



National Health Service (Primary Care) Act 1997

CHAPTER 46



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CHAPTER 46

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National Health Service (Primary Care) Act 1997

1997 CHAPTER 46

An Act to provide for new arrangements in relation to the provision within the national health service of medical, dental, pharmaceutical and other services; to make provision about medical lists and vacancies and the sale of medical practices; to make provision about the expenditure of Health Authorities and Health Boards; to make provision about ophthalmic services; and for connected purposes. [21st March 1997]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

PILOT SCHEMES FOR PRIMARY CARE

Preparation and making of pilot schemes

1.—(1) In this Act “pilot scheme” means one or more agreements made by an authority with respect to their area and in accordance with this Part under which— Pilot schemes.

- (a) personal medical services are provided (otherwise than by the authority); or
- (b) personal dental services are provided (otherwise than by the authority).

(2) A pilot scheme may not combine arrangements for the provision of personal medical services with arrangements for the provision of personal dental services.

(3) A pilot scheme may include arrangements for the provision of services—

- (a) which are not personal medical services or personal dental services; but

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1977 c. 49.

1978 c. 29.

(b) which may be provided under Part I of the National Health Service Act 1977 or (as the case may be) Part I or III of the National Health Service (Scotland) Act 1978.

(4) In this Act “piloted services” means services provided in accordance with a pilot scheme (including any services to which the scheme applies by virtue of subsection (3)).

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

(a) a patient for whom personal medical services are provided under a pilot scheme is not to count as a person for whom arrangements must be made by the authority concerned under section 29 of the 1977 Act or section 19 of the 1978 Act;

(b) a patient for whom personal dental services are provided under a pilot scheme is not to count as a person for whom arrangements must be made by the authority concerned under section 35 of the 1977 Act or section 25 of the 1978 Act.

(6) Regulations may provide—

(a) for functions which are exercisable by a Health Authority in relation to a pilot scheme to be exercisable on behalf of the Authority by a Health Board; and

(b) for functions which are exercisable by a Health Board in relation to a pilot scheme to be exercisable on behalf of the Board by a Health Authority.

(7) The functions of an NHS trust include power to provide piloted services, and to do so as a member of a qualifying body (within the meaning of section 2 or 3).

(8) For the purposes of this Part—

“authority” means—

(a) in relation to England and Wales, a Health Authority; and

(b) in relation to Scotland, a Health Board;

“personal medical services” means medical services of a kind that may be provided by a general medical practitioner in accordance with arrangements made under Part II of the 1977 Act or (as the case may be) Part II of the 1978 Act; and

“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 of the 1977 Act or (as the case may be) Part II of the 1978 Act.

Provision of personal medical services under a pilot scheme.

2.—(1) This section applies to any pilot scheme under which personal medical services are provided.

(2) An agreement which constitutes, or is one of the agreements which together constitute, a pilot scheme may be made by an authority only with one or more of the following—

(a) an NHS trust;

(b) a suitably experienced medical practitioner;

(c) an NHS employee or a pilot scheme employee;

(d) a qualifying body;

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- (e) an individual who is providing personal medical services under that or another pilot scheme.

(3) In this section—

“NHS employee” means an individual who, in connection with the provision of services in the health service, is employed by—

- (a) an NHS trust;
- (b) a medical practitioner whose name is included in a medical list; or
- (c) a medical practitioner who is providing personal medical services in accordance with a pilot scheme;

“pilot scheme employee” means an individual who, in connection with the provision of personal medical services in accordance with a pilot scheme, is employed by an individual providing those services;

“qualifying body” means a company which is limited by shares all of which are legally and beneficially owned by persons falling within paragraph (a), (b), (c) or (e) of subsection (2).

(4) For the purposes of this section, a medical practitioner is suitably experienced if he is suitably experienced for the purposes of section 11 of this Act, section 31 of the 1977 Act or section 21 of the 1978 Act.

(5) In this Part, “medical list” means—

- (a) in relation to England and Wales, a list prepared in accordance with regulations made under section 29(2)(a) of the 1977 Act;
- (b) in relation to Scotland, a list prepared in accordance with regulations made under section 19(2)(a) of the 1978 Act.

3.—(1) This section applies to any pilot scheme under which personal dental services are provided.

Provision of personal dental services under a pilot scheme.

(2) An agreement which constitutes, or is one of the agreements which together constitute, a pilot scheme may be made by an authority only with one or more of the following—

- (a) an NHS trust;
- (b) a dental practitioner whose name is included in a dental list;
- (c) an NHS employee or a pilot scheme employee;
- (d) a qualifying body;
- (e) an individual who is providing personal dental services under that or another pilot scheme.

(3) In this section—

“dental list” means—

(a) in relation to England and Wales, a list prepared in accordance with regulations made under section 36(1)(a) of the 1977 Act;

(b) in relation to Scotland, a list prepared in accordance with regulations made under section 25(2)(a) of the 1978 Act;

“NHS employee” means an individual who, in connection with the provision of services in the health service, is employed by—

- (a) an NHS trust;

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(b) a dental practitioner whose name is included in a dental list; or

(c) a dental practitioner who is providing personal dental services in accordance with a pilot scheme;

“pilot scheme employee” means an individual who, in connection with the provision of personal dental services in accordance with a pilot scheme, is employed by an individual providing those services;

“qualifying body” means—

1984 c. 24.

(a) a body corporate which, in accordance with the provisions of Part IV of the Dentists Act 1984, is entitled to carry on the business of dentistry; or

(b) a company which is limited by shares all of which are legally and beneficially owned by persons falling within paragraph (a), (b), (c) or (e) of subsection (2).

Proposals for pilot schemes.

4.—(1) Before any pilot scheme may be made, the authority concerned must prepare proposals for the scheme and submit them to the Secretary of State.

(2) An authority must prepare and submit such proposals if they are asked to do so by a person—

(a) who wishes to provide piloted services, and

(b) with whom an agreement which constitutes, or is part of, a pilot scheme may be made;

but otherwise they may not do so.

(3) A request to an authority under subsection (2) must—

(a) be made in writing; and

(b) comply with such requirements (if any) as may be prescribed.

(4) In preparing proposals for a pilot scheme, an authority must comply with any directions given to them by the Secretary of State as to the matters to be dealt with, and information to be included, in the proposals.

(5) Before submitting proposals for a pilot scheme, an authority must (in addition to complying with any requirements about consultation imposed by or under any other enactment) comply with any directions given to them by the Secretary of State about the extent to which, and manner in which, they are to consult on the proposals.

(6) The Secretary of State may give directions as to—

(a) the matters to which an authority must have regard in making any recommendation to the Secretary of State when submitting proposals for a pilot scheme; and

(b) the form in which any such recommendation is to be made.

Approval of pilot schemes.

5.—(1) If proposals for a pilot scheme are submitted to the Secretary of State under section 4, he must—

(a) approve them as submitted;

(b) make such modifications as he considers appropriate and approve them as modified; or

- (c) reject them.
- (2) The Secretary of State may not approve proposals for a pilot scheme unless he is satisfied that they include satisfactory provision for any participant other than the authority to withdraw from the scheme if he wishes to do so.
- (3) Subsection (4) applies if—
 - (a) the Secretary of State intends to approve proposals for a pilot scheme; and
 - (b) it appears to him that the effect of implementing the proposals would be to increase or reduce the number of general practitioners in the area of the authority concerned.
- (4) The Secretary of State must have regard to the effect that the proposals, as he intends to approve them, are likely to have on—
 - (a) the distribution of general practitioners in England, in the case of proposals submitted by an authority in England;
 - (b) the distribution of general practitioners in Scotland, in the case of proposals submitted by an authority in Scotland;
 - (c) the distribution of general practitioners in Wales, in the case of proposals submitted by an authority in Wales.
- (5) In carrying out his functions under subsection (4), the Secretary of State must consult the Medical Practices Committee or (as appropriate) the Scottish Medical Practices Committee.
- (6) The Secretary of State must notify the authority concerned, in writing, of any decision made under this section.
- (7) In this section “general practitioner” means any medical practitioner who is providing general medical services or performing personal medical services.

6.—(1) If the Secretary of State approves proposals for a pilot scheme and notifies the authority concerned in accordance with section 5, the authority must implement the proposals in accordance with directions given by the Secretary of State.

Making of pilot schemes.

- (2) A proposed participant in a pilot scheme (other than the authority concerned) may withdraw at any time before the proposals relating to him are implemented.
- (3) A pilot scheme, as implemented, may differ from the proposals for the scheme approved by the Secretary of State only if the Secretary of State agrees to the variation or—
 - (a) directions given by the Secretary of State (either under subsection (1) or generally) authorise variations that satisfy specified requirements; and
 - (b) the variation satisfies those requirements.
- (4) As soon as is reasonably practicable after implementing proposals for a pilot scheme, the authority concerned must (in accordance with any directions given to them by the Secretary of State) publish details of the scheme.

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Reviews of pilot schemes

Reviews of pilot schemes.

7.—(1) At least one review of the operation of each pilot scheme must be conducted by the Secretary of State.

(2) Each pilot scheme must be reviewed under this section before the end of the period of three years beginning with the date on which piloted services are first performed under the scheme.

(3) When conducting a review of a pilot scheme, the Secretary of State must give—

- (a) the authority concerned, and
- (b) any person providing services under the scheme,

an opportunity to comment on any matter relevant to the review.

(4) Otherwise, the procedure on any review is to be determined by the Secretary of State.

Variation and termination of pilot schemes

Variation and termination of pilot schemes.

8.—(1) The Secretary of State may by directions require a pilot scheme to be varied by the authority concerned in accordance with the directions.

(2) Directions under subsection (1) may be given—

- (a) in response to a request made by the authority or by any other participant in the scheme; or
- (b) on the Secretary of State's own initiative.

(3) The Secretary of State may give directions authorising authorities to vary pilot schemes (otherwise than in response to directions given under subsection (1)) in such circumstances, and subject to such conditions, as may be specified in the directions.

(4) If the Secretary of State is satisfied that a pilot scheme is (for any reason) unsatisfactory, he may give directions to the authority concerned requiring them to bring the scheme to an end in accordance with the terms of the directions.

General

Relationship between this Part and the 1977 Act.

9.—(1) The provisions of the 1977 Act, apart from section 13 (power of Secretary of State to direct a Health Authority to exercise functions on his behalf), apply in relation to functions of the Secretary of State under this Part (exercisable in relation to England and Wales) as if they were functions of his under Part I of the 1977 Act.

(2) The 1977 Act (and in particular section 17) has effect in relation to piloted services—

- (a) subject to any provision of, or made under, this Part; but
- (b) otherwise as if those services were provided as a result of the delegation by the Secretary of State (by directions given under section 13 of the 1977 Act) of functions of his under Part I of that Act.

1990 c. 19.

(3) The functions of a Health Authority in relation to piloted services are primary functions of the Authority for the purposes of the National Health Service and Community Care Act 1990.

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10.—(1) The provisions of the 1978 Act apply in relation to functions of the Secretary of State under this Part (exercisable in relation to Scotland) as if they were functions of his under Part I of the 1978 Act.

Relationship between this Part and the 1978 Act.

(2) The 1978 Act (and in particular section 2) has effect in relation to piloted services—

- (a) subject to any provision of, or made under, this Part; but
- (b) otherwise as if those services were provided as a result of the delegation by the Secretary of State (by regulations made or directions given under section 2 of the 1978 Act) of functions of his under that Act.

11.—(1) Any medical practitioner who performs personal medical services in connection with the provision of such services under a pilot scheme must be suitably experienced.

Medical practitioners to be suitably experienced.

(2) Subsection (1) does not prevent the performance of personal medical services by—

- (a) a person who is acting in the course of acquiring the experience prescribed by regulations made under section 32 of the 1977 Act or section 22 of the 1978 Act;
- (b) a person who is provisionally registered under section 15 or 21 of the Medical Act 1983, acting in the course of his employment in a resident medical capacity in an approved medical practice (within the meaning of section 11(4) of that Act); or
- (c) such other category of person as may be prescribed.

1983 c. 54.

(3) Sections 31(2) and 32 of the 1977 Act (meaning of “suitably experienced”) apply for the purposes of this section as they apply for the purposes of section 31 of that Act.

(4) In its application by virtue of subsection (3), section 32 of the 1977 Act is to be read as if references to the applicant were references to a medical practitioner who is proposing to perform personal medical services in connection with the provision of such services under a pilot scheme.

(5) Sections 21(2) and 22 of the 1978 Act (meaning of “suitably experienced”) apply for the purposes of this section as they apply for the purposes of section 21 of that Act.

(6) In its application by virtue of subsection (5), section 22(2) of the 1978 Act is to be read as if references to the applicant were references to a medical practitioner who is proposing to perform personal medical services in connection with the provision of such services under a pilot scheme.

12.—(1) Except in such circumstances and to such extent as may be prescribed, a medical practitioner who performs personal medical services in connection with the provision of such services under a pilot scheme may not provide general medical services under Part II of the 1977 Act or Part II of the 1978 Act.

Leaving medical lists.

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(2) Except in such circumstances as may be prescribed, an authority must remove from their medical list the name of any medical practitioner who is performing personal medical services in connection with the provision of such services under a pilot scheme made by them or by any other authority.

Preferential treatment on transferring to medical lists.

13.—(1) Before the Secretary of State approves a pilot scheme, he must determine whether a participating medical practitioner is to be given preferential treatment under Schedule 1 if he makes an application for his name to be included in the authority's medical list after ceasing to perform personal medical services under the scheme.

(2) Before a pilot scheme is varied so as to permit a new medical practitioner to perform personal medical services under the scheme, the Secretary of State must make a determination under this section in relation to the new practitioner.

(3) The Secretary of State may at any time make a determination under this section varying a determination about a medical practitioner if he is asked to do so by the practitioner concerned.

(4) Before making any determination under this section, the Secretary of State must publish the criteria by reference to which he will make it.

(5) Those criteria may be—

- (a) criteria applying generally to all determinations;
- (b) criteria applying only to the pilot scheme in question; or
- (c) a mixture of both.

(6) The Secretary of State must notify the authority and the medical practitioner or practitioners concerned in writing of any determination made by him under this section.

(7) Different determinations may be made with respect to different medical practitioners performing personal medical services under the same pilot scheme.

(8) A determination may identify the medical practitioner or practitioners to which it applies by name or in any other way.

(9) Schedule 1 has effect in relation to preferential treatment for medical practitioners who wish to transfer to medical lists.

Returning to fund-holding status.

14.—(1) Regulations must be made providing for a medical practitioner who—

- (a) has provided or performed personal medical services under a pilot scheme, and
- (b) in contemplation of doing so, gave up fund-holding status,

to be allowed to return immediately to fund-holding status on satisfying the Secretary of State that, if he were granted that status, he would be able to fulfil the conditions for the time being in force for continuing to have it.

(2) For the purposes of this section “fund-holding status” has such meaning as may be prescribed.

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15.—(1) Regulations may make provision with respect to the liabilities and obligations of—

Liabilities and obligations in relation to deputies.

- (a) a Part II practitioner who, in connection with any obligation of his to provide general medical services, enters into arrangements under which a pilot scheme practitioner deputises, or is engaged to deputise, for him; or
- (b) a Part II practitioner who enters into arrangements under which he deputises, or is engaged to deputise, for a pilot scheme practitioner, in connection with that practitioner's obligation to perform personal medical services under a pilot scheme.

(2) The regulations may, in particular—

- (a) modify any liabilities or obligations which would otherwise be applicable by virtue of Part II of the 1977 Act or Part II of the 1978 Act;
- (b) apply (with or without modifications) any provision made by or under Part II of the 1977 Act or Part II of the 1978 Act (including any provision so made by virtue of section 17 of the Health and Medicines Act 1988).

1988 c. 49.

(3) In this section—

“Part II practitioner” means a medical practitioner who provides general medical services; and

“pilot scheme practitioner” means a medical practitioner who performs personal medical services under a pilot scheme.

16.—(1) In the case of a pilot scheme entered into, or to be entered into, by a single individual or body corporate, that individual or body may make an application under this section to become a health service body.

NHS contracts.

(2) In the case of any other pilot scheme, all of those providing, or proposing to provide, piloted services under the scheme may together make an application under this section to become a single health service body.

(3) An application must—

- (a) be made to the Secretary of State in accordance with such provisions as may be prescribed; and
- (b) specify the pilot scheme in relation to which it is made.

(4) Except in such cases as may be prescribed, the Secretary of State may grant an application.

(5) If an application is granted, the Secretary of State must specify when it is to come into effect and, as from that time—

- (a) in the case of an application under subsection (1), the applicant is, and
- (b) in the case of an application under subsection (2), the applicants together are,

a health service body for the purposes of section 4 of the National Health Service and Community Care Act 1990 and section 17A of the 1978 Act (NHS contracts).

1990 c. 19.

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(6) Those sections have effect in relation to such a health service body (“a pilot scheme health service body”), acting as acquirer, as if the functions referred to in subsection (1) of those sections were the provision of piloted services.

(7) Except in such circumstances as may be prescribed, a pilot scheme health service body resulting from an application under subsection (2) is to be treated, at any time, as consisting of those providing piloted services under the scheme.

(8) A direction as to payment made under section 4(7) of the Act of 1990 or section 17A(8) of the 1978 Act against, or in favour of, a pilot scheme health service body is enforceable—

- (a) in England and Wales, in a county court (if the court so orders) as if it were a judgment or order of that court; and
- (b) in Scotland, in like manner as an extract registered decree arbitral bearing warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(9) Regulations may provide for a pilot scheme health service body to cease to be such a body in prescribed circumstances.

(10) The Secretary of State must—

- (a) maintain and publish a list of pilot scheme health service bodies;
- (b) publish a revised copy of the list as soon as is reasonably practicable after any change is made to it.

(11) The list is to be published in such manner as the Secretary of State considers appropriate.

The Dental
Practice Boards.

17.—(1) Regulations may confer such powers or impose such duties on the Board, in relation to pilot schemes under which personal dental services are provided, as may be prescribed.

(2) The regulations may, in particular, make any of the following kinds of provision.

(3) They may authorise or require the Board—

- (a) to perform on behalf of an authority functions of a prescribed description (including functions relating to remuneration) which have been delegated to the Board by the authority in accordance with a power conferred by the regulations;
- (b) to conduct or commission surveys or other research;
- (c) to carry on such other activities as may be prescribed.

(4) They may provide that functions conferred by the regulations are only to be exercised by the Board in accordance with directions of the Secretary of State.

(5) They may enable the Board to direct a dental practitioner to submit to the Board, in relation to treatment or a description of treatment that he has carried out or contemplates carrying out, such information (including estimates, radiographs, models and other items) as may be prescribed.

(6) In this section “the Board” means—

- (a) in relation to England and Wales, the Dental Practice Board; and
- (b) in relation to Scotland, the Scottish Dental Practice Board.

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Financial provisions

18.—(1) Provision may be made by regulations for authorities to make payments of financial assistance for preparatory work. Funding of preparatory work.

(2) “Preparatory work” means work which it is reasonable for a person to undertake—

- (a) in connection with preparing proposals for a pilot scheme; or
- (b) in preparing for the provision by him of any piloted services.

(3) Regulations under this section may, in particular, include provision—

- (a) prescribing the circumstances in which payments of financial assistance may be made;
- (b) imposing a limit on the amount of any payment of financial assistance which an authority may make in any prescribed period in respect of any one person or any one pilot scheme;
- (c) imposing a limit on the aggregate amount which an authority may pay by way of financial assistance in any one financial year;
- (d) requiring a person to whom assistance is given under this section to comply with such conditions as may be imposed in accordance with prescribed requirements; and
- (e) for repayment in the case of a failure to comply with any condition so imposed.

19. Section 14 of the National Health Service and Community Care Act 1990 and section 87A of the 1978 Act (recognition of fund-holding practices of doctors) apply— Fund-holding practices.
1990 c. 19.

- (a) in relation to the provision of personal medical services under a pilot scheme as they apply in relation to the provision of general medical services in accordance with arrangements under section 29 of the 1977 Act or section 19 of the 1978 Act; but
- (b) only in relation to medical practitioners who are not employed by another person.

20.—(1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges for dental treatment provided in accordance with pilot schemes. Charges for dental treatment.

(2) “Dental treatment” means personal dental services other than those to which section 78(1A) of the 1977 Act or (as the case may be) section 70(1A) of the 1978 Act applies.

(3) The regulations must secure that the amount charged for a particular treatment (or course of treatment) is the same as the amount that would be charged for that treatment (or course of treatment) if it were provided under Part II of the 1977 Act or (as the case may be) Part II of the 1978 Act.

(4) The regulations may—

- (a) provide for the amount or the maximum amount of any charge authorised by the regulations to be varied in prescribed circumstances; or
- (b) give power to direct that the charge is not to be payable.

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- (5) If, under a contract or arrangement, a patient receives—
- (a) services for which a charge is payable under section 78 of the 1977 Act or (as the case may be) section 70 of the 1978 Act, and
 - (b) treatment for which a charge is payable under the regulations,
- the total charge for those services and that treatment is not to exceed such sum as may be prescribed.
- (6) No charge is to be made under the regulations in respect of treatment provided for any person who, at the time of the making of the contract or arrangement under which the treatment is provided—
- (a) was under 18;
 - (b) was under 19 and receiving qualifying full-time education;
 - (c) was pregnant; or
 - (d) had given birth within the previous twelve months.
- (7) In subsection (6)(b) “qualifying full-time education” has the same meaning as in Schedule 12 to the 1977 Act or (as the case may be) in Schedule 11 to the 1978 Act.
- (8) The regulations may provide, with respect to any exemption under subsection (6), that it is to be a condition of the exemption that—
- (a) a declaration of the prescribed kind is made in the prescribed form or manner; or
 - (b) a certificate of the prescribed kind is supplied in the prescribed form or manner.

PART II

PRIMARY CARE

Personal medical or dental services

Provision of
personal medical
or dental services.

21.—(1) In the 1977 Act, after section 28B, insert—

“Provision of personal medical or dental services

- Personal medical or dental services. 28C.—(1) A Health Authority may make one or more agreements with respect to their area, in accordance with the provisions of regulations under section 28E, under which—
- (a) personal medical services are provided (otherwise than by the Authority); or
 - (b) personal dental services are provided (otherwise than by the Authority).
- (2) An agreement made under this section—
- (a) may not combine arrangements for the provision of personal medical services with arrangements for the provision of personal dental services; but
 - (b) may include arrangements for the provision of services—
 - (i) which are not personal medical services or personal dental services; but
 - (ii) which may be provided under this Part.

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

- (a) a patient for whom personal medical services are provided in accordance with an agreement made under this section is not to count as a person for whom arrangements must be made by the Health Authority concerned under section 29;
- (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 Authority concerned under section 35.

(4) This Act (and in particular section 17) has effect, in relation to personal medical services or 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 13) of functions of his under this Part.

(5) The functions of a Health Authority in relation to an agreement made under this section are primary functions of the Authority for the purposes of the National Health Service and Community Care Act 1990. 1990 c. 19.

(6) Regulations may provide—

- (a) for functions which are exercisable by a Health Authority in relation to an agreement made under this section to be exercisable on behalf of the Authority by a Health Board; and
- (b) for functions which are exercisable by a Health Board in relation to an agreement made under section 17C of the National Health Service (Scotland) Act 1978 to be exercisable on behalf of the Board by a Health Authority. 1978 c. 29.

(7) For the purposes of this section—

“personal medical services” means medical services of a kind that may be provided by a general medical practitioner in accordance with arrangements made under Part II; and

“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.

Persons with whom agreements may be made.

28D.—(1) A Health Authority may make an agreement under section 28C only with one or more of the following—

- (a) an NHS trust;
- (b) in the case of an agreement under which personal medical services are provided—
 - (i) a qualifying medical practitioner;
 - (ii) an individual who is providing

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personal medical services in accordance with section 28C arrangements or section 17C 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 28C arrangements or section 17C arrangements;
- (d) an NHS employee, a section 28C employee or a section 17C employee;
- (e) a qualifying body.

(2) In this section—

1978 c. 29.

“the 1978 Act” means the National Health Service (Scotland) Act 1978;

“NHS employee” means an individual who, in connection with the provision of services in the health service in England and Wales or Scotland, is employed by—

- (a) an NHS trust;
- (b) in the case of an agreement under which personal medical services are provided—
 - (i) a medical practitioner whose name is included in a medical list kept under this Act or in a corresponding list kept under the 1978 Act; or
 - (ii) a medical practitioner who is providing personal medical services in accordance with section 28C arrangements or section 17C arrangements;
- (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 36(1)(a) of this Act or section 25(2)(a) of the 1978 Act; or
 - (ii) a dental practitioner who is providing personal dental services in accordance with section 28C arrangements or section 17C arrangements;

“qualifying body” means—

- (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

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(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 Dentists Act 1984, is entitled to carry on the business of dentistry;

1984 c. 24.

“qualifying dental practitioner” means a dental practitioner who satisfies the conditions imposed by regulations made under section 28E(2)(b) of this Act or section 17E(2)(b) of the 1978 Act;

“qualifying medical practitioner” means a medical practitioner who satisfies the conditions imposed by regulations made under section 28E(2)(b) of this Act or section 17E(2)(b) of the 1978 Act;

“section 17C arrangements” means arrangements for the provision of services made under section 17C of the 1978 Act;

“section 17C employee” means an individual who, in connection with the provision of services in accordance with section 17C arrangements, is employed by an individual providing those services;

“section 28C arrangements” means arrangements for the provision of services made under section 28C; and

“section 28C employee” means an individual who, in connection with the provision of services in accordance with section 28C arrangements, is employed by an individual providing those services.”

(2) In the 1978 Act, after section 17B, insert—

“Provision of personal medical or dental services

Personal medical
or dental
services.

17C.—(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) personal 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 personal medical services with arrangements for the provision of personal dental services; but
- (b) may include arrangements for the provision of services—
 - (i) which are not personal medical services or personal dental services; but

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(ii) which may be provided under this Part.

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

- (a) a patient for whom personal medical services are provided in accordance with 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 19;
- (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 personal medical services or 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 Health Authority; and
- (b) for functions which are exercisable by a Health Authority in relation to an agreement made under section 28C of the National Health Service Act 1977 to be exercisable on behalf of the Authority by a Health Board.

(6) For the purposes of this section—

“Health Authority” has the same meaning as in the National Health Service Act 1977;

“personal medical services” means medical services of a kind that may be provided by a general medical practitioner in accordance with arrangements made under Part II; and

“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.

1977 c. 49.

Persons with whom agreements may be made.

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

- (a) an NHS trust;
- (b) in the case of an agreement under which personal medical services are provided—
 - (i) a qualifying medical practitioner;
 - (ii) an individual who is providing

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personal medical services in accordance with section 17C arrangements or section 28C 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 section 28C arrangements;

(d) an NHS employee, a section 17C employee or a section 28C employee;

(e) a qualifying body.

(2) In this section—

“the 1977 Act” means the National Health Service Act 1977; 1977 c. 49.

“NHS employee” means an individual who, in connection with the provision of services in the health service in Scotland or England and Wales, is employed by—

(a) an NHS trust;

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

(i) a medical practitioner whose name is included in a medical list kept under this Act or in a corresponding list kept under the 1977 Act; or

(ii) a medical practitioner who is providing personal medical services in accordance with section 17C arrangements or section 28C arrangements;

(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 36(1)(a) of the 1977 Act; or

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

“qualifying body” means—

(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

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1984 c. 24.

(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 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;

“qualifying medical practitioner” means a medical 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;

“section 17C employee” means an individual who, in connection with the provision of services in accordance with section 17C arrangements, is employed by an individual providing those services;

“section 28C arrangements” means arrangements for the provision of services made under section 28C of the 1977 Act; and

“section 28C employee” means an individual who, in connection with the provision of services in accordance with section 28C arrangements, is employed by an individual providing those services.”

(3) The Secretary of State may not make an order under section 41(3) bringing this section into force unless he is satisfied, having regard in particular to reviews of pilot schemes which have been conducted under section 7, that it would be in the interests of any part of the health service to bring this section into force.

Supplementary regulations.

22.—(1) In the 1977 Act, after section 28D, insert—

“Personal medical or dental services: regulations. 28E.—(1) The Secretary of State may make regulations with respect to the provision of services in accordance with section 28C arrangements.

(2) The regulations must—

- (a) include provision for participants other than Health Authorities to withdraw from section 28C arrangements if they wish to do so;
- (b) impose conditions (including conditions as to qualifications and experience) to be satisfied by medical practitioners performing personal medical services, and dental practitioners performing personal dental services, in accordance with section 28C arrangements.

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

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- (3) The regulations may, in particular—
- (a) provide that section 28C arrangements may be made only in prescribed circumstances;
 - (b) provide that section 28C 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 28C arrangements;
 - (d) require details of section 28C arrangements to be published;
 - (e) make provision with respect to the variation and termination of section 28C arrangements;
 - (f) prevent (except in such circumstances and to such extent as may be prescribed) a medical practitioner who performs personal medical services in accordance with section 28C arrangements from providing general medical services;
 - (g) make provision with respect to medical lists, including provision for preferential treatment for medical practitioners;
 - (h) provide for parties to section 28C arrangements to be treated, in such circumstances and to such extent as may be prescribed, as health service bodies for the purposes of section 4 of the National Health Service and Community Care Act 1990; 1990 c. 19.
 - (i) provide for directions, as to payments, made under section 4(7) of the Act of 1990 (as it has effect as a result of regulations made by virtue of paragraph (h)) to be enforceable in a county court (if the court so orders) as if they were judgments or orders of that court;
 - (j) confer powers or impose duties on the Dental Practice Board in relation to agreements made by virtue of section 28C(1) under which personal dental services are provided;
 - (k) authorise Health Authorities to make payments of financial assistance for prescribed categories of preparatory work undertaken—
 - (i) in connection with preparing proposals for section 28C arrangements; or
 - (ii) in preparation for the provision of services under proposed section 28C arrangements.
- (4) The regulations must include provision for a medical practitioner who—
- (a) has provided or performed personal medical services in accordance with section 28C arrangements, and

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- (b) in contemplation of doing so, gave up fund-holding status,

to be allowed to return immediately to fund-holding status on satisfying the Secretary of State that, if he were granted that status, he would be able to fulfil the conditions for the time being in force for continuing to have it.

For the purposes of this subsection “fund-holding status” has such meaning as may be prescribed.

- (5) The Secretary of State must—

- (a) consider whether section 28C arrangements are likely to have an adverse effect on the distribution of medical practitioners providing general medical services or performing personal medical services in England or in Wales;
- (b) if he thinks that the arrangements are likely to have that effect, consider whether it is necessary to include in the regulations provisions designed to secure that, so far as is possible, the arrangements do not have that effect; and
- (c) if he thinks that it is necessary, include such provisions in the regulations.

(6) Regulations which impose conditions on persons performing personal medical services or persons performing personal dental services (whether made by virtue of subsection (2)(b) or otherwise) may, in particular, include provision of a kind that may be made by regulations under section 32.

(7) Regulations made by virtue of subsection (3)(g) may, in particular, include provision—

- (a) requiring (except in prescribed circumstances) Health Authorities to remove from their medical lists persons who are performing personal medical services in accordance with section 28C arrangements or corresponding services under section 17C of the National Health Service (Scotland) Act 1978;
- (b) conferring a right to transfer to a medical list on persons who have ceased to perform such services;
- (c) that any provision in relation to medical lists made by or under any enactment is not to apply;
- (d) as to conditions to be attached to entries in medical lists;
- (e) conferring powers of disqualification on the Tribunal constituted under section 46.

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

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- (a) to authorise or require the Dental Practice Board to perform on behalf of a Health Authority functions of a prescribed description (including functions relating to remuneration) which have been delegated to the Board by the Health Authority 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 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 Board under this section."

(2) In the 1978 Act, after section 17D, insert—

"Personal medical or dental services: regulations.

17E.—(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 medical practitioners performing personal medical services, and 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;
- (d) require details of section 17C arrangements to be published;
- (e) make provision with respect to the variation and termination of section 17C arrangements;
- (f) prevent (except in such circumstances and to such extent as may be prescribed) a medical practitioner who performs personal medical services in accordance with section 17C arrangements from providing general medical services;

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- (g) make provision with respect to medical lists, including provision for preferential treatment for medical practitioners;
- (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 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.

(4) The regulations must include provision for a medical practitioner who—

- (a) has provided or performed personal medical services in accordance with section 17C arrangements, and
- (b) in contemplation of doing so, gave up fund-holding status,

to be allowed to return immediately to fund-holding status on satisfying the Secretary of State that, if he were granted that status, he would be able to fulfil the conditions for the time being in force for continuing to have it.

For the purposes of this subsection “fund-holding status” has such meaning as may be prescribed.

(5) The Secretary of State must—

- (a) consider whether section 17C arrangements are likely to have an adverse effect on the distribution of medical practitioners providing general medical services or performing personal medical services in Scotland;
- (b) if he thinks that the arrangements are likely to have that effect, consider whether it is necessary to include in the regulations provisions designed to secure that, so far as is possible, the arrangements do not have that effect; and

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(c) if he thinks that it is necessary, include such provisions in the regulations.

(6) Regulations which impose conditions on persons performing personal medical services or persons performing personal dental services (whether made by virtue of subsection (2)(b) or otherwise) may, in particular, include provision of a kind that may be made by regulations under section 22.

(7) Regulations made by virtue of subsection (3)(g) may, in particular, include provision—

- (a) requiring (except in prescribed circumstances) Health Boards to remove from their medical lists persons who are performing personal medical services in accordance with section 17C arrangements or corresponding services under section 28C of the National Health Service Act 1977; 1977 c. 49.
- (b) conferring a right to transfer to a medical list on persons who have ceased to perform such services;
- (c) that any provision in relation to medical lists made by or under any enactment is not to apply;
- (d) as to conditions to be attached to entries in medical lists;
- (e) conferring powers of disqualification on the Tribunal constituted under section 29.

(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.

(9) In this Act “section 17C arrangements” means arrangements for the provision of services made under section 17C.”

23.—(1) In the 1977 Act, after section 28E, insert—

“Right to choose medical practitioner.

28F.—(1) Provision shall be made in regulations for conferring a right on any person to choose the medical practitioner from whom he is to receive primary medical services, subject to—

Right to choose medical practitioner.

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- (a) the consent of the practitioner concerned; and
 - (b) any limit on the number of patients to be accepted by any practitioner.
- (2) In particular, the regulations—
- (a) shall prescribe the procedure for choosing a practitioner;
 - (b) may prescribe a limit on the number of patients to be accepted by a medical practitioner who undertakes to provide general medical services under Part II; and
 - (c) shall provide for the distribution among medical practitioners of persons who have indicated a wish to obtain primary medical services but—
 - (i) have been refused by the medical practitioner of their choice; or
 - (ii) have not chosen a medical practitioner.

(3) The Secretary of State may give directions imposing a limit on the number of patients to be accepted by a medical practitioner who performs personal medical services in accordance with section 28C arrangements.

(4) Any such directions may make different provision for different cases or descriptions of case.

(5) Regulations under this section may also provide that the right to choose a medical 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.

(6) In this section “primary medical services” means medical services which are—

- (a) provided, in accordance with section 28C arrangements, as personal medical services; or
- (b) provided under Part II as general medical services.”

(2) In the 1978 Act, after section 17E, insert—

“Right to choose medical practitioner. 17F.—(1) Provision shall be made in regulations for conferring a right on any person to choose the medical practitioner from whom he is to receive primary medical services, subject to—

- (a) the consent of the practitioner concerned; and
- (b) any limit on the number of patients to be accepted by any practitioner.

(2) In particular, the regulations—

- (a) shall prescribe the procedure for choosing a practitioner;
- (b) may prescribe a limit on the number of patients to be accepted by a medical practitioner who undertakes to provide general medical services under Part II; and

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- (c) shall provide for the distribution among medical practitioners of persons who have indicated a wish to obtain primary medical services but—
- (i) have been refused by the medical practitioner of their choice; or
 - (ii) have not chosen a medical practitioner.

(3) The Secretary of State may give directions imposing a limit on the number of patients to be accepted by a medical practitioner who performs personal medical services in accordance with section 17C arrangements.

(4) Any such directions may make different provision for different cases or descriptions of case.

(5) Regulations under this section may also provide that the right to choose a medical 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.

(6) In this section “primary medical services” means medical services which are—

- (a) provided, in accordance with section 17C arrangements, as personal medical services; or
- (b) provided under Part II as general medical services.”

24.—(1) In the 1977 Act, after section 28F, insert—

“Right to choose dental practitioner.

28G.—(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.

(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 28C arrangements, as personal dental services; or
- (b) provided under Part II as general dental services.”

(2) In the 1978 Act, after section 17F, insert—

“Right to choose dental practitioner.

17G.—(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.

Right to choose dental practitioner.

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

(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.”

Liabilities and obligations in relation to deputies.

25.—(1) In the 1977 Act, after section 34, insert—

“Liabilities and obligations in relation to deputies.

34A.—(1) Regulations may make provision with respect to the liabilities and obligations of—

- (a) a Part II practitioner who, in connection with any obligation of his to provide general medical services, enters into arrangements under which a Part I practitioner deputises, or is engaged to deputise, for him; or
- (b) a Part II practitioner who enters into arrangements under which he deputises, or is engaged to deputise, for a Part I practitioner, in connection with that practitioner’s obligation to perform personal medical services in accordance with section 28C arrangements.

(2) The regulations may, in particular—

- (a) modify any liabilities or obligations which would otherwise be applicable by virtue of this Part;
- (b) apply (with or without modifications) any provision made by or under this Part (including any provision so made by virtue of section 17 of the Health and Medicines Act 1988).

(3) In subsection (1)—

“Part I practitioner” means a medical practitioner who performs personal medical services in accordance with section 28C arrangements; and

“Part II practitioner” means a medical practitioner who provides general medical services.”

(2) In the 1978 Act, after section 24, insert—

“Liabilities and obligations in relation to deputies.

24A.—(1) Regulations may make provision with respect to the liabilities and obligations of—

- (a) a Part II practitioner who, in connection with any obligation of his to provide general medical services, enters into arrangements under which a Part I practitioner deputises, or is engaged to deputise, for him; or

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(b) a Part II practitioner who enters into arrangements under which he deputises, or is engaged to deputise, for a Part I practitioner, in connection with that practitioner's obligation to perform personal medical services in accordance with section 17C arrangements.

(2) The regulations may, in particular—

- (a) modify any liabilities or obligations which would otherwise be applicable by virtue of this Part;
- (b) apply (with or without modifications) any provision made by or under this Part (including any provision so made by virtue of section 17 of the Health and Medicines Act 1988).

1988 c. 49.

(3) In subsection (1)—

“Part I practitioner” means a medical practitioner who performs personal medical services in accordance with section 17C arrangements; and

“Part II practitioner” means a medical practitioner who provides general medical services.”

26.—(1) In the 1977 Act, after section 78, insert—

Charges for dental treatment.

“Charges for dental treatment under section 28C.

78A.—(1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges for dental treatment provided in accordance with section 28C arrangements.

(2) “Dental treatment” means personal dental services other than those to which section 78(1A) applies.

(3) The regulations must secure that the amount charged for a particular treatment (or course of treatment) is the same as the amount that would be charged for that treatment (or course of treatment) if it were provided under Part II.

(4) The regulations may—

- (a) provide for the amount or the maximum amount of any charge authorised by the regulations to be varied in prescribed circumstances; or
- (b) give power to direct that the charge is not to be payable.

(5) If, under a contract or arrangement, a patient receives—

- (a) services for which a charge is payable under section 78, and
- (b) treatment for which a charge is payable under the regulations,

the total charge for those services and that treatment is not to exceed such sum as may be prescribed.

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(6) No charge is to be made under the regulations in respect of treatment provided for any person who, at the time of the making of the contract or arrangement under which the treatment is provided—

- (a) was under 18;
- (b) was under 19 and receiving qualifying full-time education;
- (c) was pregnant; or
- (d) had given birth within the previous twelve months.

(7) In subsection (6)(b) “qualifying full-time education” has the same meaning as in Schedule 12.

(8) The regulations may provide, with respect to any exemption under subsection (6), that it is to be a condition of the exemption that—

- (a) a declaration of the prescribed kind is made in the prescribed form or manner; or
- (b) a certificate of the prescribed kind is supplied in the prescribed form or manner.”

(2) In the 1978 Act, after section 70, insert—

“Charges for dental treatment under section 17C.

70A.—(1) Regulations may provide for the making and recovery, in such manner as may be prescribed, of charges for dental treatment provided in accordance with section 17C arrangements.

(2) “Dental treatment” means personal dental services other than those to which section 70(1A) applies.

(3) The regulations must secure that the amount charged for a particular treatment (or course of treatment) is the same as the amount that would be charged for that treatment (or course of treatment) if it were provided under Part II.

(4) The regulations may—

- (a) provide for the amount or the maximum amount of any charge authorised by the regulations to be varied in prescribed circumstances; or
- (b) give power to direct that the charge is not to be payable.

(5) If, under a contract or arrangement, a patient receives—

- (a) services for which a charge is payable under section 70, and
- (b) treatment for which a charge is payable under the regulations,

the total charge for those services and that treatment is not to exceed such sum as may be prescribed.

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(6) No charge is to be made under the regulations in respect of treatment provided for any person who, at the time of the making of the contract or arrangement under which the treatment is provided—

- (a) was under 18;
- (b) was under 19 and receiving qualifying full-time education;
- (c) was pregnant; or
- (d) had given birth within the previous twelve months.

(7) In subsection (6)(b) “qualifying full-time education” has the same meaning as in Schedule 11.

(8) The regulations may provide, with respect to any exemption under subsection (6), that it is to be a condition of the exemption that—

- (a) a declaration of the prescribed kind is made in the prescribed form or manner; or
- (b) a certificate of the prescribed kind is supplied in the prescribed form or manner.”

Pharmaceutical services

27.—(1) In the 1977 Act, after section 41, insert—

“Arrangements for providing additional pharmaceutical services.

41A.—(1) The Secretary of State may—

- (a) give directions to a Health Authority requiring them to arrange for the provision to persons in their area of additional pharmaceutical services; or
- (b) by giving directions to a Health Authority 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 41) as may be specified in the directions; and

“Drug Tariff” means the Drug Tariff published under regulation 18 of the National Health Service (Pharmaceutical Services) Regulations 1992 or under any corresponding provision replacing, or otherwise derived from, that regulation.”

Provision of additional pharmaceutical services.

S.I. 1992/662.

(2) In the 1978 Act, after section 27, insert—

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“Arrangements for providing additional pharmaceutical services.

27A.—(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 National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995 or under any corresponding provision replacing, or otherwise derived from, that regulation.”

S.I. 1995/414.

Terms and conditions etc.

28.—(1) In the 1977 Act, after section 41A, insert—

“Terms and conditions etc.

41B.—(1) Directions under section 41A may require the Health Authority to whom they apply, when making arrangements—

- (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.

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(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 42(2)(a) of this Act; or

(b) published by any body in accordance with regulations made under section 27(2)(a) of the National Health Service (Scotland) Act 1978 or Article 63(2A)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972.”

1978 c. 29.

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

(2) In the 1978 Act, after section 27A, insert—

“Terms and conditions etc.

27B.—(1) Directions under section 27A may require the Health Board to whom they apply, when making arrangements—

(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 Board 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 Board 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 Board concerned, or by any other Health Board, in accordance with regulations made under section 27(2) of this Act; or

PART II

1977 c. 49.
S.I. 1972/1265
(N.I.14).

Authorised
provision of
pharmaceutical
services by
medical
practitioners.

(b) published by any body in accordance with regulations made under section 42(2) of the National Health Service Act 1977 or Article 63(2A)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972.”

29.—(1) In section 43 of the 1977 Act, after subsection (2), insert—

“(2A) Regulations shall provide for the preparation and publication by a Health Authority of one or more lists of medical practitioners who undertake to provide drugs, medicines or listed appliances in the Authority’s area.

(2B) In subsection (2A) “listed” has the same meaning as in section 41.

(2C) The regulations shall include provision for the removal of an entry from a list in prescribed circumstances.”

(2) In section 28 of the 1978 Act, after subsection (2), insert—

“(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.”

Ophthalmic services

Duty of registered
opticians to refer
certain persons to
registered medical
practitioners.
1989 c. 44.

30.—(1) Section 31 of the Opticians Act 1989 (matters with respect to which the General Optical Council may make rules) is amended as follows.

(2) In subsection (5) (power to make rules requiring registered optician to refer persons to registered medical practitioners except in certain circumstances), for the words from “except” to “take the prescribed steps” substitute “except—

(a) in an emergency,

(b) where that person is consulting him for the purpose of being given treatment in accordance with rules under subsection (1)(d) above, or

(c) in such other cases as may be prescribed,

take the prescribed steps”.

(3) After subsection (5), insert—

“(5A) Rules made by virtue of subsection (5)(c) may impose conditions which must be satisfied if the exception for which those rules provide is to apply.”

PART II

NHS contracts

31.—(1) In the National Health Service and Community Care Act 1990, after section 4 (NHS contracts), insert—

“Provision of certain services under NHS contracts.

4A.—(1) This section applies to any arrangement under which a Health Authority 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 the principal Act.

(2) Any such arrangement is to be treated as an NHS contract for the purposes of section 4 (other than subsections (4) and (6)).

(3) In this section—

“health service body” means a body which is a health service body for the purposes of section 4;

“ophthalmic list” means a list published in accordance with regulations made under—

- (a) section 39(a) of the principal Act;
- (b) section 26(2)(a) of the National Health Service (Scotland) Act 1978; or
- (c) Article 62(2)(a) of the Health and Personal Social Services (Northern Ireland) Order 1972; and

Provision of certain services under NHS contracts.
1990 c. 19.

1978 c. 29.

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

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

- (a) section 42(2)(a) of the principal Act;
- (b) section 27(2) of the National Health Service (Scotland) Act 1978; or
- (c) Article 63(2A)(a) of the 1972 Order.”

(2) In the 1978 Act, after section 17, insert—

“NHS contracts

Provision of certain services under NHS contracts.

17AA.—(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)).

PART II

(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 list published in accordance with regulations made under—

(a) section 26(2)(a) of this Act;

1977 c. 49.

(b) section 39(a) of the National Health Service Act 1977; or

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

(c) Article 62(2)(a) of the 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.”

Medical lists and vacancies

Medical lists and vacancies:
England and Wales.

32.—(1) In the 1977 Act, after section 29, insert—

“Medical lists.

29A.—(1) A Health Authority may not, under section 29, arrange with a medical practitioner for him to provide general medical services for persons in the Authority’s area unless his name is included in the Authority’s medical list.

(2) A medical practitioner is entitled to be included in a Health Authority’s medical list only if—

(a) he is eligible for inclusion in the list; and

(b) he is nominated or approved, in accordance with regulations under section 29B, for appointment to fill a vacancy which relates (whether wholly or in part) to the area of the Authority.

(3) A medical practitioner is eligible for inclusion in a medical list if—

1988 c. 49.

(a) he has not attained the age specified in regulations under section 8 of the Health and Medicines Act 1988 (retirement age for practitioners); and

(b) he is not disqualified, or treated as disqualified, from inclusion in the list by virtue of a direction of the Tribunal constituted under section 46 or any corresponding tribunal in Scotland or Northern Ireland.

(4) Regulations may make provision in relation to delaying a person’s inclusion in a medical list in prescribed circumstances.

PART II

(5) This section is subject to section 29(6) (temporary provision of general medical services) and any provision of, or made under, an enactment relating to the right of a medical practitioner to transfer to a medical list.

(6) In this Act “medical list”, in relation to a Health Authority, means the list of medical practitioners undertaking to provide general medical services for persons in their area, kept by the Authority under regulations made under section 29(2)(a).

Vacancies for
medical
practitioners.

29B.—(1) Regulations may make provision in relation to the filling of vacancies for medical practitioners to provide general medical services.

(2) The regulations may, in particular, include provision for—

- (a) references by a Health Authority to the Medical Practices Committee as to whether there is, or will be, a vacancy for a medical practitioner in a locality;
- (b) the determination of such references by the Medical Practices Committee;
- (c) the determination by the Medical Practices Committee of conditions of practice to be imposed on any medical practitioner who fills a particular vacancy;
- (d) the determination by a Health Authority of whether a vacancy is to be filled by a member of a partnership or by a sole practitioner;
- (e) the nomination by a Health Authority of a medical practitioner for appointment to fill a vacancy as a sole practitioner;
- (f) the approval by a Health Authority of a medical practitioner for appointment to fill a vacancy as a member of a partnership.

(3) The regulations may also make provision in relation to—

- (a) criteria to be applied in making decisions under the regulations,
- (b) the variation or revocation of such decisions (including appeals to the Secretary of State on points of law), or
- (c) vacancies relating to the area of one Health Authority which also relate to the area of another Health Authority or a Health Board,

and may contain such transitional provisions as the Secretary of State considers appropriate.

(4) Regulations which make provision about vacancies which relate partly to the area of a Health Board may, in particular, provide that section 29A(2)(b) is to have effect in prescribed circumstances as if the reference to

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1978 c. 29.

regulations under this section were a reference to regulations under section 19B of the National Health Service (Scotland) Act 1978.

(5) In this section—

“conditions of practice” means conditions—

(a) specifying, by reference to one or more prescribed conditions relating to hours or the sharing of work, the provision of general medical services for which a person is entitled to be remunerated; and

(b) specifying the locality in which a person is entitled to provide general medical services;

“Health Board” has the same meaning as in the National Health Service (Scotland) Act 1978;

“locality”, in relation to a Health Authority, means the Authority’s area or a particular part of their area; and

“sole practitioner” means a medical practitioner providing general medical services otherwise than in partnership with one or more other medical practitioners.

(6) This section does not affect the power to make regulations under section 29.”

(2) Omit section 30 (applications to provide general medical services).

(3) In section 31 (requirement of suitable experience) for subsection (1) substitute—

“(1) Regulations under section 29B must secure that a medical practitioner is not nominated or approved by a Health Authority for appointment to fill a vacancy unless he is suitably experienced.”

Medical lists and vacancies:
Scotland.

33.—(1) In the 1978 Act, after section 19, insert—

“Medical lists.

19A.—(1) A Health Board may not, under section 19, arrange with a medical practitioner for him to provide general medical services for persons in the Board’s area unless his name is included in the Board’s medical list.

(2) A medical practitioner is entitled to be included in a Health Board’s medical list only if—

(a) he is eligible for inclusion in the list; and

(b) he is nominated or approved, in accordance with regulations under section 19B, for appointment to fill a vacancy which relates (whether wholly or in part) to the area of the Board.

(3) A medical practitioner is eligible for inclusion in a medical list if—

(a) he has not attained the age specified in regulations under section 8 of the Health and Medicines Act 1988 (retirement age for practitioners); and

1988 c. 49.

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(b) he is not disqualified, or treated as disqualified, from inclusion in the list by virtue of a direction of the Tribunal constituted under section 29 or any corresponding tribunal in England and Wales or Northern Ireland.

(4) Regulations may make provision in relation to delaying a person's inclusion in a medical list in prescribed circumstances.

(5) This section is subject to section 19(5) (temporary provision of general medical services) and any provision of, or made under, an enactment relating to the right of a medical practitioner to transfer to a medical list.

(6) In this Act "medical list", in relation to a Health Board, means the list of medical practitioners undertaking to provide general medical services for persons in their area, kept by the Board under regulations made under section 19(2)(a).

Vacancies for medical practitioners.

19B.—(1) Regulations may make provision in relation to the filling of vacancies for medical practitioners to provide general medical services.

(2) The regulations may, in particular, include provision for—

- (a) references by a Health Board to the Medical Practices Committee as to whether there is, or will be, a vacancy for a medical practitioner in a locality;
- (b) the determination of such references by the Medical Practices Committee;
- (c) the determination by the Medical Practices Committee of conditions of practice to be imposed on any medical practitioner who fills a particular vacancy;
- (d) the determination by a Health Board of whether a vacancy is to be filled by a member of a partnership or by a sole practitioner;
- (e) the nomination by a Health Board of a medical practitioner for appointment to fill a vacancy as a sole practitioner;
- (f) the approval by a Health Board of a medical practitioner for appointment to fill a vacancy as a member of a partnership.

(3) The regulations may also make provision in relation to—

- (a) criteria to be applied in making decisions under the regulations,
- (b) the variation or revocation of such decisions (including appeals to the Secretary of State on points of law), or

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- (c) vacancies relating to the area of one Health Board which also relate to the area of another Health Board or a Health Authority,

and may contain such transitional provisions as the Secretary of State considers appropriate.

(4) Regulations which make provision about vacancies which relate partly to the area of a Health Authority may, in particular, provide that section 19A(2)(b) is to have effect in prescribed circumstances as if the reference to regulations under this section were a reference to regulations under section 29B of the National Health Service Act 1977.

1977 c. 49.

- (5) In this section—

“conditions of practice” means conditions—

(a) specifying, by reference to one or more prescribed conditions relating to hours or the sharing of work, the provision of general medical services for which a person is entitled to be remunerated; and

(b) specifying the locality in which a person is entitled to provide general medical services;

“Health Authority” has the same meaning as in the National Health Service Act 1977;

“locality”, in relation to a Health Board, means the Board’s area or a particular part of their area; and

“sole practitioner” means a medical practitioner providing general medical services otherwise than in partnership with one or more other medical practitioners.

(6) This section does not affect the power to make regulations under section 19.”

(2) Omit section 20 (applications to provide general medical services).

(3) In section 21 (requirement of suitable experience) for subsection (1) substitute—

“(1) Regulations under section 19B must secure that a medical practitioner is not nominated or approved by a Health Board for appointment to fill a vacancy unless he is suitably experienced.”

Medical practices

Sale of medical practices.

34.—(1) In the 1977 Act, for section 54 (sale of medical practices), substitute—

“Sale of medical practices.

54.—(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 Council, Committee or Authority under the National Health Service Act 1946, the National Health

1946 c. 81.
1973 c. 32.

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Service Reorganisation Act 1973 or this Act, or

- (b) provided or performed personal medical services in accordance with section 28C arrangements,

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 Council, Committee or Authority by arrangement with whom a person has at any time—

- (a) provided general medical services, or

- (b) provided or performed personal medical services in accordance with section 28C arrangements,

means the area, district or locality of that Council, Committee or Authority (at that time).

- (3) Schedule 10 supplements the provisions of this section.”

- (2) In the 1978 Act, for section 35 (sale of medical practices), substitute—

“Sale of medical practices.

35.—(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 National Health Service (Scotland) Act 1947, the National Health Service (Scotland) Act 1972 or this Act, or

1947 c. 27.
1972 c. 58.

- (b) provided or performed personal medical services in accordance with section 17C arrangements, 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 with whom a person has at any time—

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- (a) provided general medical services, or
- (b) provided or performed personal medical services in accordance with section 17C arrangements,

means the area of that Council or Board (at that time).

(3) Schedule 9 supplements the provisions of this section.”

Employment of pre-registration house officers in medical practices. 1983 c. 54.

35.—(1) The Medical Act 1983 is amended as follows.

(2) In subsection (2) of section 10 (experience required for full registration as a medical practitioner), for “approved hospitals or approved institutions,” substitute “—

- (a) approved hospitals,
- (b) approved institutions, or
- (c) approved medical practices.”

(3) In subsection (3) of section 11 (construction of section 10, etc), after the first “where” insert “—

(a) in the case of an approved hospital or an approved institution,” and at the end insert “; or

(b) in the case of an approved medical practice, the person employed satisfies such conditions as to residence as may be prescribed”.

(4) In subsection (4) of section 11—

(a) insert in the appropriate place—

““medical practice” means a prescribed description of practice in which one or more medical practitioners—

(a) provide general medical services under Part II of the National Health Service Act 1977, Part II of the National Health Service (Scotland) Act 1978 or Part VI of the Health and Personal Social Services (Northern Ireland) Order 1972; or

(b) perform personal medical services in accordance with arrangements made under section 28C of the 1977 Act, section 17C of the 1978 Act or the corresponding provisions of the law in force in Northern Ireland;”;

(b) in the definition of “prescribed”, after “means” insert “—

(a) in subsection (3)(b) and in the definition of “medical practice”, prescribed by regulations made by the Secretary of State; and

(b) in the other provisions of this Part.”

(5) After subsection (4) of section 11 insert—

“(4A) The Education Committee may by regulations provide that the period of employment in a medical practice which may be reckoned towards the completion of any of the periods mentioned in section 10(3)(a) above shall not exceed such period as may be specified in the regulations.”

(6) In subsection (5) of section 11, after “under subsection (2) of section 10 above” insert “or under subsection (4A) of this section”.

1977 c. 49.
1978 c. 29.
S.I. 1972/1265
(N.I.14).

PART II

(7) After subsection (6) of section 11 insert—

“(7) Regulations made by the Secretary of State under this section must be made by statutory instrument; and such a statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

PART III

MISCELLANEOUS AND SUPPLEMENTAL

36. In section 97 of the 1977 Act (expenditure of Health Authorities), for subsections (1) to (3) substitute—

Expenditure of
Health
Authorities.

“(1) It is the duty of the Secretary of State to pay to each Health Authority 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 (d) of subsection (3A).

(3) It is the duty of the Secretary of State to pay to each Health Authority, in respect of each financial year, sums not exceeding the amount allotted for that year by the Secretary of State to the Authority towards meeting their main expenditure.

(3A) In subsection (3) “main expenditure” means expenditure which is attributable to—

- (a) the performance by the Authority of their functions in that year, but—
 - (i) is not general Part II expenditure; and
 - (ii) does not fall within paragraphs (b) to (d);
- (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 41A), in respect of such of those services as are designated; or
- (d) remuneration which is—
 - (i) paid to persons providing general medical services under Part II;
 - (ii) determined by the Health Authority concerned; and
 - (iii) of a designated description.

(3B) In paragraph (b), (c) or (d) of subsection (3A), “designated” means designated in writing by the Secretary of State for the purposes of that paragraph and in relation to the allotment in question.”

PART III

Expenditure of
Health Boards.

37.—(1) In section 85 of the 1978 Act (expenses of certain bodies), after subsection (1) insert—

“(1AA) Notwithstanding subsection (2), the amount allotted by the Secretary of State to a Health Board under subsection (1) shall include provision for expenditure of that Board which is attributable to—

- (a) 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; or
- (b) remuneration which is—
 - (i) paid to persons providing general medical services under Part II;
 - (ii) determined by the Health Board concerned; and
 - (iii) of a designated description.

(1AB) In subsection (1AA), “designated” means designated in writing by the Secretary of State for the purposes of that subsection and in relation to the allotment in question.”

(2) In subsection (2) at the beginning insert “Subject to subsection (1AA),”.

Corresponding
provision for
Northern Ireland.
1974 c. 28.

38.—(1) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it is made only for purposes corresponding to purposes of any of the provisions of this Act—

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) This section does not apply in relation to the provisions of sections 32 to 34.

Regulations and
directions.

39.—(1) Any power under this Act to make regulations is exercisable by the Secretary of State.

- (2) Any such power—
 - (a) may be exercised to make different provision for different cases or descriptions of case, including different provision for different areas; and
 - (b) includes power to make such incidental, supplemental, consequential or transitional provision as appears to the Secretary of State to be appropriate.
- (3) Regulations under this Act must be made by statutory instrument.
- (4) Such a statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Any power under or by virtue of this Act to give directions—
 - (a) is to be exercised by an instrument in writing; and
 - (b) includes power to vary or revoke the directions by subsequent directions.

PART III

(6) Subsection (2) applies in relation to any power of the Secretary of State under or by virtue of this Act to give directions as it applies in relation to any power of his to make regulations.

40.—(1) Subject to subsection (2), Part I—

Interpretation.

(a) in its application to England and Wales, is to be read as one with the 1977 Act; and

(b) in its application to Scotland, is to be read as one with the 1978 Act.

(2) In this Act—

“the 1977 Act” means the National Health Service Act 1977; 1977 c. 49.

“the 1978 Act” means the National Health Service (Scotland) Act 1978; 1978 c. 29.

“authority” has the meaning given by section 1(8);

“health service” means the health service in England and Wales and the health service in Scotland;

“medical list” has the meaning given by section 2(5);

“personal medical services” and “personal dental services” have the meaning given in section 1(8);

“pilot scheme” and “piloted services” have the meaning given in section 1;

“prescribed” means prescribed by regulations; and

“regulations” means regulations under this Act.

(3) Except in sections 28C and 28E of the 1977 Act and sections 17C and 17E of the 1978 Act—

(a) references in any enactment (or in any instrument made under any enactment) to arrangements made under section 28C of the 1977 Act or section 17C of the 1978 Act are to be read, except where the context otherwise requires, as including references to pilot schemes; and

(b) references in any enactment (or in any instrument made under any enactment) to services under section 28C of the 1977 Act or section 17C of the 1978 Act, or to services provided in accordance with arrangements made under either of those sections, are to be read, except where the context otherwise requires, as including references to piloted services.

41.—(1) This Act may be referred to as the National Health Service (Primary Care) Act 1997.

Short title, commencement and extent, etc.

(2) Sections 38 to 40 and subsections (1) to (9) and (13) and (14) of this section come into force on the passing of this Act.

(3) Otherwise, this Act comes into force on such date as may be appointed by order made by the Secretary of State; but different dates may be appointed for different provisions and for different purposes.

(4) Any such order may include such transitional provisions or savings as the Secretary of State considers appropriate.

PART III

(5) A Health Authority, Health Board or NHS trust is to be taken as having, at any time before the commencement of any provision of this Act, power to prepare for that commencement.

(6) Any amendment, repeal or revocation made by or under this Act has the same extent as the enactment or other instrument amended, repealed or revoked.

(7) Subject to subsection (6), only section 38 and this section (except subsections (5) and (8)) extend to Northern Ireland.

(8) The Secretary of State may by order provide that this Act extends to the Isles of Scilly with such modifications (if any) as are specified in the order; but otherwise this Act does not extend there.

(9) Orders under subsections (3), (8) and (13) must be made by statutory instrument.

(10) Part I of Schedule 2 makes minor and consequential amendments.

(11) Part II of Schedule 2 makes amendments to facilitate, or which are otherwise desirable in connection with, the consolidation of certain enactments relating to the health service.

(12) The repeals and revocations set out in Schedule 3 are to have effect.

(13) The Secretary of State may by order make such amendments or repeals of any enactment passed before, or in the same Session as, this Act as appear to him necessary or expedient in consequence of any provision of this Act.

(14) An order under subsection (13)—

- (a) may contain such supplemental, incidental, consequential or transitional provisions and savings as the Secretary of State considers appropriate; and
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

SCHEDULES

SCHEDULE 1

Section 13(9).

PREFERENTIAL TREATMENT ON TRANSFERRING TO MEDICAL LISTS

Cases where preference is given

1.—(1) This Schedule applies if the Secretary of State determines under section 13 that a medical practitioner is to be given preferential treatment on making an application for his name to be included in an authority's medical list after ceasing to perform personal medical services in connection with the provision of such services under a pilot scheme and the conditions mentioned in sub-paragraph (2) are satisfied.

(2) The conditions are that—

- (a) the practitioner has made an application in the prescribed manner to the authority concerned for his name to be included in their medical list;
- (b) his name has not been included in the list since he ceased to perform the services under the scheme; and
- (c) he has not, since then, been nominated or approved in accordance with regulations under section 29B of the 1977 Act or (as the case may be) section 19B of the 1978 Act for appointment to fill a vacancy which relates (whether wholly or in part) to the authority's area.

The preferential treatment

2.—(1) The authority must include the applicant's name in their medical list unless—

- (a) the applicant is not eligible for inclusion in the list by virtue of a direction under paragraph 4;
- (b) he is otherwise not eligible for inclusion in the list; or
- (c) the question of whether to give a direction under paragraph 4 is not resolved.

(2) Where the authority are under a duty under sub-paragraph (1) in relation to the applicant, neither section 29A(2)(b) of the 1977 Act nor (as the case may be) section 19A(2)(b) of the 1978 Act (requirement as to nomination or approval) applies in relation to him.

(3) Regulations may make provision as to conditions to be attached to the applicant's entry in the list in such cases.

(4) For the purposes of this paragraph, a person is not eligible for inclusion in a medical list if he is not eligible for inclusion in the list for the purposes of section 29A(2)(a) of the 1977 Act or (as the case may be) section 19A(2)(a) of the 1978 Act.

Representations against preferential treatment

3.—(1) The Tribunal must inquire into any representations by the authority that the inclusion of the applicant's name in their medical list would be prejudicial to the efficiency of the general medical services provided in their area.

(2) The Tribunal may inquire into any similar representations by any other person.

(3) Where any representations of a kind mentioned in sub-paragraph (1) or (2) are made to the Tribunal and the applicant withdraws his application without the consent of the Secretary of State, the Tribunal may proceed to inquire into any of the representations, and exercise the powers in relation to disqualification conferred on them by this Schedule, as if the application had not been withdrawn.

SCH. 1

(4) The representations must be made in the prescribed manner and before the end of such period as may be prescribed.

(5) Regulations may make provision for the publication of information about—

- (a) applications to which this Schedule relates; and
- (b) the right to make representations about such applications.

Power of Tribunal to give directions

4.—(1) If the Tribunal consider that the inclusion of the applicant's name in the medical list would be prejudicial to the efficiency of the general medical services provided in the authority's area, they—

- (a) must direct that the applicant's name is not to be included in the list; and
- (b) may, if they think fit—
 - (i) direct that his name is not to be included in any other medical list (whether kept under the 1977 Act or the 1978 Act); or
 - (ii) direct that his name is not to be included in any other specified medical list or lists kept under the appropriate Act.

(2) In sub-paragraph (1) "appropriate Act" means—

- (a) in a case where the medical list to which sub-paragraph (1)(a) applies is kept under the 1977 Act, that Act; and
- (b) in a case where the medical list to which sub-paragraph (1)(a) applies is kept under the 1978 Act, that Act.

(3) If the Tribunal give a direction under sub-paragraph (1)(b)(i) they may also, if they think fit, declare that the applicant is not fit to be engaged in any capacity in the provision of general medical services (whether under the 1977 Act or the 1978 Act).

(4) A direction by the Tribunal under this paragraph is binding on the authority or authorities concerned as from the time when the direction is given.

Termination of directions

5.—(1) A person's name may not be included (whether by virtue of paragraph 2 or otherwise) in any medical list to which a direction under paragraph 4 relates before the Tribunal give a direction to the contrary under this paragraph.

(2) For the purpose of deciding whether or not to give a direction under this paragraph, the Tribunal may hold an inquiry.

Directions in Northern Ireland

6. A person's name may not be included in any medical list (whether by virtue of paragraph 2 or otherwise) if he is prevented under provisions in Northern Ireland which correspond to this Schedule from being included in all corresponding lists there.

Regulations

7.—(1) Regulations must provide—

- (a) for inquiries under this Schedule to be held in accordance with such procedure as may be prescribed by or determined under the regulations;
- (b) for conferring on the Tribunal such powers as the Secretary of State considers necessary;

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1972 c. 70.

- (c) for section 250 of the Local Government Act 1972 (local inquiries) to apply, in relation to England and Wales, with such modifications (if any) as may be prescribed; and
 - (d) for the publication of decisions of the Tribunal under the regulations and of the imposition and removal of any disqualifications imposed under paragraph 6.
- (2) The regulations must, in particular—
- (a) provide for any person who is the subject of an inquiry 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; and
 - (ii) of being heard by the Tribunal and of calling witnesses and producing other evidence on his behalf; and
 - (b) provide for the hearing to be in public if the person who is the subject of the inquiry so requests.

Interpretation

8. For the purposes of this Schedule the question of whether to give a direction under paragraph 4 is resolved if—

- (a) the period for making representations under paragraph 3 has ended without the Tribunal receiving any such representations;
 - (b) such representations have been received but the Tribunal have decided—
 - (i) not to inquire into them; or
 - (ii) not to give a direction under paragraph 4; or
 - (c) a direction has been given by the Tribunal.
9. In this Schedule “the Tribunal” means—
- (a) in relation to an applicant for inclusion in a Health Authority’s medical list, the Tribunal constituted under section 46 of the 1977 Act; or
 - (b) in relation to an applicant for inclusion in a Health Board’s medical list, the Tribunal constituted under section 29 of the 1978 Act.

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Section 41(10) and
(11).

AMENDMENTS

PART I

MINOR AND CONSEQUENTIAL AMENDMENTS

The Health Services and Public Health Act 1968 (c. 46)

- 1.—(1) The Health Services and Public Health Act 1968 is amended as follows.
- (2) In section 59(1), for “general medical services or general dental services” substitute “general medical services, personal medical services, general dental services or personal dental services”.
- (3) After section 59(2) insert—
- “(2A) In subsection (1), references to personal medical services and personal dental services are to be construed as references to services of those respective kinds under section 28C of the 1977 Act, section 17C of the 1978 Act or the corresponding provisions of the law in force in Northern Ireland or the Isle of Man.”

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- 1978 c. 29. (4) After section 63(2)(b) insert—
 “(ba) the provision or performance of a service in accordance with arrangements made under section 28C of the 1977 Act or section 17C of the National Health Service (Scotland) Act 1978 and an activity involved in or connected with the provision or performance of such a service;”.

The Patents Act 1977 (c. 37)

- 1977 c. 49. 2. In section 56(4)(a) of the Patents Act 1977, for the words from “provision of” to “Isle of Man” substitute “provision of—
 (i) pharmaceutical services, general medical services or general dental services under Part II of the National Health Service Act 1977, Part II of the National Health Service (Scotland) Act 1978, or the corresponding provisions of the law in force in Northern Ireland or the Isle of Man, or
 (ii) personal medical services or personal dental services provided in accordance with arrangements made under section 28C of the 1977 Act, section 17C of the 1978 Act, or the corresponding provisions of the law in force in Northern Ireland or the Isle of Man”.

The National Health Service Act 1977 (c. 49)

3. The 1977 Act is amended in accordance with paragraphs 4 to 31.
- 4.—(1) Section 15 is amended as follows.
- (2) After subsection (1) insert—
 “(1ZA) It is the duty of each Health Authority, in accordance with regulations, to perform such functions in relation to section 28C arrangements as may be prescribed.
 (1ZB) Regulations under subsection (1ZA) may, in particular—
 (a) prescribe functions in relation to training;
 (b) provide for appeals to the Secretary of State or a prescribed body in relation to functions prescribed by the regulations.”
- (3) For subsection (1B) substitute—
 “(1B) In relation to a Part II medical practitioner—
 (a) whose name is included in the medical list of only one Health Authority, and
 (b) who practises on his own or in partnership with others all of whom are Part II medical practitioners whose names are included only in that Authority’s medical list,
 any reference in this Act or the National Health Service and Community Care Act 1990 to the relevant Health Authority is to be construed as a reference to that Authority.
 (1BA) In relation to a medical practitioner who is not within subsection (1B), any reference in this Act or the National Health Service and Community Care Act 1990 to the relevant Health Authority is to be construed as a reference to the Authority in whose area most of the practice patients live.”
- 1990 c. 19. (4) After subsection (1C) insert—
 “(1D) In this section—

“Part II medical practitioner” means a medical practitioner who provides general medical services under Part II and does not perform personal medical services under section 28C arrangements; and

“practice patient” means—

(a) in relation to a medical practitioner who practises otherwise than in partnership, an individual who is on that practitioner’s list of patients (or, if that practitioner and one or more other medical practitioners together have a single list of patients in connection with section 28C arrangements, an individual who is on that single list);

(b) in relation to a medical practitioner who is one of two or more practitioners who practise in partnership with each other, an individual who is on the list of patients of any of those practitioners (or, if any of those practitioners together have a single list of patients in connection with section 28C arrangements, an individual who is on that single list).”

5.—(1) Section 26 is amended as follows.

(2) For subsection (2) substitute—

“(2) The Secretary of State may supply or make available to persons—

(a) providing general medical services, general dental services, general ophthalmic services or pharmaceutical services, or

(b) providing, in accordance with section 28C arrangements, personal medical services, personal dental services or other services of a kind that may be provided under this Part,

such goods, materials or other facilities as may be prescribed.”

(3) In subsection (4), after the words “pharmaceutical services” at the end of paragraph (a) insert—

“(aa) persons performing, in accordance with section 28C arrangements, personal medical services, personal dental services or other services of a kind that may be provided under this Part.”

6. After section 28G insert—

“Immunisation. 28H. Where the Secretary of State arranges with medical practitioners for the vaccination or immunisation of persons against disease, he shall so far as reasonably practicable give every person providing, and every medical practitioner performing, personal medical services in accordance with section 28C arrangements an opportunity to participate in the arrangements for vaccination or immunisation.”

7. After section 28H insert—

“Use of accommodation. 28I. 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 personal medical services or personal dental services in accordance with section 28C arrangements, he may make the accommodation available on such terms as he thinks fit to persons providing those services.”

8. In section 29(2), omit paragraphs (b) and (c).

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9. In section 32(1), for the definition of “applicant” substitute—
 ““applicant” means a medical practitioner who is seeking to be nominated or approved by a Health Authority in accordance with regulations under section 29B for appointment to fill a vacancy;”.
- 10.—(1) Section 33 is amended as follows.
- (2) Omit subsection (1).
- (3) In subsection (1B)—
- (a) after “Act” insert “or any regulations made under this Part of this Act”; and
- (b) for “the Medical Practices Committee are to refuse applications under section 30 above” substitute “references under regulations made under section 29B are to be determined”.
- (4) After subsection (1B) insert—
 “(1C) An order under subsection (1A) may, in particular, make provision as to the extent to which account is to be taken under the order of medical practitioners whose ability to carry out remunerated work is limited by virtue of conditions of practice which relate to remuneration and are determined under regulations made under section 29B.”
- (5) Omit subsections (2) to (6) and (8).
11. In section 34(1)(a), omit from “(ii) the occurrence” to the end of the section.
12. Omit section 36(1)(c).
13. In section 41, for “in this Act referred to” substitute “, together with additional pharmaceutical services provided in accordance with a direction under section 41A, referred to in this Act”.
14. In section 43(3), after “41(d)” insert “, or additional pharmaceutical services provided in accordance with a direction under section 41A,”.
15. In section 50, after “whom” insert “general ophthalmic”.
16. In section 81(b), after “providing” insert “personal dental services in accordance with section 28C arrangements or”.
17. In section 82(b), after “providing” insert “personal dental services in accordance with section 28C arrangements or”.
18. In section 83, for paragraph (b) substitute—
 “(b) for the purposes of section 78(1A) in relation to appliances provided as part of—
 (i) general dental services, or
 (ii) personal dental services provided in accordance with section 28C arrangements,
 may provide for the reduction of the sums which would otherwise be payable by a Health Authority to the persons by whom those services are provided by the amount of the charges authorised by section 78(1A) in respect of those appliances.”

19. In section 83A(1)(a), after “section 78(1) or (1A) above” insert “, section 78A(1) above”.

20. In section 85(1), references to functions conferred or imposed by or under the 1977 Act are to be construed as including references to functions conferred or imposed in relation to pilot schemes by or under this Act; and references to regulations and directions are accordingly to be construed as including regulations or directions under this Act.

21. In section 86, the reference to a function conferred by virtue of the 1977 Act is to be construed as including a reference to a function conferred in relation to pilot schemes by virtue of this Act.

22. In section 97(6)(a), for “subsections (1) to (3), or subsection (4), above” substitute “this section”.

23. In section 97A—

- (a) in subsection (1)(a), for “amounts allotted to them for that year under subsections (2) and (3)” substitute “amount allotted to them for that year under subsection (3)”; and
- (b) in subsection (9)(c)(i), omit “subsections (1) to (3) of”.

24. In section 102(1)(a)(iii) and (2)(b), after “section 32 above” insert “or by regulations which make provision in relation to section 28C arrangements of a kind that may be made by regulations under section 32 above”.

25. In section 103(1)(a) after “Act” insert “or in accordance with section 28C arrangements”.

26. In section 105(2)(a) after “examined” insert “or as part of his duty to perform personal medical services for that person in accordance with section 28C arrangements”.

27. In section 126(3), after “under” insert “or by virtue of”.

28. In section 128, insert at the appropriate places—

- ““health service body” has the same meaning as in section 4 of the National Health Service and Community Care Act 1990;”;
- ““medical list” has the meaning given by section 29A(6);”;
- ““personal dental services” has the meaning given in section 28C(7);”;
- ““personal medical services” (except in section 29) has the meaning given in section 28C(7);”;
- ““section 28C arrangements” means arrangements made under section 28C”.

29.—(1) In Schedule 9, paragraph 5A is amended as follows.

(2) In sub-paragraph (2), after “sub-paragraph (1)(c) above” insert “as it has effect in relation to the functions mentioned below”.

(3) After sub-paragraph (2) insert—

“(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.”

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30.—(1) Schedule 10 is amended as follows.

(2) In paragraph 1(1) and (3), omit “, or any part of the goodwill,”.

(3) In paragraph 1, for sub-paragraph (2) substitute—

“(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 54(1) may ask the Medical Practices Committee for a certificate under this paragraph.”

(4) In paragraph 1, omit sub-paragraph (8).

(5) In paragraph 2, for sub-paragraph (1) substitute—

“(1) For the purposes of section 54(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.

(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.

(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.”

(6) In paragraph 2(2)—

- (a) omit “between medical practitioners”; and
- (b) omit “, or part of the goodwill,”.

(7) In paragraph 2, for sub-paragraph (3) substitute—

“(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.

(3A) For the purposes of section 54 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.”

(8) In paragraph 2, for sub-paragraphs (4) and (5) substitute—

“(4) For the purposes of section 54(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.
- (5) Sub-paragraph (4) does not apply—
- (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.”
- (9) In paragraph 2, for sub-paragraph (7) substitute—
- “(7) For the purposes of section 54 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.”
- (10) At the end insert—
- “Carried-over goodwill*
3. The fact that a person’s medical practice was previously carried on by another person who at any time provided general medical services or personal medical services does not, by itself, make it unlawful under section 54(1) for the goodwill of his practice to be sold.”

31. In Schedule 12, in paragraph 1(1)(b), after “drug or medicine” insert “(otherwise than in accordance with section 28C arrangements)”.

The National Health Service (Scotland) Act 1978 (c. 29)

32. The 1978 Act is amended in accordance with paragraphs 33 to 60.

33. In section 3(1), omit from “, for the purpose of” to the end.

34. In section 12A, after subsection (4) insert—

“(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).”

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35. In section 15(1)(a)—

(a) after “persons” insert “—
(i)”; and

(b) after “Part II” insert “; or

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

36. In section 17A(2), at the end insert “and in this Act “health service body” means any of those persons or bodies”.

37. After section 17G insert—

“Immunisation. 17H. Where the Secretary of State arranges with medical practitioners for the vaccination or immunisation of persons against any disease, he shall so far as reasonably practicable give every person providing, and every medical practitioner performing, personal medical services in accordance with section 17C arrangements an opportunity to participate in the arrangements for vaccination or immunisation.”

38. After section 17H insert—

“Use of accommodation. 17I. 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 personal 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.”

39.—(1) Section 19 is amended as follows.

(2) In subsection (2), omit paragraphs (b) and (c).

(3) For subsection (8) substitute—

“(8) In relation to a Part II medical practitioner—

(a) whose name is included in the list of only one Health Board, and

(b) who practises on his own or in partnership with others all of whom are Part II medical practitioners whose names are included only in that Board’s list,

any reference in this Act to the relevant Health Board is to be construed as a reference to that Board.

(9) In relation to a medical practitioner who is not within subsection (8), any reference in this Act to the relevant Health Board is to be construed as a reference to the Board in whose area most of the practice patients live.

(10) In this section—

“Part II medical practitioner” means a medical practitioner who provides general medical services under Part II and does not perform personal medical services under section 17C arrangements; and

“practice patient” means—

(a) in relation to a medical practitioner who practises otherwise than in partnership, an individual who is on that practitioner’s list of patients (or, if that practitioner and one or

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more other medical practitioners together have a single list of patients in connection with section 17C arrangements, an individual who is on that single list);

(b) in relation to a medical practitioner who is one of two or more practitioners who practise in partnership with each other, an individual who is on the list of patients of any of those practitioners (or, if any of those practitioners together have a single list of patients in connection with section 17C arrangements, an individual who is on that single list).”

40. In section 22(1) for the definition of “applicant” substitute—

““applicant” means a medical practitioner who is seeking to be nominated or approved by a Health Board in accordance with regulations under section 19B for appointment to fill a vacancy;”.

41.—(1) Section 23 is amended as follows.

(2) Omit subsection (1).

(3) In subsection (1B)—

(a) after “Act” insert “or any regulations made under this Part of this Act”; and

(b) for “the Medical Practices Committee are to refuse applications under section 20” substitute “references under regulations made under section 19B are to be determined”.

(4) After subsection (1B) insert—

“(1C) An order under subsection (1A) may, in particular, make provision as to the extent to which account is to be taken under the order of medical practitioners whose ability to carry out remunerated work is limited by virtue of conditions of practice which relate to remuneration and are determined under regulations made under section 19B.”

(5) Omit subsections (2) to (6) and (8).

42. In section 24(1)(a), omit from “(ii) the occurrence” to the end of the section.

43. Omit section 25(2)(c).

44. In section 27(1), for “in this Act referred to” substitute “, together with additional pharmaceutical services provided in accordance with a direction under section 27A, referred to in this Act”.

45. In section 28(2)(b), after “that” insert “(i)”, and after “arrangements” insert “, and

(ii) all additional pharmaceutical services provided in accordance with a direction under section 27A,”.

46. In section 34, after “whom” insert “general ophthalmic”.

47. In section 73(b), after “providing” insert “personal dental services in accordance with section 17C arrangements or”.

48. In section 74(b), after “providing” insert “personal dental services in accordance with section 17C arrangements or”.

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49. In section 75, for paragraph (b) substitute—

“(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.”

50. In section 75A(1)(a), after “section 70(1) or (1A) above” insert “, section 70A(1) above”.

51. In section 77(1), references to functions conferred or imposed by or under the 1978 Act are to be construed as including references to functions conferred or imposed in relation to pilot schemes by or under this Act; and references to regulations, schemes, proposals and directions are accordingly to be construed as including regulations, schemes, proposals or directions under this Act.

52. In section 78, the reference to a function conferred by or under the 1978 Act is to be construed as including a reference to a function conferred in relation to pilot schemes by or under this Act.

53.—(1) Section 87A is amended as follows.

(2) In subsection (1), after “section 19”, insert “, or (in the case of practitioners who are not employed by another person) personal medical services in accordance with section 17C arrangements,”.

(3) In subsection (4), for paragraph (g) substitute—

“(g) the operation of this section in a case where one or more of the medical practitioners wishing to make an application under subsection (1) is also—

(i) on the medical list of a Health Authority established under section 8 of the National Health Service Act 1977; or

(ii) providing personal medical services in accordance with arrangements made under section 28C of that Act;”.

1977 c. 49.

54.—(1) Section 87B is amended as follows.

(2) In subsection (3)(b), for “individuals on the lists of patients of any of the members of the practice” substitute “practice patients”.

(3) In subsection (5)(b)—

(a) after “general medical services” insert “or personal medical services provided in accordance with section 17C arrangements”; and

(b) for “individuals on the lists of patients of the members of the practice” substitute “practice patients”.

(4) After subsection (6) insert—

“(7) In this section “practice patient”, in relation to a recognised fund-holding practice, means an individual who is on the list of patients of any of the members of the practice (or, if any of those members together have a single list of patients in connection with section 17C arrangements, an individual who is on that single list).”

55.—(1) Section 87D is amended as follows.

(2) In subsection (1), for “subsection (2)” substitute “subsections (2) and (8)”.

(3) In subsection (3)—

(a) in paragraph (a), after “who” insert “is on the medical list of a Health Board and”; and

(b) for paragraph (b) substitute—

“(b) in the case of two or more medical practitioners who practise in partnership with each other, each medical practitioner who is on the medical list of a Health Board;”.

(4) After subsection (7) insert—

“(8) This section does not apply in relation to the performance or provision of personal medical services in accordance with section 17C arrangements.”

56. In section 88(1)(d) and (2)(e), after “section 22” insert “or by regulations which make provision in relation to section 17C arrangements of a kind that may be made by regulations under section 22”.

57. In section 108, insert at the appropriate places—

““health service body” means a person or body specified in section 17A(2);”;

““medical list” has the meaning given by section 19A(6);”;

““personal dental services” has the meaning given in section 17C(6);”;

““personal medical services” (except in section 19) has the meaning given in section 17C(6);”;

““section 17C arrangements” has the same meaning as in section 17E(9);”.

58.—(1) In Schedule 8, paragraph 8 is amended as follows.

(2) In sub-paragraph (2), after “sub-paragraph (1)(c) above” insert “as it has effect in relation to the functions mentioned below”.

(3) After sub-paragraph (2) insert—

“(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.”

59.—(1) Schedule 9 is amended as follows.

(2) In paragraph 1(1) and (3), omit “, or any part of the goodwill,”.

(3) In paragraph 1, for sub-paragraph (2) substitute—

“(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 Medical Practices Committee for a certificate under this paragraph.”

(4) In paragraph 1, omit sub-paragraph (8).

(5) In paragraph 2, for sub-paragraph (1) substitute—

“(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—

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- (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.

(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.

(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.”

(6) In paragraph 2(2)—

- (a) omit “between medical practitioners”; and
- (b) omit “, or part of the goodwill,”.

(7) In paragraph 2, for sub-paragraph (3) substitute—

“(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.

(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.”

(8) In paragraph 2, for sub-paragraphs (4) and (5) substitute—

“(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.

(5) Sub-paragraph (4) does not apply—

- (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.”

(9) In paragraph 2, for sub-paragraph (7) substitute—

“(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.”

(10) At the end insert—

“Carried-over goodwill

3. The fact that a person’s medical practice was previously carried on by another person who at any time provided general medical services or personal medical services does not, by itself, make it unlawful under section 35(1) for the goodwill of his practice to be sold.”

60. In Schedule 11, in paragraph 1(1)(b), after “drug or medicine” insert “(otherwise than in accordance with section 17C arrangements)”.

The Medical Act 1983 (c. 54)

61.—(1) The Medical Act 1983 is amended as follows.

(2) In section 11(4), in the definition of “approved”, for “, in relation to a hospital or institution,” substitute “(except in subsection (5))”.

(3) In section 13—

- (a) in subsection (1), for “approved hospital or approved institution” substitute “approved hospital, approved institution or approved medical practice”;
- (b) in subsection (2), for “hospital or institution” substitute “hospital, institution or medical practice”;
- (c) in subsection (3)(a), for “an approved hospital or an approved institution” substitute “an approved hospital, an approved institution or an approved medical practice”.

(4) In section 15(3), for “approved hospitals or approved institutions” substitute “approved hospitals, approved institutions or approved medical practices”.

(5) In section 21(3), for “approved hospitals or approved institutions” substitute “approved hospitals, approved institutions or approved medical practices”.

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The Dentists Act 1984 (c. 24)

62. In section 53(3)(a) of the Dentists Act 1984, for the words from “services under” to “1978 or” substitute—

- “(a) services under—
- 1977 c. 49. (i) section 2, 3, 5(1)(a) or 28C of, or Schedule 1 to, the National Health Service Act 1977;
- 1978 c. 29. (ii) section 17C, 36, 38 or 39 of the National Health Service (Scotland) Act 1978; or
- (iii)”.

The Copyright, Designs and Patents Act 1988 (c. 48)

63. In section 240(4) of the Copyright, Designs and Patents Act 1988, for the words from “(a) pharmaceutical services” to the end of the subsection substitute—

- “(a) pharmaceutical services, general medical services or general dental services under—
- (i) Part II of the National Health Service Act 1977,
- (ii) Part II of the National Health Service (Scotland) Act 1978, or
- (iii) the corresponding provisions of the law in force in Northern Ireland; or
- (b) personal medical services or personal dental services in accordance with arrangements made under—
- (i) section 28C of the 1977 Act,
- (ii) section 17C of the 1978 Act, or
- (iii) the corresponding provisions of the law in force in Northern Ireland.”

The Health and Medicines Act 1988 (c. 49)

64.—(1) The Health and Medicines Act 1988 is amended as follows.

(2) In section 2(1)(a), for the words from “provision of general medical services” to “Act 1978” substitute “provision of—

- (i) general medical services under Part II of the National Health Service Act 1977 or Part II of the National Health Service (Scotland) Act 1978; or
- (ii) personal medical services in accordance with arrangements made under section 28C of the 1977 Act or section 17C of the 1978 Act”.

(3) In section 8(2) omit “(a) or”.

(4) In section 17, at the end insert—

“(3A) This section applies also in relation to additional pharmaceutical services provided under arrangements made in accordance with directions under section 41A of the National Health Service Act 1977 or section 27A of the National Health Service (Scotland) Act 1978.”

The National Health Service and Community Care Act 1990 (c. 19)

65.—(1) The National Health Service and Community Care Act 1990 is amended as follows.

(2) In section 5, after subsection (6) insert—

“(6A) The functions of an NHS trust also include power to provide services in accordance with arrangements made under section 28C of the principal Act, and to do so as a member of a qualifying body (within the meaning of section 28D of that Act).”

(3) In section 14(1), after “principal Act” insert “, or (in the case of practitioners who are not employed by another person) personal medical services in accordance with arrangements made under section 28C of that Act,”.

(4) For section 14(6)(g) substitute—

“(g) the operation of this section in a case where one or more of the medical practitioners wishing to make an application under subsection (1) above is also—

(i) on the medical list of a Health Board; or

(ii) providing personal medical services in accordance with arrangements made under section 17C of the National Health Service (Scotland) Act 1978;”.

(5) In section 15(4)(b), for “individuals on the list of patients of any of the members of the practice” substitute “practice patients”.

(6) In section 15(7)(b)—

(a) after “general medical services” insert “or personal medical services provided in accordance with arrangements made under section 28C of the principal Act”;

(b) for “individuals on the lists of patients of the members of the practice” substitute “practice patients”.

(7) In section 15, after subsection (9) insert—

“(10) In this section “practice patient”, in relation to a recognised fund-holding practice, means an individual who is on the list of patients of any of the members of the practice (or, if any of those members together have a single list of patients in connection with arrangements made under section 28C of the principal Act, an individual who is on that single list).”

(8) In section 18(1) for “subsection (2)” substitute “subsections (2) and (8)”.

(9) In section 18(3)—

(a) in paragraph (a), after “who” insert “is on the medical list of a Health Authority and”; and

(b) for paragraph (b) substitute—

“(b) in the case of two or more medical practitioners who practise in partnership with each other, each medical practitioner who is on the medical list of a Health Authority;”.

(10) After section 18(7) insert—

“(8) This section does not apply in relation to the performance or provision of personal medical services in accordance with arrangements made under section 28C of the principal Act.”

(11) In section 62(7), after paragraph (a)(i) in the definition of “services” insert—

“(ia) arrangements made under section 28C of that Act;”.

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The Access to Health Records Act 1990 (c. 23)

66.—(1) The Access to Health Records Act 1990 is amended as follows.

(2) In section 1(2), for paragraph (a) substitute—

“(a) in the case of a record made by a general practitioner (other than an employed practitioner), or by a health professional employed by such a general practitioner—

(i) the general practitioner on whose list the patient is included (or, where the patient is included on the list of a medical practice consisting of two or more partners who are general practitioners, any such partner); or

(ii) where the patient is not on any such list, the Health Authority or Health Board by arrangement with whom a general practitioner last treated him;”.

(3) In section 11, in the definition of “general practitioner”, for the words from “providing” to “Act 1978” substitute “—

1977 c. 49.

1978 c. 29.

(a) providing general medical services in accordance with arrangements made under section 29 of the National Health Service Act 1977 or section 19 of the National Health Service (Scotland) Act 1978; or

(b) performing personal medical services in accordance with arrangements made under section 28C of the 1977 Act or section 17C of the 1978 Act”.

The Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)

67. In section 279 of the Trade Union and Labour Relations (Consolidation) Act 1992—

(a) after “as a person” insert “performing personal medical services or personal dental services or”;

(b) before “29” insert “28C,”; and

(c) before “19” insert “17C,”.

The Health Service Commissioners Act 1993 (c. 46)

68.—(1) The Health Service Commissioners Act 1993 is amended as follows.

(2) In section 2A(1), for the words from “if they are” to “Act 1977” substitute “if they are—

(a) individuals undertaking to provide in England general medical services or general dental services under Part II of the National Health Service Act 1977;

(b) persons (whether individuals or bodies) undertaking to provide in England general ophthalmic services or pharmaceutical services under Part II of that Act; or

(c) individuals performing in England personal medical services or personal dental services in accordance with arrangements made under section 28C of that Act (except as employees of, or otherwise on behalf of, a health service body or an independent provider)”.

(3) In section 2A(2), for the words from “if they are” to “Act 1977” substitute “if they are—

(a) individuals undertaking to provide in Wales general medical services or general dental services under Part II of the National Health Service Act 1977;

(b) persons (whether individuals or bodies) undertaking to provide in Wales general ophthalmic services or pharmaceutical services under Part II of that Act; or

- (c) individuals performing in Wales personal medical services or personal dental services in accordance with arrangements made under section 28C of that Act (except as employees of, or otherwise on behalf of, a health service body or an independent provider)”.
- (4) In section 2A(3), for the words from “if they are” to “Act 1978” substitute “if they are—
- (a) individuals undertaking to provide in Scotland general medical services or general dental services under Part II of the National Health Service (Scotland) Act 1978; 1978 c. 29.
- (b) persons (whether individuals or bodies) undertaking to provide in Scotland general ophthalmic services or pharmaceutical services under Part II of that Act; or
- (c) individuals performing in Scotland personal medical services or personal dental services in accordance with arrangements made under section 17C of that Act (except as employees of, or otherwise on behalf of, a health service body or an independent provider)”.
- (5) In section 3, after subsection (1) insert—
- “(1ZA) Any failure or maladministration mentioned in subsection (1) may arise from action of—
- (a) the health service body,
- (b) a person employed by that body,
- (c) a person acting on behalf of that body, or
- (d) a person to whom that body has delegated any functions.”

PART II

PRE-CONSOLIDATION AMENDMENTS

The National Health Service Act 1966 (c. 8)

69.—(1) Section 10 of the National Health Service Act 1966 is amended as follows.

- (2) In subsection (1), omit “Part II of the National Health Service Act 1977 or” and “section 56 of the said Act of 1977 or”. 1977 c. 49.
- (3) In subsection (2), omit “the Minister or, as the case may be,”.
- (4) Omit subsection (3).

The National Health Service Act 1977 (c. 49)

70. The 1977 Act is amended in accordance with paragraphs 71 to 78.

71.—(1) Section 29 is amended as follows.

- (2) In subsection (1), after “regulations” insert “which shall be made for the purpose”.
- (3) In subsection (2)(a), for “of lists” substitute “by each Health Authority of a list” and after “services” insert “for persons in the Health Authority’s area”.
- (4) Subsection (4) continues to have effect as originally enacted.

72. In section 35(1), after “regulations” insert “which shall be made for the purpose”.

73. In section 36(1)(a), for “of lists” substitute “by each Health Authority of a list” and after “services” insert “for persons in the Health Authority’s area”.

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74. In section 38(1), after “with regulations” insert “which shall be made for the purpose”.

75. In section 39(a), for “of lists of medical practitioners, and ophthalmic opticians, respectively,” substitute “by each Health Authority of a list of medical practitioners and a list of ophthalmic opticians” and after “services” insert “for persons in the Health Authority’s area”.

76. In section 41, after “with regulations” insert “which shall be made for the purpose”.

77. Omit section 43A(3).

78. Omit paragraph 37 of Schedule 15.

Transitional provisions for amendments to 1977 Act

79.—(1) This paragraph applies where an amendment made by this Part of this Schedule to section 29(1), 35(1), 38(1) or 41 of the 1977 Act imposes a duty on the Secretary of State to make regulations for certain purposes.

(2) If immediately before the amendment comes into force—

(a) regulations made for the same purposes are in force under the provision concerned or a related provision, and

(b) the regulations would have wholly, or to any extent, discharged the duty if it had been operative when they were made,

the regulations shall be deemed to discharge that duty, wholly or (as the case may be) to that extent.

(3) Nothing in this Part of this Schedule shall affect the validity of the regulations mentioned in sub-paragraph (2).

The Health and Medicines Act 1988 (c. 49)

80. In section 17(1) of the Health and Medicines Act 1988, for “36, 39 or 42” substitute “35, 36, 38, 39, 41 or 42”.

The Health Service Commissioners Act 1993 (c. 46)

81. In section 6(5) of the Health Service Commissioners Act 1993 for “36, 39 or 42” substitute “35, 36, 38, 39, 41 or 42”.

Section 41(12).

SCHEDULE 3

REPEALS AND REVOCATIONS

PART I

REPEALS

Chapter	Short title	Extent of repeal
1977 c. 49.	The National Health Service Act 1977.	In section 29(2), paragraphs (b) and (c). Section 30. In section 33, subsections (1), (2) to (6) and (8).

Chapter	Short title	Extent of repeal
1978 c. 29.	The National Health Service (Scotland) Act 1978.	<p>In section 34(1)(a), the words from “(ii) the occurrence” to the end of the section.</p> <p>Section 36(1)(c).</p> <p>In section 97A(9)(c)(i), the words “subsections (1) to (3) of”.</p> <p>In Schedule 10, in paragraph 1(1) and (3) the words “, or any part of the goodwill,” paragraph 1(8) and in paragraph 2(2) the words “between medical practitioners” and “, or part of the goodwill,”.</p> <p>In section 3(1), the words from “, for the purpose of” to the end.</p> <p>In section 19(2), paragraphs (b) and (c).</p> <p>Section 20.</p> <p>In section 23, subsections (1), (2) to (6) and (8).</p> <p>In section 24(1)(a), the words from “(ii) the occurrence” to the end of the section.</p> <p>Section 25(2)(c).</p> <p>In Schedule 9, in paragraph 1(1) and (3), the words “, or any part of the goodwill,” paragraph 1(8) and in paragraph 2(2) the words “between medical practitioners” and “, or part of the goodwill,”.</p>
1980 c. 53.	The Health Services Act 1980.	In Schedule 1, paragraph 43.
1984 c. 48.	The Health and Social Security Act 1984.	In Schedule 3, paragraph 4.
1988 c. 49.	The Health and Medicines Act 1988.	<p>In section 8(2), the words “(a) or”.</p> <p>In Schedule 2, paragraph 3.</p>
1990 c. 19.	The National Health Service and Community Care Act 1990.	<p>Section 12(1)(c).</p> <p>Section 23(2) to (8).</p>
1995 c. 17.	The Health Authorities Act 1995.	In Schedule 1, paragraphs 6(c), 19, 22(a) and (c) to (g) and 36.

PART II
PRE-CONSOLIDATION REPEALS

Chapter	Short title	Extent of repeal
1966 c. 8.	The National Health Service Act 1966.	In section 10, in subsection (1) the words "Part II of the National Health Service Act 1977 or" and "section 56 of the said Act of 1977 or", in subsection (2) the words "the Minister or, as the case may be," and subsection (3).
1977 c. 49.	The National Health Service Act 1977.	Section 43A(3). In Schedule 15, paragraph 37.

PART III
REVOCATIONS

Number	Title	Extent of revocation
S.I. 1981/432.	The European Communities (Medical, Dental and Nursing Professions) (Linguistic Knowledge) Order 1981.	Article 3(1)(a) and (2).
S.I. 1985/39.	The Family Practitioner Committees (Consequential Modifications) Order 1985.	Article 7(4), (5), (7) and (8)(b).

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