or from whom any prescription for the supply of optical appliances is to be obtained.

(2A) In making provision as to the matters referred to in subsection (2)(a), the regulations may include in particular provision as to—

(a) the division of either part (or both parts) of a list into further sub-parts;

(b) eligibility for inclusion in a list;

(c) applications for inclusion (including provision for the procedure for applications to be made and dealt with and the documents to be supplied on application);

(d) the grounds on which an application for inclusion must be granted or refused;

(e) requirements with which a person included in a list must comply (including requirements as to standards of performance and patient care and as to declarations, consents or undertakings);

(f) suspension or removal from a list (including the grounds for and consequences of suspension or removal);

(g) circumstances in which a person included in a list may not withdraw from it;

(h) payments to be made by a Health Board in respect of a person suspended from a list (including provision for the amount of, or the method of calculating, the payment to be determined by the Scottish Ministers);

(i) criteria to be applied in making decisions under the regulations;

(j) disclosure of information about applicants for inclusion, refusals of applications, or suspensions, removals or references to the Tribunal, including in particular the disclosure of information about any such matter by a Health Board to the Scottish Ministers and by the Scottish Ministers to a Health Board.

(2B) Regulations may provide that—

(a) a medical practitioner or ophthalmic optician who undertakes to provide general ophthalmic services under arrangements with a Health Board may not provide such services unless his name is included in the first part of the Board's list referred to in subsection (2)(a)(i);

(b) a person who does not undertake to provide general ophthalmic services under arrangements with a Health Board may not assist in the provision of such services provided under arrangements with the Board unless his name is included in the second part of the Board's list referred to in subsection (2)(a)(ii).**]**

(3) The power conferred by this section to prescribe the qualifications to be possessed by any medical practitioner includes—

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(a) power to prescribe a requirement that the practitioner shall show, to the satisfaction of a committee recognised by the Secretary of State for the purpose, that he possesses such qualifications (including qualifications as to experience) as may be mentioned in the regulations, and

(b) power to confer on a person who is dissatisfied with the determination of such a committee, a right of appeal to a committee appointed by the Secretary of State, and to make provision for any matter for which it appears to the Secretary of State to be requisite or expedient to make provision in consequence of the conferring of that right.

Textual Amendments

F213 Words substituted by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 1(7), **Sch. 1 Pt. II para. 1**

F214 Words in s. 26(1) substituted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 13(2)(a)**, 43(3); S.S.I. 2005/492, **art. 3(e)**, Sch. 3; S.S.I. 2006/121, **art. 3(a)**, Sch. 1

F215 S. 26(1A)-(1E) repealed (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 13(2)(b)**, 43(3); S.S.I. 2005/492, **art. 3(e)**, Sch. 3; S.S.I. 2006/121, **art. 3(a)**, Sch. 1

F216 S. 26(2)-(2B) substituted for s. 26(2) (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 19**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

Pharmaceutical services

27 Arrangements for provision of pharmaceutical services.

(1) It shall be the duty of every Health Board to make, in accordance with regulations, arrangements as respects its area for the **[**[F217]provision**]** to persons who are in that area of—

(a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the health service for England and Wales, the Northern Ireland health service or the armed forces of the Crown (excluding forces of a Commonwealth country and forces raised in a colony), and

[[F218](b) proper and sufficient drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of the provision by that Board **[**[F219]or by an NHS trust**]** of dental services; and

(c) listed drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of the provision by him of general dental services; [F220]. . .

[[F221](cc) **[**[F222]such drugs and medicines and such listed appliances as may be determined by the Scottish Ministers for the purposes of this paragraph**]** which are ordered for those persons by a prescribed description of **[**[F222]person in accordance with such conditions, if any, as may be prescribed,**]** in pursuance of functions in the health service, the health service for England and Wales, the Northern Ireland health service or the armed forces of the Crown (excluding forces of a Commonwealth country and forces raised in a colony); and**]**

[such services as may be prescribed,**]]**

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[F223](d)

and the **[**[F224]provision of drugs, medicines, appliances and services in accordance with the arrangements is**][**[F225]together with additional pharmaceutical services provided in accordance with a direction under section 27A, referred to in this Act**]** as "pharmaceutical services".

In this subsection—

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

"the health service for England and Wales" and "the Northern Ireland health service" mean respectively the health service established in pursuance of section 1 of the [M19]National Health Service Act 1946 or any service provided in pursuance of Article 4(a) of the [M20]Health and Personal Social Services (Northern Ireland) Order 1972.

[[F226](1A) The descriptions of persons which may be prescribed for the purposes of subsection (1)(cc) are the following, or any sub-category of such a description—

[[F227](a) persons who are registered in the register maintained under article 5 of the Health Professions Order 2001;**]**

(b) persons who are registered pharmacists;

[[F228](c) persons who are registered in the dental care professionals register established under section 36B of the Dentists Act 1984;**]**

(d) persons who are ophthalmic opticians;

(e) persons who are registered osteopaths within the meaning of the Osteopaths Act 1993 (c. 21);

(f) persons who are registered chiropractors within the meaning of the Chiropractors Act 1994 (c. 17);

[[F229](g) persons who are registered nurses or registered midwives;**]**

(h) persons **[**[F230]not mentioned above**]** who are registered in any register established, continued or maintained under an Order in Council under section 60(1) of the Health Act 1999 (c. 8);

(i) any other description of persons which appears to the Scottish Ministers to be a description of persons whose profession is regulated by or under a provision of, or made under, Northern Ireland legislation and which the Scottish Ministers consider it appropriate to specify.

(1B) A determination under subsection (1)(cc) may—

(a) make different provision for different cases;

(b) provide for the circumstances or cases in which a drug, medicine or appliance may be ordered;

(c) provide that persons falling within a description specified in the determination may exercise discretion in accordance with any provision made by the determination in ordering drugs, medicines and listed appliances.**]**

[[F231](2) Regulations shall provide for securing that arrangements made by a Health Board under subsection (1) will enable persons in the Board's area for whom drugs, medicines or appliances mentioned in that subsection are ordered as there mentioned **[**[F232], or to whom services mentioned in subsection (1)(d) are to be provided,**]** to receive them from persons with whom such arrangements have been made.

(3) The regulations shall include provision—

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(a) for the preparation and publication by a Health Board of one or more lists of persons, other than medical practitioners and dental practitioners, who undertake to provide pharmaceutical services from premises in the Board's area;

(b) that an application to a Health Board for inclusion in such a list shall be made in the prescribed manner and shall state—

(i) the **[**[F233]pharmaceutical**]** services which the applicant will undertake to provide and, if they consist of or include the supply of appliances, which appliances he will undertake to supply; and

(ii) the premises from which he will undertake to provide those services;

(c) that, except in prescribed cases—

(i) an application for inclusion in such a list by a person not already included; and

(ii) an application by a person already included in such a list for inclusion also in respect of **[**[F233]pharmaceutical**]** services or premises other than those already listed in relation to him,

shall be granted only if the Health Board is satisfied, in accordance with the regulations, that it is necessary or desirable to grant it in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included in the list of the services, or some of the services, specified in the application; and

(d) for the removal of an entry in respect of premises from a list if it has been determined in the prescribed manner that the person to whom the entry relates—

(i) has never provided from those premises; or

(ii) has ceased to provide from them, the **[**[F233]pharmaceutical**]** services, or any of the services, which he is listed as undertaking to provide from them.

(4) The regulations may include provision—

(a) that an application to a Health Board may be granted in respect of some only of the **[**[F233]pharmaceutical**]** services specified in it;

(b) that an application to a Health Board relating to **[**[F233]pharmaceutical**]** services of a prescribed description shall be granted only if it appears to the Board that the applicant has satisfied such conditions with regard to the provision of those **[**[F233]pharmaceutical**]** services as may be prescribed;

[[F234](ba) that an application to a Health Board by a person who qualified to have his name registered under the Pharmacy Act 1954 by virtue of section 4A of that Act (qualification by European diploma) shall not be granted unless the applicant satisfies the Board that he has the knowledge of English which, in the interests of himself and the persons making use of the services to which the application relates, is necessary for the provision of pharmaceutical services in the Board's area.**]**

(c) that the inclusion of a person in a list in pursuance of such an application may be for a fixed period;

(d) that, where the premises from which an application states that the applicant will undertake to provide **[**[F233]pharmaceutical**]** services are in an area of a prescribed description, the applicant shall not be included in the list unless his inclusion is approved by a prescribed body and by reference to **[**[F235]prescribed criteria**]**; and

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(e) that the prescribed body may give its approval subject to conditions.

(5) The regulations shall include provision conferring on such persons as may be prescribed rights of appeal from decisions made by virtue of subsection (3) or (4).

(6) The regulations shall be so framed as to preclude—

(a) a person included in a list published under subsection (3)(*a*) above; and

(b) an employee of such a person;

from taking part in the decision whether an application such as is mentioned in subsection (3)(*c*) above should be granted or an appeal against such a decision brought by virtue of subsection (5) above should be allowed.**]**

Subordinate Legislation Made

P4 S. 27: s. 19 (with ss. 23, 24, 27, 28, 105(7) and 108(1)) power exercised by S.I. 1991/572
S. 27: s. 19 (with ss. 27, 69, 75(a), 105(7), 108(1) and Sch. 11 para. 1) power exercised by S. I. 1991/574
S. 27: for previous exercises of power see Index to Governmental Orders

P5 S. 27: s. 19 (with ss. 27 and 108(1)) power exercised by S.I. 1991/2241

P6 S. 27(2): s. 19 (with ss. 25(2), 26(2), 27(2), 105(7) and 108(1)) power exercised by S.I. 1991/1188.

Textual Amendments

F217 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(7)(a)(i)**

F218 S. 27(1)(b)(c) substituted for s. 27(1)(b) by Health Services Act 1980 (c. 53), **s. 20(2)**

F219 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(7)(a)(ii)**

F220 Word "and" at end of s. 27(1)(c) omitted (1.7.1996) by virtue of Medicinal Products: Prescription by Nurses etc. Act 1992 (c. 28), **s. 3**; S.I. 1996/1505, **art. 2**

F221 S. 27(1)(cc) inserted (1.7.1996) by Medicinal Products; Prescription by Nurses etc. Act 1992 (c. 28), **s. 3**; S.I. 1996/1505, **art. 2**

F222 Words in s. 27(1)(cc) substituted (11.5.2001 for conferring power to make any order or regulations, otherwise 1.4.2002) by 2001 c. 15, **s. 44(2)** (with ss. 64(9), 65(4)); S.S.I. 2002/75, **art. 2**

F223 S. 27(1)(d) and "; and" preceding it inserted by National Health Service and Community Care Act 1990 (c.19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(7)(a)(iii)**

F224 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(7)(a)(iv)**

F225 Words in s. 27(1) substituted (15.8.1997) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 44**; S.I. 1997/1780, art. 2(1), **Sch.**

F226 S. 27(1A)(1B) inserted (11.5.2001 for conferring power to make any order or regulations, otherwise 1.4.2002) by 2001 c. 15, **s. 44(3)** (with ss. 64(9), 65(4)); S.S.I. 2002/75, **art. 2**

F227 S. 27(1A)(a) substituted (9.7.2003) by The Health Professions Order 2001 (Consequential Amendments) Order 2003 (S.I. 2003/1590), art. 3, **Sch. para. 2**

F228 Words in s. 27(1A)(c) substituted (coming into force in accordance with art. 1 of the amending S.I.) by The Dentists Act 1984 (Amendment) Order 2005 (S.I. 2005/2011), art. 49, **Sch. 6 para. 2(3)** (with transitional provisions in Sch. 7 and S.I. 2006/1671)

F229 S. 27(1A)(g) substituted (1.8.2004) by The Health Act 1999 (Consequential Amendments) (Nursing and Midwifery) Order 2004 (S.I. 2004/1771), art. 3, **Sch. para. 6(a)**

F230 Words in s. 27(1A)(h) inserted (1.8.2004) by The Health Act 1999 (Consequential Amendments) (Nursing and Midwifery) Order 2004 (S.I. 2004/1771), art. 3, **Sch. para. 6(b)**

F231 S. 27(2)–(6) substituted for (2) by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), **s. 3(3)**

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Changes to legislation: *National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F232 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(7)(b)**

F233 Word inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(7)(c)**

F234 S. 27(4)(ba) inserted by S.I. 1987/2202, **art. 5**

F235 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(7)(d)**

Modifications etc. (not altering text)

C33 Words in s. 27 modified (4.3.2004) by The National Health Service (Tribunal) (Scotland) Regulations 2004 (S.S.I. 2004/38), **reg. 26(2)(d)** (with regs. 32-34)

C34 S. 27(2) extended by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 17(1)**

Marginal Citations

M19 1946 c. 81.

M20 S.I. 1972/1265.

[[F236]27A Arrangements for providing additional pharmaceutical services.

(1) The Secretary of State may—

(a) give directions to a Health Board requiring them to arrange for the provision to persons in their area of additional pharmaceutical services; or

(b) by giving directions to a Health Board authorise them to arrange for such provision if they wish to do so.

(2) Directions under this section may make different provision in relation to different services specified in the directions.

(3) The Secretary of State must publish any directions under this section in the Drug Tariff or in such other manner as he thinks appropriate.

(4) In this section—

"additional pharmaceutical services", in relation to directions, means such services (of a kind that do not fall within section 27) as may be specified in the directions; and

"Drug Tariff" means the Drug Tariff published under regulation 9 of the [M21]National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995 or under any corresponding provision replacing, or otherwise derived from, that regulation.**]**

Textual Amendments

F236 S. 27A inserted (15.8.1997) by 1997 c. 46, **s. 27(2)**; S.I. 1997/1780, art. 2(1), **Sch.**

Marginal Citations

M21 S.I. 1995/414.

[[F237]27B Terms and conditions etc.

(1) Directions under section 27A may require the Health Authority to whom they apply, when making arrangements—

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(a) to include, in the terms on which the arrangements are made, such terms as may be specified in the directions;

(b) to impose, on any person providing a service in accordance with the arrangements, such conditions as may be so specified.

(2) The arrangements must secure that any service to which they apply is provided only by a person whose name is included in a pharmaceutical list.

(3) Different arrangements may be made with respect to—

(a) the provision of the same service by the same person but in different circumstances; or

(b) the provision of the same service by different persons.

(4) A Health Authority must provide details of proposed arrangements (including the remuneration to be offered for the provision of services) to any person who asks for them.

(5) After making any arrangements, a Health Authority must publish, in such manner as the Secretary of State may direct, such details of the arrangements as he may direct.

(6) In this section, "pharmaceutical list" means, subject to any provision of the directions in question, a list—

(a) published by the Health Authority concerned, or by any other Health Authority, in accordance with regulations made under section 27(2)(a) of this Act; or

(b) published by any body in accordance with regulations made under section 42(2)(a) of the [M22]National Health Service Act 1977or Article 63(2A)(a) of the [M23]Health and Personal Social Services (Northern Ireland) Order 1972.**]**

Textual Amendments

F237 S. 27B inserted (15.8.1997) by 1997 c. 46, **s. 28(2)**; S.I. 1997/1780, art. 2(1), **Sch.**

Marginal Citations

M22 1978 c. 29.

M23 S.I. 1972/1265 (N.I.14).

28 Persons authorised to provide pharmaceutical services.

(1) Except as may be provided by **[**[F238]or under**]** regulations, no arrangements shall be made by a Health Board with a medical practitioner or dental practitioner under which he is required or agrees to provide pharmaceutical services to any person to whom he is rendering **[**[F239]primary medical services under Part 1**]** or general dental services.

(2) Except as may be provided by **[**[F240]or under**]** regulations, no arrangements for the dispensing of medicines **[**[F241]or the provision of pharmaceutical services**]** shall be made with persons other than persons who are registered pharmacists or are persons lawfully conducting a retail pharmacy business in accordance with section 69 of the [M24]Medicines Act 1968, and who undertake

[[F242](a)**]** that all medicines **[**[F243]provided**]** by them under the arrangements made under this Part shall be dispensed **[**[F244], and

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(b) that

[all services mentioned in section 27(1)(d) provided by them under [F245](i)**]** those arrangements

[all additional pharmaceutical services provided in accordance with a [F246](ii) direction under section 27A,**]**

shall be provided**]** either by, or under the direct supervision of, a registered pharmacist.

[[F247](2A) Regulations shall provide for the preparation and publication by a Health Board of one or more lists of medical practitioners who undertake to supply drugs and appliances in the Board's area.

(2B) The regulations shall include provision for the removal of an entry from a list in prescribed circumstances.**]**

Textual Amendments

F238 Words inserted by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), **s. 3(4)**

F239 Words in s. 28(1) substituted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(8)**; S.S.I. 2004/58, **art. 2(3)**

F240 Words inserted by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), **s. 3(4)**

F241 Words inserted by National Health Service and Community Care Act 1990 (c.19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(8)(a)**

F242 "(a)" inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(8)(b)**

F243 Word substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(8)(c)**

F244 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(8)(d)**

F245 S. 28(2)(b) "(i)" inserted (15.8.1997) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 45**; S.I. 1997/1780, art 2(1), **Sch.**

F246 S. 28(2)(b)(ii) inserted (15.8.1997) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 45**; S.I. 1997/1780, art. 2(1), **Sch.**

F247 S. 28(2A)(2B) inserted (1.4.1998) by National Health Service (Primary Care) Act 1997 (c. 46), **ss. 29(2)**, 41(3); S.I. 1998/631, art. 2(a), Sch. 1 (with arts. 3-5)

Marginal Citations

M24 1968 c. 67.**(84).**

[[F248] Remuneration for services]

Textual Amendments

F248 S. 28A inserted (*prosp.*) by Health and Social Security Act 1984 (c. 48, SIF 113:1), **ss. 7(2)**, 27(1)

[[F249]28A Remuneration for Part II services.

(1) The remuneration to be paid to persons who provide [F250]. . . , general dental services, general ophthalmic services or pharmaceutical services under this Part of this Act shall be determined by determining authorities (and they may also determine the

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remuneration to be paid to persons providing those services in respect of the instruction of any person in matters relating to those services).

(2) For the purposes of this section and section 28B, determining authorities are—
- (a) the Secretary of State; and
- (b) so far as authorised by him to exercise the functions of determining authorities, any Health Board or other person appointed by him in an instrument (referred to in this section and section 28B as an instrument of appointment).

(3) An instrument of appointment—
- (a) may contain requirements with which a determining authority appointed by that instrument must comply in making determinations; and
- (b) may be contained in regulations.

(4) Subject to this section and section 28B, regulations may make provision about determining remuneration under subsection (1) and may in particular impose requirements with which determining authorities must comply in making, or in connection with, determinations (including requirements as to consultation and publication).

(5) Regulations may provide—
- (a) that determinations may be made by reference to any of the following—
  - (i) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or to be fixed or determined, otherwise than by way of a determination under subsection (1);
  - (ii) scales, indices or other data of any description specified in the regulations;
- (b) that any determination which in accordance with regulations made by virtue of paragraph (a)(ii) falls to be made by reference to a scale or an index or to any other data may be made not only by reference to that scale or index or those data in the form current at the time of the determination but also by reference to the scale, index or data in any subsequent form attributable to amendment or revision taking effect after that time or to any other cause.

(6) Regulations may—
- (a) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates;
- (b) provide that any such determination which does not specify such a date shall have effect in relation to remuneration in respect of a period beginning—
  - (i) if it is required to be published, on the date of publication;
  - (ii) if it is not so required, on the date on which it is made.

(7) A reference in this section or section 28B to a determination is a reference to a determination of remuneration under subsection (1) of this section.**]**

Textual Amendments

F249 S. 28A and side-note substituted (1.10.1999) by 1999 c. 8, **s. 57(1)(2)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

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F250 Words in s. 28A(1) repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(9)**; S.S.I. 2004/58, **art. 2(3)**

[F251 28B Part II remuneration: supplementary.

(1) Before a determination is made by the Secretary of State which relates to all persons who provide services of, or of a category falling within, one of the descriptions of services mentioned in section 28A(1), he—

(a) shall consult a body appearing to him to be representative of persons to whose remuneration the determination would relate, and

(b) may consult such other persons as he considers appropriate.

(2) Determinations may make different provision for different cases including different provision for any particular case, class of case or area.

(3) Determinations may—

(a) be made in more than one stage;

(b) be made by more than one determining authority;

(c) be varied or revoked by subsequent determinations.

(4) A determination may be varied—

(a) to correct an error; or

(b) where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact.

(5) Determinations may, in particular, provide that the whole or any part of the remuneration—

(a) is payable only if the determining authority is satisfied as to certain conditions; or

(b) is to be applied for certain purposes or is otherwise subject to certain conditions.

(6) Subject to [F252 section] 25(3), remuneration under section 28A may consist of payments by way of—

(a) salary;

(b) fees;

(c) allowances;

(d) reimbursement (in full or in part) of expenses incurred or expected to be incurred in connection with the provision of the services or instruction,

and may be determined from time to time.

(7) At the time a determination is made or varied, certain matters which require determining may be reserved to be decided at a later date.

(8) The matters which may be reserved include in particular—

(a) the amount of remuneration to be paid in particular cases;

(b) whether any remuneration is to be paid in particular cases.

(9) Any determination shall be made after taking into account all the matters which are considered to be relevant by the determining authority and such matters may include in particular—

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(a) the amount or estimated amount of expenses (taking into account any discounts) incurred in the past or likely to be incurred in the future (whether or not by persons to whose remuneration the determination will relate) in connection with the provision of services of the description in section 28A(1) to which the determination will relate or of any category falling within that description;

(b) the amount or estimated amount of any remuneration paid or likely to be paid to persons providing such services;

(c) the amount or estimated amount of any other payments or repayments or other benefits received or likely to be received by any such persons;

(d) the extent to which it is desirable to encourage the provision, either generally or in particular places, of the description or category of services to which the determination will relate;

(e) the desirability of promoting services which are—

(i) economic and efficient; and

(ii) of an appropriate standard.

(10) If the determination is of remuneration for a category of services falling within one of the descriptions of services mentioned in section 28A(1), the reference in subsection (9)(a) to a category of services is a reference to the same category of services or to any other category of services falling within the same description.**]**

Textual Amendments

F251 S. 28B and sidenote substituted (1.10.1999) by 1999 c. 8, **s. 57(1)(2)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

F252 Words in s. 28B(6) substituted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(10)**; S.S.I. 2004/58, **art. 2(3)**

Modifications etc. (not altering text)

C35 S. 28B modified (1.10.1999) by 1999 c. 8, **s. 57(2)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

[[F253]28C Indemnity cover.

(1) Regulations may make provision for the purpose of securing that, in prescribed circumstances, prescribed Part II practitioners hold approved indemnity cover.

(2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—

(a) for securing that a person is not be added to any list unless he holds approved indemnity cover;

(b) for the removal from a list prepared by a Health Board of a Part II practitioner who does not within a prescribed period after the making of a request by the Health Board in the prescribed manner satisfy the Health Board that he holds approved indemnity cover.

(3) For the purposes of this section—

"approved body" means a person or persons approved in relation to indemnity cover of any description, after such consultation as may be prescribed, by the Secretary of State or by such other person as may be prescribed;

"approved indemnity cover" means indemnity cover made—

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(a) on prescribed terms; and

(b) with an approved body;

"indemnity cover", in relation to a Part II practitioner (or person who proposes to provide Part II services), means a contract of insurance or other arrangement made for the purpose of indemnifying him and any person prescribed in relation to him to any prescribed extent against any liability which—

(a) arises out of the provision of Part II services in accordance with arrangements made by him with a Health Board under this Part of this Act; and

(b) is incurred by him or any such person in respect of the death or personal injury of a person;

"list" has the same meaning as in section **[**[F254]29(8)(b) to (e)**]**;

"Part II practitioner" means a person whose name is on a list;

"Part II services" means [F255]. . . general dental services, general ophthalmic services or pharmaceutical services;

"personal injury" means any disease or impairment of a person's physical or mental condition and includes the prolongation of any disease or such impairment;

and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover.

(4) The regulations may provide that a person of any description who has entered into a contract or arrangement which is—

(a) in a form identified in accordance with the regulations in relation to persons of that description; and

(b) made with a person or persons so identified,

is to be treated as holding approved indemnity cover for the purposes of the regulations.**]**

Textual Amendments

F253 S. 28C and sidenote inserted (1.3.2000) by 1999 c. 8, **s. 56(1)**; S.S.I. 2000/38, **art. 2**

F254 Words in s. 28C(3) substituted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(11)(a)**; S.S.I. 2004/58, **art. 2(3)**

F255 Words in s. 28C(3) repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(11)(b)**; S.S.I. 2004/58, **art. 2(3)**

[[F256]*Assistance and support: general dental services*

Textual Amendments

F256 S. 28D and preceding cross-heading inserted (17.10.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 16**, 43(3); S.S.I. 2005/492, **art. 3(a)**, Sch. 1

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28D Assistance and support: general dental services

(1) A Health Board may provide assistance and support to any person providing, or proposing to provide, general dental services.

(2) Assistance and support provided by a Health Board under subsection (1) is to be provided on such terms, including terms as to payment, as the Board think fit.

(3) In this section, "assistance" includes financial assistance.**]**

Provisions as to disqualification of practitioners

[[F257]29 The NHS tribunal.

(1) The tribunal constituted in accordance with Schedule 8 shall continue under the name of "the NHS Tribunal" and that Schedule shall continue to have effect in relation to the Tribunal.

[[F258](2) If the Tribunal receive from a Health Board representations that a person—

(a) who has applied to be included; or

(b) who is included,

in any list meets any of the conditions for disqualification, the Tribunal shall inquire into the case.**]**

(3) If the Tribunal receive such representations from any other person, they may inquire into the case.

(4) Representations under this section shall be made—

(a) in the prescribed manner; and

(b) where [F259]. . . regulations prescribe the time within which such representations are to be made, within that time.

(5) Subsections (6) to (11) apply for the purposes of this group of sections.

(6) The first condition for disqualification is that the **[**[F260]inclusion or continued**]** inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the **[**[F261] list—

(a) in relation to a list referred to in subsection (8)(a), (cc) or (e), perform;

(b) in relation to a list referred to in subsection (8)(c) or (d), undertake to provide or are approved to assist in providing;**]**

. undertake to provide [F262]. . . .

(7) The second condition for disqualification is that the person concerned—

(a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit; and

(b) knew that he or (as the case may be) the other was not entitled to the benefit.

[The third condition for disqualification is that the person concerned is unsuitable [F263](7A) (by virtue of professional or personal conduct) to be included, or to continue to be included, in the list.**]**

(8) A "list" means—

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[[F264](a) a list of health care professionals of a prescribed description performing primary medical services **[**[F265]or approved to assist in the provision of such services**]**;**]**

[[F266](aa) a list of medical practitioners approved to perform personal medical services—

(i) in accordance with section 17C arrangements; or

(ii) in connection with the provision of such services under a pilot scheme;**]**

(b) [F267]. . . . . .

[[F268](c) a list of dental practitioners and bodies corporate referred to in section 25(1) undertaking to provide, and of persons who are approved to assist in providing, general dental services;

(cc) a list of persons performing personal dental services;

(d) a list of medical practitioners and ophthalmic opticians undertaking to provide, and of persons who are approved to assist in providing, general ophthalmic services; or

(e) a list of registered pharmacists performing pharmaceutical care services,**]**

prepared (in each case) under **[**[F269]or by virtue of this Part or Part I of this Act**]**.

[In subsection (8)(a), "health care professional" has the same meaning as in section [F270](8A) **[**[F271]17P**]**.**]**

(9) "Health scheme" means—

(a) any of the health services under section 1(1) or any corresponding enactment extending to England and Wales or Northern Ireland; and

(b) any prescribed scheme,

and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.

(10) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.

(11) Cases in which representations are made that the first condition for disqualification is met are referred to below as efficiency cases; [F272]. . . cases in which representations are made that the second condition for disqualification is met are referred to below as fraud cases **[**[F273]; and cases in which representations are made that the third condition for disqualification is met are referred to below as unsuitability cases**]**.

(12) In this section and sections 29A to 29C—

(a) "this group of sections" means this and those sections and Schedule 8; and

(b) the NHS Tribunal is referred to as the Tribunal.**]**

Textual Amendments

F257 S. 29 substituted (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with saving for effect of 1999 c. 8, s. 58 by S.S.I. 2004/31, art. 3)

F258 Words in s. 29(2) substituted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(a)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

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F259 Words in s. 29(4)(b) repealed (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(b)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

F260 Words in s. 29(6) substituted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(c)(i)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

F261 Words in s. 29(6) substituted (7.3.2006, 1.4.2006 and 2.7.2010 for certain purposes and otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(c)(ii)**, 43(3); S.S.I. 2006/121 {art. 3(a)(b)}, Schs. 1, 2; S.S.I. 2010/185 {art. 3(b)}, Sch. 2

F262 Words in s. 29(6) omitted (1.4.2004) by virtue of The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(1)(a)**

F263 S. 29(7A) inserted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(d)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

F264 S. 29(8)(a) substituted for s. 29(8)(a)(aa) (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 5(3)(b)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F265 Words in s. 29(8)(a) added (4.3.2004) by 2002 asp 5, ss. 25, 27(2), **Sch. 2 para. 2(4)(b)(i)**; S.S.I. 2004/33, **art. 2(1)(c)** (with savings for effects of 2002 asp 5, Sch. 2 para. 2(4) by S.S.I. 2004/34, art. 3(2))

F266 S. 29(8)(aa) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), **Sch. 2 para. 2(4)(b)(ii)**; S.S.I. 2004/33, **art. 2(2)** (with savings for effects of 2002 asp 5, Sch. 2 para. 2(4) by S.S.I. 2004/34, art. 3(2))

F267 S. 29(8)(b) repealed (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(e)(i)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

F268 S. 29(8)(c)-(e) substituted (7.3.2006, 1.4.2006 and 2.7.2010 for certain purposes otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(e)(ii)**, 43(3); S.S.I. 2006/121 {art. 3(a)(b)}, Schs. 1, 2; S.S.I. 2010/185 {art. 3(b)}, Sch. 2

F269 Words in s. 29(8) substituted (4.3.2004 for certain purposes otherwise 1.4.2004) by 2002 asp 5, ss. 25, 27(2), **Sch. 2 para. 2(4)(b)(iii)**; S.S.I. 2004/33, **art. 2(1)(d)**, Sch. (with savings for effects of 2002 asp 5, Sch. 2 para. 2(4) by S.S.I. 2004/34, art. 3(2))

F270 S. 29(8A) inserted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 5(3)(c)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

F271 Words in s. 29(8A) substituted (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(10)**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2

F272 Word in s. 29(11) repealed (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(f)(i)**, 43(3); S.S.I. 2006/121 {art. 3(a)(b)}, Schs. 1, 2

F273 Words in s. 29(11) inserted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(f)(ii)**, 43(3); S.S.I. 2006/121 {art. 3(a)(b)}, Schs. 1, 2

[F274[F275**29A** The NHS Tribunal: supplementary.

(1) Where an ophthalmic optician is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification **[**[F276]or, as the case may be, the third condition for disqualification**]** if any director meets that condition (whether or not he first met that condition when he was a director).

[F277]**[** (1A) A body corporate entitled, by virtue of section 43 of the Dentists Act 1984 (c. 24), to carry on the business of dentistry is to be treated for the purposes of this group of sections as meeting the second condition for disqualification or, as the case may be,

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the third condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).**]**

(2) Where a body corporate carries on a retail pharmacy business, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any one of the body of persons controlling the body corporate meets that condition (whether or not he first met that condition when he was one of them).

(3) A person who is included in any list ("the practitioner") is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if—

(a) another person, because of an act or omission of his occurring in the course of providing **[**[F278]assisting in providing,**]**[[F279], or as the case may be performing,**]** any services mentioned in section 29(8) on the practitioner's behalf, meets that condition; and

(b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 29(7)(a) occurring in the course of the provision **[**[F280], **[**[F281]assistance in provision,**]** or performance,**]** of those services on his behalf.

(3A) [F282]. . . . . .

(4) The Tribunal is not required to inquire into a fraud case if they have previously inquired into representations in respect of the person concerned and the same acts or omissions.

(5) In **[**[F283]an unsuitability case, a fraud case or an efficiency case**]**, regulations may make provision [F284]. . . for the purpose of securing that the person subject to the inquiry is not added to any list until proceedings in that case are finally concluded.

(6) For the purposes of this group of sections, in **[**[F285]an unsuitability,**]** a fraud or efficiency case proceedings are finally concluded—

(a) if the Tribunal determine not to disqualify or conditionally disqualify him when they make that determination;

(b) if they determine to disqualify or conditionally disqualify him and no appeal is brought against the determination, at the end of the period for bringing an appeal;

(c) if they determine to disqualify or conditionally disqualify him and an appeal is brought against the determination, when the appeal process is exhausted.

(7) An inquiry under section 29 is not affected by the person subject to the inquiry withdrawing from, withdrawing any application to be included in or being removed from the list to which the case relates.**]**

Textual Amendments

F274 Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

F275 Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

F276 Words in s. 29A(1) inserted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(3)(a)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

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F277 S. 29A(1A) inserted (7.3.2006 for certain purposes otherwise 2.7.2010) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(3)(b)**, 43(3); S.S.I. 2006/121, **art. 3(a)**, Sch. 1; S.S.I. 2010/185 {art. 3(b)}, Sch. 2

F278 Words in s. 29A(3)(a) inserted (7.3.2006, 1.4.2006 and 2.7.2010 for certain purposes and otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(3)(c)(i)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2; S.S.I. 2010/185, **art. 3(b)**, Sch. 2

F279 Words in s. 29A(3)(a) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(5)(a)(i); S.S.I. 2004/33, **art. 2(2)(b)**

F280 Words in s. 29A(3)(b) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(5)(a)(ii); S.S.I. 2004/33, **art. 2(2)(b)**

F281 Words in s. 29A(3)(b) inserted (7.3.2006, 1.4.2006 and 2.7.2010 for certain purposes and otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(3)(c)(ii)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2; S.S.I. 2010/185, **art. 3(b)**, Sch. 2

F282 S. 29A(3A) repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(12)**; S.S.I. 2004/58, **art. 2(3)**

F283 Words in s. 29A(5) substituted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(3)(d)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

F284 Words in s. 29A(5) repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(2), 43(3), **Sch. 3**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2 Table

F285 Words in s. 29A(6) inserted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(3)(e)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

[F286 29B Powers of NHS Tribunal.

(1) Subsection (2) applies where the Tribunal are of the opinion—

(a) on inquiring into an efficiency case, that the person meets the first condition for disqualification;

(b) on inquiring into a fraud case, that the person meets the second condition for disqualification**[F287**;

(c) on inquiring into an unsuitability case, that the person meets the third condition for disqualification.**]**

[F288(2) The Tribunal shall disqualify him for inclusion in—

(a) the list to which the case relates;

(b) all lists within the same paragraph of subsection (8) of section 29 as that list; and

(c) where the list to which the case relates is a list referred to in—

(i) paragraph (c) of that subsection, all lists within paragraph (cc) of that subsection;

(ii) that paragraph (cc), all lists within that paragraph (c).**]**

(3) **F289** . . . . . .

(4) The Tribunal shall not make **[F290**a**]** disqualification **F291**. . . under this section if they are of the opinion that it would be unjust to do so.

(5) A disqualification under this section shall have effect when the case is finally concluded.

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(6) If a person is disqualified for inclusion in any list prepared by a Health Board, the Board must not enter him in the list and (if he is already included in the list) must remove him from the list.**]**

Textual Amendments

F274 Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

F286 Ss. 29, 29A-29C and sidenotes substituted for s. 29 and sidenote (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

F287 S. 29B(1)(c) inserted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(4)(a)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

F288 Words in s. 29B(2) substituted (7.3.2006 and 1.4.2006 for certain purposes and otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(4)(b)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

F289 S. 29B(3) repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(2), 43(3), **Sch. 3**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2 Table

F290 Word in s. 29B(4) substituted (7.3.2006 for certain purposes and otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(4)(c)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

F291 Words in s. 29B(4) repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(2), 43(3), **Sch. 3**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2 Table

[F292 29C Conditional disqualification etc.

(1) The functions of making disqualifications under section 29B include making a conditional disqualification, that is, a disqualification which is to come into effect only if the Tribunal determine (on a review under section 30) that the person subject to the inquiry has failed to comply with any conditions imposed by them.

(2) Conditions may be imposed by virtue of subsection (1) with a view to—

(a) removing any prejudice to the efficiency of the services in question; [F293]. . .

(b) preventing any acts or omissions within section 29(7)(a)**[**[F294];

(c) ensuring that the person—

(i) performs, undertakes to provide or assists in providing only services specified (or of a description specified) in the condition;

(ii) undertakes an activity (or course of activity) of a personal or professional nature, or refrains from conduct of a personal or professional nature, so specified (or of a description so specified),**]**

(as the case may be).

(3) Conditions so imposed shall have effect when proceedings in the case are finally concluded.

(4) Section 29B(4) applies to a conditional disqualification as it applies to a disqualification.

(5) The Tribunal may by directions—

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(a) vary the terms of service of the person subject to the inquiry (including terms imposed by regulations under this Part);

[F295(aa) vary any requirements to which the person subject to the inquiry is subject under or by virtue of section **[**F296 17F, 17P or 17X or this Part**]**;**]**

(b) confer functions on any Health Board,

for the purpose of or in connection with the imposition of any conditions by virtue of this section.

(6) References in any enactment to a disqualification by the Tribunal do not include a conditional disqualification.**]**

Textual Amendments

F274 Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

F292 Ss. 29, 29A-29C and sidenotes substituted for s. 29 and sidenote (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

F293 Word in s. 29C(2) repealed (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(5)(a)(i)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

F294 S. 29C(2)(c) inserted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(5)(a)(ii)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

F295 S. 29C(5)(aa) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(1)(b)**

F296 Words in s. 29C(5)(aa) substituted (7.3.2006 for certain purposes otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(5)(b)**, 43(3); S.S.I. 2006/121, **art. 3(a)**, Sch. 1

[F297**30** **Review etc. of disqualification.**

(1) The Tribunal may review **[**F298a disqualification or conditional disqualification**]**—

(a) if the disqualified or conditionally disqualified person requests a review; or

(b) in any other circumstances in which they consider it appropriate.

(2) On a review under subsection (1), the Tribunal may—

(a) remove a disqualification; F299. . .

(b) make a disqualification conditional;

(c) in the case of a conditional disqualification, remove it, vary the conditions or make it unconditional.

F299 . . . . . .

(3) If any Health Board request a review of a conditional disqualification on the ground that—

(a) there has been a change in the circumstances by reference to which the conditions were imposed;

(b) the person concerned has failed to comply with the conditions; or

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(c) in a fraud case, the person concerned has since the Tribunal imposed the conditions (or made the disqualification conditional) again satisfied the second condition for disqualification,

the Tribunal shall review the conditional disqualification.

(4) [F300] . . . . . .

(5) On a review under subsection (3) of a conditional disqualification, the Tribunal may remove it, vary the conditions or make it unconditional [F301] . . .

(6) [F302] . . . . . .

(7) The Tribunal shall not under this section—

(a) in the case of a conditional disqualification, make it unconditional or vary the conditions; [F302] . . .

(b) [F302] . . . . . .

(c) [F302] . . . . . .

if they are of the opinion that it would be unjust to do so.

(8) A determination by the Tribunal under this section shall have effect—

(a) if no appeal is brought against it, at the end of the period for bringing an appeal;

(b) if an appeal is brought against it, when the appeal process is exhausted.

(9) The Tribunal may hold an inquiry for the purposes of any review under this section.]

Textual Amendments

F274 Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

F297 S. 30 substituted (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 58(2), 67(1); S.S.I. 2004/32, **art. 2(1)(a)(2)(a)**

F298 Words in s. 30(1) substituted (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(11)**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2

F299 Words in s. 30(2) repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(2), 43(3), **Sch. 3**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2 Table

F300 S. 30(4) repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(2), 43(3), **Sch. 3**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2 Table

F301 Words in s. 30(5) repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(2), 43(3), **Sch. 3**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2 Table

F302 S. 30(6)(7)(b)(c) and word in s. 30(7)(a) repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(2), 43(3), **Sch. 3**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2 Table

31 Disqualification provisions in England or Wales or Northern Ireland.

[F303] . . . . . .

Textual Amendments

F274 Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

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F303 S. 31 repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(2), 43(3), **Sch. 3**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2 Table

32 Regulations as to sections 29 to 31.

[Regulations shall make provision—

[F304](1)**]** (a) **[**[F305]for inquiries**]**. . . under sections 29 to **[**[F306]30**][**[F307]to be held in accordance with such procedure as may be prescribed by or determined under the regulations**]**. . . and, in particular, for [F308]. . . any person who is the subject of such an inquiry **[**[F309]to be**]** informed, as soon as may be, of the substance of any charge or complaint to which the inquiry relates and **[**[F310]to have**]** an opportunity—

(i) of appearing, either in person or by counsel or solicitor or such other representative as may be prescribed, before the Tribunal [F311]. . ., and

(ii) of being heard by the Tribunal [F311]. . ., and of calling witnesses and producing other evidence on his behalf,

and **[**[F312]for the hearing**]**, [F311]. . . **[**[F309]to be**]** in public if the person who is the subject of the inquiry so requests;

(b) for conferring on the Tribunal [F311]. . .such powers as the Secretary of State considers necessary for the purpose of holding such inquiries, including power to require the attendance of witnesses and the production of documents and to administer oaths; and

(c) for the publication of decisions of the Tribunal [F311]. . . under this section and of the imposition and removal of any disqualification **[**[F313]or condition**]**imposed by virtue of this section, and for the intimation to any person who is the subject of such an inquiry of the grounds upon which any disqualification **[**[F313]or condition**]**has been imposed in his case.

[Regulations under subsection (1)(a) may in particular provide that, where (apart from [F314](2) the regulations) it would be the duty of the Tribunal to inquire into **[**[F315]an efficiency case and a fraud case or an unsuitability case or any other combination of more than one such category of case**]** in respect of the same person, they may inquire into one case before inquiring into the other and, after proceedings in the first case are finally disposed of, may if they think it appropriate adjourn the other case indefinitely.**]**

Textual Amendments

F274 Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

F304 S. 32 renumbered as s. 32(1) (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 50; S.S.I. 2004/32, **art. 2(1)(c)(2)(c)**

F305 Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, **s. 11(2)(a)**; S.I. 1995/3214, art. 2, **Sch.**(with art. 3)

F306 Words in s. 32(1)(a) substituted (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(12)**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2

F307 Words in s. 32(a) inserted (1.1.1996) by 1995 c. 31, **s. 11(2)(b)**; S.I. 1995/3214, art. 2, **Sch.** (with art. 3)

F308 Words in s. 32(a) repealed (1.1.1996) by 1995 c. 31, ss. 11(2)(c), 14(2), **Sch.**; S.I. 1995/3214, art. 2, **Sch.**(with art. 3)

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F309 Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, **s. 11(2)(d)**; S.I. 1995/3214, art. 2, **Sch.** (with art. 3)

F310 Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, **s. 11(2)(e)**; S.I. 1995/3214, art. 2, **Sch.** (with art. 3)

F311 Words in s. 32(a)(i)(ii)(b)(c) repealed (1.1.1996) by 1995 c. 31, s. 14(2), **Sch.**; S.I. 1995/3214, art. 2, **Sch.** (with art. 3)

F312 Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, **s. 11(2)(f)**; S.I. 1995/3214, art. 2, **Sch.** (with art. 3)

F313 Words in s. 32(1)(c) inserted (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 50(a); S.S.I. 2004/32, **art. 2(1)(c)(2)(c)**

F314 S. 32(2) inserted (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 50(b); S.S.I. 2004/32, **art. 2(1)(c)(2)(c)**

F315 Words in s. 32(2) substituted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(6)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

Modifications etc. (not altering text)

C36 S. 32(a) extended (1.1.1996) by 1995 c. 31, **s. 11(1)**; S.I. 1995/3214, **art. 2 Sch.**(with art. 3)

[F316**32A** **Applications for interim suspension.**

(1) A Health Board who have made representations under section 29 may, at any time before the case is disposed of by the Tribunal, apply to the Tribunal for a direction to be made under subsection (2) below in relation to the person to whom the case relates.

[F317(1A) **[** A Health Board may, if they have requested a review of a conditional disqualification on the ground mentioned in section 30(3)(b) or (c), at any time before the review is concluded apply to the Tribunal for a direction to be made under subsection (2) in relation to the person to whom the review relates.**]]**

(2) If, on an application under this section, the Tribunal are satisfied that **[**[F318]either of the conditions for doing so is satisfied**]**, they shall direct that subsection (3) below shall apply to the person concerned as respects

[[F319](a) services of the kind to which the case in question, or the case to which the review in question, relates; and

(b) if the services are either general dental services or personal dental services, both general dental services and personal dental services.**]**

[F320(2A) **[** The conditions for giving such a direction are—

(a) that it is necessary to do so in order to protect persons who are, or may be, provided with **[**[F321]primary medical services **[**[F322], pharmaceutical care services**]** or**]** services under this Part **[**[F323], section 17C arrangements or a pilot scheme**]** to which the case in question, or the case to which the review in question, relates;**[**[F324] or

(b) that it is otherwise in the public interest to do so.**]]**

(3) A person to whom this subsection applies shall—

(a) be deemed to have been removed from any relevant list in which his name is included,**[**[F325] and**]**

(b) be disqualified for inclusion in any relevant list in which his name is not included, [F326]. . .

(c) [F326]. . . . . .

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(4) A direction under subsection (2) above shall cease to have effect on the Tribunal's disposing of the case **[**[F327]or review**]** in connection with which it is made.

[F328](5) **[** In subsection (2) above, the reference to patients is to persons to whom services of the kind to which the case in question relates are, or may be, provided under this Part of this Act.**]**

(6) In the application of subsection (3) above to any person—

(a) "relevant list" means

[[F329](i) a list of persons performing;

(ii) a list of persons undertaking to provide and of persons approved to assist in providing,

services**]** of the kind to which the direction applying the subsection to him relates [F330]. . .

(b) [F330]. . . . . .

[F331](7) **[** Regulations may provide that where a Health Board, in accordance with regulations made under section 17F, 17P, 17X, 25(2) or 26(2), suspend a person from a list prepared under regulations made under the section in question and the Board apply to the Tribunal for a direction to be made under subsection (2) in relation to the person to whom the suspension applies, the suspension may continue until the Tribunal determine the application.**]**

Textual Amendments

F274 Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

F316 S. 32A inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, **s. 8**; S.I. 1995/3214, art. 2, **Sch.**(with art. 3); S.I. 1996/552, **art. 2**

F317 S. 32A(1A) inserted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(a); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)

F318 Words in s. 32A(2) substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(b); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)

F319 S. 32A(2)(a)(b) substituted for words (7.3.2006 for certain purposes otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(7)(a)**, 43(3); S.S.I. 2006/121, **art. 3(a)**, Sch. 1

F320 S. 32A(2A) inserted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(c); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)

F321 Words in s. 32A(2A)(a) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(3)(a)**

F322 Words in s. 32A(2A)(a) inserted (7.3.2006 for certain purposes otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(7)(b)(i)**, 43(3); S.S.I. 2006/121, **art. 3(a)**, Sch. 1

F323 Words in s. 32A(2A)(a) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(9)(a); S.S.I. 2004/33, **art. 2(2)(b)** (with savings for effects of 2002 asp 5, Sch. 2 para. 2(9) by S.S.I. 2004/34, art. 3(2))

F324 S. 32A(2A)(b) and word substituted for s. 32A(2A)(b) (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(7)(b)(ii)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

F325 Word in s. 32A(3) inserted (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(13)**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2

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F326 S. 32A(3)(c) and preceding word repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(2), 43(3), **Sch. 3**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2 Table

F327 Words in s. 32A(4) inserted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(e); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)

F328 S. 32A(5) repealed (4.3.2004) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 51(f), Sch. 5; S.S.I. 2004/32, **art. 2(2)(b)(c)(d)** (with S.S.I. 2004/31, art. 3)

F329 Words in s. 32A(6)(a) substituted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(7)(c)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

F330 S. 32A(6)(b) and preceding word repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(2), 43(3), **Sch. 3**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2 Table

F331 Words in s. 32A(7) inserted (7.3.2006 and 1.4.2006 for certain purposes and otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(7)(d)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

Modifications etc. (not altering text)

C37 S. 32A functions modified (4.3.2004) by The National Health Service (Tribunal) (Scotland) Regulations 2004 (S.S.I. 2004/38), **reg. 27** (with savings in regs. 32-34)

[F332 32B [F333] **Suspension pending appeal.**

[F332](1) Where, on disposing of a case under section 29B, the Tribunal make a [F334]. . . disqualification, they may, if they consider that either of the conditions mentioned in section 32A(2A) is satisfied, direct that section 32A(3) shall apply or, if a direction has been given under section 32A(2), shall continue to apply to him as respects services of the kind to which the disqualification relates.**]**

(2) A direction under subsection (1) above shall cease to have effect—

(a) where no appeal against the **[**[F335F334]. . . disqualification**]** is brought, at the end of the period for bringing an appeal, and

(b) where an appeal against **[**[F335]the disqualification**]** is brought, when the appeal process has been exhausted.

(3) [F336]. . . . . .

[F337](4) **[** In subsection (1) above, the reference to patients is to persons to whom services of the kind to which the direction under section 29(3)(b) relates are, or may be, provided under this Part of this Act.**]**

Textual Amendments

F274 Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

F332 S. 32B(1) and preceding side-note substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 52(a); S.S.I. 2004/32, **art. 2(2)(c)** (with savings for effects of 1999 c. 8 by S.S.I. 2004/31, art. 3)

F333 S. 32B inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, **s. 8**; S.I. 1995/3124, art. 2, **Sch.** (with art. 3); S.I. 1996/552

F334 Words in s. 32B(1)(2)(a) repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(2), 43(3), **Sch. 3**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2 Table

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F335 Words in s. 32B(2)(a)(b) substituted (prosp.) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 52(b) and also same words substituted (4.3.2004) by 2002 asp 5, s. 25, Sch. 2, para. 2(10); S.S.I. 2004/33, **art. 2(1)(c)** (with savings for effects of 2002 asp 5 by S.S.I. 2004/34, art. 3(2))

F336 S. 32B(3) repealed (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(2), 43(3), **Sch. 3**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2 Table

F337 S. 32B(4) repealed (4.3.2004) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 52(d), Sch. 5; S.S.I. 2004/32, **art. 2(2)(c)(d)** (with savings for effects of 1999 c. 8 by S.S.I. 2004/31, art. 3)

Modifications etc. (not altering text)

C38 S. 32B(1) functions modified (4.3.2004) by The National Health Service (Tribunal) (Scotland) Regulations 2004 (S.S.I. 2004/38), **reg. 27** (with regs. 32-34))

[F338]32C Sections 32A and 32B: procedure etc.

(1) Before making a direction under section 32A(2) or 32B(1) in relation to any person, the Tribunal shall give him an opportunity—

(a) to appear before them, either—

(i) in person; or

(ii) by counsel or solicitor or such other representative as may be prescribed; and

(b) to be heard and to call witnesses and produce other evidence.

(2) Regulations may—

(a) make provision for, or for the determination of, procedure in relation to determining applications under section 32A or the exercise of the power conferred by section 32B(1), and

(b) provide for the functions of the Tribunal under section 32A or 32B to be carried out, or to be carried out in prescribed circumstances, by the chairman or a deputy chairman of the Tribunal.

Textual Amendments

F274 Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

F338 S. 32C inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, **s. 8**; S.I. 1995/3214, art. 2, **Sch.**(with art. 3); S.I. 1996/552, **art. 2**

[F339F340]32D Corresponding provision in England or Wales or Northern Ireland

(1) This section applies where it appears to the Scottish Ministers that there is provision in England or Wales or Northern Ireland under which a person may be dealt with in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under sections 29 to 32B.

(2) A decision in England or Wales or Northern Ireland to deal with such a person in such a way is referred to in this section as a "corresponding decision".

(3) If this section applies, the Scottish Ministers may make regulations providing for the effect to be given in Scotland to a corresponding decision; and where the decision corresponds (whether or not exactly) with a decision which may be made under

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section 29C or (so far as relating to conditional disqualification) 30 the regulations may provide for the effect to be given to be determined in the prescribed manner by the Scottish Ministers.

(4) That effect need not be the same as the effect of the corresponding decision in the place where it was made.**]**

Textual Amendments

F274 Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

F339 S. 32D substituted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 27**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

F340 S. 32D inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, **s. 8**; S.I. 1995/3214, art. 2, **Sch.** (with art. 3); S.I. 1996/552, **art. 2**

[F341]32E Payments in consequence of suspension.

(1) Regulations may provide for the making to persons to whom section 32A(3) or **[**[F342]32D(3)**]** applies of payments in consequence of the application of that provision.

(2) Regulations under subsection (1) above may provide for the determination by the Secretary of State in a prescribed manner of anything for which provision may be made by regulations under that subsection.**]**

Textual Amendments

F274 Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

F341 S. 32E inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, **s. 8**; S.I. 1995/3214, art. 2, **Sch.** (with art. 3); S.I. 1996/552, **art. 2**

F342 Words in s. 32E(1) substituted (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(14)**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2

Supplementary provisions relating to Part II

33 Powers of Secretary of State where services are inadequate.

If the Secretary of State is satisfied, after such inquiry as he may think fit, as respects the area of any Health Board or part of any such area that the persons included in any list prepared under this Part—

(a) of medical practitioners undertaking to provide general medical services,

(b) of dental practitioners undertaking to provide general dental services,

(c) of persons undertaking to provide general ophthalmic services, or

(d) of persons undertaking to provide pharmaceutical services,

are not such as to secure the adequate provision of the services in question in that area or part, or that for any other reason any considerable number of persons in any such area or part are not receiving satisfactory services under the arrangements in force

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under this Part, he may authorise the Health Board to make such other arrangements as he may approve, or may himself make other arrangements, and may dispense with any of the requirements of regulations made under this Part so far as appears to him to be necessary to meet exceptional circumstances and enable such arrangements to be made.

34 Exercise of choice of medical practitioner etc. in certain cases.

Regulations may provide that where a right to choose the person by whom services are to be provided under this Part is conferred by or under any provision of this Part, that right shall, in the case of such persons as may be specified in the regulations, be exercisable on their behalf by other persons so specified.

[[F343]35 Sale of medical practices.

(1) It is unlawful to sell the goodwill of the medical practice of a person who has at any time—

(a) provided general medical services under arrangements made with any Executive Council or Health Board under the [M25]National Health Service (Scotland) Act 1947, the [M26]National Health Service (Scotland) Act 1972 or **[**[F344](prior to its repeal) section 19 of**]** this Act, or

(b) provided or performed personal medical services in accordance with section 17C arrangements, **[**[F345](prior to the coming into force of section 2C)**][**[F346] or

(c) provided or performed primary medical services in accordance with section 17C arrangements or arrangements under section 2C(2) or under a general medical services contract—

(i) in prescribed circumstances; or

(ii) if regulations so provide, in all circumstances,**]**

unless that person no longer provides or performs such services and has never carried on the practice in a relevant area .

(2) In this section—

"goodwill" includes any part of goodwill and, in relation to a person practising in partnership, means his share of the goodwill of the partnership practice;

"medical practice" includes any part of a medical practice; and

"relevant area", in relation to any Executive Council or Health Board by arrangement **[**[F347]or contract**]** with whom a person has at any time**[**[F348] provided or performed services as specified in subsection (1)**]**

(3) Schedule 9 supplements the provisions of this section.**]**

Textual Amendments

F343 S. 35 substituted (1.4.1998) by 1997 c. 47, **s. 34(2)**; S.I. 1998/631, art. 2(a), **Sch. 1**

F344 Words in s. 35(1)(a) inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1)(2), **Sch. para. 1(14)(a)(i)**; S.S.I. 2004/58, **art. 2**, Sch.

F345 Words in s. 35(1)(b) inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1)(2), **Sch. para. 1(14)(a)(ii)**; S.S.I. 2004/58, **art. 2**, Sch.

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F346 S. 35(1)(c) and word inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1)(2), **Sch. para. 1(14)(a)(iii)**; S.S.I. 2004/58, **art. 2**, Sch.

F347 S. 35(2): words in the "definition of relevant" inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1)(2), **Sch. para. 1(14)(b)(i)**; S.S.I. 2004/58, **art. 2**, Sch.

F348 Words in s. 35(2) substituted (13.2.2004 for certain purposes, otherwise 1.4.2004) for s. 35(2)(a)(b) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1)(2), **Sch. para. 1(14)(b)(ii)**; S.S.I. 2004/58, **art. 2**, Sch.

Modifications etc. (not altering text)

C39 S. 35(1)(c) modified (1.4.2004) by The General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004 (S.S.I. 2004/163), **art. 96**

Marginal Citations

M25 1947 c. 27.

M26 1972 c. 58.

[F349 35A Interpretation of Part II.

Where, under a direction by the Secretary of State, a Health Board has delegated any of its functions to an NHS trust, any reference in this Part to a Health Board in relation to such a delegated function shall, unless the context otherwise requires, include a reference to an NHS trust.]

Textual Amendments

F349 S. 35A inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 55**; S.S.I. 1999/90, **art. 2(a)(b)**

PART III

OTHER SERVICES AND FACILITIES

36 Accommodation and services.

(1) It shall be the duty of the Secretary of State to provide throughout Scotland, to such extent as he considers necessary to meet all reasonable requirements, accommodation and services of the following descriptions—

(a) hospital accommodation, including accommodation at state hospitals;

(b) premises other than hospitals at which facilities are available for any of the services provided under this Act;

(c) medical, nursing and other services, whether in such accommodation or premises, in the home of the patient or elsewhere.

(2) Where accommodation or premises provided under this section afford facilities for the provision of F350 . . . general dental or general ophthalmic services, or of pharmaceutical services, they shall be made available for those services on such terms and conditions as the Secretary of State may determine.

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Textual Amendments

F350 Words in s. 36(2) omitted (1.2.2006) by virtue of The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(4)}

Modifications etc. (not altering text)

C40 S. 36 restricted (1.1.2003) by S.S.I. 2002/533, **reg. 5(3)**

C41 S. 36(1): functions transferred (27.6.2002) by S.S.I. 2002/305, **art. 4(2)(c)** (with art. 4(4))

37 Prevention of illness, care and after-care.

The Secretary of State shall make arrangements, to such extent as he considers necessary to meet all reasonable requirements, for the purposes of the prevention of illness, the care of persons suffering from illness or the after-care of such persons.

Modifications etc. (not altering text)

C42 S. 37: functions tranferred (27.6.2002) by S.S.I. 2002/305, **art. 4(2)(d)** (with art. 4(4))

38 Care of mothers and young children.

It shall be the duty of the Secretary of State to make arrangements, to such extent as he considers necessary, for the care, including in particular medical and dental care, of expectant mothers and nursing mothers and of young children.

[F351 38A Breastfeeding

(1) The Scottish Ministers shall make arrangements, to such extent as they consider necessary to meet all reasonable requirements, for the purpose of supporting and encouraging the breastfeeding of children by their mothers.

(2) The Scottish Ministers shall have the power to disseminate, by whatever means, information promoting and encouraging breastfeeding.**]**

Textual Amendments

F351 S. 38A inserted (19.3.2005) by Breastfeeding etc. (Scotland) Act 2005 (asp 1), **ss. 4**, 5

[F352 38B Detection of vision problems in children

(1) It is the duty of the Scottish Ministers, to such extent as they consider necessary to meet all reasonable requirements, to provide for the detection of vision problems in children.

(2) In this section, "children" means persons under the age of 16 years.**]**

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Textual Amendments

F352 S. 38B inserted (17.10.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 11**, 43(3); S.S.I. 2005/492, **art. 3(a)**, Sch. 1

39 Medical and dental inspection, supervision and treatment of pupils and young persons.

(1) It shall be the duty of the Secretary of State to provide for the medical [F353] inspection, at appropriate intervals, and for the medical [F353] supervision **[**[F354]and treatment**]**, of all pupils in attendance at any school under the management of an education authority **[**[F355]or at any self-governing school**]**, and of all young persons in attendance at any [F356] other educational establishment under such management.

[[F357](2) It is also the Secretary of State's duty to provide, to such extent as he considers necessary to meet all reasonable requirements—

(a) for the dental inspection of such pupils and young persons as are mentioned in subsection (1);

(b) for their dental treatment; and

(c) for their education in dental health.**]**

(3) It shall be the duty of every education authority **[**[F358]and of every board of management**]** to make arrangements for encouraging and assisting pupils and young persons to take advantage of facilities for medical **[**[F359]treatment made available under subsection (1) and dental treatment made available for the purpose of**]** subsection (2); but where, in the case of any pupil or young person, his parent gives notice to the authority that he objects to the pupil or young person availing himself of the said facilities, the pupil or young person shall not be encouraged or assisted to do so.

(4) It shall be the duty of every education authority **[**[F360]and of every board of management**]** to afford sufficient and suitable facilities for the medical [F361] inspection, supervision and treatment, described in **[**[F362]subsection (1) and for the dental inspection, treatment and education described in subsection (2)**]**.

(5) Expressions used in this section and in the Education (Scotland) Act **[**[F363M27]1980**]** have in this section the same meanings as in that Act.

Textual Amendments

F353 Words repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), ss. 10(2)(a)(i), 25(2), **Sch. 3**

F354 Words inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 10(2)(a)(ii)**

F355 Words in s. 39(1) repealed (31.12.2004) by 2000 asp 6, ss. 60(2), 61(3), **Sch. 3**; S.S.I 2004/528, {art. 2}

F356 Words repealed by Self Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(2), **Sch. 11**

F357 S. 39(2) substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 10(2)(b)**

F358 Words in s. 39(3) repealed (31.12.2004) by 2000 asp 6, ss. 60(2), 61(3), Sch. 3; S.S.I. 2004/528, **art. 2**

F359 Words substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 10(2)(c)**

F360 Words in s. 39(4) repealed (31.12.2004) by 2000 asp 6, ss. 60(2), 61(3), Sch. 3; S.S.I. 2004/528, **art. 2**

F361 Words repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), ss. 10(2)(d)(i), 25(2), **Sch. 3**

F362 Words substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 10(2)(d)(ii)**

F363 Words substituted by Education (Scotland) Act 1980 (c. 44), **Sch. 4 para. 17**

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Modifications etc. (not altering text)
C43 S. 39 extended by Education (Scotland) Act 1980 (c. 44), **s. 57**

Marginal Citations
M27 1980 c. 44.

40 Vaccination and immunisation.

(1) The Secretary of State shall have power to make arrangements with medical practitioners for the vaccination or immunisation of persons against any disease, either by medical practitioners or by persons acting under their direction and control.

(2) [F364] . . . . . .

(3) The Secretary of State may, either directly or by another person, supply free of charge to medical practitioners providing services under this section, vaccines, sera or other preparations for vaccinating or immunising persons against any disease.

Textual Amendments
F364 S. 40(2) repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), {Sch. para. 1(15); S.S.I. 2004/58, **art. 2(3)**}

41 Family planning.

It shall be the duty of the Secretary of State to make arrangements, to such extent as he considers necessary, for the giving of advice on contraception, the medical examination of persons seeking advice on contraception, the treatment of such persons and the supply of contraceptive substances or appliances.

Modifications etc. (not altering text)
C44 S. 41: functions transferred (27.6.2002) by S.S.I. 2002/305, **art. 4(2)(e)** (with art. 4(4))

42 Health education.

The Secretary of State shall have power to disseminate, by whatever means, information relating to the promotion and maintenance of health and the prevention of illness.

Modifications etc. (not altering text)
C45 By S.I. 1990/2639, **art. 4(1)(a)** certain functions of the Secretary of State specified in s. 42 are made exercisable (1.4.1991) by Health Education Board for Scotland
C46 S. 42: functions transferred (27.6.2002) by S.S.I. 2002/305, **art. 4(2)(f)** (with art. 4(4))

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43 Control of spread of infectious disease.

The Secretary of State may provide or secure the provision of a service, which may include the provision of laboratories, for the control of the spread of infectious disease; and he may allow persons to make use of services provided at such laboratories on such terms (including terms as to the payment of charges) and on such conditions as he may determine.

44 Supplies of blood and other substances.

(1) Where the Secretary of State has acquired supplies of human blood for the purpose of carrying out blood transfusion, or supplies of any other substances or preparations not readily obtainable or has acquired any part of a human body for the purpose of, or in the course of providing, any service under this Act, he may make arrangements for making such supplies available to medical practitioners and other persons who require them or for supplying that part to any person on such terms (including terms as to the payment of charges) and on such conditions as he may determine.

(2) Subsection (1) is subject to section 54 (restriction of powers).

45 Ambulances.

It shall be the duty of the Secretary of State to make such provision as he thinks necessary for securing that ambulances and other means of transport are available for the conveyance of persons suffering from illness or of expectant or nursing mothers or of other persons for whom such transport is reasonably required in order to avail themselves of any service under this Act.

Modifications etc. (not altering text)

C47 S. 45 excluded by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **ss. 11(2)**, 17(2)

46 Provision of vehicles for persons suffering from physical defect or disability.

(1) The Secretary of State may provide invalid carriages for persons appearing to him to be suffering from severe physical defect or disability, and, at the request of such a person, may provide for him a vehicle other than an invalid carriage.

(2) The Secretary of State shall have power, in the case of an invalid carriage or other vehicle provided by him for, or belonging to, any such person as is mentioned in subsection (1), on such terms and subject to such conditions as he may determine—

(a) to adapt the vehicle for the purpose of making it suitable for the circumstances of that person;

(b) to maintain and repair the vehicle;

(c) to take out insurance policies relating to the vehicle and pay the duty, if any, with which the vehicle is chargeable under the [M28]Vehicles (Excise) Act 1971;

(d) to provide a structure for the keeping of the vehicle therein and provide all material and execute all works necessary for the erection of the structure.

(3) The Secretary of State may, on such terms and subject to such conditions as he may determine, make payments by way of grant towards costs incurred by any such person as is mentioned in subsection (1) in respect of all or any of the following matters in

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relation to an invalid carriage or other vehicle provided by the Secretary of State for, or belonging to, that person, that is to say—

(a) the taking of any such action as is referred to in subsection (2);

(b) the purchase of fuel for the purposes of the vehicle, so far as the cost of the purchase is attributable to duties of excise payable in respect of fuel; and

(c) the taking of instruction in the driving of the vehicle.

(4) Regulations made by the Secretary of State may provide for any incidental or supplementary matter for which it appears to him necessary or expedient to make provision in connection with the taking of any action under subsection (2) or the making of any payment under subsection (3).

(5) In this section "invalid carriage" means a mechanically propelled vehicle specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability, and used solely by such a person.

Marginal Citations

M28 1971 c. 10.

47 Educational and research facilities.

(1) It shall be the duty of the Secretary of State to make available such facilities, in any premises provided by him under this Act, as appear to him 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.

(2) Without prejudice to the general powers and duties conferred or imposed on the Secretary of State under the [M29]Scottish Board of Health Act 1919, the Secretary of State may conduct, or assist by grants or otherwise any person to conduct, research into any matters relating to the causation, prevention, diagnosis or treatment of illness, or into such other matters relating to the health service as he thinks fit.

Modifications etc. (not altering text)

C48 S. 47: functions transferred (31.3.2002) by S.S.I. 2002/103, **art. 4(1)(a)** (with art. 4(4))
S. 47: functions transferred (27.6.2002) by S.S.I. 2002/305, **art. 4(2)(g)** (with art. 4(4))

Marginal Citations

M29 1919 c. 20.

48 Residential and practice accommodation.

(1) The Secretary of State may provide, on such terms and conditions as may be agreed, residential accommodation for officers employed for the purposes of any of his functions under this Act, or for officers employed by a voluntary organisation for the purposes of any service provided under this Part.

(2) The Secretary of State may, in any case, in view of the special circumstances thereof, provide, on such terms and conditions as may be agreed—

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(a) residential accommodation for medical and dental practitioners providing services under Part II;

(b) practice accommodation for such medical and dental practitioners and for such other persons providing services under this Act as he thinks fit.

(3) In subsection (2) "practice accommodation", in relation to a person providing services of any kind, means accommodation suitable for the provision of services of that kind.

Modifications etc. (not altering text)

C49 S. 48: functions transferred (27.6.2002) by S.S.I. 2002/305, **art. 4(2)(h)** (with art. 4(4))

PART IV

POWERS OF THE SECRETARY OF STATE

Control of maximum prices for medical supplies

[F365 49 Maximum prices of medical supplies may be controlled.

(1) The Secretary of State may by order provide for controlling maximum prices to be charged for any medical supplies required for the purposes of this Act.

(2) The Secretary of State may by direction given with respect to any undertaking, or by order made with respect to any class or description of undertakings, being an undertaking or class or description of undertakings concerned with medical supplies required for the purposes of this Act, require persons carrying on the undertaking or undertakings of that class or description—

(a) to keep such books, accounts and records relating to the undertaking as may be prescribed by the direction or, as the case may be, by the order or a notice served under the order;

(b) to furnish at such times, in such manner and in such form as may be so prescribed such estimates, returns or information relating to the undertaking as may be so prescribed.

(3) The additional provisions set out in Schedule 10 have effect in relation to this section; and

"medical supplies" in this section includes surgical, dental and optical materials and equipment; and

"undertaking" in this section and that Schedule means any public utility undertaking or any undertaking by way of trade or business.]

Textual Amendments

F365 S. 49 ceased to have effect in relation to health service medicines (1.9.1999 and 1.11.1999 for specified purposes) by virtue of 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(3)(4)(b)**

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Additional powers as to services and supplies; and the use of those services and supplies for private patients

50 . . . . . [F366]

Textual Amendments
F366 S. 50 repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

51, 52. . . . . . [F367]

Textual Amendments
F367 Ss. 16(3), 20(2), 51, 52, 59–63, 65–68, 96(2), Sch. 16 paras. 25, 43 repealed by Health Services Act 1980 (c. 53), **Sch. 7**

53 . . . . . [F368]

Textual Amendments
F368 S. 53 repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

54 Restriction of powers under sections 44, 50 and 53.

The Secretary of State shall exercise the powers conferred on him by the provisions of section 44 (supplies of blood and other substances) [F369] only if and to the extent that he is satisfied that anything which he proposes to do or allow under those powers—

(a) will not to a significant extent interfere with the performance by him of any duty imposed on him by this Act to provide accommodation or services of any kind; and

(b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than as private patients.

Textual Amendments
F369 Words repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

Further provisions as to payments by patients for health service accommodation and services

55 Hospital accommodation on part payment.

(1) The Secretary of State may authorise the accommodation described in this section to be made available, **[**[F370]for patients to such extent as he may determine, and may recover

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such charges as he may determine in respect of such accommodation and calculate them on any basis that he considers to be the appropriate commercial basis**]**.

The accommodation mentioned above is—

(a) in single rooms or small wards which are not for the time being needed by any patient on medical grounds;

(b) at any hospital **[**[F371]vested in the Secretary of State**]**.

(2[F372]

Textual Amendments

F370 Words substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 7(9)(a)**

F371 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(9)**

F372 S. 55(2) repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), ss. 7(9)(b), 25(2), **Sch. 3**

56 Expenses payable by remuneratively employed resident patients.

The Secretary of state may require any person—

(a) who is a resident patient for whom the Secretary of State provides services under this Act; and

(b) who is absent during the day for the purpose of engaging in remunerative employment from the hospital where he is a patient,

to pay such part of the cost of his maintenance in the hospital and any costs incidental thereto as may seem reasonable to the Secretary of State having regard to the amount of that person's remuneration, and the Secretary of State may recover the payment so required.

[[F373]57 Accommodation and services for private patients.

(1) If the Secretary of State is satisfied, in the case of a health service hospital **[**[F374]vested in the Secretary of State**]** that it is reasonable to do so, he may authorise accommodation and services at the hospital in question to be made available, to such extent as he may determine, for patients who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation and services made available, such charges as the Secretary of State may determine and may make and recover such charges as he may determine in respect of such accommodation and services and calculate them on any basis that he considers to be the appropriate commercial basis; but he shall do so only if and to the extent that he is satisfied that to do so—

(a) will not to a significant extent interfere with the performance by him of any duty imposed on him by this Act to provide accommodation or services of any kind; and

(b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than under this section.

(2) The Secretary of State may allow accommodation and services to which an authorisation under subsection (1) above relates to be made available in connection with treatment, in pursuance of arrangements made by a medical practitioner or dental

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practitioner serving (whether in an honorary or paid capacity) on the staff of a health service hospital for the treatment of private patients of that practitioner.

F375 **[** The Secretary of State shall revoke an authorisation under this section only if and (3) to the extent that he is satisfied that sufficient accommodation and facilities for the private practice of medicine and dentistry are otherwise reasonably available (whether privately or at health service hospitals) to meet the reasonable demand for them in the area served by the hospital in question.**]]**

Textual Amendments

F373 S. 57 substituted for ss. 57, 58 by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 7(11)**

F374 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(10)**

F375 Section 57(3) repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

Modifications etc. (not altering text)

C50 S. 57 applied (1.4.1999) by S.I. 1999/686, art. 5(1), **Sch. Pt. I**

58A F376

Textual Amendments

F376 S. 58A repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

59—63. . . . . . F377

Textual Amendments

F377 Ss. 16(3), 20(2), 51, 52, 59–63, 65–68, 96(2), Sch. 16 paras. 25, 43 repealed by Health Services Act 1980 (c. 53), **Sch. 7**

Use by practitioners of health service accommodation and facilities for private practice

64 Permission for use of facilities in private practice.

(1) A person to whom this section applies who wishes to use any relevant health service accommodation or facilities for the purpose of providing medical, dental, pharmaceutical, ophthalmic or chiropody services to non-resident private patients may apply in writing to the Secretary of State for permission under this section.

(2) Any application for permission under this section must specify—

(a) which of the relevant health service accommodation or facilities the applicant wishes to use for the purpose of providing services to such patients; and

(b) which of the kinds of services mentioned in subsection (1) he wishes the permission to cover.

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(3) On receiving an application under this section the Secretary of State—

(a) shall consider whether anything for which permission is sought would interfere with the giving of full and proper attention to persons seeking or afforded access otherwise than as private patients to any services provided under this Act; and

(b) shall grant the permission applied for unless in his opinion anything for which permission is sought would so interfere.

(4) Any grant of permission under this section shall be on such terms (including terms as to the payment of charges for the use of the relevant health service accommodation or facilities pursuant to the permission) as the Secretary of State may from time to time determine.

(5) The persons to whom this section applies are—

[[F378](za) persons providing primary medical services; and**]**

(a) persons of any of the following descriptions who provide services under Part II, namely, medical practitioners, dental practitioners, registered pharmacists, and ophthalmic [F379] opticians; and

(b) other persons who provide pharmaceutical or ophthalmic services under Part II; and

(c) chiropodists who provide services under this Act at premises where services are provided under Part II.

(6) In this section—

(a) "relevant health service accommodation or facilities", in relation to a person to whom this section applies, means any accommodation or facilities available at premises provided by the Secretary of State by virtue of this Act, being accommodation or facilities which that person is for the time being authorised to use for the purposes of **[**[F380]this Act**]**; or

(b) in the case of a person to whom this section applies by virtue of paragraph (c) of subsection (5), accommodation or facilities which that person is for the time being authorised to use for purposes of this Act at premises where services are provided under Part II.

Textual Amendments

F378 S. 64(5)(za) inserted (1.2.2006) by The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(5)(a)}

F379 Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**

F380 Words in s. 64(6)(a) substituted (1.2.2006) by The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(5)(b)}

65—68. . . . . . [F381]

Textual Amendments

F381 Ss. 16(3), 20(2), 51, 52, 59–63, 65–68, 96(2), Sch. 16 paras. 25, 43 repealed by Health Services Act 1980 (c. 53), **Sch. 7**

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Regulations as to certain charges

69 Charges for drugs, medicines or appliances or pharmaceutical services.

(1) Regulations may provide for the making and recovery in such manner as may be prescribed of such charges as may be prescribed in respect of—

(a) the supply under this Act (otherwise than under Part II) of drugs, medicines or appliances (including the replacement and repair of those appliances),

(b) such of the pharmaceutical services referred to in Part II as may be prescribed.

(2) Regulations under subsection (1) may provide for the grant, on payment of such sums as may be prescribed by those regulations, of certificates conferring on the persons to whom the certificates are granted exemption from charges otherwise exigible under the regulations in respect of drugs, medicines and appliances supplied during such period as may be prescribed, and different sums may be so prescribed in relation to different periods.

(3) The additional provisions of paragraphs 1 and 4 of Schedule 11 have effect in relation to this section.

70 Charges for dental or optical appliances.

(1) Regulations may provide for the making and recovery in such manner as may be prescribed of charges of such amounts as are mentioned in sub-paragraph (1) of paragraph 2 of Schedule 11, in respect of the supply under this Act of such [F382] optical appliances as are mentioned in that sub-paragraph.

[[F383](1A) Regulations may provide for the making and recovery in such manner as may be prescribed of charges of amounts calculated in accordance with section 71A in respect of the supply under this Act of dentures and other dental appliances of prescribed descriptions.**]**

(2) If the Secretary of State, after consultation with the university associated with any hospital providing facilities for clinical dental teaching, is satisfied that it is expedient in the interests of dental training or education that the charges imposed by subsection **[**[F384](1A)**]** should be remitted in the case of dental services provided at that hospital, either generally or subject to limitations or conditions, he may by order provide for that purpose.

Any order made under this subsection may be revoked or varied by a subsequent order made by the Secretary of State after such consultation as is mentioned above.

(3) The additional provisions of paragraphs 2 and 5 of Schedule 11 have effect in relation to this section.

Textual Amendments

F382 Words repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

F383 S. 70(1A) inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 11(4)**

F384 "(1A)" substituted for "(1)" by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), **Sch. 2 para. 12**

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71 Charges for dental treatment.

(1) A charge of **[**[F385]an amount calculated in accordance with section 71A**]** may be made and recovered, in such manner as may be prescribed, in respect of any services provided as part of the general dental services under Part II, not being—

[[F386](a) oral health assessments and dental examinations carried out on or after 1st April 2006;**]**

(a)

[F387](b) the repair of appliances other than prescribed appliances;

(c) the arrest of bleeding; [F387]

(d)

[F387]The additional provisions of paragraphs 3 and 5 of Schedule 11 have effect in relation to this subsection.

(2) Regulations may provide that, in the case of such special dental treatment as may be prescribed, being treatment provided as part of the general dental services **[**[F388](but not being oral health assessments or dental examinations carried out on or after 1st April 2006)**]**, such charges as may be prescribed may be made and recovered by the person providing the services.

Textual Amendments

F385 Words substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 11(5)**

F386 S. 71(1)(a) inserted (7.3.2006 for certain purposes, otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 12(2)(b)(i)**, 43(3); S.S.I. 2005/492, **art. 3(e)**, Sch. 3; S.S.I. 2006/121, **art. 3(a)**, Sch. 1

F387 S. 71(1)(a)(d) and word "or" preceding (d) repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

F388 Words in s. 71(2) inserted (7.3.2006 for certain purposes, otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 12(2)(b)(ii)**, 43(3); S.S.I. 2005/492, **art. 3(e)**, Sch. 3; S.S.I. 2006/121, **art. 3(a)**, Sch. 1

Modifications etc. (not altering text)

C51 By Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 11(7)** it is provided that s. 71(1) shall cease to have effect so far as it provides that a charge may not be authorised for the clinical examination of a patient and any report on that examination

[[F389]71A Calculation of charges for dental appliances and treatment.

(1) Subject to the following provisions of this section, regulations may make such provision as to the amount of any charge—

(a) authorised by section 70(1A) for the supply of dentures or other dental appliances; or

(b) authorised by section 71 for the provision of services,

as appears to the Secretary of State to be appropriate.

(2) Without prejudice to the generality of subsection (1) above, regulations may provide that any such charge in respect of appliances or services supplied or provided under Part II of this Act—

(a) shall be of an amount equal—

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(i) to the practitioner's remuneration in respect of the supply or provision; or

(ii) to any part of that remuneration; or

(b) shall be otherwise calculated by reference to that remuneration.

(3) Without prejudice to the generality of subsection (1) above, regulations may provide that any charge which is so authorised in respect of appliances supplied otherwise than under Part II of this Act—

(a) shall be of an amount equal—

(i) to the remuneration a practitioner would receive for a supply under that Part of equivalent appliances; or

(ii) to any part of such remuneration; or

(b) shall be otherwise calculated by reference to such remuneration.

(4) The charge shall not exceed the amount which the Secretary of State considers to be the cost to the health service of the supply or provision.

(5) In this section "cost to the health service" does not include—

(a) any fee in respect of a visit by a practitioner to a patient; or

(b) any fee or part of a fee payable by a patient in pursuance of regulations under section 71(2) or section 73(b) or 74(b).**]**

Textual Amendments

F389 S. 71A inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 11(6)**

72 Charges in respect of services etc. provided under sections 37, 38 and 41.

Regulations may provide for the recovery of such charges as may be prescribed—

(a) in respect of such services provided under section 37 (prevention of illness, care and after-care) as may be prescribed, not being services provided in a hospital;

(b) in respect of such articles or services provided under section 38 (care of mothers and young children) as may be prescribed, not being articles or services provided in a hospital, and not being a drug, a medicine or an appliance of a type normally supplied;

(c) from persons availing themselves of any service under section 41 (except advice on contraception),

and may provide for the remission of any such charge, in whole or in part, in such circumstances as may be prescribed.

73 Charges for more expensive supplies.

Regulations may provide for the making and recovery of such charges as may be prescribed—

(a) by the Secretary of State in respect of the supply by him of any appliance or vehicle which is, at the request of the person supplied, of a more expensive type than the prescribed type, or in respect of the replacement or repair of any such appliance, or the replacement of any such vehicle, or the taking of any such action in relation to the vehicle as is mentioned in section 46(2).

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(b) by persons providing **[**[F390]personal dental services in accordance with section 17C arrangements or**]** general dental services [F391] in respect of the supply, as part of those services, of any dental [F391] appliance which is, at the request of the person supplied, of a more expensive type than the prescribed type or in respect of replacement or repair of any such appliance.

[[F392](c) by a National Health Service trust in respect of the supply by them of any appliance or vehicle which is, at the request of the person supplied, of a more expensive type than the prescribed type, or in respect of the replacement or repair of any such appliance, or the replacement of any such vehicle.**]**

Textual Amendments

F390 Words in 73(b) inserted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I paras. 32, **47**; S.I. 1998/1998, art. 2(2)(b), **Sch. 2**

F391 Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**

F392 S. 73(c) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(11)**

74 Charges for repairs and replacements in certain cases.

Regulations may provide for the making and recovery of such charges as may be prescribed—

(a) by the Secretary of State in respect of the replacement or repair of any appliance or vehicle supplied by him, or

(b) by persons providing **[**[F393]personal dental services in accordance with section 17C arrangements or**]**general dental services [F394] in respect of the replacement or repair of any dental [F394] appliance supplied as part of those services, **[**[F395]or**]**

[[F395](c) by an NHS trust in respect of the replacement or repair of any appliance or vehicle supplied by them,**]**

if it is determined in the prescribed manner that the replacement or repair is necessitated by an act or omission of the person supplied or (if the act or omission occurred when the person supplied was under 16 years of age) of the person supplied or of the person having charge of him when the act or omission occurred.

Textual Amendments

F393 Words in s. 74(b) inserted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I paras. 32, **48**; S.I. 1998/1998, art. 2(2)(b), **Sch. 2**

F394 Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**

F395 S. 74(c) and preceding word "or" inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(12)**

75 Sums otherwise payable to those providing services.

Regulations made—

(a) under sections 69 to 71 and under sections 73 and 74 providing for the making and recovery of charges in respect of any services, may provide for the reduction of the sums which would otherwise be payable by a Health Board to

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the persons by whom those services are provided by the amount of the charges authorised by the regulations in respect of those services;

[[F396](b) for the purposes of section 70(1A) in relation to appliances provided as part of—

(i) general dental services, or

(ii) personal dental services provided in accordance with section 17C arrangements,

may provide for the reduction of the sums which would otherwise be payable by a Health Board to the persons by whom those services are provided by the amount of the charges authorised by section 70(1A) in respect of those appliances.**]**

Textual Amendments

F396 S. 75(b) substituted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I paras. 32, **49**; S.I. 1998/1998, art. 2(2)(b), **Sch. 2**

[[F397]**75A Remission and repayment of charges and payment of travelling expenses.**

(1) Regulations may provide in relation to prescribed descriptions of persons—

(a) for the remission or repayment of the whole or any part of any charges which would otherwise be payable by them in pursuance of section 69(1) above, section 70(1) **[**[F398]or, (1A)**]** above **[**[F399]section 70A(1) above**]** or section 71 above **[**[F400]or section 20 of the National Health Service (Primary Care) Act 1997**]**;

(b) for the payment by the Secretary of State in such cases as may be prescribed of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred for the purpose of their availing themselves of any services provided under this Act; and

(c) where they are persons whose travelling expenses are payable by virtue of paragraph (b) above, for the payment by the Secretary of State in such cases as may be prescribed of expenses necessarily incurred by them (and by any companion whose travelling expenses are so payable) in obtaining overnight accommodation for the purpose mentioned in that paragraph **[**[F401]and**]**

[[F401](d) for the payment by the Secretary of State to NHS trusts of such sums as will reimburse them for any sums paid by them as travelling expenses in such cases as may be prescribed**]**.

(2) Descriptions of persons may be prescribed for the purposes of paragraph (a), (b) **[**[F402], (c) or (d)**]** of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria-

(a) their age;

(b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;

(c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;

(d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit;

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(e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits; and

(f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.

(3) Regulations under this section may direct how a person's resources and requirements are to be calculated and, without pre-judice to the generality of this subsection, may direct that they shall be calculated—

(a) by a method set out in the regulations;

(b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;

(c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or

(d) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.

(4) Regulations under this section which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—

(a) as it has effect at the time when the regulations are made; or

(b) both as it has effect at that time and as amended subsequently.**]**

Textual Amendments

F397 S. 75A inserted by Social Security Act 1988 (c. 7, SIF 113:1), **s. 14(2)**

F398 Words inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), **Sch. 2 para. 13**

F399 Words in s. 75A(1)(a) inserted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I paras. 32, **51**; S.I. 1998/1998, art. 2(2)(b), **Sch. 2**

F400 Words in s. 75A(1)(a) inserted (29.9.1998) by S.I. 1998/2385, **art. 3**

F401 S. 75A(1)(d) and preceding word "and" inserted by National Health Service and Community Care Act 1990 (c.19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(13)(a)**

F402 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(13)(b)**

VALID FROM 07/07/2010

[F403 75B Reimbursement of the cost of services provided in another EEA state

(1) A Health Board must reimburse the cost of eligible services incurred by or on behalf of an eligible person on or after 23rd August 2010, but this is subject to the limits applicable under subsections (3) and (4), to subsections (6) and (7) and to any deduction applicable under section 75D.

(2) Eligible services are services provided by an authorised provider in an EEA state other than the UK, which are necessary to treat or diagnose a medical condition of the eligible person and are—

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(a) services, not being specified services, that are the same as or equivalent to those that the Health Board in whose area the eligible person resides would make or have made available under this Act in the circumstances of the person's case;

(b) specified services for which the Health Board in whose area the eligible person resides has given authorisation under section 75C; or

(c) services—

(i) which are neither the same as nor equivalent to services that the Health Board would make available under this Act in the circumstances of the person's case; and

(ii) for which the Health Board has given authorisation under section 75C.

(3) In respect of services other than dental services, a Health Board may limit the amount payable by way of reimbursement under subsection (1) to the amount that the same or equivalent services would have cost the Health Board in whose area the eligible person resides if those services had been provided under this Act otherwise than in accordance with this section and section 75C.

(4) In respect of dental services a Health Board may limit the amount payable by way of reimbursement under subsection (1) to the amount that would have been payable in respect of the same or equivalent services if those services had been provided under this Act otherwise than in accordance with this section and section 75C.

(5) Where the same or equivalent services referred to in subsection (4) would have required approval from the Dental Practice Board, the Health Board—

(a) may require the eligible person to submit evidence as to the clinical necessity of the dental services; and

(b) may decline to reimburse the costs of any services which were not clinically necessary.

(6) The duty in subsection (1) does not apply where the cost of the eligible services was incurred in connection with an arrangement which was entered into by or on behalf of the eligible person in the course of business and under which the applicant for reimbursement has gained or might be expected to gain any financial benefit.

(7) This section and section 75C do not apply in circumstances where Articles 20 and 27(3) of Regulation (EC) 883/2004 apply.

(8) In this section and sections 75C and 75D—

"authorised provider" in relation to services provided in an EEA state other than the United Kingdom means a person who is lawfully providing services;

"eligible person" means a person who is ordinarily resident in Scotland;

"eligible services" has the meaning given in subsection (2) of this section;

"services" includes any goods, including drugs, medicines and appliances which are used or supplied in connection with the provision of a service, but does not include accommodation other than hospital accommodation; and

"specified services" means those services comprising—

(a) services which would require a stay in hospital accommodation for at least one night;

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(b) medical treatment that involves general anaesthesia, epidural anaesthesia or intravenously administered sedation;

(c) dental treatment that involves general anaesthesia or intravenously administered sedation;

(d) services whose provision involves the use of specialised or cost-intensive medical infrastructure or medical equipment.

Textual Amendments

F403 Ss. 75B-75D inserted (7.7.2010) by The National Health Service (Reimbursement of the Cost of EEA Treatment) (Scotland) Regulations 2010 (S.S.I. 2010/283), **reg. 3(3)**

VALID FROM 07/07/2010

75C Prior authorisation

(1) An eligible person may apply to the Health Board in whose area that person resides for prior authorisation for the purposes of section 75B.

(2) Prior authorisation must be given if the eligible services are specified services which—

(a) are the same as or equivalent to those that the Health Board in whose area the eligible person resides would make available under this Act in the circumstances of the person's case; and

(b) are not available to the eligible person from the Health Board without undue delay.

(3) Prior authorisation may be given for any other eligible services falling within section 75B(2)(b) or (c).

(4) "Undue delay" means that the services cannot be provided within a period of time which is acceptable on the basis of medical evidence as to the clinical needs of the eligible person, taking into account that person's state of health at the time the decision is made and the probable course of the medical condition to which the services relate.

(5) In assessing whether there is undue delay for the purposes of subsection (2), the Health Board must consider—

(a) the eligible person's medical history;

(b) the extent of any pain, disability, discomfort or other suffering that is attributable to the medical condition to which the services are to relate;

(c) whether any such pain, disability, discomfort or suffering makes it impossible or extremely difficult for the patient to carry out ordinary daily tasks; and

(d) the extent to which the services would be likely to alleviate, or enable the alleviating of, the pain, disability, discomfort or suffering.

(6) Any authorisation under this section must be in writing.

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Textual Amendments

F403 Ss. 75B-75D inserted (7.7.2010) by The National Health Service (Reimbursement of the Cost of EEA Treatment) (Scotland) Regulations 2010 (S.S.I. 2010/283), **reg. 3(3)**

VALID FROM 07/07/2010

75D Deduction of NHS charges

(1) A Health Board may deduct from any amount to be reimbursed under section 75B(1), in whole or in part, any NHS charge which would have been payable by the eligible person for the same service or an equivalent service if the service had been made available by the Health Board in whose area the eligible person resides.

(2) Subsection (1) does not apply to the extent that the eligible person would, if the services received had been provided under this Act otherwise than in accordance with sections 75B and 75C, be entitled to any exemption or remission from any NHS charge.

(3) In this section "NHS charge" means any charge payable in accordance with sections 69 to 74 or regulations made under those sections.**]**

Textual Amendments

F403 Ss. 75B-75D inserted (7.7.2010) by The National Health Service (Reimbursement of the Cost of EEA Treatment) (Scotland) Regulations 2010 (S.S.I. 2010/283), **reg. 3(3)**

Inquiries, and default and emergency powers

76 Inquiries.

(1) The Secretary of State may cause an inquiry to be held in any case where he deems it advisable to do so in connection with any matter arising under this Act.

(2) The provisions of Schedule 12 shall have effect with regard to any inquiry which the Secretary of State is, under this Act, required or authorised to hold.

77 Default powers.

(1) Where the Secretary of State is of the opinion, on representations made to him or otherwise, that—

(a) any Health Board;

[[F404](aa) an NHS trust**]**

(b) [F405]. . . . . .

(c) the Dental Estimates Board;

have failed to carry out any functions conferred or imposed on them by or under this Act, or have in carrying out those functions failed to comply with any regulations,

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schemes, proposals or directions relating to those functions, he may after holding an inquiry make an order declaring them to be in default.

(2) When such an order is made, the members of the body shall forthwith vacate their office, and the order—

(a) shall provide for the appointment, in accordance with the provisions of this Act, of new members of the body; and

(b) may contain such provisions as seem to the Secretary of State expedient for authorising any person to act in the place of the body in question pending the appointment of new members.

(3) An order made under this section may contain such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient.

Textual Amendments

F404 S. 77(1)(aa) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(14)**

F405 S. 77(1)(b) repealed (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(11)**; S.S.I. 2004/148, **art. 2(c)**

Modifications etc. (not altering text)

C52 S. 77 extended by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), ss. 17(2), 91(2), **Sch. 1 para. 8**(*a*)

C53 S. 77 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C54 S. 77 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 77 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 77 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 77 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 77 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 77 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 77 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S. 77 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C55 S. 77 modified (15.8.1997) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I paras. 32, **51**; S.I. 1997/1780, art. 2(1), **Sch.**

78 Emergency powers.

If the Secretary of State is of the opinion that an emergency exists, and thinks it necessary in order to secure the effective continuance of any service under this Act, he shall have power to direct that any function conferred by or under this Act on any body or person shall, during the period of the emergency, be performed by such other body or person as he may specify in the direction.

Modifications etc. (not altering text)

C56 S. 78 extended by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), ss. 17(2), 91(2), **Sch. 1 para. 8**(*b*)

C57 S. 78 modified (1.10.1998) by 1997 c. 46, s. 41(10), Sch. Pt. I paras. 32, **52**; S.I. 1998/1998, **art. 2(2)(b) Sch. 2**

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[F406 78A Powers in case of service failure

(1) This section applies where—
- (a) it is a function of a body or person under or by virtue of this Act to provide, or secure the provision of, a service, and
- (b) the Scottish Ministers consider that the body or person has failed, is failing or is likely to fail—
  - (i) to provide the service, or
  - (ii) to provide it to a standard which they regard as acceptable.

(2) The Scottish Ministers may, where they consider it necessary for the purpose of ensuring the provision of the service in question to a standard which they regard as acceptable, direct that specified functions of the body or person under or by virtue of this Act be performed, for a specified period and to a specified extent, by—
- (a) a body falling within subsection (4), or
- (b) one or more persons falling within subsection (5).

(3) In subsection (2), "specified" means specified in the direction.

(4) A body falls within this subsection if it is—
- (a) a Health Board,
- (b) a Special Health Board, or
- (c) the Agency.

(5) A person falls within this subsection if the person is—
- (a) an employee of a Health Board, a Special Health Board or the Agency,
- (b) a member of the staff of the Scottish Administration, or
- (c) an employee of a local authority.

(6) A body or person appointed by a direction given under subsection (2) to perform functions of a body or person referred to in subsection (1) is referred to in this section as an "appointed person".

(7) An appointed person must comply with a direction given under subsection (2).

(8) The remuneration and expenses of, and any other costs reasonably incurred by, an appointed person in performing the functions specified in the direction shall, unless otherwise specified in the direction, be paid by the body or person referred to in subsection (1).

(9) Anything done or omitted by an appointed person in performing the functions specified in the direction is to be regarded as done or omitted by the body or person referred to in subsection (1).

(10) A person dealing with an appointed person in good faith and for value is not concerned to inquire whether the appointed person is acting within the powers conferred by virtue of the direction.

(11) The Scottish Ministers may vary or withdraw a direction given under subsection (2).]

Textual Amendments

F406 Ss. 78A, 78B inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 6**, 12(1); S.S.I. 2004/361, **art. 2(b)(i)**

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[F406 78B Relationship of sections 77, 78 and 78A

The powers conferred by each of sections 77, 78 and 78A are without prejudice to the powers conferred by the other two sections.]

Textual Amendments

F406 Ss. 78A, 78B inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 6**, 12(1); S.S.I. 2004/361, **art. 2(b)(i)**

PART V

PROPERTY AND FINANCE

Land and other property

79 Purchase of land and moveable property.

(1) The Secretary of State may purchase by agreement any moveable property and, by agreement or compulsorily, any land which he considers is required for the purposes of any service under this Act [F407 and may take any such property or land on lease,], and may use for those purposes any property, heritable or moveable, acquired by him or on his behalf under this Act.

[F408 (1A) Without prejudice to any other power of disposal, the Secretary of State may dispose of any land which he considers is no longer required for the purposes of any service under this Act F409 . . ..]

(2) Where the Secretary of State acquires premises under subsection (1) [F410 other than on lease] he may acquire compulsorily, in accordance with Schedule 13, any equipment, furniture or other moveable property used in or in connection with the premises.

[F411 (2A) For the avoidance of doubt, the power to use heritable property conferred by subsection (1), and the power to dispose of land conferred by subsection (1A), include power to let the property or, as the case may be, land.]

(3) Any Health Board or the Agency may acquire on behalf of the Secretary of State any moveable property which may be required for the purposes aforesaid.

(4) For the purpose of the purchase of land by agreement by the Secretary of State—

(a) the Lands Clauses Acts (except so much thereof as relates to the acquisition of land otherwise than by agreement, and the provisions relating to access to the special Act, and except sections 120 to 125 of the M30 Lands Clauses Consolidation (Scotland) Act 1845), and

(b) section 6 and sections 70 to 78 of the M31 Railways Clauses Consolidation (Scotland) Act 1845 (as originally enacted and not as amended by section 15 of the M32 Mines (Working Facilities and Support) Act 1923),

are hereby incorporated with this section; and in construing those Acts for the purposes of this section, this section shall be deemed to be the special Act and the Secretary of State shall be deemed to be the promoter of the undertaking.

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Textual Amendments

F407 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(15)(a)**

F408 S. 79(1A) inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 14(2), **Sch. 7 para. 3**

F409 Words in s. 79(1A) repealed (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), **Sch. 5** (with ss. 9(3)(5)(7), 13, 14(3))

F410 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(15)(b)**

F411 S. 79(2A) inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 11, 12(1), **Sch. 1 para. 1(6)**; S.S.I. 2004/361, **art. 2(b)(iv)**

Modifications etc. (not altering text)

C58 S. 79(1) extended by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **ss. 17(2)**, 91(6)

C59 By S.I. 1990/2369, **art. 4(2)(c)** certain functions of the Secretary of State under s. 79(1) are made exercisable (1.4.1991) by the Health Education Board for Scotland

C60 S. 79(1): functions transferred (27.6.2002) by S.S.I. 2002/305, **art. 4(2)(i)** (with art. 4(4))
S. 79(1): functions transferred (31.3.2002) by S.S.I. 2002/103, **art. 4(2)(c)** (with art. 4(4))

C61 S. 79(1A) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), Sch. Pt. I (which amendment fell on 1.4.2003 by virtue of the omission of the amending provision by S.S.I. 2003/154, **art. 6(b)**)

C62 By S.I. 1990/2369, **art. 4(2)(d)** certain functions of the Secretary of State under s. 79(1A) (see entry above) are made exercisable by the Health Education Board for Scotland

C63 S. 79(1A)(3) applied (with modifications) (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 79(1A)(3) applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 79(1A)(3) applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 79(1A)(3) applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 79(1A)(3) applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 79(1A)(3) applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 79(1A)(3) applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S. 79(1A)(3) applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C64 S. 79(3) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

Marginal Citations

M30 1845 c. 19.

M31 1845 c. 33.

M32 1923 c. 20.

80 Transferred property free of trusts.

(1) All property vested in the Secretary of State by virtue of section 6 of the [M33]National Health Service (Scotland) Act 1947 is so vested free of any trust existing immediately before 5th July 1948; and the Secretary of State may use any such property for the purpose of any of the functions exercisable by him under this Act, but shall so far as practicable secure that the objects for which any such property was used immediately before the said 5th July are not prejudiced by the exercise of the power hereby conferred.

(2) Where the character and associations of any voluntary hospital transferred to the Secretary of State by virtue of the said Act of 1947 are such as to link it with a

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particular religious denomination, regard shall be had in the general administration of the hospital to the preservation of the character and associations of the hospital.

Marginal Citations
M33 1947 c. 27.

81 Power of voluntary organisations to transfer property to Secretary of State.

Notwithstanding anything contained in the constitution or rules of any voluntary organisation formed for the purpose of providing a service of nurses for attendance on the sick in their own home or of midwives, or in any trust deed or other instrument relating to any such organisation or service, any property vested in the organisation or held by any persons on trust for the organisation or service or for any specific purposes connected with the organisation or service may be transferred to the Secretary of State on such terms as may be agreed between the Secretary of State and the organisation or trustees, with a view to the property being used or held by the Secretary of State for purposes similar to the purposes for which it was previously used or held.

Trust property

82 Use and administration of certain endowments and other property held by Health Boards.

(1) All endowments vested in a Health Board by virtue of section 37 of the [M34]National Health Service (Scotland) Act 1972 are so vested free of any trust existing immediately before 1st April 1974 (hereafter in this section referred to in relation to any such endowment as "the original trust"); but all such endowments shall be held by the Health Board on trust for such purposes relating to services provided under this Act in or in relation to hospitals, or to the functions of the Board with respect to research, as the Board may think fit.

(2) All property vested in a Health Board by virtue of section 39 of the said Act of 1972 is so vested free of any trust existing immediately before the said 1st April (hereafter in this section referred to in relation to any such property as "the original trust"); but all such property shall be held by the Health Board on trust for such purposes relating to services provided by them under this Act, or to the functions of the Board with respect to research, as the Board may think fit.

[[F412](2A) All endowments and other property (including value in lieu of the property) vested in a Health Board by virtue of section 5 or 6(2) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4) is so vested free of any trust existing immediately before it is so vested (hereafter in this section referred to in relation to any such endowment or property as "the original trust"); but all such endowments and other property shall be held by the Health Board on trust for such purposes relating to services provided under this Act or in relation to hospitals, or to the functions of the Board with respect to research, as the Board may think fit.**]**

[[F413](2B) All endowments and property held in trust transferred to a Health Board by an order under paragraph 26 of Schedule 7A (whenever made) are held by the Health Board free of any trust existing immediately before the transfer (hereafter in this section referred to in relation to any such endowment or property as "the original trust"); but

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all such endowments and property shall be held by the Health Board on trust for such purposes relating to services provided under this Act, or to the functions of the Board with respect to research, as the Board may think fit.**]**

(3) In exercising the power conferred on them by this section in relation to any endowment or property a Health Board shall secure, so far as is reasonably practicable, that the objects of the original trust (including, in the case of an endowment, the objects of the endowment) and the observance of any conditions attaching thereto, including, in particular, conditions intended to preserve the memory of any person or class of persons, are not prejudiced by the exercise of the power.

(4) Any reference in this section to an endowment or to any property includes a reference to the accumulated income thereof.

Textual Amendments

F412 S. 82(2A) inserted (12.2.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), **ss. 10(2)**, 21(3); S.S.I. 2003/602, **art. 2(4)(c)**

F413 S. 82(2B) inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 1(2)**, 12(1); S.S.I. 2004/361, **art. 2(b)(i)**

Modifications etc. (not altering text)

C65 S. 82 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**

Marginal Citations

M34 1972 c. 58.

83 Power of Health Boards and local health councils to hold property on trust.

(1) A Health Board shall have power to accept, hold and administer any property on trust for purposes relating to any service which it is their function to make arrangements for, administer or provide, or to their functions with respect to research.

[[F414](1A) A Health Board shall have power to accept, hold and administer any property on trust for purposes relating to any service which it is the function of any NHS trust in the area of the Health Board to make arrangements for, administer or provide.**]**

(2) A local health council shall have power to accept, hold and administer any property on trust for purposes relating to any function conferred upon them by or under any enactment.

Textual Amendments

F414 S. 83(1A) inserted (12.2.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), **ss. 10(3)**, 21(3); S.S.I. 2003/602, **art. 2(4)(c)**

Modifications etc. (not altering text)

C66 S. 83(1) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C67 S. 83(1) applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 83(1) applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 83(1) applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 83(1) applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 83(1) applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**

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S. 83(1) applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 83(1) applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S. 83(1) applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

84 Power of trustees to make payments to Health Boards.

(1) Where property (other than property transferred to the Secretary of State under Part V of the [M35]National Health Service (Scotland) Act 1972 or to a Health Board under Part VI of that Act) was immediately before 1st April 1974, and is at any time after the commencement of this Act, held on trust under a trust instrument the terms of which authorise or require the trustees (whether immediately or in the future) to apply any part of the capital or income of the property for the purposes of any hospital or service which is administered by a Health Board **[**[F415]or an NHS trust**]**, the trust instrument shall be construed as authorising, or, as the case may be, requiring, the trustees to pay that capital or income to the Health Board **[**[F416]or NHS trust**]** concerned.

(2) Where property so held on trust is, under the trust instrument, to be applied for the purposes of hospitals which are administered by more than one Health Board **[**[F417]or NHS trust**]**, the trustees shall distribute the property between the Boards **[**[F418]or NHS trusts**]** concerned, in such manner, having regard to the purposes of the trust, as the trustees may determine.

(3) Any sums paid to a Health Board **[**[F419]or an NHS trust**]** under this section shall, so far as practicable, be applied by them for the purposes specified in the trust instrument.

Textual Amendments

F415 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(16)(a)(i)**

F416 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(16)(a)(ii)**

F417 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(16)(b)(i)**

F418 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(16)(b)(ii)**

F419 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(16)(c)**

Modifications etc. (not altering text)

C68 S. 84 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C69 S. 84 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 84 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 84 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 84 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 84 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 84 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 84 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
S. 84 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))

Marginal Citations

M35 1972 c. 58.

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[F420 84A Power to raise money, etc., by appeals, collections, etc.

(1) A Health Board [F421 or NHS trust] shall have power to engage in activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to assist them in providing or improving any services or any facilities or accommodation which is or are to be provided as part of the health service or to assist them in connection with their functions with respect to research.

(2) A local health council shall have power to engage in activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to assist them in carrying out any function conferred upon them by or under any enactment.

(3) Subject to any directions of the Secretary of State excluding specified descriptions of activity, the activities authorised by this section include public appeals or collections and competitions, entertainments, bazaars, sales of produce or other goods and other similar activities and the activities may involve the use of land, premises or other property held by or for the benefit of the Board [F422, NHS trust] or local health council exercising the power subject however to any restrictions on the purposes for which trust property may be used.

(4) Subject to subsections (5) and (6), the Health Board [F422, NHS trust] or local health council at whose instance property is given in pursuance of this section shall, after defraying out of it any expenses incurred in obtaining it, hold, administer and apply the property on trust for or for the purpose for which it was given.

(5) Where property held by a Health Board [F422, NHS trust] or local health council under this section is more than sufficient to enable the purpose for which it was given to be fulfilled, the excess shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property comprising the excess was given, for such purposes connected with any of the functions of the Board [F422, NHS trust] or council as the Board [F422, NHS trust] or council think fit.

(6) Where property held by a Health Board [F422, NHS trust] or local health council under this section is insufficient to enable the purpose for which it was given to be fulfilled then—

(a) the Board [F422, NHS trust] or the council may apply so much of the capital or income at their disposal as is needed to enable the purpose to be fulfilled subject, however, in the case of trust property, to any restrictions on the purposes for which the trust property may be applied, and in the case of money paid or payable by the Secretary of State under section 85(1), to any directions he may give; but

(b) where the capital or income applicable under paragraph (a) is insufficient or is not applied to enable the purpose to be fulfilled, the property so held by the Board [F422, NHS trust] or the council shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property was given, for such purposes connected with any of the functions of the Board [F422, NHS trust] or council as the Board [F422, NHS trust] or council think fit.

(7) Where under subsections (5) or (6) property becomes applicable for purposes other than that for which it was given, the Health Board [F422, NHS trust] or local health council shall have regard to the desirability of applying the property for a purpose similar to that for which it was given.]

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Textual Amendments

F420 S. 84A inserted by Health Services Act 1980 (c. 53), **s. 5(2)**

F421 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(17)(a)**

F422 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(17)(b)**

Modifications etc. (not altering text)

C70 S. 84A applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C71 S. 84A applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 84A applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 84A applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 84A applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 84A applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 84A applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 84A applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
S. 84A applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))

[F423 Joint ventures

Textual Amendments

F423 S. 84B and cross-heading inserted (S.) (17.10.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 37(1)**, 43(3); S.S.I. 2005/492, **art. 3(a)**, Sch. 1

84B Joint ventures

(1) The Scottish Ministers may do any (or all) of the following—

(a) form or participate in forming companies to provide facilities or services for persons or groups of persons exercising functions, or otherwise providing services, under this Act;

(b) participate in companies providing facilities or services for persons or groups of persons falling within paragraph (a);

(c) with a view to securing or facilitating the provision by companies of facilities or services for persons or groups of persons falling within paragraph (a)—

(i) invest in the companies (whether by acquiring assets, securities or rights or otherwise);

(ii) provide loans and guarantees and make other kinds of financial provision to or in respect of them.

(2) For the purpose of subsection (1), it is immaterial that the facilities or services provided or to be provided by a company are not provided or to be provided—

(a) only to persons or groups of persons exercising functions, or otherwise providing services, under this Act; or

(b) to such persons or groups of persons only in that capacity.

(3) In this section—

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"companies" means companies within the meaning of the Companies Act 1985 (c. 6);

"facilities" includes the provision of (or the use of) premises, goods, equipment, materials, vehicles, plant or apparatus.**]**

Finance and accounts

[F424 85AA Means of meeting expenditure of Health Boards out of public funds.

(1) The Secretary of State shall pay to each Health Board sums equal to their general Part II expenditure.

(2) "General Part II expenditure" is expenditure which—
- (a) is attributable to the payment of remuneration to persons providing services in pursuance of Part II; but
- (b) does not fall within paragraphs (b) to (e) of subsection (4).

(3) The Secretary of State shall pay to each Health Board, in respect of each financial year, sums not exceeding the amount allotted for that year by the Secretary of State to the Board towards meeting their main expenditure.

(4) In subsection (3) "main expenditure" means expenditure which is attributable to—
- (a) the performance by the Board of their functions in that year, but—
  - (i) is not general Part II expenditure; and
  - (ii) does not fall within paragraphs (b) **[**F425 or (c)**]**;
- (b) the reimbursement of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services);
- (c) remuneration which is paid to persons providing additional pharmaceutical services (in accordance with directions under section 27A) in respect of such of those services as are designated;
- (d) F426 . . . . . .
- (e) remuneration which is referable to the cost of drugs for which the Health Board is accountable in that year (whether paid by it or by another Health Board).

(5) In paragraphs (b) to (e) of subsection (4), "designated" means designated in writing by the Secretary of State for the purposes of that paragraph and in relation to the allotment in question.

(6) An amount is allotted to a Health Board for a year under this section when they are notified by the Secretary of State that it is allotted to them for that year; and the Secretary of State may make an allotment under this section increasing or reducing an allotment previously so made.

(7) Where the Secretary of State proposes to pay any sum to a Health Board, he may, with the consent of the Treasury, instead pay that sum to an NHS trust in discharge of the whole or any part of any liability of the Health Board to the NHS trust.

(8) The Secretary of State may give directions to a Health Board with respect to the application of sums paid to them and a Board to whom directions have been given under this subsection shall comply with the directions.

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(9) The expenditure of a University Liaison Committee shall, for the purposes of this section, be deemed to be the expenditure of the Health Board for whose area it is constituted, and, where a University Liaison Committee is constituted for the areas of more than one Health Board, its expenditure shall be apportioned between the Boards concerned in such manner as may be determined by the Secretary of State.

(10) Payments under this section shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may determine.

(11) In this section and section 85AB, "drugs" includes medicines and listed appliances (within the meaning of section 27).**]**

Textual Amendments

F424 S. 85, 85AA, 85AB substituted for s. 85 (1.10.1999) by 1999 c. 8, **s. 52**; S.I. 1999/90, art. 2(a), **Sch. 1**

F425 Words in s. 85AA(4)(a)(ii) substituted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), {Sch. para. 1(16)(a); S.S.I. 2004/58, **art. 2(3)**}

F426 S. 85AA(4)(d) repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), {Sch. para. 1(16)(b); S.S.I. 2004/58, **art. 2(3)**}

Modifications etc. (not altering text)

C72 S. 85AA applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 85AA applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 85AA applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S.85AA applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C73 S. 85AA applied (1.4.2003) by S.I. 1990/2639, art. 5(1), Sch. Pt. 1 (as amended by The Health Education Board for Scotland Amendment Order 2003 (S.S.I. 2003/154), **art. 6(c)**)

[F427 85AB Further provision as to expenditure on drugs.

(1) For each financial year, the Secretary of State shall apportion, in such manner as he thinks appropriate, among all Health Boards the total of the remuneration referable to the cost of drugs which is paid by each Health Board in that year.

(2) A Health Board is accountable in any year for remuneration referable to the cost of drugs to the extent (and only to the extent) that such remuneration is apportioned to it under subsection (1).

(3) Where in any financial year any remuneration referable to the cost of drugs for which a Health Board is accountable is paid by another Health Board, the remuneration is to be treated (for the purposes of this section) as having been paid by the first Health Board in the performance of its functions.

(4) The Secretary of State may, in particular, exercise his discretion under subsection (1) —

(a) so that any apportionment reflects, in the case of each Health Board, the financial consequences of orders for the provision of drugs, being orders which in his opinion are attributable to the Board in question;

(b) by reference to averaged or estimated amounts.

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(5) The Secretary of State may make provision for any remuneration referable to the cost of drugs which is paid by a Health Board other than the Health Board which is accountable for the payment to be reimbursed in such manner as he may determine.

(6) The Secretary of State shall determine what remuneration paid by Health Boards to persons providing pharmaceutical services is to be treated for the purposes of section 85AA and this section as remuneration referable to the cost of drugs.**]**

Textual Amendments

F427 S. 85, 85AA, 85AB substituted for s. 85 (1.10.1999) by 1999 c. 8, **s. 52**; S.I. 1999/90, art. 2(a), **Sch. I**

[[F428]85 Expenses of certain bodies.

(1) There shall, in respect of each financial year, be paid by the Secretary of State sums not exceeding the amount allotted by him for that year to each of the following bodies towards meeting the expenditure attributable to the performance by that body of their functions in that year—

(a) the Agency;

(b) every Special Health Board;

(c) [F429] . . . . . .

(d) the Dental Estimates Board;

(e) the tribunal;

(f) every local health council.

(2) The date on which an allotment under subsection (1) (including an allotment increasing or reducing an allotment previously made) takes effect is the date on which the body receiving the allotment are notified of its amount by the Secretary of State.

(3) The Secretary of State may give directions to a body referred to in subsection (1) with respect to the application of the sums paid to them under that subsection and it shall be the duty of any body to whom directions have been given under this subsection to comply with the directions.

(4) Payments under subsection (1) shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may determine.**]**

Textual Amendments

F428 S. 85,85AA, 85AB substituted for s. 85 (1.10.1999) by 1999 c. 8, **s. 52** ; S.S.I. 1999/90, art. 2(a), **Sch. 1**

F429 S. 85(1)(c) repealed (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(12)**; S.S.I. 2004/148, **art. 2(c)**

Modifications etc. (not altering text)

C74 S. 85 applied (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 4(3), 333(2)-(4), **Sch. 1 para. 9(a)**, S.S.I. 2005/161, **art. 3**

C75 S. 85(1)(2)(3)(4) applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 85(1)(2)(3)(4) applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 85(1)(2)(3)(4) applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))

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S. 85(1)(2)(3)(4) applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

[F430 85A Financial duties of bodies referred to in section 85.

(1) It is the duty of each such body as is referred to in section **[**F431 85AA(1) or**]**85(1), in respect of each financial year, so to perform their functions as to secure that the expenditure attributable to the performance of their functions in that year does not exceed the aggregate of—

(a) the amounts allotted to that body for that year under section **[**F431 85AA(1) or**]**85(1) **[**F432 and, as the case may be, section **[**F433 85AA(3)**]]**;

(b) any other sums received under this Act in that year by that body; and

(c) any sums received otherwise than under this Act in that year by that body for the purposes of enabling them to defray any such expenditure.

(2) **[**F434 Subsection (9) of section 85AA**]**shall apply for the purposes of this section as it applies for the purposes of that section.

(3) The Secretary of State may give such directions to a body referred to in section **[**F435 85AA(1) or**]**85(1) as appear to him to be requisite to secure that the body comply with the duty imposed on them by subsection (1) and it shall be the duty of the body to comply with the directions.

Directions under this subsection may be specific in character.

(4) To the extent to which—

(a) any expenditure of a Health Board or a local health council is defrayed by that body as trustee; or

(b) any sums are received by such a body as trustee or under section 84A,

that expenditure and, subject to subsection (5), those sums shall be disregarded for the purposes of this section, and, for those purposes, sums which, in the hands of such a body, cease to be trust funds and become applicable by the body otherwise than as trustee shall be treated, on their becoming so applicable, as having been received by the body otherwise than as trustee.

(5) Of the sums received by a body under section 84A so much only as accrues to the body after defraying any expenses incurred in obtaining them shall be disregarded under subsection (4).

(6) Subject to subsection (4), the Secretary of State may, by directions, determine—

(a) whether sums of a description specified in the directions are or are not to be treated for the purposes of this section as being receivable under this Act by a body of a description so specified;

(b) whether expenditure of a description specified in the directions is or is not to be treated for the purposes of this section as being attributable to the performance of functions by a body of a description so specified; or

(c) the extent to which and the circumstances in which sums received but not yet spent by a body under section **[**F436 85AA(1)**]**85(1) **[**F437, or, as the case may be, section **[**F438 85AA(3)**]]** are to be treated for the purposes of this section as part of the expenditure of the body and to which financial year's expenditure they are to be attributed.**]**

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Textual Amendments

F430 S. 85A inserted by Health Services Act 1980 (c. 53), **s. 6(4)(5)** in relation to the financial year 1980 to 1981 and subsequent years

F431 Words in s. 85A(1) inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 55(a)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F432 Words inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 16(4)(a)**

F433 Word in s. 85A(1)(a) substituted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 55(a)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F434 Words in s. 85A(2) substituted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 55(b)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F435 Words in s. 85A(3) inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 55(c)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F436 Word in s. 85A(6)(c) inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 55(d)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F437 Words inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 16(4)(b)**

F438 Word in s. 85A(6)(c) substituted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 55(d)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

Modifications etc. (not altering text)

C76 S. 85A(1)(3) extended by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), ss. 2(8)(b), 17(2), 91(2), **Sch. 1 para. 8(d)**

C77 Ss. 85(1)(2A), 85A(1)(3)(4) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C78 S. 85A(1)(3)(4) applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with
S. 85A(1)(3)(4) applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 85A(1)(3)(4) applied (1.4.1999) by S.I. 1999/686, art 5(1)(2), **Sch. Pt. I**
S. 85A(1)(3)(4) applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 85A(1)(3)(4) applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 85A(1)(3)(4) applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 85A(1)(3)(4) applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S. 85A(1)(3)(4) applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C79 S. 85A(1) applied (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 4(3), 333(2)-(4), **Sch. 1 para. 9(b)**, S.S.I. 2005/161, **art. 3**

C80 S. 85A(3) applied (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 4(3), 333(2)-(4), **Sch. 1 para. 9(b)**, S.S.I. 2005/161, **art. 3**

[F439 85B Schemes for meeting losses and liabilities etc. of certain health service bodies.

(1) The Secretary of State may by regulations made with the consent of the Treasury establish a scheme whereby any of the bodies mentioned in subsection (2) may make provision to meet—

(a) expenses arising from any loss of or damage to their property; and

(b) liabilities to third parties for loss, damage (including solatium) or injury arising out of the carrying out of the functions of the bodies concerned.

(2) The bodies referred to in subsection (1) are—

(a) Health Boards;

(b) the Agency;

(c) F440 . . . . . .

(d) NHS trusts [F441F442. . .

(e) Special Health Boards][F443; and

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(f) the Mental Welfare Commission for Scotland**]**,

but a scheme under this section may limit the class or description of bodies which are eligible to participate in it.

(3) Without prejudice to the generality of the power conferred by subsection (1), a scheme under this section may-

(a) provide for the scheme to be administered by the Secretary of State, the Agency, or a Health Board or NHS trust specified in the scheme;

(b) require any body which participates in the scheme to make payments in accordance with the scheme; and

(c) provide for the making of payments for the purposes of the scheme by the Secretary of State.

(4) Without prejudice to any other power of direction conferred on the Secretary of State,-

(a) if the Secretary of State so directs, any body which is eligible to participate in a scheme shall do so; and

(b) where a scheme provides for it to be administered by the Secretary of State, the Agency or a Health Board or NHS trust shall carry out such functions in connection with the administration of the scheme as the Secretary of State may direct.

(5) Neither the Secretary of State nor any body administering a scheme under this section shall, by virtue of their activities under the scheme, be regarded as **[**[F444]effecting or carrying out contracts of insurance for the purposes of the Financial Services and Markets Act 2000**].]**

Textual Amendments

F439 S. 85B inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 41**

F440 S. 85B(2)(c) repealed (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), arts. 1, 3, **Sch. 2**

F441 S. 85B(2)(e) and the word preceding it inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 56(b)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F442 Word in s. 85B(2) repealed (13.5.2002) by 2002 asp 5, **s.21(a)**; S.S.I. 2002/170, **art. 2**

F443 S. 85B(2)(f) and the word preceding it inserted (13.5.2002) by 2002 asp 5, **s. 21(b)**; S.S.I. 2002/170, **art. 2(2)**

F444 Words in s. 85B(5) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 221

Modifications etc. (not altering text)

C81 Ss. 85B, 86 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C82 S. 85B applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 85B applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 85B applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 85B applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 85B applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 85B applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 85B applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S. 85B applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

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86 Accounts of Health Boards and the Agency.

[[F445](1) The following bodies that is to say—

(a) every Health Board;

(b) the Agency; and

(c) every NHS trust,**]**

shall keep, in such form as the Secretary of State may, with the approval of the Treasury, direct, accounts of all moneys received or paid out by them, and **[**[F446]shall send those accounts to the Scottish Ministers by such time as they may direct**]**.

[[F447](1AA) The Scottish Ministers shall send the accounts to the Auditor General for Scotland for auditing.**]**

[[F448F449](1A) . . . . . .

(1B) In preparing its annual accounts in pursuance of subsection (1), an NHS trust shall comply with any directions given by the Secretary of State with the approval of the Treasury as to—

(a) the methods and principles according to which the accounts are to be prepared; and

(b) the information to be given in the accounts.**]**

(1C) . . . . . .

[F450](2) . . . . . .

[F449](3) Every **[**[F451]body mentioned in paragraphs (a) to (c) of subsection (1)**]** shall prepare and transmit to the Secretary of State in respect of each financial year accounts in such form as the Secretary of State may, with the approval of the Treasury, direct.

[[F452](4) The Scottish Ministers may if they think fit prepare, in respect of any financial year, summarised or consolidated accounts, in such form as they may determine, of such of the bodies mentioned in paragraphs (a) to (c) of subsection (1), or such groups of those bodies, as they may determine; and they shall transmit any such accounts to the Auditor General for Scotland for auditing**]**

[F449](5) . . . . . .

Textual Amendments

F445 S. 86(1)(a)(b)(c) substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 36(2)(3)**

F446 Words in s. 86(1) substituted (1.4.2000) by 2000 asp 1, s. 26(1), **Sch. 4 para. 4(3)(a)**; S.S.I. 2000/10, **art. 2(3)**

F447 S.86(1AA) inserted (1.4.2000) by 2000 asp 1, s. 26(1), **Sch. 4 para. 4(3)(b)**; S.S.I. 2000/10, **art. 2(3)**

F448 S. 86(1A)(1B) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 36(2)(4)**

F449 S. 86(1A)(1C)(5) repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 57, **Sch. 5**; S.S.I. 1999/90, art. 2(b)(c), **Sch. 2**

F450 S. 86(2) repealed (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 36(1), 66(2), Sch. 7 para. 14(4), **Sch. 10**; S.I. 1994/2658, **art. 4(a)(b)** and expressed to be repealed (1.4.2000) by 2000 asp 1, s. 26(1), **Sch. 4 para. 4(3)(c)**; S.S.I. 2000/10, **art. 2(3)**

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F451 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 36(6)**

F452 S. 86(4) substituted (1.4.2000) by 2000 asp 1, s. 26(1), **Sch. 4 para. 4(3)(d)**; S.I. 2000/10, **art. 2(3)**

Modifications etc. (not altering text)

C83 Ss. 85B, 86 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C84 S. 86 extended by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), **ss. 2(8)**(*c*), 17(2), 91(2), Sch. 1 para. 8(*e*)

C85 S. 86 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I**(with art. 6)
S. 86 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 86 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 86 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 86 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 86 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 86 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S. 86 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C86 S. 86 applied (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 4(3), 333(2)-(4), **Sch. 1 para. 9(c)**, S.S.I. 2005/161, **art. 3**

87 Regulation of financial arrangements of Health Boards, the Agency and the Dental Estimates Board.

(1) Regulations may provide, in the case of all or any of the following bodies, that is to say, Health Boards, the Agency, and the Dental Estimates Board, for restricting the making of payments by or on behalf of the body otherwise than on such authorisation and subject to such conditions as may be specified in the regulations; but such provision may be made subject to such exceptions as may be so specified.

(2) Regulations made under this section may contain such other provisions as to the making and carrying out by all or any of those bodies of such arrangements with respect to financial matters as the Secretary of State thinks necessary for the purpose of securing that the affairs of such bodies are conducted, so far as reasonably practicable, in such manner as to prevent financial loss and to ensure and maintain efficiency.

(3) Without prejudice to the operation of the provisions of any such regulations, the Secretary of State may give to any of the said bodies such directions (which may be specific in character) as to any matter with respect to which regulations may be made under this section as it appears to him is requisite for the purpose of securing that the affairs of the body are conducted, so far as reasonably practicable, in such manner as is mentioned in subsection (2); and a body to whom any such directions are given shall comply therewith.

Modifications etc. (not altering text)

C87 S. 87 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C88 S. 87 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 87 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 87 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 87 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 87 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 87 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 87 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))

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S. 87 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

[F453 Fund-holding practices]

Textual Amendments

F453 Ss. 87A–87C inserted (the insertion being in force 17.9.1990 in relation to the provisions of section 87A and section 87B(1) (in so far as section 87B(1) provides for the meaning of "recognised fund-holding practice" and "allotted sum") but otherwise in force 1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 34**

F454 87A . . . . . .

Textual Amendments

F454 S. 87A repealed (1.10.1999) by 1999 c. 8, ss. 45, 65(2), **Sch. 5**; S.S.I. 1999/90, art. 2(a)(c), Sch. 1, **2**

F455 87B . . . . . .

Textual Amendments

F455 S. 87B repealed (1.10.1999) by 1999 c. 8, ss. 45, 65(2), **Sch. 5**; S.S.I. 1999/90, art. 2(a)(c), **Sch. 2**

F456 87C . . . . . .

Textual Amendments

F456 S. 87C repealed (1.10.1999) by 1999 c. 8, ss. 45, 65(2), **Sch. 5**; S.S.I. 1999/90, art. 2(a)(c), Sch. 1, **Sch. 2**

[F457 Indicative amounts]

Textual Amendments

F457 S. 87D inserted (1.4.1992) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 35**

F458 87D . . . . . .

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Textual Amendments

F458 S. 87D repealed (1.10.1999) by 1999 c. 8, ss. 45, 65(2), Sch. 4 para. 58, **Sch. 5**; S.S.I. 1999/90, art. 2(a)(c), Sch. 1, **Sch. 2**

Remuneration, allowances and superannuation

88 Payment of allowances and remuneration to members of certain bodies connected with the health services.

(1) The Secretary of State may pay to members of—

(a) [F459] . . . . . .

(b) the Dental Estimates Board,

(c) the Tribunal,

(d) any body on which functions are conferred by regulations under section 22 **[**[F460]or by regulations which make provision in relation to section 17C arrangements of a kind that may be made by regulations under section 22**]**, and

(e) any body specified in an order made by the Secretary of State as being a body recognised by him to have been formed for the purpose of performing a function connected with the provision of services under this Act,

such travelling and other allowances, including compensation for loss of remunerative time, as he may, with the approval of the Minister for the Civil Service, from time to time determine.

(2) The Secretary of State may pay to members of—

(a) [F461] . . . . . .

(b) the Dental Estimates Board,

(c) the Tribunal,

(d) any other body constituted under or by virtue of Part II, being a body specified in an order made for the purposes of this section by the Secretary of State with the approval of the Minister for the Civil Service, and

(e) any body on which functions are conferred by regulations under section 22 **[**[F460]or by regulations which make provision in relation to section 17C arrangements of a kind that may be made by regulations under section 22**]**,

such remuneration as the Secretary of State may, with such approval, from time to time determine.

(3) Allowances shall not be paid under subsection (1) except in connection with the performance of such powers or duties, in such circumstances, as may, with the approval of the Minister for the Civil Service, be determined by the Secretary of State.

(4) Any payments made under this section shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may, with the approval of the Minister for the Civil Service, determine.

Textual Amendments

F459 S. 88(1)(a) repealed (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(13)(a)**; S.S.I. 2004/148, **art. 2(c)**

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F460 Words in s. 88(1)(d)(2)(e) inserted (5.3.2001) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 56**; S.S.I. 2001/58, **art. 2**

F461 S. 88(2)(a) repealed (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(13)(b)**; S.S.I. 2004/148, **art. 2(c)**

89 Superannuation of officers of certain hospitals.

(1) The Secretary of State may enter into an agreement with the governing body of any hospital to which this section applies for admitting, on such terms and conditions as may be provided in the agreement, officers of the hospital of such classes as may be so provided to participate in the superannuation benefits provided under regulations made under section 10 of the [M36]Superannuation Act 1972, in like manner as officers of Health Boards; and the said regulations shall apply accordingly in relation to the officers so admitted, subject to such modifications as may be provided in the agreement.

(2) The governing body of any hospital to which this section applies shall have all such powers as may be necessary for the purpose of giving effect to any terms and conditions on which their officers are admitted to participate in those superannuation benefits.

(3) This section applies to any hospital (not vested in the Secretary of State) which is used, in pursuance of arrangements made by the governing body of the hospital with a Health Board, for the provision of services under this Act.

Marginal Citations

M36 1972 c. 11.

[F462]PART VI

THE HEALTH SERVICE COMMISSIONER FOR SCOTLAND

Textual Amendments

F462 Pt. VI (ss. 90-97) repealed (5.2.1994) by 1993 c. 46, ss. 20, 22(4), **Sch. 3** (with s. 3(4)).

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PART VII

MISCELLANEOUS AND SUPPLEMENTARY

Miscellaneous

98 Charges in respect of non-residents.

Regulations may provide for the making and recovery in such manner as may be prescribed of such charges as **[**[F476]the Secretary of State may determine**]** in respect of the provision of such services under this Act as may be prescribed for such persons not ordinarily resident in Great Britain as may be prescribed; and the regulations may provide that the charges are only to be made in such cases as may be determined in accordance with the regulations. **[**[F477] The Secretary of State may calculate charges under this section on any basis that he considers to be the appropriate commercial basis.**]**

Textual Amendments

F476 Words substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 7(13)**

F477 Words added by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 7(14)**

Modifications etc. (not altering text)

C97 S. 98 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. 1**

99 Evasion of charges.

If any person, for the purpose of evading the payment of any charge under this Act, or of reducing the amount of any such charge—

(a) knowingly makes any false statement or false representation, or

(b) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,

the charge, or as the case may be the balance of the charge, may be recovered from him as a simple contract debt by the person by whom the cost of the service in question was defrayed.

Modifications etc. (not altering text)

C98 S. 99 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. 1**

[[F478]**99ZA Recovery of charges and payments.**

(1) Where goods or services to which this section applies are provided and either—

(a) any charge payable by any person under this Act in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment; or

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(b) any payment under this Act is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services but that person is not entitled to, or to the benefit of, the payment,

the amount mentioned in subsection (2) is recoverable as a debt from the person in question by the responsible authority.

(2) That amount—

(a) in a case within subsection (1)(a), is the amount of the charge or (where it has been reduced) reduction;

(b) in a case within subsection (1)(b), is the amount of the payment.

(3) Where two or more persons are liable under section 99 or this section to pay an amount in respect of the same charge or payment, those persons shall be jointly and severally liable.

(4) For the purposes of this section, the circumstances in which a person is to be treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—

(a) on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description;

(b) on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it;

(c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.

(5) In this section and section 99ZB, "responsible authority" means—

(a) in relation to the recovery of any charge under section 99 in respect of the provision of goods or services to which this section applies, the person by whom the charge is recoverable;

(b) in relation to the recovery by virtue of this section of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable;

(c) in a case within subsection (1)(b), the person who made the payment.

(6) But the Secretary of State may by directions provide for—

(a) the functions of any responsible authority of recovering any charges under this Act in respect of the provision of goods or services to which this section applies;

(b) the functions of any responsible authority under this section and section 99ZB,

to be exercised on behalf of the authority by another health service body.

(7) This section applies to the following goods and services—

(a) dental treatment and appliances provided in pursuance of this Act;

(b) drugs and medicines provided in pursuance of this Act;

(c) the testing of sight;

(d) optical appliances;

(e) any other appliances provided in pursuance of this Act.**]**

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Textual Amendments

F478 Ss. 99ZA-ZB inserted (14.10.1999) by 1999 c. 8, **s. 59(1)**; S.S.I. 1999/115, **art. 2**

[F479 99ZB

(1) Regulations may provide that, where a person fails to pay—

(a) any amount recoverable from him under section 99 in respect of the provision of goods or services to which section 99ZA applies; or

(b) any amount recoverable from him under section 99ZA,

a notice (referred to in this section as a penalty notice) may be served on the person, by or on behalf of the responsible authority, requiring him to pay to the authority, within a prescribed period, that amount together with a charge (referred to in this section as a penalty charge) of an amount determined in accordance with the regulations.

(2) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—

(a) £100;

(b) the amount referred to in subsection (1)(a) or (b) multiplied by 5.

(3) The Secretary of State may by order provide for subsection (2) to have effect as if, for the sum specified in paragraph (a) or the multiplier specified in paragraph (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or (as the case may be) multiplier specified in the order.

(4) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.

(5) The further sum must not exceed 50 per cent. of the amount of the penalty charge.

(6) Any sum payable under the regulations (including the amount referred to in subsection (1)(a) or (b)) may be recovered by the responsible authority as a debt.

(7) But a person is not liable by virtue of a penalty notice—

(a) to pay at any time so much of any amount referred to in subsection (1)(a) or (b) for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other; or

(b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.

(8) Section 99ZA and this section apply to charges which may be made and recovered under section 20 of the [M45]National Health Service (Primary Care) Act 1997 as they apply to charges under this Act which may be recovered under section 99; and the reference to this Act in section 99ZA(7)(a) includes a reference to a pilot scheme (within the meaning of the 1997 Act).**]**

Textual Amendments

F479 S. 99ZA-ZB inserted (14.10.1999) by 1999 c. 8, **s. 59(2)**; S.I. 1999/115, **art. 2**

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Marginal Citations

M45 1997 c.46.

[[F480]99A Holidays for patients etc.

The Secretary of State's functions may be performed outside Scotland, in so far as they relate—

(a) to holidays for patients;

(b) to the transfer of patients to or from England, Wales, Northern Ireland, the Isle of Man or the Channel Islands; or

(c) to the return of patients who have received treatment in Scotland to countries or territories outside the British Islands.**]**

Textual Amendments

F480 S. 99A added by Health and Social Security Act 1984 (c. 48, SIF 113:1), **s. 9(2)**

100 Accommodation for persons displaced in course of development.

(1) Where the carrying out of a scheme for the provision by the Secretary of State in pursuance of this Act or the **[**[F481]Mental Health (Care and Treatment) (Scotland) Act 2003**]** of accommodation or other facilities will involve the displacement from any premises of persons residing in them, the Secretary of State may make arrangements with one or more of the following bodies—

(a) an authority who are a local authority for the purposes of the Housing (Scotland) Act **[**[F482]1987**]**,

[[F483](b) the Scottish Special Housing Association;

(c) a Housing Association or Housing Trust within the meaning of the Housing Associations Act 1985.**]**

[[F484](d)**]** a development corporation established under the [M46]New Towns (Scotland) Act 1968,

for securing, in so far as it appears to him that there is no other residential accommodation suitable for the reasonable requirements of those persons available on reasonable terms, the provision of residential accommodation in advance of the displacements from time to time becoming necessary as the carrying out of the scheme proceeds.

(2) Arrangements made under subsection (1) may include provision for the making by the Secretary of State to the body with whom the arrangements are made of payments of such amounts, and for such purposes, as may be approved by the Treasury.

Textual Amendments

F481 Words in s. 100(1) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), arts. 1, 2, **Sch. 1 para. 7(2)**

F482 "1987" substituted for "1966" by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 335, 339(2), **Sch. 23 para. 24(a)**

F483 S. 100(1)(b)(c) substituted for paragraph (b) by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 335, 339(2), **Sch. 23 para. 24(b)**

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F484 "(d)" substituted for "(c)" by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 335, 339(2), **Sch. 23 para. 24(c)**

Marginal Citations

M46 1968 c. 16.

101 Protection of Health Boards and Common Services Agency.

Section 166 of the [M47]Public Health (Scotland) Act 1897 (which relates to the protection of local authorities and their officers) shall apply in relation to a Health Board **[**[F485], an NHS trust**]** and the Agency in like manner as the said section applies in relation to a local authority, but with the substitution for any reference to that Act of a reference to this Act.

Textual Amendments

F485 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(19)**

Modifications etc. (not altering text)

C99 S. 101 excluded by National Health Service (Amendment) Act 1986 (c.66, SIF 113:2), **ss. 1(6)**, 2(3)

C100 S. 101 applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C101 S. 101 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 101 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 101 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 101 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 101 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 101 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 101 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S. 101 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

Marginal Citations

M47 1897 c. 38.

[[F486]102 State hospitals.

(1) The Secretary of State shall provide such hospitals as appear to him to be necessary for persons subject to detention under **[**[F487]the Criminal Procedure (Scotland) Act 1995 (c. 46) or**]** the **[**[F488]Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)**]** who require treatment under conditions of special security on account of their dangerous, violent or criminal propensities.

(2) Hospitals provided by the Secretary of State under subsection (1) are referred to in this Act as "state hospitals".

(3) Subject to subsection (4) and section 2, state hospitals shall be under the control and management of the Secretary of State.

(4) The Secretary of State may provide for the management of a state hospital to be undertaken on his behalf by—

(a) [F489]. . . . . .

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[F490(b) A Health Board, a Special Health Board, the Agency or an NHS trust to the extent that power to do so is delegated to the Board, Agency or trust by the Secretary of State.

(5) F491 . . . . . .]]

Textual Amendments

F486 S. 102 substituted (1.4.1995) by 1994 c. 16, **s. 1**; S.I. 1995/576, **art. 2**

F487 Words in s. 102(1) inserted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(1), 333(2)-(4), **Sch. 4 para. 3(a)**, S.S.I. 2005/161, **art. 3**

F488 Words in s. 102(1) substituted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(1), 333(2)-(4), **Sch. 4 para. 3(b)**, S.S.I. 2005/161, **art. 3**

F489 S. 102(4)(a) and word repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 280(a), 331(1)(2), 333(2)-(4), **Sch. 5 Pt. 1**; S.S.I. 2005/161, **art. 3**

F490 S. 102(4)(b) substituted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 59**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F491 S. 102(5) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 280(b), 331(1)(2), 333(2)-(4), **Sch. 5 Pt. 1**; S.S.I. 2005/161, **art. 3**

Modifications etc. (not altering text)

C102 S. 102 restricted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), **ss. 210(6)**, **215(8)**, 333(2)-(4); S.S.I. 2005/161, **art. 3**

103 Arbitration.

Any question which is required by this Act or by any regulation thereunder to be determined by arbitration shall be determined by a single arbiter agreed upon by the parties, or, failing such agreement, appointed by the Court of Session on the application of any of the parties to the question; and at any stage in the proceedings in any such arbitration the arbiter may, and shall if so directed by the Court of Session, state a case for the opinion of that Court on any question of law arising in the arbitration.

104 Exemption from stamp duty.

(1) Stamp duty shall not be payable on any conveyance, agreement or assignation made, or instrument executed, solely for the purpose of giving effect to any transfer of property, rights or liabilities by, or by an order made under, sections 2 or 82 or paragraph 7 of Schedule 6.

(2) Section 12 of the M48Finance Act 1895 (which requires Acts to be stamped as conveyances on sale in certain cases) shall not apply to the transfer of property, rights or liabilities by, or by an order made under, section 2, and stamp duty shall not be payable on any such order.

Marginal Citations

M48 1895 c. 16.

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[F492 104A Exemption from stamp duty land tax

(1) This section applies to a land transaction effected by a conveyance, agreement or assignation made, or an instrument executed, solely for the purpose of giving effect to any transfer of property, rights or liabilities held upon trust under section 82.

(2) For the purposes of stamp duty land tax the land transaction is exempt from charge.

(3) Relief under this section must be claimed in a land transaction return or an amendment of such a return.

(4) In this section—

"land transaction" has the meaning given by section 43(1) of the Finance Act 2003;

"land transaction return" has the meaning given by section 76(1) of that Act.]

Textual Amendments

F492 S. 104A inserted (1.12.2003) by The Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003 (S.I. 2003/2867), reg. 2, **Sch. para. 9(3)**

Supplementary

105 Orders, regulations and directions.

(1) Any power to make orders and regulations conferred by this Act shall be exercisable by statutory instrument.

[F493 (1A) Subsection (1) does not apply to orders made under section 12D(1) or paragraph 26(1) of Schedule 7A.]

(2) A statutory instrument made by virtue of this Act shall, subject to subsections (3) and (4), be subject to annulment in pursuance of a resolution by either House of Parliament.

(3) No regulations shall be made under sub-paragraphs (1) or (2) of paragraph 6 of Schedule 6 (capital value of and borrowings from relevant endowments [F494 or orders under section 99ZB(3)]) unless a draft has been laid before Parliament and approved by a resolution of each House of Parliament.

(4) Subsection (2) does not apply to—

(a) an order made under section 2(1) constituting a Health Board;

(b) orders made under sections 2(11), 8, 10(3) to (5) [F495 12A(1), 12A(8), 12E(1), 12G(2),], 70(2) F496. . . [F497 paragraph 25(1) of Schedule 7A and paragraph 3 of Schedule 7B];

(5) Any power to make regulations conferred on the Secretary of State by this Act is, if the Treasury so direct, exercisable by the Treasury and the Secretary of State jointly except in the case of—

(a) regulations made under section 22;

(b) regulations made under section 69(1) in respect of charges for the drugs, medicines or appliances referred to in paragraph (a) of that subsection, or under paragraph 1(1) of Schedule 11 in respect of the remission or repayment

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of any charge payable under that section in the cases provided for in paragraph 1(1) of that Schedule;

(c) regulations made under paragraph 2(2) of that Schedule;

(d) regulations made under paragraph 2(6) of that Schedule;

(6) Where under any provision of this Act—

(a) power to make an order may be exercisable, or

(b) directions may be given, or

(c) schemes may be made,

that provision includes power to vary or revoke the order or direction or scheme, as the case may be, by subsequent order or subsequent directions or subsequent scheme made in the like manner and subject to the same provisions.

(7) Any power **[**[F498]conferred by this Act**]** to make regulations **[**[F499], orders or directions**]** may be exercised—

(a) either in relation to all cases to which the power extends, or in those cases subject to exceptions, or in relation to any **[**[F500]specified cases or classes of case**]**, and

(b) subject to such other exceptions or conditions as the Secretary of State thinks fit,

and shall include power to make such **[**[F501]supplementary, incidental, consequential, transitory, transitional or saving**]** provision as appears to the Secretary of State to be expedient.

[[F502]This subsection does not apply to regulations made under section 22 (but without prejudice to subsection (3) of that section) or to an order made under section 49 (but without prejudice to paragraph 1(1) of Schedule 10).**]**

Textual Amendments

F493 S. 105(1A) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(21)(a)**

F494 Words in s. 105(3) inserted (14.10.1999) by 1999 c. 8, **s. 59(2)**; S.S.I. 1999/115, **art. 2**

F495 Figures inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(21)(b)**

F496 Words in s. 105(4)(b) repealed (1.4.1995) by 1994 c. 16, **s. 2(1)**; S.I. 1995/576, **art. 2**

F497 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(21)(c)**

F498 Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 5(1)(a)**

F499 Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 29(1), **Sch. 9 Pt. I para. 24**

F500 Words substituted by Health Services Act 1980 (c. 53), **Sch. 6 para. 5(1)(c)**

F501 Words in s. 105(7) substituted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 60**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F502 Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 5(1)(d)**

Modifications etc. (not altering text)

C103 S. 105(7) extended by Health and Social Security Act 1984 (c. 48, SIF 113:1), **s. 28(3)**

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106 Supplementary regulatory powers.

Regulations may make provision for all or any of the following matters,—

(a) for prescribing the forms of notices and other documents, and the manner of service of notices and other documents;

(b) for prescribing the manner in which documents may be executed or proved;

(c) for prescribing the manner in which resolutions of any bodies constituted under this Act are to be proved.

107 Local enactments.

(1) Subject to subsection (2), where any local enactment provides for any matter which is also provided for by any provision of this Act or of any order or regulations made under this Act, the provisions of this Act, or as the case may be, of that order or those regulations, shall have effect in substitution for the local enactment, which shall cease to have effect.

(2) The Secretary of State may by order except from the operation of subsection (1) such local enactments as may be specified in the order and direct that corresponding provisions of this Act or of any order or regulations made under this Act, shall not have effect in the areas in which the specified local enactments have effect.

(3) If it appears to the Secretary of State that any local enactment not being an enactment which has ceased to have effect by virtue of subsection (1), is inconsistent with any provision of this Act or that any order or regulations made under this Act, or is no longer required, or regulations to be amended, having regard to any such provision, order or regulation, he may by order repeal or amend the local enactment as he may consider appropriate.

108 Interpretation and construction.

(1) In this Act, unless the contrary intention appears—

"the Agency" has the meaning indicated in section 10;

"area medical committee", "area dental committee", "area nursing and midwifery committee", "area pharmaceutical committee" and "area optical committee" have the meanings indicated in section 9(2);

[F503] . . . . . .

"the Dental Estimates Board" has the meaning indicated in section 4;

"dental practitioner" means a person registered in the dentists register under the Dentists Act **[**[F504]1984**]**;

"designated medical officer" means an officer designated under section 14;

"dispensing optician" means a person who is registered in the register kept under section 2 of the [M49]Opticians Act 1958 of dispensing opticians or a body corporate enrolled in the list kept under section 4 of that Act or such bodies carrying on business as dispensing opticians;

"education authority" has the same meaning as in the Education (Scotland) Act **[**[F505M50]1980**]**;

"equipment" includes any machinery, apparatus or appliance, whether fixed or not, and any vehicle;

[F506] . . . . . .

"functions" includes powers and duties;

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[[F507]"general medical services contract" has the meaning given in section 17J(2);

[[F508]"general ophthalmic services" is to be construed in accordance with section 26(1F);**]]**

[[F509]"goods" includes accommodation**]**

"governing body", in relation to any hospital to which section 89 applies, includes any body, whether corporate or unincorporate, having the control and management of the hospital or any part of it or otherwise carrying on the business of the hospital or any part of it;

"Health Board" means a **[**[F510]Health Board**]** constituted under section 2;

"the health service" means the health service established in pursuance of section 1 of the [M51]National Health Service (Scotland) Act 1947;

"health service hospital" means a hospital vested in the Secretary of State **[**[F511]for the purposes of his functions**]** under this Act **[**[F512]or vested in an NHS trust**]**;

"hospital" means—

(a) any institution for the reception and treatment of persons suffering from illness,

(b) any maternity home, and

(c) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation, and any institution for providing dental treatment maintained in connection with a dental school,

and includes clinics, dispensaries, and out-patient departments maintained in connection with any such home or institution, and "hospital accommodation" shall be construed accordingly;

"the Hospital Trust"has the meaning indicated in section 11;

"illness" includes mental disorder within the meaning of **[**[F513]section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003**]** and any injury or disability requiring medical or dental treatment or nursing;

"local authority"means a **[**[F514]council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]**;

"local consultative committee" means a committee recognised by the Secretary of State under section 9(1);

"local health council" has the meaning indicated in section 7;

"medical" includes surgical;

[F515] . . . . . .

[F516] . . . . . .

[[F517]"medical practitioner"means a registered medical practitioner within the meaning of Schedule 1 to the Interpretation Act 1978**]**

"medicine" includes such chemical re-agents as are included in a list for the time being approved by the Secretary of State for the purposes of section 27;

"modifications" includes additions, omissions and amendments;

[[F518]"National Health Service trust" has the meaning indicated by section 12A and "NHS trust" shall be construed accordingly

"NHS contract" has the meaning indicated by section 17A(3)**]**

[F519] . . . . . .

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"officer" includes servant;

[[F520]"operational date", in relation to an NHS trust, shall be construed in accordance with paragraph 3(1)(e) of Schedule 7A;**]**

[[F521]"ophthalmic optician" means a person registered in the register of optometrists maintained under section 7 of the Opticians Act 1989 or a body corporate registered in the register of bodies corporate maintained under section 9 of that Act carrying on business as an optometrist.**]**

"patient" includes an expectant or nursing mother and a lying-in woman;

[F515] . . . . . .

[[F522]"pilot scheme" has the meaning given by section 1 of the National Health Service (Primary Care) Act 1997 (c.46);**]**

[F523] . . . . . .

"prescribed" means prescribed by regulations made by the Secretary of State under this Act;

[[F524]"primary medical services" is to be construed in accordance with section 2C(5);**]**

"property" includes rights;

[[F525]"provide" includes manage**]**

[F503] . . . . . .

"registered pharmacist" means a pharmacist registered in the register of pharmaceutical chemists;

"regulations" means regulations made by the Secretary of State under this Act;

"relevant endowment" has the meaning indicated in section 11;

[[F526]"the Research Trust" means the Scottish Hospital Endowments Research Trust constituted under subsection (1) of section 12 of this Act (before the repeal of that subsection by section 38(2)(a) of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13);**]**

[[F527]"section 17C arrangements" has the same meaning as in section 17E(9);**]**

[F528] . . . . . .

[[F529]"Special Health Board" means a Special Health Board constituted under section 2;**]**

[[F530]"state hospital" has the meaning indicated in section 102(2)**]**

[F531] . . . . . .

"superannuation benefits" means annual superannuation allowances, gratuities and periodical payments payable on retirement, death or incapacity, and similar benefits;

[F528] . . . . . .

"the Tribunal" has the meaning indicated in section 29;

"the Trust" has the meaning indicated in section 11;

"University Liaison Committee" means a committee such as is referred to in section 8;

[[F532]"voluntary organisation" means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority.**]**

(2) References in this Act to the purposes of a hospital shall be construed as referring both to the general purposes of the hospital and to any specific purpose of the hospital.

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(3) Any reference in this Act to any enactment is a reference to it as amended or applied by or under any other enactment including this Act.

(4) In this Act, except where otherwise indicated,—

(a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered;

(b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered;

(c) a reference in a section, subsection or Schedule to a numbered or lettered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered or lettered; and

(d) a reference to any provision of an Act (including this Act) includes a reference to any Schedule incorporated in the Act by that provision.

Textual Amendments

F503 Definition repealed by Nurses, Midwives and Health Visitors Act 1979 (c. 36), s. 24(2), Sch. 7 para. 29, **Sch. 8**

F504 "1984" substituted for "1957" by Dentists Act 1984 (c. 24, SIF 83:1), s. 54(1), **Sch. 5 para. 13**

F505 Words substituted by Education (Scotland) Act 1980 (c. 44), **Sch. 4 para. 18**

F506 Definitions repealed by Health Services Act 1980 (c. 53), **Sch. 7**

F507 Words in s. 108 inserted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), {Sch. para. 1(17)(a); S.S.I. 2004/58, **art. 2(3)**}

F508 Words in s. 108(1) inserted (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(19)(a)(ii)**; S.S.I. 2005/492, **art. 3(e)**, Sch. 3

F509 S. 108: definition of "goods" inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 61(a)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F510 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(22)(a)**

F511 Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 6(a)**

F512 Words added by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(22)(b)**

F513 Words in s. 108(1) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), arts. 1, 2, **Sch. 1 para. 7(3)**

F514 Words in s. 108: definition of "local authority" substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 112(3)**; S.I. 1996 323, art. 4(c)

F515 S. 108: definitions repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(17)(b)**; S.S.I. 2004/58, **art. 2(3)**

F516 S. 108(1): entry relating to the Medical Practices Committees repealed (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(14)**; S.S.I. 2004/148, **art. 2(c)**

F517 Definition substituted by Medical Act 1983 (c. 54, SIF 83:1), ss. 54, 56(1), **Sch. 5 para. 17**(*b*)

F518 Definitions inserted (the insertion not being in force until 1.4.1991 so far as it relates to the definition of "NHS contract") by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(22)(c)**

F519 Definition repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

F520 Definition inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(22)(d)**

F521 S. 108(1): definition of "ophthalmic optician" substituted (coming into force in accordance with art. 1(2)(3)(4) of the amending S.I.) by The Opticians Act 1989 (Amendment) Order 2005 (S.I. 2005/848), art. 28, **Sch. 1 para. 10** (with Sch. 2)

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F522 S. 108: definition of "pilot scheme" inserted (28.2.2003) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(12); S.S.I. 2003/62, **art. 2(1)(c)**

F523 Definition repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

F524 S. 108: definition inserted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), {Sch. para. 1(17)(c); S.S.I. 2004/58, **art. 2(3)**}

F525 S. 108: definition of "provide" inserted (*retrospectively*) by 1999 c. 8, **s. 46(2)(8)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

F526 Words in s. 108(1) inserted (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(19)(a)(iv)**; S.S.I. 2005/492, **art. 3(b)**, Sch. 2

F527 S. 108: definition of "section 17C arrangements" inserted (1.4.1998) by 1997 c. 46, s. 41(3)(10), **Sch. 2 Pt. I para. 57**; S.I. 1998/631, art. 2(1)(b), **Sch. 2**

F528 S. 108: definitions repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), {Sch. para. 1(17)(d); S.S.I. 2004/58, **art. 2(3)**}

F529 Definition inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(22)(e)**

F530 S. 108: definition of "state hospital" substituted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 61(b)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F531 Definition repealed by Health Services Act 1980 (c. 53), **Sch. 7**

F532 Definition substituted by Health Services Act 1980 (c. 53), **Sch. 6 para. 6(b)**

Marginal Citations

M49 1958 c. 32.

M50 1980 c. 44.

M51 1947 c. 27.

109 Transitional provisions and savings, consequential amendments and repeals.

Schedule 15 to this Act is hereby given effect, and subject to the transitional provisions and savings contained in that Schedule—

(a) the enactments and the order specified in Schedule 16 have effect subject to the amendments (being amendments consequent on this Act) specified in that Schedule, and

(b) the enactments specified in Schedule 17 (which include enactments which were spent before the passing of this Act) are hereby repealed to the extent specified in the third column of that Schedule;

but nothing in this Act shall be taken as prejudicing the operation of **[**[F533]sections 16(1) and 17(2)(a) of the [M52]Interpretation Act 1978**]** (which relates to the operation of repeals).

Textual Amendments

F533 Words substituted by virtue of Interpretation Act 1978 (c. 30), **s. 25(2)**

Modifications etc. (not altering text)

C104 The text of s. 109(a)(b) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

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Marginal Citations

M52 1978 c. 30.

110 Citation, extent and commencement.

(1) This Act may be cited as the National Health Service (Scotland) Act 1978.

(2) Subject to **[**[F534]subsection (3)**][**[F534]subsections (2A) and (3)**]**, this Act extends only to Scotland.

[[F535](2A) Section 87B(3) extends also to England and Wales.**]**

(3) Paragraph 3 of Schedule 10 extends to other parts of the United Kingdom.

(4) This Act shall come into force on 1st January 1979.

Textual Amendments

F534 Words "subsections (2A) and (3)" substituted (1.4.1991) for "subsection (3)" by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(23)(a)**

F535 S. 110(2A) inserted (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(23)(b)**

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SCHEDULES

SCHEDULE 1

Section 2.

HEALTH BOARDS

PART I

Constitution

1 A Health Board shall be a body corporate and shall have a common seal.

Modifications etc. (not altering text)

C105 Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C106 Sch. 1 para. 1 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 1 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 1 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 1 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 1 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 1 para.1 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 1 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C107 Sch. 1 paras. 1 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

2 A Health Board shall consist of a chairman appointed by the Secretary of State and such number of other members so appointed as the Secretary of State thinks fit.

Modifications etc. (not altering text)

C108 Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C109 Sch. 1 para. 2 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 2 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 2 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 2 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 2 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 1 para. 2 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 2 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C110 Sch. 1 para. 2 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

[[F536]2A In the case of a prescribed Health Board at least one of the persons appointed under paragraph 2 above must hold a post in a university with a medical or dental school.**]**

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Subordinate Legislation Made

P7 Sch. 1 para. 2A: s. 105(7) (with ss. 2(10), 108(1) and Sch. 1 paras. 2A, 4 and 11) power exercised by S.I. 1991/571.
Sch. 1 para. 2A: s. 105(7) (with ss. 2(10), 108(1) and Sch. 1 paras. 2A, 4 and 11) power exercised by S.I.1991/809.
Sch 1 para 2A: for previous exercises of this power see Index to Government Orders

Textual Amendments

F536 Sch. 1 para. 2A inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 27(3), **Sch. 5 para. 2**

3 Appointments under paragraph 2 shall be made after consultation with the following bodies—

(a) each local authority (within the meaning of the [M53]Local Government (Scotland) Act 1973) in the area of the Health Board concerned;

(b) any university appearing to the Secretary of State to have an interest in the provision of health services in that area;

(c) such organisations as the Secretary of State may recognise as representative in that area of the medical, dental, nursing, pharmaceutical and ophthalmic professions and such other professions as the Secretary of State considers appropriate, or of those professions generally; and

(d) such other organisations as appear to the Secretary of State to be concerned.

Marginal Citations

M53 1973 c. 65.

VALID FROM 24/06/2009

[[F537]3A A person appointed as chairman of a Health Board may not be an employee of that Health Board.**]**

Textual Amendments

F537 Sch. 1 para. 3A inserted (24.6.2009 for certain purposes and otherwise prosp.) by Health Boards (Membership and Elections) (Scotland) Act 2009 (asp 5), **ss. 1(5)**, 4, 7, 11(1); S.S.I. 2009/242, **art. 2**

4 The Secretary of State may pay to the chairman of a Health Board **[**[F538]and to such other members of a Health Board as may be prescribed**]** such remuneration as he may, with the approval of the Minister for the Civil Service, from time to time determine.

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Subordinate Legislation Made

P8 Sch. 1 para. 4: s. 105(7) (with ss. 2(10), 108(1) and Sch. 1 paras. 2A, 4 and 11) power exercised by S.I. 1991/571.
Sch. 1 para. 4: s. 105(7) (with ss. 2(10), 108(1) and Sch. 1 paras. 2A, 4 and 11) power exercised by S.I. 1991/809.
Sch. 1 para. 4: for previous exercises of this power see Index to Government Orders

Textual Amendments

F538 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 27(3), **Sch. 5 para. 3**

Modifications etc. (not altering text)

C111 By S.I. 1990/2639, **art. 4(2)(e)** certain functions of the Secretary of State under para. 4 are made exercisable (1.4.1991) by the Health Education Board for Scotland
C112 Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
C113 Sch. 1 para. 4 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 4 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 4 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 4 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 4 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 1 para. 4 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 4 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
C114 Sch. 1 para. 4, applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
C115 Sch. 1 para. 4: functions transferred (31.3.2002) by S.S.I. 2002/103, **art. 4(2)(d)** (with art. 4(4))
Sch. 1 para. 4: functions transferred (27.6.2002) by S.S.I. 2002/305, **art. 4(2)(j)** (with art. 4(4))

5 A Health Board may employ such officers and servants on such terms as to remuneration and conditions of service as the Board may, [F539] determine **[**[F540]in accordance with regulations and any directions given under this paragraph by the Secretary of State**]**.

Textual Amendments

F539 Words repealed by Health Services Act 1980 (c. 53), **Sch. 7**
F540 Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 7(2)(b)**

Modifications etc. (not altering text)

C116 Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
C117 Sch. 1 para. 5 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 5 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 5 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 5 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 5 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 1 para. 5 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 5 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
C118 Sch. 1 para. 5 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

[[F541]5A Regulations or directions under paragraph 5 may provide for approvals, authorisations or determinations to have effect from a date (which may be before or after the date of giving or making them but may not be before if to the detriment

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of such officers and servants) specified in them **[**[F542]and a direction under that paragraph may relate to a particular officer or servant or class of officer or servant specified in the direction**].]**

Textual Amendments

F541 Sch. 1 para. 5A added by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 14(2), **Sch. 7 para. 4**

F542 Words added by National Health Service and Community Care Act 1990 (c.19, SIF 113:2), s. 27(3), **Sch. 5 para. 4**

Modifications etc. (not altering text)

C119 Sch. 1 para. 5A applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 5A applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 1 para. 5A applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 5A applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C120 Sch. 1 para. 5A applied (1.4.2003) by S.I. 1990/2639, art. 5(1), Sch. Pt. 1 (as amended by The Health Education Board for Scotland Amendment Order 2003 (S.S.I. 2003/154), **art. 6(d)**)

6 Regulations may make provision with respect to the method of appointment of officers or servants of a Health Board and as to the qualifications, remuneration and conditions of service of those persons.

Modifications etc. (not altering text)

C121 Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C122 Sch. 1 para. 6 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 6 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with
Sch. 1 para. 6 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 6 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 6 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 1 para. 6 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 6 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C123 Sch. 1 para. 6 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

[[F543]6A(1) Sub-paragraph (3) applies where the registration of a dental practitioner in the dentists register is suspended—

(a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or

(b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner's fitness to practise is impaired.

(2) For the purposes of sub-paragraph (1), a "relevant determination" that a practitioner's fitness to practise is impaired is a determination which is based solely on—

(a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);

(b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or

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(c) both those grounds.

(3) Where this sub-paragraph applies, notwithstanding paragraph 7 of this Schedule, the suspension shall not terminate any contract of employment made between the dental practitioner and a Health Board, but a person whose registration is so suspended shall not perform any duties under a contract made between him and a Health Board which involves the practice of dentistry within the meaning of the Dentists Act 1984.**]**

Textual Amendments

F543 Sch. 1 para. 6A substituted (coming into force in accordance with art. 1 of the amending S.I.) by The Dentists Act 1984 (Amendment) Order 2005 (S.I. 2005/2011), art. 49, **Sch. 6 para. 2(4)** (with transitional provisions in Sch. 7 and S.I. 2006/1671)

7 No officer or servant of a Health Board to whom regulations **[**[F544]or any directions given under paragraph 5**]** apply shall be employed otherwise than in accordance with the regulations **[**[F545]or, as the case may be, the directions**]**.

Textual Amendments

F544 Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 7(3)(a)**

F545 Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 7(3)(b)**

Modifications etc. (not altering text)

C124 Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C125 Sch. 1 para. 7 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 7 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 7 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 7 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 7 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 1 para. 7 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 7 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C126 Sch. 1 para. 7 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

[[F546]7A Regulations may provide for the transfer of officers and servants from a Health Board to—

(a) another Health Board;

(b) the Agency; or

(c) a state hospital,

and for arrangements under which the services of an officer or servant of a Health Board are placed at the disposal of a body mentioned in sub-paragraphs (a) to (c).**]**

Textual Amendments

F546 Sch. 1 paras. 7A–7C inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 27(3), **Sch. 5 para. 5**

Modifications etc. (not altering text)

C127 Sch. 1 paras. 7A, 7B, 11A applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C128 Sch. 1 para. 7A applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 7A applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)

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Sch. 1 para. 7A applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 7A applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 7A applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 1 para. 7A applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 7A applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
C129 Sch. 1 para. 7A applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

7B Directions may be given by the Secretary of State—

(a) to a Health Board to place services of any of its officers or servants at the disposal of a body mentioned in sub-paragraphs (a) to (c) of paragraph 7A; and

(b) to any such body to employ as an officer or servant any person who is or was employed by a Health Board and is specified in the direction,

and a Board or body to which such directions are given shall comply with the directions.

Modifications etc. (not altering text)

C130 Sch. 1 paras. 7A, 7B, 11A applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
C131 Sch. 1 para. 7B applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. 1 Pt. I** (with art. 6)
Sch. 1 para. 7B applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt.I** (with art. 6)
Sch. 1 para. 7B applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch Pt.I**
Sch. 1 para. 7B applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 7B applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 1 para. 7B applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 7B applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
C132 Sch. 1 para. 7B applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

7C Before making regulations under paragraph 7A or 8A, the Secretary of State shall consult such bodies and organisations as appear to him to be concerned.

8 Regulations under paragraph 6 shall not contain a requirement that all consultants employed for the purpose of hospitals shall be employed whole-time.

[[F547]8A In connection with arrangements relating to community care services (within the meaning of section 5A(4) (local authority plans for community care services) of the Social Work (Scotland) Act 1968), regulations may make provision with respect to—

(a) the transfer to employment by a local authority of officers or servants employed by a Health Board; and

(b) the transfer to employment by a National Health Service body of officers and servants transferred to employment by a local authority by virtue of this paragraph,

and for the purposes of this paragraph "National Health Service body" means a Health Board, the Agency or an NHS trust.**]**

Textual Amendments

F547 Sch. 1 para. 8A inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 27(3), **Sch. 5 para. 6**

[F548]9 . . . . . .

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Textual Amendments

F548 Sch. 1 para. 9 repealed (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), **Sch. 5** (with ss. 9(3)(5)(7), 13, 14(3), Sch. 2 para 3(2))

[F549]10 . . . . . .

Textual Amendments

F549 Sch. 1 para. 10 repealed (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), **Sch. 5** (with ss. 9(3)(5)(7), 13, 14(3), Sch. 2 para. 3(2) and subject to an amendment (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt.I**)

PART II

Supplementary provisions

VALID FROM 24/06/2009

[[F550]10A (1) An elected member holds office for a period beginning with the day after the day of the Health Board election at which the member was elected and ending on the day of the next following Health Board election in the Health Board area.

(2) An elected member vacates office on becoming—

(a) a member of the European Parliament,

(b) a member of the House of Commons,

(c) a member of the House of Lords,

(d) a member of the Scottish Parliament, or

(e) a local authority councillor.

(3) Regulations may specify further circumstances in which an elected member must vacate office before the end of that period and, in particular, may specify that an elected member is to vacate office on becoming the holder of a post set out in a list of restricted posts maintained by the Health Board concerned for that purpose.**]**

Textual Amendments

F550 Sch. 1 para. 10A inserted (temp. from 24.6.2009 for certain purposes and prosp. otherwise) by Health Boards (Membership and Elections) (Scotland) Act 2009 (asp 5), **ss. 1(6)**, 4, 6(2)(3), 7, 11(1); S.S.I. 2009/242, **art. 2**

11 Regulations may make provision—

(a) as to the appointment, tenure and vacation of office of chairman and members of Health Boards;

(b) as to the delegation of functions to committees or sub-committees **[**[F551]constituted in accordance with the regulations**]**; **[**[F552]and**]**

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(c) as to the procedure of Health Boards, their committees and sub-committees; [F553]

(d[F553]

Textual Amendments

F551 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 27(3), **Sch. 5 para. 7**

F552 Word inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 7(4)(a)**

F553 Word and para. 11(d) repealed by Health Services Act 1980 (c. 53), **Sch. 7**

Modifications etc. (not altering text)

C133 Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C134 Sch. 1 para. 11 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 11 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 11 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 11 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 11 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 1 para. 11 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 11 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C135 Sch. 1 para. 11 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

[[F554]11A A Health Board may subscribe to the funds of any associations or other bodies having objects of which the Board approves.**]**

Textual Amendments

F554 Para. 11A inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 7(5)**

Modifications etc. (not altering text)

C136 Sch. 1 paras. 7A, 7B, 11A applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C137 Sch. 1 para. 11A applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 11A applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 11A applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 11A applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 11A applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 1 para. 11A applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 11A applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C138 Sch. 1 para. 11A applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

12 The proceedings of a Health Board shall not be invalidated by any vacancy in membership or by any defect in the appointment of any member thereof.

Modifications etc. (not altering text)

C139 Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C140 Sch. 1 para. 12 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)

C141 Sch. 1 para. 12 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 12 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 12 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**

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Sch. 1 para. 12 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 12 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

13 The Secretary of State shall pay to members of a Health Board, the committees and sub-committees thereof, such travelling and other allowances, including compensation for loss of remunerative time, as he may, with the approval of the Minister for the Civil Service, from time to time determine.

Modifications etc. (not altering text)

C142 Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C143 By S.I. 1990/2639, **art. 4(2)(f)** certain functions of the Secretary of State under para. 13 are made exercisable (1.4.1991) by Health Education Board for Scotland

C144 Sch. 1 para. 13 applied (with modifications) (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. 1 Pt. I** (with art. 6)
Sch. 1 para. 13 applied (with modifications) (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. 1 Pt. I** (with art. 6)
Sch. 1 para. 13 applied (with modifications) (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. 1 Pt. I**
Sch. 1 para. 13 applied (with modifications) (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 13 applied (with modifications) (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 1 para. 13 applied (with modifications) (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 13 applied (with modifications) (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C145 Sch. 1 para. 13 applied (with modifications) (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

C146 Sch. 1 para. 13: functions transferred (31.3.2002) by S.S.I. 2002/103, **art. 4(2)(e)** (with art. 4(4))
Sch. 1 para. 13: functions transferred (27.6.2002) by S.S.I. 2002/305, **art. 4(2)(k)** (with art. 4(4))

14 Allowances shall not be paid under paragraph 13 except in connection with the performance of such powers or duties, in such circumstances, as the Secretary of State may determine.

Modifications etc. (not altering text)

C147 Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C148 Sch. 1 para. 14 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. 1 Pt. I** (with art. 6)
Sch. 1 para. 14 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 1 para. 14 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 14 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 14 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 1 para. 14 applied (with modifications) (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 14 applied (with modifications) (27.6.2002) by S.S.I. 2002/305, art. 6, **Sch. Pt. I** (with art. 4(4))

C149 Sch. 1 para. 14 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

15 Payment under paragraph 13 shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may determine.

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Modifications etc. (not altering text)

C150 Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C151 Sch. 1 para. 15 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. 1 Pt. I** (with art. 6)
Sch. 1 para. 15 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. 1 Pt. I** (with art. 6)
Sch. 1 para. 15 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. 1 Pt. I**
Sch. 1 para. 15 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 1 para. 15 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 1 para. 15 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 1 para. 15 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C152 Sch. 1 para. 15 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

16 [F555] . . . . . .

Textual Amendments

F555 Sch. 1 para. 16 repealed (6.2.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(15)**; S.S.I. 2003/602, **art. 2(2)**

17 [F556] . . . . . .

Textual Amendments

F556 Sch. 1 para. 17 repealed (6.2.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(15)**; S.S.I. 2003/602, **art. 2(2)**

18 The functions transferred to and exercisable by Health Boards under section 56 of the [M54]National Health (Scotland) Act 1972 (functions under the [M55]Nursing Homes Registration (Scotland) Act 1938) shall continue to be exercisable by them under this paragraph.

Marginal Citations

M54 1972 c. 58.

M55 1938 c. 73.

19 The Secretary of State may, with any necessary modifications, by order apply any of the provisions of **[**[F557]paragraph 6 of Schedule 3 to the Civil Aviation Act 1982**]** to the case of a person who enters the employment of a Health Board after having been employed in employment to which **[**[F558]the said paragraph 6**]** applies, and any such order may provide that for the purposes of any enactment specified in the order, or for any other purposes so specified, there shall be deemed to have been no break in the employment of any such person.

Textual Amendments

F557 Words substituted by Civil Aviation Act 1982 (c. 16), **Sch. 15 para. 22**(*a*)

F558 Words substituted by Civil Aviation Act 1982 (c. 16), **Sch. 15 para. 22**(*b*)

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VALID FROM 24/06/2009

[F559SCHEDULE 1A

(introduced by section 2(10A))

HEALTH BOARD ELECTIONS

Textual Amendments

F559 Sch. 1A inserted (temp. from 24.6.2009 for certain purposes and otherwise prosp.) by Health Boards (Membership and Elections) (Scotland) Act 2009 (asp 5), **ss. 2(3)**, 4, 6(2)(3), 7, 11(1); S.S.I. 2009/242, **art. 2**

Health Board elections

1 An election held under this Schedule is known as a "Health Board election".

Timing of Health Board elections

2 (1) A Health Board must hold the first Health Board election in the Health Board area on the day specified in election regulations.

(2) Election regulations may specify different days for the first election in different Health Board areas.

(3) A Health Board must hold subsequent Health Board elections on the first Thursday falling after the end of the period of 4 years beginning with the day of the previous election.

(4) But a Health Board election may be held in a Health Board area before the day specified in sub-paragraph (3) if the Scottish Ministers make an order under section 77 specifying the date of a Health Board election in that area.

Electoral wards

3 (1) Each Health Board area is to be comprised of a single electoral ward unless election regulations specify that a Health Board area is to be divided into more than one ward.

(2) If regulations specify such a division they must also specify—

(a) the number of electoral wards in the Health Board area,

(b) the boundaries of those wards, and

(c) the number of elected members to be elected in each ward.

(3) Before regulations specifying such a division are made—

(a) the Scottish Ministers must consult the Local Government Boundary Commission for Scotland, and

(b) the Commission must give the Scottish Ministers advice about the boundaries of the electoral wards which the Health Board is to be divided into.

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Conduct of election

4 (1) Election regulations must appoint an individual as the returning officer for each ward in which a Health Board election is to be held.

(2) Election regulations may make provision about—
- (a) the tenure and vacation of office of a returning officer,
- (b) the functions of a returning officer,
- (c) a returning officer's fees and expenses,
- (d) any other matters relating to returning officers that the Scottish Ministers consider appropriate.

5 (1) The nomination of a candidate must be made—
- (a) within the period specified in election regulations (the "nomination period"), and
- (b) in accordance with any other requirement made in those regulations.

(2) A candidate may withdraw from a Health Board election at any time before the end of the nomination period.

6 If, at the end of the nomination period, the number of nominated candidates in an electoral ward is equal to or less than the number of elected members to be elected for that ward—
- (a) the Health Board election is not to be held in the ward, and
- (b) on the day on which the election was to be held the returning officer must—
  - (i) declare the nominated candidates (if any) to be deemed to have been elected as elected members for the ward, and
  - (ii) if the number of nominated candidates is less than the number of elected members to be elected for the ward, declare the number of vacancies in the ward.

7 (1) In any other case, the elected members are to be elected for the electoral ward at a poll held in accordance with this paragraph.

(2) At the poll, each individual entitled to vote may vote by marking on the ballot paper—
- (a) the voter's first preference from among the candidates, and
- (b) if the voter wishes to express a further preference for one or more candidates, the voter's second and, if the voter wishes, subsequent preferences from among those candidates.

(3) Election regulations must, in particular, make provision about—
- (a) the manner in which and period during which votes may be cast,
- (b) the form and content of ballot papers,
- (c) the manner in which the number of votes which will secure the return of a candidate as an elected member is to be calculated,
- (d) the procedure for counting votes,
- (e) the declaration of the result of the poll.

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Changes to legislation: *National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Candidates

8 (1) An individual is disqualified from being a candidate in a Health Board election if the individual is—
- (a) a member of the European Parliament,
- (b) a member of the House of Commons,
- (c) a member of the House of Lords,
- (d) a member of the Scottish Parliament, or
- (e) a local authority councillor.

(2) Election regulations may make further provision about—
- (a) who is qualified to be a candidate in a Health Board election, and
- (b) the circumstances in which an individual may be disqualified from being a candidate,

and, in particular, may disqualify from being a candidate an individual holding a post set out in a list of restricted posts maintained by the Health Board concerned for that purpose.

Franchise

9 (1) An individual is entitled to vote at a Health Board election if the individual—
- (a) is aged 16 or over, and
- (b) meets any further criteria specified in election regulations.

(2) Such further criteria may, in particular, provide that an individual is entitled to vote at a Health Board election only if the individual—
- (a) is registered in the register of local government electors in respect of an address in the Health Board area, and
- (b) would be entitled to vote at a local government election in an electoral area falling wholly or partly in the Health Board area (or would be so entitled if aged 18 or over).

(3) Election regulations may determine, or set out the criteria for determining, the electoral ward in which an individual is entitled to vote.

(4) Election regulations may not entitle an individual to vote—
- (a) more than once in the same Health Board area, nor
- (b) in more than one Health Board area.

Election expenses

10 Election regulations may make provision about the expenses which may be incurred by any person in connection with a Health Board election.

Vacancies

11 (1) This paragraph applies if—
- (a) a returning officer declares a vacancy in an electoral ward (see paragraph 6), or
- (b) an elected member vacates office before the end of the period mentioned in paragraph 10A(1) of Schedule 1.

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(2) The Scottish Ministers may—

(a) direct the Health Board with the vacancy to invite an unelected candidate to fill the vacancy, or

(b) appoint, in accordance with any provision made by election regulations, an individual to fill the vacancy.

(3) If a vacancy arises less than 6 months before the date of the next Health Board election in the Health Board area where it arises, the Scottish Ministers may, instead of taking action under sub-paragraph (2), direct the Health Board to leave the vacancy unfilled until that next election.

(4) An individual who fills a vacancy is to be deemed to be an elected member of the Health Board elected for the ward in which the vacancy occurred.

(5) In sub-paragraph (2)(a), an "unelected candidate" is an individual who—

(a) was a nominated candidate in the last Health Board election to be held in the Health Board area, and

(b) is identified by criteria specified in election regulations.

Election regulations

12 (1) The Scottish Ministers may make regulations ("election regulations") in relation to any matter specified in this Schedule as something in relation to which provision may be made by election regulations.

(2) Election regulations may make further provision about Health Board elections (in so far as not already provided for in this Schedule).

(3) In particular, election regulations may provide that an enactment applies (with or without modifications specified in the regulations) or does not apply to Health Board elections.

(4) In sub-paragraph (3), "enactment" includes an Act of the Scottish Parliament and any instrument made under such an Act.**]**

[F560][F560]SCHEDULE 2

. . . . . .

Textual Amendments

F560 Sch. 2 repealed (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(16)**; S.S.I. 2004/148, **art. 2(c)**

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
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SCHEDULE 3

Section 5.

THE PLANNING COUNCIL [F561]

Textual Amendments

F561 Sch. 3 repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

SCHEDULE 4

Section 8.

UNIVERSITY LIAISON COMMITTEES

The University Liaison Committee for any area or combination of areas shall consist of such number of members as the Secretary of State thinks fit; and of those members—

(a) not less than one-third shall be appointed by any university or universities appearing to the Secretary of State to have an interest in the health service in the area or combined areas;

(b) a number, equal to the number appointed under paragraph (a), shall be appointed by the Health Board for the area or, as the case may be, by the Health Boards for the combined areas acting jointly; and

(c) any other members shall be appointed in such manner as may be provided in the order constituting the Committee.

The Committee shall appoint one of their number to be chairman.

SCHEDULE 5

Section 10.

THE AGENCY

1 The Agency shall be a body corporate and shall have a common seal.

2 The affairs of the Agency shall be managed by a management committee constituted in accordance with paragraph 3.

3 The management committee shall consist of a chairman appointed by the Secretary of State and **[**[F562]such other members as the Secretary of State may, after consultation with the Health Boards, appoint.**]**

Textual Amendments

F562 Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 27(3), **Sch. 5 para. 9**

[[F563]3A The Secretary of State may pay to the chairman of the management committee **[**[F564]and to such other members of the management committee as may be prescribed**]** such remuneration as he may, with the approval of the Minister for the Civil Service, from time to time determine.**]**

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Textual Amendments

F563 Para. 3A inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 8(2)**

F564 Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 27(3), **Sch. 5 para. 10**

4 The proceedings of the management committee shall not be invalidated by any vacancy in its membership or by any defect in the appointment of any member thereof.

5 The Secretary of State shall pay to members of the management committee and sub-committees thereof such travelling and other allowances, including compensation for loss of remunerative time, as he may, with the approval of the Minister for the Civil Service, from time to time determine.

6 Allowances shall not be paid under paragraph 5 except in connection with the performance of such powers or duties, in such circumstances, as the Secretary of State may determine.

7 The Agency may employ such officers and servants on such terms as to remuneration and conditions of service as the management committee may, [F565] determine **[**[F566]in accordance with regulations and any directions given under this paragraph by the Secretary of State**]**.

Textual Amendments

F565 Words repealed by Health Services Act 1980 (c. 53), **Sch. 7**

F566 Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 8(3)(b)**

[[F567]7A Regulations or directions under paragraph 7 may provide for approvals, authorisations or determinations to have effect from a date (which may be before or after the date of giving or making them but may not be before if to the detriment of such officers and servants) specified in them.**]**

Textual Amendments

F567 Sch. 5 para. 7A added by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 14(2), **Sch. 7 para. 4(2)**

[[F568]7B Regulations may provide for the transfer of officers and servants from the Agency to a Health Board or state hospital, and for arrangements under which the services of an officer or servant of the Agency are placed at the disposal of a Health Board or state hospital.**]**

Subordinate Legislation Made

P9 Sch. 5 para. 7B: s. 105(7) (with s. 108(1) and Sch. 5 para. 7B) power exercised by S.I. 1991/345

Textual Amendments

F568 Sch. 5 para. 7B, 7C inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 27(3), **Sch. 5 para. 11**

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Modifications etc. (not altering text)

C153 Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
Sch. 5 para. 7B applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 5 para. 7B applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
Sch. 5 para. 7B applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
Sch. 5 para. 7B applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 5 para. 7B applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 5 para. 7B applied (with modifications) (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
Sch. 5 para. 7B applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

C154 Sch. 5 para. 7B applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

7C Directions may be given by the Secretary of State—

(a) to the Agency to place services of any of its officers or servants at the disposal of a Health Board or state hospital; and

(b) to a Health Board or state hospital to employ as an officer or servant any person who is or was employed by the Agency and is specified in the direction,

and it shall be the duty of the Agency, a Health Board or a state hospital to comply with any such directions given to it.

Modifications etc. (not altering text)

C155 Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

C156 Sch. 5 para. 7C applied (1.4.1993) by S.I. 1993/577, art. 5(1), **Sch. Pt. I** (with art. 6)
Sch. 5 para. 7C applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt.I** (with art. 6)
Sch. 5 para. 7C applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
Sch. 5 para. 7C applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
Sch. 5 para. 7C applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
Sch. 5 para. 7C applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
Sch. 5 para. 7C applied (with modifications) (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. (4))
Sch. 5 para. 7C applied (27.6.2002) by S.S.I. 2002/503, art. 5(1), **Sch. Pt. I** (with art. 4(4))

8 Regulations may make provision with respect to—

(a) the appointment, tenure and vacation of office of the chairman and members of the management committee;

(b) enabling alternative members to attend in place of any member of the committee who may be absent;

(c) the appointment by the management committee of sub-committees, whose membership may include persons who are not members of the management committee;

(d) the procedure of the management committee; and

(e) the method of appointment of officers or servants of the Agency and the qualifications, remuneration and conditions of service of those persons.

[F569 8A In connection with arrangements relating to community care services (within the meaning of section 5A(4) (local authority plans for community care services) of the Social Work (Scotland) Act 1968), regulations may make provision with respect to—

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(a) the transfer to employment by a local authority of officers or servants employed by the Agency; and

(b) the transfer to employment by a National Health Service body of officers and servants transferred to employment by a local authority by virtue of this paragraph.

and for the purposes of this paragraph "National Health Service body" means the Agency, a Health Board or an NHS trust.**]**

Textual Amendments

F569 Sch. 5 paras. 8A, 8B inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 27(3), **Sch. 5 para. 12**

8B Before making regulations under paragraph 7B or 8A, the Secretary of State shall consult such bodies and organisations as appear to him to be concerned.

9 No officer or servant of the Agency to whom regulations **[**[F570]or any directions given under paragraph 7**]** apply shall be employed otherwise than in accordance with the regulations **[**[F570]or, as the case may be, the directions**]**.

Textual Amendments

F570 Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 8(4)**

[F571]10 . . . . . .

Textual Amendments

F571 Sch. 5 para. 10 repealed (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), **Sch. 5** (with ss. 9(3)(5)(7), 13, 14(3))

[F572]11 . . . . . .

Textual Amendments

F572 Sch. 5 para. 11 repealed (1.8.1995) by 1995 c. 7 ss. 14(2), 15(2), Sch. 5 (with ss. 9(3)(5)(7), 13, 14(3), Sch. 3(2))

12 The Secretary of State may exercise the powers conferred by paragraph 19 of Schedule 1 in the case of a person who enters the employment of the Agency and to whom that paragraph otherwise applies.

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VALID FROM 01/08/2010

[F573SCHEDULE 5A

(introduced by section 10A(5))

HEALTHCARE IMPROVEMENT SCOTLAND

Textual Amendments

F573 Sch. 5A inserted (1.8.2010 for certain purposes, 1.10.2010 for certain purposes, 1.4.2011 in so far as not already in force) by Public Services Reform (Scotland) Act 2010 (asp 8), ss. 110(1), 134(7), **Sch. 16**; S.S.I. 2010/221, **art. 3(2)(3)**, Sch.; S.S.I. 2010/321, **art. 3**, Sch.; S.S.I. 2011/122, art. 2, Sch.

. . . . . .

F574F574SCHEDULE 6

. . . . . .

Textual Amendments

F574 Sch. 6 repealed (6.5.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(17)**; S.S.I. 2004/198, **art. 2(c)**

SCHEDULE 7

THE RESEARCH TRUST

1 F585 . . . . . .

Textual Amendments

F585 Sch. 7 para. 1 repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(a)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

2 The Research Trust shall be a body corporate.

[F586Members

Textual Amendments

F586 Sch. 7 paras. 3-3G and cross-headings substituted (1.11.2005) for Sch. 7 para. 3 by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

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3 Subject to paragraph 3A, the Research Trust shall consist of such number of members appointed by the Trust as the Trust may determine.

Textual Amendments

F586 Sch. 7 paras. 3-3G and cross-headings substituted (1.11.2005) for Sch. 7 para. 3 by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

3A (1) The persons who are the members of the Research Trust immediately before the day on which section 38 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) comes into force shall, on that day, continue to be members (the "continuing members").

(2) The terms and conditions of appointment of the continuing members shall, on the 90th day after whichever of the following occurs first—

(a) the day on which that section comes into force; or

(b) the day on which the Research Trust first make standing orders under paragraph 3F,

be the terms and conditions of appointment the Research Trust determine for the members appointed by them under paragraph 3B(1).

(3) The provisions of paragraphs 3B(2) and (3) to 3D and 3F shall apply to the continuing members as they apply to members appointed under paragraph 3; and in the application of paragraph 3C any period of appointment of a continuing member as a member (before he became a continuing member by virtue of sub-paragraph (1)) shall count for the purposes of determining eligibility for re-appointment in accordance with paragraph 3C.

Textual Amendments

F586 Sch. 7 paras. 3-3G and cross-headings substituted (1.11.2005) for Sch. 7 para. 3 by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

Terms of office etc

3B (1) Subject to the provisions of this Schedule, the appointment of a member under paragraph 3 shall be on such terms and conditions as the Research Trust may determine, but shall not be for a period exceeding 4 years.

(2) A person holds and vacates office as member in accordance with the person's terms of appointment.

(3) A person may resign office as member at any time by notice in writing to the Research Trust.

Textual Amendments

F586 Sch. 7 paras. 3-3G and cross-headings substituted (1.11.2005) for Sch. 7 para. 3 by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

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Eligibility for re-appointment

3C A person who ceases to be a member of the Research Trust shall be eligible for re-appointment, but only once.

Textual Amendments

F586 Sch. 7 paras. 3-3G and cross-headings substituted (1.11.2005) for Sch. 7 para. 3 by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

Payments to members

3D The Research Trust may make payments from their funds to their members in respect of any loss of earnings the members would otherwise have made or any additional expenses to which they would not otherwise have been subject, being loss of expenses necessarily suffered or incurred for the purpose of enabling the members to discharge their duties as members of the Trust.

Textual Amendments

F586 Sch. 7 paras. 3-3G and cross-headings substituted (1.11.2005) for Sch. 7 para. 3 by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

Staff

3E (1) The Research Trust may appoint such staff, on such terms and conditions (including as to remuneration and allowances), as they consider appropriate.

(2) The Research Trust may—

(a) pay, or make arrangements for the payment of;

(b) make payments towards the provision of; and

(c) provide and maintain schemes (whether contributory or not) for the payment of,

such pensions, allowances and gratuities to or in respect of such of their employees, or former employees, as they may determine.

(3) The reference in sub-paragraph (1) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment or reduction in remuneration.

Textual Amendments

F586 Sch. 7 paras. 3-3G and cross-headings substituted (1.11.2005) for Sch. 7 para. 3 by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

Standing orders

3F (1) The Research Trust—

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(a) shall make and maintain standing orders regulating—
(i) the appointment by them of members;
(ii) the appointment of a member as convener;
(iii) the terms and conditions of office of members and convener;
(iv) their procedure;
(v) such other matters as the Research Trust consider appropriate;

(b) may, subject to sub-sub-paragraph (a), amend such standing orders from time to time.

(2) The first set of standing orders under this paragraph shall be made before the expiry of the period of 90 days beginning with the day on which section 38 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) comes into force.

(3) Subject to the provisions of this Schedule, the Research Trust may regulate their own procedure.

(4) The validity of any proceedings of the Research Trust shall not be affected by any vacancy in membership nor by any defect in the appointment of a member.

Textual Amendments

F586 Sch. 7 paras. 3-3G and cross-headings substituted (1.11.2005) for Sch. 7 para. 3 by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

Powers etc.

3G The Research Trust may do anything which appears to them to be necessary or expedient for the purpose of, or in connection with, the exercise of their functions.

Textual Amendments

F586 Sch. 7 paras. 3-3G and cross-headings substituted (1.11.2005) for Sch. 7 para. 3 by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

4 **F587** . . . . . .

Textual Amendments

F586 Sch. 7 paras. 3-3G and cross-headings substituted (1.11.2005) for Sch. 7 para. 3 by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

F587 Sch. 7 para. 4 repealed (1.1.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), ss. 95, 107(2), **Sch. 3 para. 5**; S.S.I. 2005/644, **art. 2(1)**, Sch.

5 The Research Trust shall have, in relation to their funds, the like powers as trustees have in relation to their trust estate under subsection (1) of section 4 of the [M63]Trusts (Scotland) Act 1921.

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Textual Amendments

F586 Sch. 7 paras. 3-3G and cross-headings substituted (1.11.2005) for Sch. 7 para. 3 by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

Marginal Citations

M63 1921 c. 58.

6 Where the Research Trust borrow money or draw upon capital to meet expenditure of a capital nature, they shall set aside annually a sum sufficient to repay such loan or draft within a period which [F588]. . . shall not exceed 30 years; but this paragraph shall not apply in the case of a draft on capital to the extent only of surplus income added to capital.

Textual Amendments

F586 Sch. 7 paras. 3-3G and cross-headings substituted (1.11.2005) for Sch. 7 para. 3 by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

F588 Words in Sch. 7 para. 6 repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(c)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

7 [F589]. . . . . .]

Textual Amendments

F586 Sch. 7 paras. 3-3G and cross-headings substituted (1.11.2005) for Sch. 7 para. 3 by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

F589 Sch. 7 para. 7 repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(3)(d)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

[[F590F591]SCHEDULE 7A

NATIONAL HEALTH SERVICE TRUSTS

Textual Amendments

F590 Schs. 7A, 7B inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 32, **Sch. 6**

F591 Sch. 7A repealed (1.9.2004 but only for the purpose stated in art. 2(a)(i) of the commencing S.S.I.) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 1(1)**, 12(1), S.S.I. 2004/361, **art. 2(a)(i)**

Modifications etc. (not altering text)

C157 Sch. 7A applied in part (1.4.1999) by S.I. 1999/686, **art. 5(1)(2)**

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PART I

ORDERS ESTABLISHING NHS TRUSTS ETC.

1 Any reference in this Part of this Schedule to an order is a reference to an order under section 12A(1) establishing an NHS trust or any subsequent order under that provision amending or revoking a previous order.

Subordinate Legislation Made

P10 Sch. 7A para. 1: s. 12A(1)(4) (with Sch. 7A paras. 1, 3, 4, 5, 6(2)(d)) power exercised (18.12.1991) by S.I. 1991/2898.
Sch. 7A para. 1: s. 12A(1)(4) (with Sch. 7A paras. 1, 3, 4, 5, 6(2)(d)) power exercised (18.12.1991) by S.I. 1991/2899.

2 The provisions made by an order shall be in conformity with any general provision made by regulations under section 12A(5).

3 (1) Without prejudice to any amendment made by subsequent order, the first order to be made in relation to any NHS trust shall specify—

(a) the name of the trust;
(b) the functions of the trust;
(c) the number of executive directors and **[**[F592]trustees**]**;
(d) where the trust is to be regarded as having a significant teaching commitment, a provision to secure the inclusion in the **[**[F592]trustees**]** referred to in paragraph (c) of a person appointed from a university with a medical or dental school specified in the order;
(e) the operational date of the trust, that is to say, the date on which the trust is to begin to undertake the whole of the functions conferred on it; and
(f) if a scheme is to be made under section 12B, the body (being a Health Board or the Agency) which is to make the scheme.

(2) For the purposes of sub-paragraph (1)(d), an NHS trust is to be regarded as having a significant teaching commitment in the following cases—

(a) if the trust is established to **[**[F593]provide services at**]** a hospital or other establishment or facility which, in the opinion of the Secretary of State, has a significant teaching and research commitment; and
(b) in any other case, if the Secretary of State so provides in the order.
(a) is employed by the university in question; and
(b) would also, apart from this sub-paragraph, be regarded as employed by the trust,

his employment by the trust shall be disregarded in determining whether, if appointed, he will be a **[**[F592]trustee**]** of the trust.

(4) An order shall specify the accounting date of the trust.

Textual Amendments

F592 Words in Sch. 7A para. 3(1)(c)(d),(3) substituted (1.10.1999) by virtue of 1999 c. 8, s. 65, **Sch. 4 para. 62**; S.S.I. 1999/90, art. 2(b), **Sch. 1**

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F593 Words in Sch. 7A para. 3(2)(a) substituted (*retrospectively*) by 1999 c. 8, **s. 46(6)(8)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

4 (1) An order may require a Health Board and the Agency to make staff, premises and other facilities available to an NHS trust pending the transfer or appointment of staff to or by the trust and the transfer of premises or other facilities to the trust.

(2) An order making provision under this paragraph may make provision with respect to the time when the Health Board's functions under the provision are to come to an end.

5 (1) An order may provide for the establishment of an NHS trust with effect from a date earlier than the operational date of the trust and, during the period between that earlier date and the operational date, the trust shall have such limited functions for the purposes of enabling it to begin to operate satisfactorily with effect from the operational date as may be specified in the order.

(2) If an order makes the provision referred to in sub-paragraph (1), then, at any time during the period referred to in that sub-paragraph, the NHS trust shall be regarded as properly constituted (and may carry out its limited functions accordingly) notwithstanding that, at that time, all or any of the executive officers have not yet been appointed.

(3) If an order makes the provisions referred to in sub-paragraph (1) above, the order may require a Health Board to discharge such liabilities of the NHS trust as—

(a) may be incurred during the period referred to in that sub-paragraph; and

(b) are of a description specified in the order.

PART II

DUTIES, POWERS AND STATUS OF NHS TRUSTS

Specific duties

6 F594 (1) **[** In carrying out the functions for the time being conferred on it an NHS trust shall comply with any directions given to it by the Secretary of State, whether of a general or of a particular nature.**]**

(2) . . . . . .

Textual Amendments

F594 Sch. 7A para. 6(1) substituted (1.10.1999) by 1999 c. 8, **s. 49(2)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

7 (1) For each accounting year an NHS trust shall prepare and send to the Secretary of State an annual report in such form as may be determined by the Secretary of State.

(2) At such time or times as may be prescribed, an NHS trust shall hold a public meeting at which its audited accounts, its annual report, and such other documents as may be prescribed shall be presented.

(3) In such circumstances and at such time or times as may be prescribed, an NHS trust shall hold a public meeting at which such documents as may be prescribed shall be presented.

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Subordinate Legislation Made

P11 Sch. 7A para. 7(2): S. 12A(5) (with ss. 105(7), 108(1) and Sch. 7A para. 7(2)) power exercised by S.I. 1991/535

8 An NHS trust shall furnish to the Secretary of State such reports, returns and other information, including information as to its forward planning as, and in such form as, he may require.

9 (1) An NHS trust shall be liable to pay—

(a) to the chairman and any **[**[F595]trustee**]** of the trust—

(i) remuneration of an amount determined by the Secretary of State, not exceeding such amount as may be approved by the Treasury; and

(ii) such travelling and other allowances as may be determined by the Secretary of State with the approval of the Treasury; and

(b) to any member of a committee or sub-committee of the trust who is not also a director such travelling and other allowances as may be so determined.

(2) If an NHS trust so determines in the case of a person who is or has been a chairman of the trust, the trust shall be liable to pay such pension, allowances or gratuities to or in respect of him as may be determined by the Secretary of State with the approval of the Treasury.

(3) Different determinations may be made under sub-paragraph (1) or (2) in relation to different cases or description of cases.

Textual Amendments

F595 Words in s. 9(1)(a) substituted (1.10.1999) by virtue of 1999 c.8, s. 65, **Sch. 4 para. 62(a)**; S.I. 1999/90, art. 2(b), **Sch. 1**

Specific powers

10 An NHS trust may enter into NHS contracts.

11 An NHS trust may undertake and commission research and make available staff and provide facilities for research by other persons.

12 An NHS trust may—

(a) provide training for persons employed or likely to be employed by the trust or otherwise in the provision of services under this Act; and

(b) make facilities and staff available in connection with training by a university or any other body providing training in connection with the health service.

13 An NHS trust may enter into arrangements for the carrying out on such terms as seem to it to be appropriate, of any of its functions jointly with any Health Board, with the Agency, with another NHS trust or with any other body or individual.

14 According to the nature of its functions, an NHS trust may make accommodation or services or both available for patients who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation or services (or both) such charges as the trust may determine.

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15 For the purpose of making additional income available in order better to perform its functions, an NHS trust shall have the powers specified in section 7(2) of the Health and Medicines Act [M64]1988 (extension of powers of Secretary of State for financing the Health Service).

Marginal Citations

M64 1988 c.49**(113:2).**

General powers

16 Subject to Schedule 7B, an NHS trust shall have power to do anything which appears to it to be necessary or expedient for the purpose of or in connection with the discharge of its functions, including in particular power—

(a) to acquire and dispose of land and other property;

(b) to enter into such contracts as seem to the trust to be appropriate;

(c) to accept gifts of money, land or other property, including money, land or other property to be held on trust, for purposes relating to any service which it is their function to provide, administer, or make arrangements for [F596]. . .; and

(d) to employ staff on such terms as the trust thinks fit.

Textual Amendments

F596 Words in Sch. 7A para. 16(c) repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 62(b), **Sch. 5**; S.S.I. 1999/90, art. 2(a)-(c), Schs. 1, **2**

17 In connection with arrangements relating to community care services (within the meaning of section 5A(4) (local authority plans for community care services) of the Social Work (Scotland) Act 1968), the Secretary of State may by regulations make provision with respect to—

(a) the transfer to employment by a local authority of staff employed by an NHS trust; and

(b) the transfer to employment by a national Health Service body of staff transferred to employment by a local authority by virtue of this paragraph.

and for the purposes of this paragraph "National Health Service body" means an NHS trust, a Health Board or the Agency.

18 Regulations made under paragraph 17 may make such incidental and consequential provision in relation to staff transferred by virtue of that paragraph as may be made in relation to officers and servants of a Health Board transferred by virtue of regulations made under paragraph 8A of Schedule 1.

19 Before making regulations under paragraph 17, the Secretary of State shall consult such bodies and organisations as appear to him to be concerned.

20 (1) Without prejudice to the generality of paragraph 16, to or in respect of such of its employees as it may determine, an NHS trust may make such arrangements for providing pensions, allowances or gratuities as it may determine; and such arrangements may include the establishment and administration, by the trust or otherwise, of one or more pension schemes.

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(2) The reference in sub-paragraph (1) to pensions, allowances or gratuities to or in respect of employees of an NHS trust includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the trust's employees who suffer loss of office or employment or loss of diminution of emoluments.

Status

21 An NHS trust shall not be regarded as the servant or agent of the Crown or, except as provided by this Act, as enjoying any status, immunity or privilege of the Crown; and an NHS trust's property shall not be regarded as property of, or property held on behalf of, the Crown.

PART III

SUPPLEMENTARY PROVISIONS

Reimbursement for health services work carried out otherwise than under contract

22 (1) In any case where an NHS trust provides goods or services for the benefit of an individual and—

(a) those goods or services are not provided pursuant to an NHS contract; and

(b) the condition of the individual is such that he needs those goods or services and, having regard to his condition, it is not practicable before providing them to enter into an NHS contract for their provision, and

(c) the provision of those goods or services is a function of a Health Board or is within the primary functions of a **[**[F597]Health Authority established under section 8**]** of the National Health Service Act 1977, [F598]. . .

the trust shall be remunerated by that Board [F599]. . . **[**[F600]or Health and Social Services Board**]** in respect of the provision of the goods or services in question.

(2) The rate of any remuneration payable by virtue of sub-paragraph (1) shall be calculated in such manner or on such basis as may be determined by the Secretary of State.

Textual Amendments

F597 Words in Sch. 7A para. 22(1)(c) substituted (28.6.1995 for certain purposes and 1.4.1996 for all other purposes) by 1995 c. 17, ss. 2(1), 2(3), 8(1), **Sch. 1 Pt. III para. 102(7)(b)(i)** (with Sch. 2 para. 6)

F598 Words in Sch. 7A para. 22(1)(c) repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 62(c), **Sch. 5**; S.S.I. 1999/90, art. 2(a)-(c), Schs. 1, **2**

F599 Words in Sch. 7A para. 22(1) repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 62(c), **Sch. 5**; S.S.I. 1999/90, art. 2(a)-(c), Schs. 1, **2**

F600 Words in Sch. 7A para. 22(1) inserted by S.I. 1991/195, **art. 4(6)**

[F601]23 . . . . . .

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Textual Amendments

F601 Sch. 7A para. 23 repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 62(d), **Sch. 5**; S.S.I. 1999/90, art. 2(a)-(c), Schs. 1, **2**

Use and development of land used for religious purposes and burial grounds

24 Where land consisting of a church or other building used or formerly used for religious worship, or the site thereof, or a burial ground, within the meaning of **[**[F602]section 197 of the Town and Country Planning (Scotland) Act 1997**]** (provisions as to churches and burial grounds), is held by an NHS trust for any of its purposes, that section applies to the land as if—

(a) the land had been acquired by the trust as mentioned in subsection (1) of that section; and

(b) the trust were a statutory undertaker, within the meaing of that Act.

Textual Amendments

F602 Words in Sch. 7A para. 24 substituted (27.5.1997) by virtue of 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 46(1)**

PART IV

DISSOLUTION

25 (1) The Secretary of State may by order dissolve an NHS trust.

(2) An order under this paragraph may be made—

(a) on the application of the NHS trust concerned; or

(b) if the Secretary of State considers it appropriate in the interests of the health service as a whole.

(3) Except where it appears to the Secretary of State necessary to make an order under this paragraph as a matter of urgency, no such order shall be made until after the completion of such consultation as may be prescribed.

26 (1) If an NHS trust is dissolved under this Part of this Schedule, the Secretary of State may by order transfer or provide for the transfer to—

(a) the Secretary of State, or

(b) a Health Board, or

(c) the Agency, or

(d) another NHS trust.

of such of the property, rights and liabilities of the NHS trust which is dissolved as in his opinion is appropriate and any such order may include provisions corresponding to those of section 12D.

[F603](1A) **[** For the avoidance of doubt, the reference to "property, rights and liabilities" in sub-paragraph (1) includes endowments and property held in trust.**]**

(2) An order under this paragraph may make provision in connection with the transfer of staff employed by or for the purposes of the NHS trust which is dissolved; and such

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an order may include provisions corresponding to those of sections 12B and 12C, including provision for the making of a scheme by such body (being a Health Board or the Agency) as may be specified in the order.

(3) No order shall be made under this paragraph until after completion of such consultation as may be prescribed.

Textual Amendments

F603 Sch. 7A para. 26(1A) inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 1(3)**, 12(1); S.S.I. 2004/361, **art. 2(b)(i)**

27 If an NHS trust is dissolved under this Part of this Schedule, the Secretary of State or such other NHS trust or Health Board as he may direct or, if he so directs, the Agency shall undertake the responsibility for the continued payment of any such pension, allowances or gratuities as, by virtue of paragraph 9(2) or paragraph 20 above, would otherwise have been the responsibility of the trust which has been dissolved.

28 An NHS trust may not be dissolved or wound up except in accordance with this Part of this Schedule.**]**

[[F604]SCHEDULE 7B

FINANCIAL PROVISIONS RELATING TO NHS TRUSTS

Textual Amendments

F604 Schs. 7A, 7B inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 32, **Sch. 6**

Borrowing

1 (1) Subject to **[**[F605]any direction given by the Secretary of State, to**]**the provisions of this paragraph and to any limit imposed under the following provisions of this Schedule, for the purpose of its functions an NHS trust may borrow (both temporarily, by way of overdraft, and longer term) from the Secretary of State or from any other person.

(2) An NHS trust may not grant any security over any of its assets or in any other way use any of its assets as security for a loan.

[F606](3) . . . . . .

[F606](4) . . . . . .

[F606](5) . . . . . .

[[F607](6) It shall be for the Secretary of State, with the consent of the Treasury, to determine the terms of any loan made by him to an NHS trust (including terms as to the payment of interest, if any).**]**

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Textual Amendments

F605 Words in Sch. 7B para. 1(1) inserted (1.10.1999) by 1999 c. 8, **s. 55(2)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

F606 Sch. 7B para. 1(3)-(5) repealed (1.10.1999) by 1999 c. 8, ss. 55(3), 65(2), **Sch. 5**; S.S.I. 1999/90, art. 2(a)(c), Sch. 1, **Sch. 2**

F607 Sch. 7B para. 1(6) substituted (1.10.1999) by 1999 c. 8, **s. 55(4)**; S.S.I. 1999/90, **art. 2(a)**

Guarantees of borrowing

2 (1) The Secretary of State may guarantee, in such manner and on such conditions as, with the approval of the Treasury, he considers appropriate, the repayments of the principal of and the payment of interest on any sums which an NHS trust borrows from a person other than the Secretary of State.

(2) Immediately after a guarantee is given under this paragraph, the Secretary of State shall lay a statement of the guarantee before each House of Parliament.

(3) Where any sum is issued for fulfilling a guarantee so given, the Secretary of State shall lay before each House of Parliament a statement relating to that sum as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.

(4) If any sums are issued in fulfilment of a guarantee given under this paragraph, the NHS trust concerned shall make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct,—

(a) payments of such amounts as the Secretary of State with the consent of the Treasury so directs in or towards repayment of the sums so issued; and

(b) payments of interest, at such rates as the Secretary of State with the consent of the Treasury so directs, on what is outstanding for the time being in respect of sums so issued.

[F608 Surplus funds

Textual Amendments

F608 Cross-heading and Sch. 7B paras. 2A, 2B inserted (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 2(1)**; S.S.I. 2000/10, **art. 2(3)**

F609 2A In any financial year the net aggregate amount of sums borrowed by NHS trusts shall not exceed the amount specified for that year for the purposes of this paragraph in a Budget Act.

Textual Amendments

F609 Sch. 7B paras. 2A, 2B and cross-heading inserted (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 2(1)**; S.S.I. 2000/10, **art. 2(3)**

F610 2B In paragraph 2A above, "net aggregate amount" means the aggregate amount of sums borrowed in the financial year less any repayments made during that year

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(otherwise than by way of interest) in respect of sums borrowed in that or any other year.**]**

Textual Amendments

F610 Sch. 7B paras. 2A, 2B and cross heading inserted (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 2(1)**; S.S.I. 2000/10, **art. 2(3)**

Limits on indebtedness

[F611]3 . . . . . .

Textual Amendments

F611 Sch. 7B paras. 3-4 repealed (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 2(2)**; S.S.I. 2000/10, **art. 2(3)**

[F612]4 . . . . . .

Textual Amendments

F612 Sch. 7B paras. 3-4 repealed (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 2(2)**; S.S.I. 2000/10, **art. 2(3)**

Additional public dividend capital

5 (1) If the Secretary of State, with the consent of the Treasury, considers it appropriate to do so, he may, instead of making a loan to an NHS trust under paragraph 1, pay an amount to the trust as public dividend capital.

[F613](2) . . . . . .

Textual Amendments

F613 Sch. 7B para. 5(2) repealed (1.10.1999) by 1999 c. 8, ss. 53(6), 65(2), **Sch. 5**; S.S.I. 1999/90, art. 2(a)(c), Sch. 1, **Sch. 2**

Surplus funds

6 If it appears to the Secretary of State that any **[**[F614]sum held by an NHS trust other than a sum held on trust under section 12G**]** is surplus to its foreseeable requirements, the trust shall, if the Secretary of State with the approval of the Treasury and after consultation with the trust so directs, pay **[**[F614]that sum**]** into the Consolidated Fund.

Textual Amendments

F614 Words in Sch. 7B para. 6 substituted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 63(2)(a)(b)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

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Investment

[F615 7 An NHS trust shall have power to invest money held by it in any investments, including investments which do not produce income, specified in directions made by the Secretary of State with the consent of the Treasury; but nothing in this paragraph applies in relation to money held on trust under section 12G.]

Textual Amendments

F615 Sch. 7B para. 7 substituted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 63(3)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

[F616 8 Any direction with respect to—

(a) the power conferred on an NHS trust by paragraph 1; or

(b) the maximum amount which an NHS trust may invest in any investment or class of investment,

may be given only with the consent of the Treasury.]

Textual Amendments

F616 Sch. 7B para. 8 inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 63(4)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

SCHEDULE 8

Section 29.

THE TRIBUNAL

[F617 1 The Tribunal shall consist of—

(a) a chairman appointed by the Lord President of the Court of Session,

(b) such number of deputy chairmen as may be so appointed,

(c) such number of persons as the Secretary of State may appoint for the purposes of this sub-paragraph,

(d) such number of medical practitioners as the Secretary of State may appoint for the purposes of this sub-paragraph,

(e) such number of medical practitioners having the qualifications prescribed under section 26 as the Secretary of State may appoint for the purposes of this sub-paragraph,

(f) such number of dental practitioners as the Secretary of State may appoint for the purposes of this sub-paragraph,

(g) such number of ophthalmic opticians as the Secretary of State may appoint for the purposes of this sub-paragraph, and

(h) such number of registered pharmacists as the Secretary of State may appoint for the purposes of this sub-paragraph.]

Textual Amendments

F617 Sch. 8 paras. 1-4 substituted for Sch. 8 paras. 1-6 (1.1.1996) by 1995 c. 31, **s. 12(2)**; S.I. 1995/3214, art. 2(1), **Sch.** (with art. 3)

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Modifications etc. (not altering text)
C158 Sch. 8 para 1 amended (*prosp.*) by 1954 c. 61 s. 13I (as inserted by 1997 c. 19, **s. 1 Sch.**)

F618 2 A person appointed as the chairman or a deputy chairman shall be a practising—
(a) advocate; or
(b) solicitor,
of not less than ten years' standing.

Textual Amendments
F618 Sch. 8 paras. 1-4 substituted for Sch 8 paras. 1-6 (1.1.1996) by 1995 c. 31, **s. 12(2)**; S.I. 1995/3214, art. 2(1), **Sch.** (with art. 3)

F619 3 Any appointment for the purposes of paragraph 1(c) above shall be made after consultation with such body as the Secretary of State may recognise as representative of Health Boards.

Textual Amendments
F619 Sch. 8 paras. 1-4 substituted for Sch. 8 paras. 1-6 (1.1.1996) by 1995 c. 31, **s. 12(2)**; S.I. 1995/3214, art. 2(1), **Sch.** (with art. 3)

F620 4 Any appointment for the purposes of any of sub-paragraphs (d) to (h) of paragraph 1 above shall be made after consultation with such organisations as the Secretary of State may recognise as representative of the profession or calling concerned.

Textual Amendments
F620 Sch. 8 paras. 1-4 substituted for Sch. 8 paras. 1-6 (1.1.1996) by 1995 c. 31, **s. 12(2)**; S.I. 1995/3214, art. 2(1), **Sch.** (with art. 3)

. . . . . .

5 For the purposes of paragraph 4, the Secretary of State shall, after consultation with such organisations as he may recognise as representative of the several professions or callings concerned, appoint the following panels, none of which shall exceed 6 persons, that is to say:—
(a) a panel of medical practitioners;
(b) a panel of medical practitioners having the qualifications prescribed under section 26;
(c) a panel of dental practitioners;
(d) a panel of ophthalmic opticians;
(e)
(f) a panel of registered pharmacists.

. . . . . .

6 If any member of the Tribunal is unable to act in any case a deputy may be appointed by the Lord President of the Court of Session or the Secretary of State, as in the

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case of the appointment of the member in question; and, if the member is the chairman, the deputy shall possess the professional qualifications required for the office of chairman, and, if the member is the practitioner member, the deputy shall be appointed from the same panel.

7 Regulations may make provision—

(a) with respect to the appointment, tenure of office and vacation of office of members of the Tribunal;

(b) with respect to the appointment of officers of the Tribunal.

[[F622]8 (1) The functions of the Tribunal shall be exercised by three members consisting of—

(a) the chairman or a deputy chairman,

(b) a person appointed under paragraph 1(c) above, and

(c) a person appointed under such one of sub-paragraphs (d) to (h) of paragraph 1 above as provides for the appointment of persons of the same profession or calling as that of the person concerned.

(2) In sub-paragraph (1)(c) above **[**[F623]as it has effect in relation to the functions mentioned below**]**, the reference to the person concerned is—

(a) in the case of functions under **[**[F624]section 29 to 29C**]**, to the person to whom the representations in question relate,

(b) in the case of functions under section 30 (or paragraph 6 of Schedule 15), to the person whose **[**[F625]disqualification or conditional disqualification**]** is under consideration,

(c) in the case of functions under section 32A, to the person to whom the application in question relates, and

(d) in the case of functions under section 32B, to the person in relation to whom **[**[F626]section 32A(3) may be made to apply or continue to apply**]**.

[F627]**[** (2A) In sub-paragraph (1)(c) above as it has effect in relation to functions of the Tribunal conferred by or under any enactment relating to the preferential treatment of medical practitioners on transferring to medical lists, the reference to the person concerned is a reference to the medical practitioner to whom the matter before the Tribunal relates.**]**

(3) In the case of functions under section 32A or 32B, sub-paragraph (1) above is subject to section 32C(2)(b).**]**

Textual Amendments

F622 Sch. 8 para. 8 inserted (1.1.1996) by 1995 c. 31, **s. 12(3)**; S.I. 1995/3214, art. 2(1), **Sch.** (with art. 3)

F623 Words in Sch. 8 para. 8(2) inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 58(2)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

F624 Words in Sch. 8 para. 2(a) substituted (4.3.2004) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 64(a); S.S.I. 2004/32, **art. 2(2)(c)** (with savings for effects of 1999 c. 8 by S.S.I. 2004/31, art. 3)

F625 Words in Sch. 8 para. 8(2)(b) substituted (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(20)**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2

F626 Words in Sch. 8 para. 2(d) substituted (4.3.2004) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 64(c); S.S.I. 2004/32, **art. 2(2)(c)** (with savings for effects of 1999 c. 8 by S.S.I. 2004/31, art. 3)

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F627 Sch. 8 para. 8(2A) inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 58(3)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

SCHEDULE 9

Section 35.

ADDITIONAL PROVISIONS AS TO PROHIBITION OF SALE OF MEDICAL PRACTICES

Prohibition, and certificate of Practices Committee

1 (1) Any person who sells or buys the goodwill [F628]. . .of a medical practice which it is unlawful to sell by virtue of section 35(1) is guilty of an offence and liable on conviction on indictment to a fine [F629] or to imprisonment for a term not exceeding 3 months, or to both such fine and such imprisonment.

[F630](2) Any person proposing to be a party to a transaction or series of transactions which he thinks might amount to a sale of the goodwill of a medical practice in contravention of section 35(1) may ask the **[**[F631]Health Board which has arrangements with the **[**[F632]person, under which, or in accordance with which, services as specified in section 35(1) are provided or performed,**]]** for a certificate under this paragraph.

(3) **[**[F633]That Health Board**]** shall consider any such application, and, if they are satisfied that the transaction or series of transactions does not involve the giving of valuable consideration in respect of the goodwill, or any part of the goodwill [F634]. . . of such a medical practice, they shall issue to the applicant a certificate to that effect, which shall be in the prescribed form and shall set out all material circumstances disclosed to **[**[F635]the Board**]**.

(4) Where any person is charged with an offence under this paragraph in respect of any transaction or series of transactions, it shall be a defence to the charge to prove that the transaction or series of transactions was certified by the **[**[F636]Health Board**]** under sub-paragraph (3).

(5) Any document purporting to be such a certificate shall be admissible in evidence and shall be deemed to be such a certificate unless the contrary is proved.

(6) If it appears to the court that the applicant for any such certificate failed to disclose to the **[**[F637]Board**]** all the material circumstances, or made any misrepresentation with respect thereto, the court may disregard the certificate, and sub-paragraph (4) shall not apply thereto.

(7) **[**[F638]A Health Board**]** shall, at the request of the Lord Advocate, furnish him with a copy of any certificate issued by them under sub-paragraph (3), and with copies of any documents produced to them in connection with the application for that certificate.

[F639](8) . . . . . .

Textual Amendments

F628 Words in Sch. 9 para. 1(1) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 59(2), **Sch. 3 Pt. I**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

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F629 Sch. 9 para. 1(1)(*a*)(*b*) and words repealed by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 16**

F630 Sch. 9 para. 1(2) substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(3)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

F631 Words in Sch. 9 para. 1(2) substituted (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(18)(a)**; S.S.I. 2004/148, **art. 2(c)**

F632 Words in Sch. 9 para. 1(2) substituted (1.2.2006) by The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(6)(a)}

F633 Words in Sch. 9 para. 1(3) substituted (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(18)(b)(i)**; S.S.I. 2004/148, **art. 2(c)**

F634 Words in Sch. 9 para. 1(3) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 59(2), **Sch. 3 Pt. I**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

F635 Words in Sch. 9 para. 1(3) substituted (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(18)(b)(ii)**; S.S.I. 2004/148, **art. 2(c)**

F636 Words in Sch. 9 para. 1(4) substituted (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(18)(c)**; S.S.I. 2004/148, **art. 2(c)**

F637 Words in Sch. 9 para. 1(6) substituted (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(18)(d)**; S.S.I. 2004/148, **art. 2(c)**

F638 Words in Sch. 9 para. 1(7) substituted (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(18)(e)**; S.S.I. 2004/148, **art. 2(c)**

F639 Sch. 9 para. 1(8) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 59(4), **Sch. 3 Pt. I**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

Modifications etc. (not altering text)

C159 Sch. 9 para. 1(3) modified (31.3.1995) by S.I. 1995/416, reg. 18, **Sch. 8**

Certain transactions deemed sale of goodwill

[2 F640F640(1) For the purposes of section 35(1) and paragraph 1, a disposal of premises previously used for the purposes of a medical practice shall be deemed to be a sale of the goodwill of a medical practice if—

(a) the person disposing of the premises did so knowing that another person ("A") intended to use them for the purposes of A's medical practice; and

(b) the consideration for the disposal substantially exceeded the consideration that might reasonably have been expected if the premises had not previously been used for the purposes of a medical practice.

F640(1A) If a person disposes of any premises together with any other property, the court shall, for the purposes of sub-paragraph (1), make such apportionment of the consideration as it thinks just.

F640(1B) For the purposes of sub-paragraphs (1) and (1A)—

(a) "disposal" means any sale, letting or other form of disposal (whether by a single transaction or a series of transactions) and "disposes" and "disposing" are to be read accordingly; and

(b) a person who procures the disposal of any premises is to be treated as having disposed of them.]

(2) Where in pursuance of any partnership agreement F641. . .—

(a) any valuable consideration, other than the performance of services in the partnership business, is given by a partner or proposed partner as consideration for his being taken into partnership.

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(b) any valuable consideration is given to a partner, on or in contemplation of his retirement or of his acceptance of a reduced share of the partnership profits, or to the personal representative of a partner on his death, not being a payment in respect of that partner's share in past earnings of the partnership or in any partnership assets or any other payment required to be made to him as the result of the final settlement of accounts, as between him and the other partners, in respect of past transactions of the partnership, or

(c) services are performed by any partner for a consideration substantially less than those services might reasonably have been expected to be worth having regard to the circumstances at the time when the agreement was made,

there shall be deemed for the purposes of section 35(1) and paragraph 1 to have been a sale of the goodwill [F642]. . . of the practice of any partner to whom, or to whose personal representative, the consideration or any part thereof is given or, as the case may be, for whose benefit the services are performed, to the partner or each of the partners by or on whose behalf the consideration or any part thereof was given or, as the case may be, the partner who performed the services, and the said sale shall be deemed for the purposes of section 35(1) and paragraph 1 to have been effected—

(i) in a case to which paragraph (a) or paragraph (b) applies, at the time when the consideration was given, or, if the consideration was not all given at the same time, at the time when the first part thereof was given, or

(ii) in a case to which paragraph (c) applies, at the time when the agreement was made.

[[F643](3) Sub-paragraph (3A) applies if a person ("the assistant")—

(a) performs services on behalf of a person who carries on a medical practice (or as an employee of a person employing a practitioner who carries on a medical practice);

(b) receives substantially less remuneration for performing those services than might reasonably have been expected, having regard to the circumstances at the time when the remuneration was fixed; and

(c) subsequently succeeds, whether as a result of a partnership agreement or otherwise, to that practice.

[F643](3A) For the purposes of section 35 and paragraph 1, a sale of the goodwill of the practice is to be deemed to have taken place (at the time when the remuneration was fixed), unless it is proved that the remuneration was not fixed in contemplation of the assistant's succeeding to the practice.]

[[F644](4) For the purposes of section 35(1) and paragraph 1, the goodwill of a medical practice shall be deemed to have been sold if—

(a) a person carrying on the practice (or employing a practitioner who carries on a medical practice) agrees, for valuable consideration—

(i) to do or refrain from doing any act, for the purpose of facilitating the succession of another person to the practice; or

(ii) to allow any act to be done, for that purpose; or

(b) a person—

(i) gives valuable consideration to a person carrying on the practice (or employing a practitioner who carries on a medical practice); and

(ii) succeeds, or has previously succeeded, to the practice.

[F644](5) Sub-paragraph (4) does not apply—

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(a) if it is proved that no part of the consideration was given in respect of the goodwill; or

(b) to anything done—

(i) in relation to the acquisition of premises for the purposes of a medical practice;

(ii) in pursuance of a partnership agreement; or

(iii) in the performance of medical services by one person as an assistant to another.**]**

(6) In determining for the purposes of section 35(1) and this Schedule the consideration given in respect of any transaction, the court shall have regard to any other transaction appearing to the court to be associated with the first transaction, and shall estimate the total consideration given in respect of both or all the transactions, and shall apportion it between those transactions in such manner as it thinks just.

[[F645](7) For the purposes of section 35 and this Schedule—

(a) consideration is deemed to be given to a person ("B") if—

(i) it is given to another person but with B's knowledge and consent; and

(ii) it appears to the court that B has derived, or will derive, a substantial benefit from the giving of the consideration; and

(b) unless the context otherwise requires, references to a person include, in the case of an individual who has died, references to his personal representative.**]**

Textual Amendments

F640 Sch. 9 para. 2(1)(1A)(1B) substituted for Sch. 9 para. 2(1) (1.4.1998) by 1997 c. 47, s. 41(10), **Sch. 2 Pt. I para. 59(5)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (withg arts. 3, 5)

F641 Words in Sch. 9 para. 2(2) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), **Sch. 2 Pt. I para. 59(6)**)a), Sch. 3 Pt. I; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

F642 Words in Sch. 9 para. 2(2) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 59(6)(b), **Sch. 3 Pt. I**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

F643 Sch. 9 para. 2(3)(3A) substituted for Sch. 9 para. 2(3) (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(7)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

F644 Sch. 9 para 2(4)(5) substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(8)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

F645 Sch. 9 para. 2(7) substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(9)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

[[F646] *Carried-over goodwill*

Textual Amendments

F646 Sch. 9 para 3 and crossheading inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(10)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

[F647]3 The fact that a person's medical practice was previously carried on by another person who at any time provided **[**[F648]or performed services as specified in section 35(1)**]** does not, by itself, make it unlawful under section 35(1) for the goodwill of his practice to be sold.**]**

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Textual Amendments

F647 Sch. 3 and heading inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(10)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

F648 Words in Sch. 9 para. 3 substituted (1.2.2006) by The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(6)(b)}

[F649SCHEDULE 10

Section 49.

ADDITIONAL PROVISIONS AS TO THE CONTROL OF MAXIMUM PRICES FOR MEDICAL SUPPLIES]

Textual Amendments

F649 Schedule 10 ceased to have effect (1.9.1999 and 1.11.1999 for certain purposes, otherwise 3.4.2007) by 1999 c. 8, s. 38(5); S.I. 1999/2177, art. 2(4)(b)(3(b); S.I. 2007/1179, **art. 2(c)**

[F650 Orders and directions]

Textual Amendments

F650 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

[F651 1 (1) Any power of making orders under section 49 includes power to provide for any incidental and supplementary provisions which the Secretary of State thinks it expedient for the purposes of the order to provide.

(2) An order under section 49 may make such provisions (including provision for requiring any person to furnish any information) as the Secretary of State thinks necessary or expedient for facilitating the introduction or operation of a scheme of control for which provision has been made, or for which, in his opinion, it will or may be found necessary or expedient that provision should be made, under that section.

(3) An order under section 49 may prohibit the doing of anything regulated by the order except under the authority of a licence granted by such authority or person as may be specified in the order, and may be made so as to apply either to persons or undertakings generally or to any particular person or undertaking or class of persons or undertakings, and so as to have effect either generally or in any particular area.

(4) The M65Interpretation Act 1889 shall apply to the interpretation of any order made under section 49 as it applies to the interpretation of an Act of Parliament and for the purposes of section 38 of that Act any such order shall be deemed to be an Act of Parliament.]

Textual Amendments

F651 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

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Marginal Citations
M65 1889 c. 63.

[F652 Notices, authorisations and proof of documents]

Textual Amendments
F652 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

[F653 2 (1) A notice to be served on any person for the purposes of section 49, or of any order or direction made or given under that section, shall be deemed to have been duly served on the person to whom it is directed if—
(a) it is delivered to him personally; or
(b) it is sent by registered post or the recorded delivery service addressed to him at his last or usual place of abode or place of business.

(2) Where under section 49 and this Schedule a person has power to authorise other persons to act thereunder, the power may be exercised so as to confer the authority either on particular persons or on a specified class of persons.

(3) Any permit, licence, permission or authorisation granted for the purposes of section 49 may be revoked at any time by the authority or person empowered to grant it.

(4) Every document purporting to be an instrument made or issued by the Secretary of State or other authority or person in pursuance of section 49 and this Schedule or any provisions so having effect and to be signed by or on behalf of the Secretary of State, or that authority or person, shall be received in evidence and shall until the contrary is proved, be deemed to be an instrument made or issued by the Secretary of State, or that authority or person.

(5) Prima facie evidence of any such instrument as is described in sub-paragraph (4) may in any legal proceedings (including arbitrations) be given by the production of a document purporting to be certified to be a true copy of the instrument by or on behalf of the Secretary of State or other authority or person having power to make or issue the instrument.]

Textual Amendments
F653 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

[F654 Territorial extent]

Textual Amendments
F654 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

[F655 3 So far as any provisions contained in or having effect under section 49 and this Schedule impose prohibitions, restrictions or obligations on persons, those provisions apply to any persons in the United Kingdom and all persons on board

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any British ship or aircraft, not being an excepted ship or aircraft, and to all other persons, wherever they may be, who are ordinarily resident in the United Kingdom and who are citizens of the United Kingdom and Colonies or British protected persons.

In this paragraph—

"British aircraft" means an aircraft registered in—

(a) any part of her Majesty's dominions;

(b) any country outside Her Majesty's dominions in which for the time being Her Majesty has jurisdiction;

(c) any country consisting partly of one or more colonies and partly of one or more such countries as are mentioned in paragraph (b);

"British protected person"means the same as in **[**[F656]the British Nationality Act 1981**]**;

"excepted ship or aircraft" means a ship or aircraft registered in any country for the time being listed in **[**[F657]Schedule 3 to the British Nationality Act 1981**]** or in any territory administered by the government of any such country, not being a ship or aircraft for the time being placed at the disposal of, or chartered by or on behalf of, Her Majesty's Government in the United Kingdom.**]**

Textual Amendments

F655 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

F656 Words substituted by British Nationality Act 1981 (c. 61, SIF 87), **Sch. 7**

F657 Words substituted by British Nationality Act 1981 (c. 61, SIF 87), **Sch. 7**

[[F658]False documents and false statements]

Textual Amendments

F658 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

[[F659]4 (1) A person shall not, with intent to deceive—

(a) use any document issued for the purposes of section 49 and this Schedule or of any order made under that section;

(b) have in his possession any document so closely resembling such a document as is described in paragraph (a) as to be calculated to deceive;

(c) produce, furnish, send or otherwise make use of for purposes connected with that section and this Schedule or any order or direction made or given under that section, any book, account, estimate, return, declaration or other document which is false in a material particular.

(2) A person shall not, in furnishing any information for the purposes of section 49 and this Schedule or of any order made under that section, make a statement which he knows to be false in a material particular or recklessly make a statement which is false in a material particular.**]**

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Textual Amendments
F659 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

[F660 Restrictions on disclosing information]

Textual Amendments
F660 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

[F661 5 No person who obtains any information by virtue of section 49 and this Schedule shall, otherwise than in connection with the execution of that section and this Schedule or of an order made under that section, disclose that information except for the purposes of any criminal proceedings, or of a report of any criminal proceedings, or with permission granted by or on behalf of a Minister of the Crown.]

Textual Amendments
F661 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

[F662 Offences by corporations]

Textual Amendments
F662 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

[F663 6 Where an offence under this Schedule committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In this paragraph, the expression "director", in relation to a body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.]

Textual Amendments
F663 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

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[F664 Penalties]

Textual Amendments

F664 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

[F665 7 (1) If any person contravenes or fails to comply with any order made under section 49, or any direction given or requirement imposed under that section, or contravenes or fails to comply with this Schedule (except for paragraph 8(3) or paragraph 9(4)) he is, save as otherwise expressly provided, guilty of an offence.

(2) Subject to any special provisions contained in this Schedule, a person guilty of such an offence shall—

(a) on summary conviction, be liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding [F666 the statutory maximum], or to both; or

(b) on conviction on indictment, be liable to imprisonment for a term not exceeding 2 years or to a fine F667, or to both.]

(3 F668

Textual Amendments

F665 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

F666 "£100" substituted by Criminal Justice Act 1982 (c. 48, SIF 39:1), Sch. 15 para. 21(a), **Sch. 17 para. 18**

F667 Words repealed by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 80(2), **Sch. 16**

F668 Sch. 10 para. 7(3) repealed by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 16**

[F669 Production of documents]

Textual Amendments

F669 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

[F670 8 (1) For the purposes—

(a) of securing compliance with any order made or direction given under section 49 by or on behalf of the Secretary of State, or

(b) of verifying any estimates, returns or information furnished to the Secretary of State in connection with section 49 or any order made or direction given under that section,

an officer of the Secretary of State duly authorised in that behalf has power, on producing (if required to do so) evidence of his authority, to require any person carrying on an undertaking or employed in connection with an undertaking to produce to that officer forthwith any documents relating to the undertaking which that officer may reasonably require for the purpose set out in this paragraph.

(2) The power conferred by this paragraph to require any person to produce documents includes power—

(a) if the documents are produced, to take copies of them or extracts from them and to require that person, or where that person is a body corporate, any

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other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them;

(b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(3) If any requirement to produce documents or provide an explanation or make a statement which is imposed by virtue of this paragraph is not complied with, the person on whom the requirement was so imposed is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding **[**[F671]level 3 on the standard scale**]**, or to both.

Where a person is charged with such an offence in respect of a requirement to produce any document, it shall be a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirements.**]**

Textual Amendments

F670 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

F671 "£100" substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21), **ss. 289F**, 289G (as inserted by Criminal Justice Act 1982 (c.48, SIF 39:1), **s. 54**)

[[F672]9 (1) If a sheriff, magistrate or justice of the peace is satisfied, on information on oath laid on the Secretary of State's behalf, that there are any reasonable grounds for suspecting that there are on any premises any documents of which production has been required by virtue of paragraph 8 and which have not been produced in compliance with that requirement, he may issue a warrant under this paragraph.

A warrant so issued may authorise any constable, together with any other persons named in the warrant and any other constables—

(a) to enter the premises specified in the information (using such force as is reasonably necessary for the purpose); and

(b) to search the premises and take possession of any documents appearing to be such documents as are mentioned above, or to take in relation to any documents so appearing any other steps which may appear necessary for preserving them and preventing interference with them.

(2) Every warrant issued under this paragraph shall continue in force until the end of the period of one month after the date on which it is issued.

(3) Any documents of which possession is taken under this paragraph may be retained for a period of 3 months, or, if within that period there are commenced any proceedings for an offence under section 49 and this Schedule to which they are relevant, until the conclusion of those proceedings.

(4) Any person who obstructs the exercise of any right of entry or search conferred by virtue of a warrant under this paragraph, or who obstructs the exercise of any rights so conferred to take possession of any documents, is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding **[**[F673]level 3 on the standard scale**]**, or to both.**]**

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Textual Amendments

F672 Schedule 10 ceased to have effect (1.11.1999) by 1999 c. 8, **s. 38(5)**; S.I. 1999/2177, **art. 2(4)(a)**

F673 "£50" substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21), **ss. 289F**, 289G (as inserted by Criminal Justice Act 1982 (c.48, SIF 39:1), **s. 54**)

SCHEDULE 11

Sections 69—71.

ADDITIONAL PROVISIONS AS TO REGULATIONS FOR THE MAKING AND RECOVERY OF CHARGES

Regulations under section 69—charges for drugs, medicines or appliances, or pharmaceutical services

1 (1) No charge shall be made under section 69(1) in relation to the supply of drugs, medicines and appliances referred to in paragraph (a) of that subsection in respect of—

(a) the supply of any drug, medicine or appliance for a patient who is for the time being resident in hospital, or

(b) the supply of any drug or medicine **[**[F674] (otherwise than in accordance with section 17C arrangements)**]** for the treatment of venereal disease, or

(c) the supply of any appliance for a person who is under 16 years of age **[**[F675]or is under 19 years of age and is receiving qualifying full-time education, or**]**

(d) the replacement or repair of any appliance in consequence of a defect in the appliance as supplied,

[F676](2[F677]

Textual Amendments

F674 Words in Sch. 11 para. 1(1)(b) inserted (1.4.1998) by 1997 c. 46, s. 41(1), **Sch. 2 Pt. I para. 60**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

F675 Words from "or is under" to "education, or" substituted for words from "or is undergoing" to "school, or" by Health Services Act 1980 (c. 53), s. 26(2), **Sch. 5 Pt II para. 5**

F676 Words repealed by Social Security Act 1988 (c. 7, SIF 113:1), s. 16(2), **Sch. 5**

F677 Sch. 11 para. 1(2) repealed by Social Security Act 1988 (c. 7, SIF 113:1), s. 16(2), **Sch. 5**

Regulations under section 70—charges for dental or optical appliances

2 **[**[F678](1) The optical appliances referred to in section 70(1) are glasses and contact lenses, and the charge for glasses and contact lenses which that subsection authorises is a charge of such sum as may be determined by or in accordance with directions given by the Secretary of State.**]**

(2) Regulations may—

(a) vary the amount or maximum amount of any charge authorised by section 70(1) for any [F679] optical appliance, and this power includes power to direct that the charge shall not be payable; or

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(b) vary the descriptions of appliances for which any such charge is authorised;

and regulations made for the purposes of section 70(1) may be made so as to take effect—

(i) in the case of appliances supplied under this Act otherwise than under Part II, where the examination or testing of sight (otherwise than under that Part) leading to the supply of those appliances, or the first such examination or testing takes place on or after the date on which the regulations come into force;

(ii)

[F680](iii)

[F681](3) No charge shall be made under section 70(1) **[**[F682]or (1A)**]** in respect of any appliance supplied otherwise than under Part II to a patient for the time being resident in a hospital.

(4) No charge shall be made under section 70 **[**[F683](1A)**]** in respect of the supply of a dental appliance if at the relevant time the person for whom that appliance was supplied—

[[F684](a) was under **[**[F685]18**]** years of age or was under 19 years of age and receiving qualifying full-time education; or**]**

(b) was an expectant mother or had borne a child within the previous 12 months.

(5)

[F686](6) Regulations made with respect to any exemption under sub-paragraph (4) [F687] may provide that it shall be a condition of the exemption that such declaration is made in such form and manner, or such certificate or other evidence is supplied in such form and manner, as may be prescribed.

(7) **[**[F688]In sub-paragraph (4), "the relevant time" means—

(a) in relation to a dental appliance supplied otherwise than under Part II, the time of the examination leading to the supply of the appliance, or the first such examination;**]**

(b) in relation to a dental appliance supplied under Part II, the time of the making of the contract or arrangement in pursuance of which the appliance is supplied.

(8) References in section 70 and in this paragraph to the supply of appliances shall be construed as including references to their replacement **[**[F689]and, in the case of dentures, to their being relined or adjusted or having additions made to them**]** but no charge shall be made under those provisions in respect of the replacement of dentures [F690] if the replacement is required in consequence of loss or damage.

Textual Amendments

F678 Sch. 11 para. 2(1) substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), **Sch. 2 para. 15(1)**

F679 Words repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

F680 Sch. 11 para. 2(2)(ii) repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

F681 Sch. 11 para. 2(2)(iii) repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**

F682 "or (1A)" inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), **Sch. 2 para. 15(2)**

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F683 "(1A)" substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), **Sch. 2 para. 15(3)**
F684 Para. 2(4)(a) substituted by Health Services Act 1980 (c. 53), s. 26(2), **Sch. 5 Pt. II para. 6(3)**
F685 "18" substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 11(8)**
F686 Sch. 11 para. 2(5) repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**
F687 Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**
F688 Sch. 11 para. 2(7)(*a*) and preceding words substituted by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 1(7), **Sch. 1 Pt. II para. 6**
F689 Words inserted by Health Services Act 1980 (c. 53), s. 26(2), **Sch. 5 Pt. II para. 6(5)**
F690 Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**

[F6912A(1) It shall be the duty of the Secretary of State to provide by regulations for payments to be made by him or by a Health Board to meet, or to contribute towards, the cost incurred (whether by way of charge under this Act or otherwise) for the supply of optical appliances for which a prescription has been given in consequence of a testing of sight under this Act—

(a) for a child;

(b) for a person whose resources fall to be treated under the regulations as being less than his requirements; or

(c) for a person of such other description as may be prescribed **[F692**or for which a prescription has been given for a person such as is mentioned in paragraph (a), (b) or (c) above in consequence of a testing of sight (not being a testing of sight under this Act) which took place in prescribed circumstances**]**.

(2) In sub-paragraph (1) (above) "child" means—

(a) a person who is under the age of 16 years; or

(b) a person who is under the age of 19 years and receiving qualifying full-time education.

[The Secretary of State may by regulations—

F693(3) (a) **F694**. . . . . .

(b) provide for payments to be made by him or by a Health Board to meet, or to contribute towards, any cost accepted by him or by the Board as having been incurred (whether by way of charge under this Act or otherwise) for the replacement or repair in prescribed circumstances of optical appliances for which a prescription was given in consequence of a testing of the sight of a person of a prescribed description; and

(c) direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this sub-paragraph, give any such direction as to how they are to be calculated as may be given by regulations under section 75A(3).

(3A) Descriptions of persons may be prescribed under this paragraph by reference to any criterion and, without prejudice to the generality of this sub-paragraph, by reference to any of the criteria specified in section 75A(2).

(3B) Subsection (4) of section 75A shall have effect in relation to regulations under this paragraph as it has effect in relation to regulations under that section.**]**

(4) If regulations under this paragraph provide for payments to be made by a Health Board, it shall be the duty of the Secretary of State to pay to the Board, in respect of each financial year, the sum attributable to the Board's disbursements under the regulations.

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(5) Sums falling to be paid in pursuance of regulations made under this paragraph shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the Secretary of State may determine.**]**

Textual Amendments

F691 Sch. 11 para. 2A inserted by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 1(7), **Sch. 1 Pt. II para. 7**

F692 Words added after paragraph (c) of sub-paragraph (1) by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 13(2)**

F693 Paragraphs (3)–(3B) substituted for paragraph (3) by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 13(5)**

F694 Sch. 11 para. 2A(3)(a) repealed (7.3.2006 for certain purposes, otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 13(3)**, 43(3); S.S.I. 2005/492, **art. 3(e)** Sch. 3; S.S.I. 2006/121, **art. 3(a)**, Sch. 1

Regulations under section 71—charges for dental treatment

3 (1)

F695(2) Regulations may vary the amount or the maximum amount of any charge authorised by section 71(1), and this power includes power to direct that the charge shall not be payable.

(3) Where any services in respect of which a charge is payable under section 70 are provided in pursuance of the contract or arrangement, the charges payable under that section and section 71(1) in respect of all services provided in pursuance of the contract or arrangement shall not exceed a prescribed sum in the aggregate.

(4) No charge shall be made under section 71(1) in respect of services provided for any person who, on the date of the contract or arrangement for the services—

[F696(a) was under 18 years of age or was under 19 years of age and receiving qualifying full-time education, or**]**

(c) was an expectant mother or had borne a child within the previous 12 months,

F697(5) Regulations **[**F698made with respect to any exemptions under sub-paragraph (4)**]**

may provide that it shall be a condition of the exemption that such declaration is made in such form and manner, or such certificate or other evidence is supplied in such form and manner, as may be prescribed.

Textual Amendments

F695 Sch. 11 para. 3(1) repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

F696 Words substituted by Health Services Act 1980 (c. 53), s. 26(2), **Sch. 5 Pt. II para. 7(2)**.

F697 Words repealed by Health Services Act 1980 (c. 53), s. 26(2), **Sch. 5 Pt. II para. 7(2)**

F698 Words substituted by Health Services Act 1980 (c. 53), s. 26(2), **Sch. 5 Pt. II para. 7(3)**

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Miscellaneous Provisions

4 For the purposes of section 39(2) (which provides for the Secretary of State to arrange for the free medical treatment of certain pupils) any charge made in pursuance of regulations under this Act in respect of the supply of drugs, medicines or appliances shall be disregarded.

5 Regulations may provide for the remission or repayment of any charges which, in pursuance of section 70(1) or section 71(1), are payable apart from this paragraph by a person whose income as calculated in accordance with regulations is at less than the prescribed rate, in respect of the supply or replacement of dental [F699] appliances or in respect of services provided as part of the general dental services.

Textual Amendments

F699 Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**

6 For the purposes of sections 69 and 70 and of this Schedule, a bridge, whether fixed or removable, which takes the place of any teeth shall be deemed to be a denture having that number of teeth; [F700]

Textual Amendments

F700 Words repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

[[F701]7 References in this Schedule to qualifying full-time education mean full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State, and for the purposes of such references—

(a) "recognised educational establishment" means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university; and

(b) regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.]

Textual Amendments

F701 Para. 7 inserted by Health Services Act 1980 (c. 53), s. 26(2), **Sch. 5 Pt. II para. 8**

SCHEDULE 12

Section 76.

INQUIRIES

1 The Secretary of State shall appoint a person to hold the inquiry and to report thereon to him.

2 The Secretary of State or the person appointed to hold the inquiry shall send to any person who appears to them to be interested, notification of the time when and the place where the inquiry is to be held.

3 The person appointed to hold the inquiry may by notice require any person—

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(a) to attend at the time and place set forth in the notice, to give evidence or to produce any books or documents in his custody or under his control which relate to any matter in question at the inquiry; or

(b) to furnish within such reasonable period as is specified in the notice such information relating to any matter in question at the inquiry as the person appointed to hold the inquiry may think fit, and as the person so required is able to furnish; but—

(i) no person shall be required in obedience to such a notice to attend at any place which is more than 10 miles from the place where he resides unless the necessary expenses are paid or tendered to him; and

(ii) nothing in this paragraph shall empower the person appointed to hold the inquiry to require any person to produce any book or document or to answer any question which he would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.

4 The person appointed to hold the inquiry may administer oaths and examine witnesses on oath, and may accept in lieu of evidence on oath by any person a statement in writing by that person.

5 Any person who refuses or wilfully neglects to attend in obedience to a notice under paragraph 3, or to give evidence, or who wilfully alters, suppresses, conceals, destroys or refuses to produce any book or document which he may be required by any such notice to produce, or who refuses or wilfully neglects to furnish any information which he is required to furnish under sub-paragraph (b) of paragraph 3, shall be liable on summary conviction to a fine not exceeding **[**[F702]level 1 on the standard scale**]** or to imprisonment for a period not exceeding 3 months.

Textual Amendments

F702 Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21), **ss. 289F**, 289G (as inserted by Criminal Justice Act 1982 (c.48), **s. 54**)

6 The expenses incurred by the Secretary of State in relation to any inquiry held under this Act (including a reasonable sum for the services of any officer engaged in the inquiry) shall be paid by such of the parties to the inquiry in such proportions as the Secretary of State may order.

7 The Secretary of State may make orders as to the expenses incurred by the parties appearing at any such inquiry and as to the parties by whom such expenses shall be paid.

8 Any order by the Secretary of State under paragraph 6 or paragraph 7 may be enforced in like manner as a recorded decree arbitral.

SCHEDULE 13

Section 79.

ACQUISITION OF PROPERTY OTHER THAN LAND

1 Where under this Act, in connection with the acquisition of any premises, the Secretary of State proposes to acquire any equipment, furniture or other moveable

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property used in or in connection with the premises, he may, at any time after the acquisition of the premises (in the case of acquisition by agreement) or at any time after the service of a notice to treat (in the case of a compulsory acquisition of premises), serve a notice on the owner of the premises specifying the property proposed to be acquired and specifying the time within which and the manner in which any objection to such acquisition may be made.

2 If any objection is duly made the Secretary of State shall afford to the said owner an opportunity of appearing before, and being heard by, a person appointed by him for the purpose; and after considering any such objection and the report of the person so appointed by him, the Secretary of State shall either withdraw the notice aforesaid or serve upon the owner a notice confirming that notice.

3 The property with respect to which a notice is served under paragraph 1 and is not withdrawn shall—

(a) if no objection is duly made to the notice, vest in the Secretary of State at the expiration of the time for making such an objection;

(b) if such an objection is duly made and the notice is confirmed by a notice served under paragraph 2, vest in the Secretary of State on the service of the last mentioned notice;

and shall in each case vest free of any pledge, lien or right in security.

4 Where any property is acquired in accordance with this Schedule there shall be paid by way of compensation to the owner of the property concerned a sum equal to the price which he might reasonably have been expected to have obtained upon a sale of the property effected by him immediately before the acquisition of the property by the Secretary of State; and any dispute as to the amount of such compensation shall be determined by arbitration; and the compensation shall accrue due at the time when the property vested in the Secretary of State.

5 Where property in respect of which compensation is payable as aforesaid was, immediately before the acquisition thereof by the Secretary of State, in the possession of some person by virtue of a hire purchase agreement, that person may, by a notice served on the Secretary of State, make a claim to have apportioned to him such part of the compensation as may be specified in his claim; and in default of agreement between the parties the claim shall be determined by arbitration, and the arbiter may apportion the compensation between the owner and the other person in such manner as appears to him to be just.

6 Any such compensation shall carry interest, as from the time when it accrues due until payment, at such rate as the Treasury may from time to time by order prescribe.

7 Where any sum by way of compensation is paid in accordance with this Schedule in respect of any property and, at the time when the compensation accrues due, the property is subject to any pledge, lien or right in security, the sum so paid shall be deemed to be subject to that pledge, lien or right.

[F703]SCHEDULE 14

Section 93.

. . . . . .

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Textual Amendments

F703 Sch. 14 repealed (5.2.1994) by 1993 c. 46, ss. 20, 22(4), **Sch. 3** (with s. 3(4)).

SCHEDULE 15

Section 109.

TRANSITIONAL PROVISIONS AND SAVINGS

General

1 (1) In so far as—

(a) any agreement, appointment, apportionment, authorisation, determination, scheme, instrument, order or regulation made by virtue of an enactment repealed by this Act, or

(b) any approval, consent, direction, or notice given by virtue of such an enactment, or

(c) any complaint made or investigation begun by virtue of such an enactment, or

(d) any other proceedings begun by virtue of such an enactment, or

(e) anything done or having effect as if done,

could, if a corresponding enactment in this Act were in force at the relevant time, have been made, given, begun or done by virtue of the corresponding enactment, it shall, if effective immediately before the corresponding enactment comes into force, continue to have effect thereafter as if made, given, begun or done by virtue of that corresponding enactment.

(2) Where—

(a) there is any reference in this Act (whether express or implied) to a thing done or required or authorised to be done, or to a thing omitted, or to an event which has occurred, under or for the purposes of or by reference to or in contravention of any provisions of this Act, then,

(b) that reference shall be construed (subject to its context) as including a reference to the corresponding thing done or required or authorised to be done, or omitted, or to the corresponding event which occurred, as the case may be, under or for the purposes of or by reference to or in contravention of any of the corresponding provisions of the repealed enactments.

2 Where any enactment passed before the commencement of this Act, or any instrument or document, refers either expressly or by implication to an enactment repealed by this Act, the reference shall (subject to its context) be construed as or as including a reference to the corresponding provision of this Act.

3 Where any period of time specified in an enactment repealed by this Act is currrent at the commencement of this Act, this Act has effect as if its corresponding provision had been in force when that period began to run.

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Section 37 of the National Health Service (Scotland) Act 1947

4 Notwithstanding the repeal by this Act of section 37 of the [M69]National Health Service (Scotland) Act 1947 (compensation for loss of right to sell a medical practice) that section shall continue to have such effect as may be necessary for the purposes of sections 1 to 7 of the [M70]National Health Service (Amendment) Act 1949.

The saving made by this paragraph applies to section 51 of the [M71]National Health Service Reorganisation Act 1973 (which amended section 37 of the National Health Service (Scotland) Act 1947), and to any regulations made under that section 37 which were in force immediately before the coming into force of this Act.

Marginal Citations

M69 1947 c. 27.
M70 1949 c. 93.
M71 1973 c. 32.

Persons authorised to provide pharmaceutical services

5 A person who for three years immediately before 16th December 1911 acted as a dispenser to a medical practitioner or a public institution is in the same position in relation to the undertaking referred to in section 28(2) regarding the dispensing of medicines as a registered pharmacist.

Disqualification of practitioners

6 Where by virtue of section 43(8) of the National Health Service (Scotland) Act 1947 a person's name was disqualified for inclusion in any list referred to in section 43(1) of that Act, that person's name is disqualified for inclusion in any list referred to in section 29(1), until such time as **[**[F708]the Tribunal direct**]** to the contrary.

Textual Amendments

F708 Words in Sch. 15 para. 6 substituted (1.1.1996) by 1995 c. 31, **s. 10(2)**; S.I. 1995/3214, art. 2(1), **Sch.** (with art. 3)

Section 4 of the Health Services and Public Health Act 1968

7 An undertaking given before the coming into force of section 4(1) of the [M72]Health Services and Public Health Act 1968 in respect of payment under section 4 of the [M73]National Health Service (Scotland) Act 1947 (accommodation available on part payment) continues to have the same effect as it had immediately before the coming into force of this Act.

Marginal Citations

M72 1968 c. 46.
M73 1947 c. 27.

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Changes to legislation: *National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Compensation of officers

8 Notwithstanding the repeal by the [M74]National Health Service (Scotland) Act 1972 of section 67 of the said Act of 1947, regulations made under paragraphs (c) to (e) of subsection (1) of that section shall continue to have effect until revoked by regulations under this Act.

Marginal Citations

M74 1972 c. 58.

Vehicles under section 33 of the Health Services and Public Health Act 1968

9 The provision of vehicles as mentioned in section 33 of the [M75]Health Services and Public Health Act 1968, and the taking of any such action as is mentioned in subsection (2) of that section, shall for the purposes of the [M76]National Health Service (Scotland) Act 1947 be treated as having been included among hospital and specialist services provided under Part II of that Act of 1947 as from its commencement.

Marginal Citations

M75 1968 c. 46.
M76 1947 c. 27.

Saving of amendments

10 Notwithstanding the repeal by this Act of sections 53 and 74 and Part I of Schedule 11 to the National Health Service (Scotland) Act 1947, and section 64(1) and Schedule 6 to the National Health Service (Scotland) Act 1972 and section 57(1) and Schedule 4 to the [M77]National Health Service Reorganisation Act 1973—

(a) the amendments made by Part I of Schedule 11 to that Act of 1947 to the [M78]Public Health (Scotland) Act 1897, and

(b) the amendments made by section 53 and paragraphs 37 to 77, **[**[F709]82**]**, 83(a), 84 to **[**[F710]92**]**, [F711]. . . 95 to 97, 101, **[**[F712]102**]**, 104 to 107(a), 108 to 115, 117, 119 to 122, [F713] 129, **[**[F714]135(b) to (c)**]**, 136(b), 138 to 140, 150, 152(b), **[**[F715]155**]** to 156A of Schedule 6 to that Act of 1972, and

(c) the amendments made by paragraphs [F716] 69(2), 82, 96, 102, 106, 109, 123, 128, 130, 133, 134, 140 and 141 of Schedule 4 to that Act of 1973,

shall continue to have the same effect as they had immediately before the coming into force of this Act, subject to any amendments made under this Act.

Textual Amendments

F709 "82" repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

F710 Words in Sch. 15 para. 10(b) substituted (6.1.1997) by S.I. 1996/3097, **arts. 1**, 3(2)

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F711 Words in Sch. 15 para. 10(b) repealed (28.6.1995 for certain purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5(1)(2), Sch. 1 Pt. III para. 102(8)(a), **Sch. 3** (with Sch. 2 para. 6)
F712 "102" repealed by Mental Health Act 1983 (c. 20, SIF 85), ss. 131(1), 148(3), **Sch. 6**
F713 Words repealed by Education (Scotland) Act 1980 (c. 44), **Sch. 5**
F714 Words in Sch. 15 para. 10(b) substituted (28.6.1995 for certain purposes and 1.4.1996 for all other purposes) by 1995 c. 17, ss. 2(1)(3), **Sch. 1 Pt. III para. 102(8)(b)** (with Sch. 2 para. 6)
F715 Word substituted by Education (Scotland) Act 1980 (c. 44), **Sch. 4 para. 19**
F716 Word repealed by Reserve Forces Act 1980 (c. 9), **Sch. 10 Pt. II**

Marginal Citations
M77 1973 c. 32.
M78 1897 c. 38.

Transfer of property of voluntary organisations

11 Notwithstanding the repeal by this Act of section 23(2) of the [M79]National Health Service (Amendment) Act 1949, section 23(1) of that Act shall be deemed to have had effect as from 5th July 1948.

Marginal Citations
M79 1949 c. 93.

Investigations by the Health Service Commissioner for Scotland

[F717]12 . . . . . .

Textual Amendments
F717 Sch. 15 para. 12 repealed (5.2.1994) by 1993 c. 46, ss. 20, 22(4), **Sch. 3** (with s. 3(4)).

Permission deemed to have been granted under section 9(5) of the Health Services Act 1976

13 Where under any arrangements terminated by virtue of section 9(5) of the [M80]Health Services Act 1976—

(a) a person was deemed to have been granted under that section permission to use accommodation and facilities to the same extent and for the same purposes as were covered by those arrangements, then

(b) that person shall be deemed to have been granted under section 64 of **[**[F718]this Act**]** the like permission (and the provisions of that section shall apply accordingly).

Textual Amendments
F718 Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 10**

Marginal Citations
M80 1976 c. 83.

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Borrowing from the Hospital Trust by Boards of Management and Regional Hospital Boards

14 Notwithstanding the repeal by this Act of the provisions of section 6(2) and (3) of the [M81]Hospital Endowments (Scotland) Act 1971 relating to borrowings from relevant endowments by Boards of Management and Regional Hospital Boards, regulations made under that section shall continue to have effect until revoked by regulations under this Act.

Marginal Citations

M81 1971 c. 8.

Health functions of local authorities

[[F719]15 Notwithstanding the repeal by this Act of section 27 of the [M82]National Health Service (Scotland) Act 1947 (functions of local authorities relating to the prevention of illness, care and after-care), that section shall continue to have the same effect for the purposes of section 1(4) of the [M83]Social Work (Scotland) Act 1968 as it had immediately before the coming into force of this Act.**]**

Textual Amendments

F719 Sch. 15 para. 15 repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

Marginal Citations

M82 1947 c. 27.

M83 1968 c. 49.

SCHEDULE 16

CONSEQUENTIAL AMENDMENTS OF ENACTMENTS

Modifications etc. (not altering text)

C160 The text of Sch. 16 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

The [M84] Polish Resettlement Act 1947

Marginal Citations

M84 1947 c. 19.

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
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1 In section 11(3)(*b*) (application to Scotland), for the words "the National Health Service (Scotland) Acts 1947 to 1972" substitute the words "the National Health Service (Scotland) Act 1978".

The [M85] Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947

Marginal Citations
M85 1947 c. 42.

2 In section 1(1)(*d*) (compulsory purchase of land by the Secretary of State), for the words ":58 of the National Health Service (Scotland) Act 1972" substitute the words "79 of the National Health Service (Scotland) Act 1978".

The [M86] National Assistance Act 1948

Marginal Citations
M86 1948 c. 29.

3 (1) In section 47 (removal of persons in need of care)—
(a) in subsection (8), for the words "Acts 1947 to 1972" substitute the words "Act 1978";
(b) in subsection (10), for the words "section sixteen of the National Health Service (Scotland) Act 1947" substitute the words " section 45 of the National Health Service (Scotland) Act 1978" and for the word "sixteen" substitute the word "45".

(2) In section 64 (interpretation), in the definition of "hospital", for the words "eighty" and "1947" substitute the words "108" and "1978" respectively;

[F720](3) . . . . . .

Textual Amendments
F720 Sch. 16 para. 3(3) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6)

The [M87] Law Reform (Personal Injuries) Act 1948

Marginal Citations
M87 1948 c. 41.

4 In seciton 2(4) (measure of damages), for the words "National Health Service (Scotland) Act 1947" substitute the words "National Health Service (Scotland) Act 1978".

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The [M88] Children Act 1948

Marginal Citations
M88 1948 c. 43.

5 In section 59(1) (interpretation), in the definition of "hospital", for the words "section eighty of the National Health Service (Scotland) Act 1948" substitute the words "section 108(1) of the National Health Service (Scotland) Act 1978".

The [M89] Nurseries and Child Minders Regulation Act 1948

Marginal Citations
M89 1948 c. 53.

[F721]6 . . . . . .

Textual Amendments
F721 Sch. 16 para. 6 repealed (5.11.1993) by 1993 c. 50, s.1(1), **Sch. 1 Pt. VIII**.

The [M90] Nurses (Scotland) Act 1951

Marginal Citations
M90 1951 c. 55.

[F722]7 . . . . . .

Textual Amendments
F722 Sch. 16 para. 7 repealed (1.4.2002) by 2001 asp 8, s. 80(1), **Sch. 4**; S.S.I. 2002/162, **art. 2(g)(i)**

The [M91] Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951

Marginal Citations
M91 1951 c. 65.

[F723]8 . . . . . .

Textual Amendments
F723 Sch. 16 para. 8 repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6)

9 . . . . . [F724]

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments
F724 Sch. 16 para. 9 repealed by Medical Act 1983 (c. 54, SIF 83:1), ss. 54, 56(2), **Sch. 7 Pt. I**

10 . . . . . F725

Textual Amendments
F725 Sch. 16 para. 10 repealed by Dentists Act 1984 (c. 24, SIF 83:1), s. 54(2)(3), **Sch. 6 Pt. I**

11 . . . . . F726

Textual Amendments
F726 Sch. 16 para. 11 repealed by Opticians Act 1989 (c. 44, SIF 83:1), s. 37(4), **Sch. 2**

12, 13. . . . . F727

Textual Amendments
F727 Sch. 16 paras. 12, 13 repealed by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), ss. 17(2), 127(1)(2), Sch. 4 para. 4, **Sch. 5**

The M92 Public Bodies (Admission to Meetings) Act 1960

Marginal Citations
M92 1960 c. 67.

14 In paragraph (2) of the Schedule (bodies to which Act applies), in sub-paragraph (*d*), for the words "1972" substitute the words " 1978".

15—18. . . . . F728

Textual Amendments
F728 Sch. 16 paras. 15–18 repealed by Education (Scotland) Act 1980 (c. 44), **Sch. 5**

19 . . . . . F729

Textual Amendments
F729 Sch. 16 para. 19 repealed by Statute Law (Repeals) Act 1986 (c. 12) s. 1(1), Sch. 1 Pt. VIII

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
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The [M93] Redundancy Payments Act 1965

Marginal Citations
M93 1965 c. 62.

20 In Schedule 3 (National Health Service Employers), in paragraph 7, for the words "section 13(8) of the National Health Service (Scotland) Act 1972" substitute the words "section 2(11) of the National Health Service (Scotland) Act 1978".

The [M94] National Health Service 1966

Marginal Citations
M94 1966 c. 8.

21 . . . . . [F730]

Textual Amendments
F730 Sch. 16 para. 21 repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

[F731]22 . . . . . .

Textual Amendments
F731 Sch. 11 para. 22 repealed (1.10.1999) by 1999 c. 8, s.65, **Sch. 5**; S.S.I. 1999/90, art. 2(c), Sch. 1, **Sch. 2**

23 In section 11, for words "1947" substitute the words "1978".

The [M95] Superannuation (Miscellaneous Provisions) Act 1967

Marginal Citations
M95 1967 c. 28.

24 In section 7(5) (superannuation provisions of the National Health Service Acts), for the words "Acts 1947 to 1972" substitute the words "Act 1978".

25 . . . . . [F732]

Textual Amendments
F732 Ss. 16(3), 20(2), 51, 52, 59–63, 65–68, 96(2), Sch. 16 paras. 25, 43 repealed by Health Services Act 1980 (c. 53), **Sch. 7**

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
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The [M96] Health Services and Public Health Act 1968

Marginal Citations
M96 1968 c. 46.

26 (1) In section 59(2) (extension of power), for the words "IV" and "1947" substitute the words "II" and "1978" respectively.

(2) In section 63 (provision of instruction for employees)—
(a) in subsection 2(*d*), for the words "IV" and "1947" substitute the words "II" and "1978" respectively;
(b) in subsection (8), in paragraph (*b*) of the definition of "the relevant enactmetns", for the words "section 6 of the Natioanl Haelth Service (Scotland) Act 1972" substitute the words "section 39 of the National Health Service (Scotland) Act 1978".

27 In section 64 (financial assistance to voluntary organisations)—
(a) in subsection (4)(*a*), for the words "1972" substitute the words "1978";
(b) in subsection (4)(*b*), for the words "IV" and "1947" substitute the words "II" and "1978".

28 In section 65(6) (assistance by local authorities to voluntary organisations), in paragraph (*c*) of the substituted subseciton (2B), for the words "1947 to 1972" substitute the words "1978".

The [M97] Social Work (Scotland) Act 1968

Marginal Citations
M97 1968 c. 49.

29 (1) In section 60(1)(*f*) (control of certain establishments), for the words "1947 or the National Health Service (Scotland) Act 1972" substitute the words "1978".

(2) In section 86(3) for the words "Part II of the |National Health Service (Scotland) Act 1947" substitute the wprds "Part II of the National Health Service (Scotland) Act 1978".

(3) In section 94(1), in the definition of "hospital", for the words "1947" substitute the words "1978".

The [M98] Medicines Act 1968

Marginal Citations
M98 1968 c. 67.

30 In section 131(5) (meaning of certain expressions), for the words "Acts 1947 to 1972" substitute the words "Act 1978".

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31 In section 132(1) (interpretation), in the definition of "health centre", for the words "section 2 of the National Health Service (Scotland) Act 1972" substitute the words "section 36 of the National Health Service (Scotland) Act 1978".

The [M99] Post Office Act 1969

Marginal Citations
M99 1969 c. 48.

[F733]32 . . . . . .

Textual Amendments
F733 Sch. 16 para. 32 repealed (26.3.2001 subject to art. 1(3) of the amending S.I.) by S.I. 2001/1149, art. 3(2), **Sch. 2** (with art. 4(11))

The [M100] Chronically Sick and Disabled Persons Act 1970

Marginal Citations
M100 1970 c. 44.

33 In section 17(1) (separation of younger from older patients), for the words "1972" substitute the words "1978".

34 . . . . . [F734]

Textual Amendments
F734 Sch. 16 para. 34 repealed by Finance Act 1980 (c. 48), **Sch. 20 Pt. III**

The [M101] Tribunals and Inquiries Act 1971

Marginal Citations
M101 1971 c. 62.

[F735]35 . . . . . .

Textual Amendments
F735 Sch. 16 para. 35 repealed (1.10.1992) by Tribunals and Inquiries Act 1992 (c. 53), ss. 18(2), 19(2), **Sch. 4 Pt. I**

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
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The [M102] Finance Act 1971

Marginal Citations
M102 1971 c. 68.

36 In Schedule 13 (health service agreement) in paragraph 1(1) for the words "1947" substitute the words "1978".

37 . . . . . [F736]

Textual Amendments
F736 Sch. 16 para. 37 repealed by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844(4), **Sch. 31**

The [M103] Local Goverment (Scotland) Act 1973

Marginal Citations
M103 1973 c. 65.

38 In section 197 (inspection of documents) for the words "1972" substitute the words "1978".

The [M104] Trade Union and Labour Relations Act 1974

Marginal Citations
M104 1974 c. 52.

[F737]39 . . . . . .

Textual Amendments
F737 Sch. 16 para. 39 repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, **Sch.1**

The [M105] Social Security Act 1975

Marginal Citations
M105 1975 c. 14.

[F738]40 . . . . . .

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F738 Sch. 16 para. 40 repealed (6.4.1992) by Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21, SIF 113:1), s. 10, **Sch.4** ; S.I. 1991/2617, **art. 2(f)**
Sch. 16 para. 40 expressed to be repealed (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 3, 7(2), **Sch.1** (subject as mentioned (6.3.1992) in Local Government Finance Act 1992 (c. 14), **s. 118(5)(7)** (with s. 118(1)(2)(4))).

The [M106] Criminal Procedure (Scotland) Act 1975

Marginal Citations

M106 1975 c. 21.

[F739]41 . . . . . .

Textual Amendments

F739 Sch. 16 para. 41 repealed (1.4.1996) by 1995 c. 40, **ss. 6**, 7(2) Sch. 5 (with Sch. 3)

The [M107] House of Commons Disqualification Act 1975

Marginal Citations

M107 1975 c. 24.

42 In Schedule 1 in Part II (bodies of which all members are disqualified), in the entry relating to the Medical Practices Committee for the words “section 35 of the National Health Service (Scotland) Act 1947" substitute the words “section 3 of the National Health Service (Scotland) Act 1978".

43 . . . . . [F740]

Textual Amendments

F740 Ss. 16(3), 20(2), 51, 52, 59–63, 65–68, 96(2), Sch. 16 paras. 25, 43 repealed by Health Services Act 1980 (c. 53), **Sch. 7**

44 . . . . . [F741]

Textual Amendments

F741 Sch. 16 para. 44 repealed by Social Security Act 1990 (c. 27, SIF 113:1), s. 21(1)(2), Sch. 6 para. 14, **Sch. 7**

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The [M108] Patents Act 1977

Marginal Citations
M108 1977 c. 37.

45 In section 56(4), in paragraph (*a*), for the words "Part IV of the National Health Service (Scotland) Act 1947" substitute the words "Part II of the National Health Service (Scotland) Act 1978"

SCHEDULE 17

REPEALS

Modifications etc. (not altering text)
C161 The text of Sch. 17 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Chapter	Short Title	Extent of Repeal
10 & 11 Geo. 6. c. 27.	The National Health Service (Scotland) Act 1947.	The whole Act.
12, 13 & 14 Geo. 6. c. 93.	The National Health Service (Amendment) Act 1949.	Section 8.
		Sections 10 and 11.
		Sections 14 to 18.
		Sections 20(1), (3) and 21.
		Sections 23 and 28.
		In section 32(1), the words "and this Act" where they second occur to "1947 and 1949".
		In the Schedule, Part II.
14 & 15 Geo. 6. c. 31.	The National Health Service Act 1951.	The whole Act.
15 & 16 Geo. 6 & 1 Eliz. 2. c. 25.	The National Health Service Act 1952.	The whole Act.
1 & 2 Eliz. 2. c. 41.	The Hospital Endowments (Scotland) Act 1953.	The whole Act.
9 & 10 Eliz. 2. c. 19.	The National Health Service Act 1961.	The whole Act.

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
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1964 c. 60	The Emergency Laws (Re-enactments and Repeals) Act 1964.	Section 5.
		In section 15, the words “the National Health Service (Scotland) Acts 1947 to 1972".
1966 c. 8.	The National Health Service Act 1966.	In section 12(2), from the words “so far as" where they second occur to the end.
1968 c. 46.	The National Health Services and Public Health Act 1968.	In section 63(8), in paragraph (*b*) of “the relevant enactments", the words “the 1947 Act".
		In section 64(4), in the substituted paragraph (*a*), the words “the National Health Service (Scotland) Act 1947".
		In section 79(1), from the words “and the" where they second occur to the words “1947 to 1968".
		In Schedule 2, Part II.
		In Schedule 3, Part I.
1968 c. 67.	The Medicines Act 1968.	In Schedule 5, paragraph 12.
1971 c. 8.	The Hospital Endowments (Scotland) Act 1971.	The whole Act.
1972 c. 58.	The National Health Service (Scotland) Act 1972.	The whole Act except sections 24(2), 26 to 28, 32 to 36, 52, 53, 61(1)-(3), and Schedule 4.
1973 c. 32.	The National Health Service Reorganisation Act 1973.	The whole Act.
1976 c. 48	The Parliamentary and other Pensions and Salaries Act 1976.	Section 7.
1976 c. 59.	The National Health Service (Vocational Training) Act 1976.	The whole Act.
1976 c. 83.	The Health Services Act 1976.	Section 2.
		Sections 4 and 5.
		Sections 7 to 11.

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

	In section 23 subsections (3) and (4).
	In Schedule 1, Part VI.
	Schedule 3.
	In Schedule 4, Part II.

Status:
Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:
National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 22 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.