



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART I

#### ORGANISATION

#### *[<sup>F1</sup>Inspections*

#### Textual Amendments

- F1** [S. 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) 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

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

- [<sup>F2</sup>(1) HIS may inspect any service provided under the health service—
- (a) in pursuance of its general duty of furthering improvement in the quality of health care in Scotland, or
  - (b) for any of the purposes mentioned in subsection (1B).]

[ Where a service provided under the health service and social services are provided <sup>F3</sup>(1A) by virtue of an integration scheme approved under section 7 of the Public Bodies (Joint Working) (Scotland) Act 2014 (“the 2014 Act”), HIS may inspect the planning, organisation or co-ordination of those services for any of the purposes mentioned in subsection (1B).

(1B) The purposes are—

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- (a) reviewing and evaluating the extent to which the service is complying with the integration delivery principles and contributing to achieving the national health and wellbeing outcomes,
  - (b) reviewing and evaluating the extent to which the planning, organisation or co-ordination of services provided under the health service and social services is complying with the integration delivery principles and contributing to achieving the national health and wellbeing outcomes,
  - (c) reviewing and evaluating the effectiveness of a strategic plan prepared under section 29 of the 2014 Act in complying with the integration delivery principles and contributing to achieving the national health and wellbeing outcomes,
  - (d) encouraging improvement in the extent to which implementation of a strategic plan prepared under section 29 of the 2014 Act complies with the integration delivery principles and contributes to achieving the national health and wellbeing outcomes, and
  - (e) 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.]
- (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.

[ In this section—

- <sup>F4</sup>(3) “ integration delivery principles ” has the meaning given by section 31 of the 2014 Act;
- “ national health and wellbeing outcomes ” has the same meaning as in section 5(1) of the 2014 Act;
- “ social services ” has the meaning given by section 46 of the Public Services Reform (Scotland) Act 2010. ]

#### Textual Amendments

- F2** S. 10I(1) substituted (22.9.2014) by [Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(asp 9\)](#), **ss. 55(2)(a)**, 72(2); S.S.I. 2014/231, art. 2
- F3** S. 10I(1A)(1B) inserted (22.9.2014) by [Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(asp 9\)](#), **ss. 55(2)(b)**, 72(2); S.S.I. 2014/231, art. 2
- F4** S. 10I(3) inserted (22.9.2014) by [Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(asp 9\)](#), **ss. 55(2)(c)**, 72(2); S.S.I. 2014/231, art. 2

## 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.
- [ where services provided by an independent health care service and social services are provided in pursuance of an integration scheme approved under section 7 of the [Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#) (“ the 2014 Act ”), the planning, organisation or co-ordination of those services. ]
- <sup>F5</sup>(c)
- (2) The purposes of an inspection under [<sup>F6</sup>subsection (1)(a) or (b)] may include—

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- (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.
- <sup>F7</sup>(f) [ reviewing and evaluating the extent to which the independent health care service is complying with the integration delivery principles and contributing to achieving the national health and wellbeing outcomes,
- (g) reviewing and evaluating the extent to which the planning, organisation or co-ordination of services provided by an independent health care service and social services is complying with the integration delivery principles and contributing to achieving the national health and wellbeing outcomes,
- (h) reviewing and evaluating the effectiveness of a strategic plan prepared under section 29 of the 2014 Act in complying with the integration delivery principles and contributing to achieving the national health and wellbeing outcomes,
- (i) encouraging improvement in the extent to which implementation of a strategic plan prepared under section 29 of the 2014 Act complies with the integration delivery principles and contributes to achieving the national health and wellbeing outcomes, and
- (j) 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.]

<sup>F8</sup>(2A) [ The purposes of an inspection under subsection (1)(c) may include any of those mentioned in subsection (2)(f) to (j).]

- (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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- [ In this section—
- <sup>F9</sup>(8) “ integration delivery principles ” has the meaning given by section 31 of the 2014 Act;
- “ national health and wellbeing outcomes ” has the same meaning as in section 5(1) of the 2014 Act;
- “ social services ” has the meaning given by section 46 of the Public Services Reform (Scotland) Act 2010. ]

#### Textual Amendments

- F5** S. 10J(1)(c) added (22.9.2014) by [Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(asp 9\)](#), **ss. 55(3)(a)**, 72(2); S.S.I. 2014/231, art. 2
- F6** Words in s. 10J(2) substituted (22.9.2014) by [Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(asp 9\)](#), **ss. 55(3)(b)(i)**, 72(2); S.S.I. 2014/231, art. 2
- F7** Ss. 10J(2)(f)-(j) added (22.9.2014) by [Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(asp 9\)](#), **ss. 55(3)(b)(ii)**, 72(2); S.S.I. 2014/231, art. 2
- F8** S. 10J(2A) inserted (22.9.2014) by [Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(asp 9\)](#), **ss. 55(3)(c)**, 72(2); S.S.I. 2014/231, art. 2
- F9** S. 10J(8) added (22.9.2014) by [Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(asp 9\)](#), **ss. 55(3)(d)**, 72(2); S.S.I. 2014/231, art. 2

#### 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

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- (ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person holding that information; and
- (b) the information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.

#### **10L Inspections: best regulatory practice**

- (1) HIS must prepare a plan for carrying out inspections in accordance with best regulatory practice.
- (2) The plan—
  - (a) must set out arrangements for inspections to be so carried out (including inspections of those services subject to self evaluation);
  - (b) may make different provision for different purposes.
- (3) For the purposes of subsection (1), “ best regulatory practice ” means practice under which (in particular) inspections should be carried out in a way that is transparent, accountable, proportionate and consistent.
- (4) In preparing a plan under subsection (1), HIS must have regard to any guidance issued by the Scottish Ministers about those matters.
- (5) HIS—
  - (a) must keep the plan under review; and
  - (b) may from time to time revise, with the approval of the Scottish Ministers, the plan.
- (6) HIS must, in preparing a plan (or any revision), 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.

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- (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.

## **100 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;

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- (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. ]

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