

Status: Point in time view as at 01/04/2004. This version of this cross heading contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Cross Heading: The National Health Service (Scotland) Act 1978 (c. 29). (See end of Document for details)

SCHEDULES

SCHEDULE 2

AMENDMENTS

PART I

MINOR AND CONSEQUENTIAL AMENDMENTS

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

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

Commencement Information

- II** Sch. 2 para. 32 partly in force; Sch. 2 para. 32 not in force at Royal Assent see s. 41; Sch. 2 para. 32 in force for certain purposes at 1.4.1998 by [S.I. 1998/631](#), [art. 2\(1\)\(b\)](#), [Sch. 2](#); Sch. 2 para. 32 in force for certain purposes at 1.10.1998 by [S.I. 1998/1998](#), [art. 2\(2\)\(b\)](#), [Sch. 2](#)

PROSPECTIVE

^{F1}33

Textual Amendments

- F1** Sch. 2 para. 33 repealed (S.) (1.4.2004) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), [sch. 4 para. 14\(c\)\(i\)](#); [S.S.I. 2004/148](#), [art. 2\(c\)](#)

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).”

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.”

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Commencement Information

I2 Sch. 2 para. 35 partly in force; Sch. 2 para. 35 not in force at Royal Assent see s. 41; Sch. 2 para. 35 in force for certain purposes at 1.4.1998 by [S.I. 1998/631](#), [arts. 2\(b\), 3](#), [Sch. 2](#)

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

^{F2}37

Textual Amendments

F2 Sch. 2 para. 37 repealed (S.) (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), s. 9(1), [sch. para. 2\(10\)\(a\)](#); S.S.I. 2004/58, art. 2(3)

38 After section 17H insert—

“17I Use of accommodation.

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of 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.”

Commencement Information

I3 Sch. 2 para. 38 partly in force; Sch. 2 para. 38 not in force at Royal Assent see s. 41; Sch. 2 para. 38 in force for certain purposes at 1.4.1998 by [S.I. 1998/631](#), [arts. 2\(b\), 3](#), [Sch. 2](#)

^{F3}39

Textual Amendments

F3 Sch. 2 paras. 39-41 repealed (S.) (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), s. 9(1), [sch. para. 2\(10\)\(a\)](#); S.S.I. 2004/58, art. 2(3)

PROSPECTIVE

^{F3}40

Textual Amendments

F3 Sch. 2 paras. 39-41 repealed (S.) (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), s. 9(1), [sch. para. 2\(10\)\(a\)](#); S.S.I. 2004/58, art. 2(3)

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PROSPECTIVE

F³41

Textual Amendments

F3 Sch. 2 paras. 39-41 repealed (S.) (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), s. 9(1), [sch. para. 2\(10\)\(a\)](#); S.S.I. 2004/58, art. 2(3)

PROSPECTIVE

F⁴42

Textual Amendments

F4 Sch. 2 para. 42 repealed (S.) (1.4.2004) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), [sch. 4 para. 14\(c\)\(ii\)](#); S.S.I. 2004/148, art. 2(c)

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,”.

PROSPECTIVE

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 ”.

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.”

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- 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 ^{M1}National Health Service Act 1977; or
- (ii) providing personal medical services in accordance with arrangements made under section 28C of that Act;”.

Marginal Citations

M1 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).”

PROSPECTIVE

^{F5}155 (1) Section 87D is amended as follows.

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- (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.”]

Textual Amendments

F5 Sch. 2 para. 55 repealed (*prosp.*) by 1999 c. 8, ss. 65(2), 67(1), [Sch. 5](#)

- 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);”;
- F6“ ... ”;
- ““section 17C arrangements” has the same meaning as in section 17E(9);”.

Textual Amendments

F6 Words in Sch. 2 para. 57 repealed (S.) (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), s. 9(1), [sch. para. 2\(10\)\(b\)](#); S.S.I. 2004/58, art. 2(3)

Commencement Information

I4 Sch. 2 para. 57 partly in force; Sch. 2 para. 57 not in force at Royal Assent see s. 41; Sch. 2 para. 57 in force for certain purposes at 1.4.1998 by [S.I. 1998/631](#), art. 2(1)(b), [Sch. 2](#) and Sch. 2 para. 57 in force for certain further purposes at 5.3.2001 by [S.S.I. 2001/58](#), art. 2

- 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

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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—

- (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

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- (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

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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) ”.

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