

HEALTH ACT 1999

EXPLANATORY NOTES

OUTLINE OF THE EXISTING LAW

Part II system: family health services

30. The system provided for under Part II of the Act is quite different. The broad structure of the Part II system is similar for doctors, dentists, opticians, and pharmacists. For convenience, therefore, the existing system will be described as it applies to doctors. (There are significant differences in the systems for the other professions, most notably relating to pharmacists and opticians, but those differences are not relevant for the purposes of the Act.)
31. Under section 29 of the 1977 Act, it is the duty of each Health Authority in accordance with Regulations to arrange with medical practitioners to provide personal medical services for all persons in the area who wish to take advantage of the arrangements. These services are described as general medical services (GMS). A principal feature of this system as it operates in practice is that (apart from certain exceptional cases) it is not the Health Authority itself which provides the GMS; instead, it enters into separate statutory arrangements with independent practitioners for the provision of those services. GPs are therefore not employees of the HA; they are independent professionals who undertake to provide GMS in accordance with the body of Regulations governing that activity. Those Regulations are currently the [National Health Service \(General Medical Services\) Regulations 1992 \(S.I. 1992/635\)](#) as amended.
32. It is the duty of each Health Authority, in accordance with Regulations, to administer the arrangements made for the provision of GMS and the other family health services. The Health Authority must also perform such other management and other functions relating to those services as may be prescribed. In contrast to the Part I system, therefore, the duty to make the arrangements for these services is conferred directly upon Health Authorities, rather than upon the Secretary of State. Nonetheless, in exercising functions under Part II, Health Authorities may be the subject of Secretary of State directions issued under section 17 of the 1977 Act.
33. Remuneration of persons providing Part II services is for the most part not cash-limited (in other words the Secretary of State must pay whatever it has cost the Health Authority, and he cannot impose a ceiling on the expenditure). However, the Secretary of State has the power to designate some categories of Part II remuneration (e.g. reimbursement of certain expenses) as falling within cash-limited "main expenditure". Remuneration for Part II services includes payments to pharmacists and GPs in respect of drugs dispensed to NHS patients, typically in response to prescriptions written by GPs.

The National Health Service and Community Care Act 1990

34. The 1990 Act introduced a number of changes in the systems described above.
35. Section 5 of the 1990 Act, and the immediately following provisions, provided for the setting up of bodies known as NHS trusts. These are semi-autonomous bodies set up to assume responsibility for the ownership and management of hospitals or other

establishments or facilities previously managed or provided by a Health Authority; or to provide and manage hospitals or other establishments or facilities which were not previously so managed or provided. A trust's functions are conferred by its establishment order made under section 5(1) of and by Schedule 2 to the 1990 Act. Some NHS trusts, known as "acute trusts" provide mainly hospital services. Other NHS trusts, known as "community trusts" provide mainly community services. Those which provide both hospital and community services are often known as "integrated trusts".

36. All the NHS hospitals in the country are now run by NHS trusts. NHS trusts have no money paid to them directly by the Secretary of State, but instead obtain orders for their services placed by Health Authorities and GP fund-holders. The nature of the arrangements between Health Authorities and trusts is, however, not that of an ordinary contract enforceable at law. Instead, the 1990 Act provided for a system of NHS contracts (section 4), which are explicitly not contracts enforceable at law (section 4(3)), but are subject to arbitration by the Secretary of State.
37. A further change introduced by the 1990 Act was the creation of fund-holding practices of GPs providing services under Part II of the 1977 Act. The fund-holding system did not essentially alter the Part II services they provide. However, the practices in question are given a sum of money known as an allotted sum with which to purchase, on behalf of their patients, from whatever provider they see fit, some of the care under Part I which would otherwise have been purchased by the local Health Authority. Thus there are two types of purchaser or commissioner of services: namely Health Authorities and fund-holding practices.

The National Health Service (Primary Care) Act 1997

38. The Primary Care Act introduced a new option for the delivery of family health services. Personal medical services (PMS) and personal dental services (PDS) may be provided under agreements known (in the initial stage at least) as "pilot schemes". These agreements are made between the Health Authority and one or more of the persons listed in section 2(2) or section 3(2) of the Primary Care Act, which includes NHS trusts, GPs, and NHS employees. Pilot schemes allow PMS and PDS (essentially the same as GMS and GDS) to be provided under the Part I system. The Health Authority funds the services provided under a pilot scheme from its cash-limited allocation under section 97(3).
39. These provisions allow PMS and PDS to be provided otherwise than through the regulatory system of Part II of the 1977 Act. They enable Health Authorities to agree with pilot providers locally the content of the services and the conditions under which those services will be provided. The Primary Care Act also included provision for a permanent regime (under sections 28C and 28D of the 1977 Act, as inserted by section 21 of the Primary Care Act).

Wales

40. Many of the functions of the Secretary of State in relation to the NHS are exercised in Wales (from 1 July 1999) by the National Assembly for Wales (see the [National Assembly for Wales \(Transfer of Functions\) Order 1999 SI 1999/672](#)).

Scotland

41. The legislative framework for the NHS in Scotland is set out in the National Health Service (Scotland) Act 1978 ("the 1978 Act"). It is broadly similar in structure and content to the 1977 Act, being split into Parts I and II in the same way. Instead of Health Authorities, services are commissioned by Health Boards. The 1990 Act and the Primary Care Act described above made similar provisions for Scotland as for England and Wales.