



# Health Act 1999

## 1999 CHAPTER 8

### PART II **S**

#### THE NATIONAL HEALTH SERVICE: SCOTLAND

##### *Fund-holding practices*

#### 45 Repeal of law about fund-holding practices. **S**

In the <sup>M1</sup>National Health Service (Scotland) Act 1978, sections 87A to 87C (which make provision in relation to fund-holding practices in Scotland) are to cease to have effect.

#### Marginal Citations

M1 1978 c.29.

##### *NHS trusts*

#### 46 Establishment orders. **S**

(1) In section 12A of the 1978 Act (NHS trusts)—

- (a) in subsection (1), for paragraphs (a) and (b) there is substituted “ to provide goods and services for the purposes of the health service ”,
- (b) for subsection (4) there is substituted—

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

(2) In section 108(1) (interpretation) after the definition of “property” there is inserted—

““provide” includes manage”.

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- (3) Any order under section 12A(1) of that Act—
- (a) is to be treated as always having had effect with the omission of any obligation for the NHS trust to which the order relates to own land specified in the order, and
  - (b) so far as any functions specified in it could have been specified under that provision as amended by this Act, is to be treated as having been made under that provision as so amended.
- (4) Any restriction preventing the acquisition by any NHS trust (including any NHS trust dissolved before the commencement of this section) of land merely because the land did not comprise a hospital or other establishment or facility previously managed or provided by a Health Board or the Agency is to be treated as never having had effect.
- (5) An order under section 63 of this Act may—
- (a) provide for any provision made by it for the purposes of, in consequence of, or for giving full effect to, this section to be treated as having had effect from a time before the commencement of this section,
  - (b) make such provision about an NHS trust dissolved before that commencement.
- (6) In paragraph 3(2) of Schedule 7A to the 1978 Act (establishment orders), for “assume responsibility for the ownership and management of” there is substituted “ provide services at ”.
- (7) In paragraph 3 of Schedule 7B to that Act (borrowing limits), in sub-paragraph (1), for the words from “established” to “manage” there is substituted “ which are required to provide services at or from ”.
- (8) The 1978 Act is to be treated as always having had effect subject to the amendments made by this section.

**47 Directions as to delegation of functions. S**

After section 12A of the 1978 Act there is inserted—

**“12AA Additional functions of NHS trusts.**

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

- (a) under section 2(1) of making arrangements on his behalf for the provision of services mentioned in Part II; or
- (b) relating to pilot schemes under Part I of the National Health Service (Primary Care) Act 1997; or
- (c) relating to arrangements under section 17C for the provision of personal medical services and personal dental services.”

**48 Constitution of NHS trust boards. S**

In section 12A of the 1978 Act (NHS trusts), in subsection (3), for paragraph (a) there is substituted—

- “(a) shall be a body corporate having a board of directors consisting of a chairman who is not an employee of the trust, appointed by the

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Secretary of State; and, subject to paragraph 5(2) of Schedule 7A, executive directors (directors who, subject to subsection (5), are employees of the trust) and non-executive directors (directors who, subject to subsection (5), are not employees of the trust and who shall be known as “trustees”).

**49 Duties of NHS trusts. S**

(1) Paragraph 6 of Schedule 7A to the 1978 Act is amended as follows.

(2) For sub-paragraph (1) there is substituted—

“(1) In carrying out the functions for the time being conferred on it an NHS trust shall comply with any directions given to it by the Secretary of State, whether of a general or of a particular nature.”

(3) Sub-paragraph (2) is omitted.

*Staff transfer*

**50 Transfer of staff among health service bodies. S**

After section 12C of the 1978 Act there is inserted—

**“12CA Transfer of staff among health service bodies.**

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

- (a) employed by a health service body (the transferor authority) and is transferred to another health service body (the transferee authority) because a function of the transferor authority is transferred to the transferee authority; and
- (b) designated for the purposes of this section by a scheme made by the transferor authority.

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

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

(4) Without prejudice to subsection (3)—

- (a) all the transferor authority’s rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the transferee authority on the transfer date; and
- (b) anything done before the transfer date by or in relation to the transferor authority in respect of that contract shall be deemed from that date to have been done by or in relation to the transferee authority.

(5) Subsections (3) and (4) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his

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detriment in his working conditions; but no such right shall arise by reason only of the change in employer effected by this section.

- (6) A scheme under this section may designate a person either individually or as a member of a class or description of employees.
- (7) In this section—  
a “health service body” is a body mentioned in section 17A(2); and  
the “transfer date” is the date on which the function is transferred from the transferor authority to the transferee authority.”

### *Quality*

## 51 **Duty of quality.** S

After section 12G of the 1978 Act there is inserted—

### *“ Quality*

#### **12H Duty of quality.**

- (1) It shall be the duty of each Health Board, Special Health Board and NHS trust and of the Agency to put and keep in place arrangements for the purpose of monitoring and improving the quality of health care which it provides to individuals.
- (2) The reference in subsection (1) to health care which a body there mentioned provides to individuals includes health care which the body provides jointly with another person to individuals.
- (3) In this section “health care” means services for or in connection with the prevention, diagnosis or treatment of illness.”

### *Finance*

## 52 **Expenditure of Health Boards and other bodies.** S

For section 85 of the 1978 Act there is substituted—

#### **“85AA Means of meeting expenditure of Health Boards out of public funds.**

- (1) The Secretary of State shall pay to each Health Board sums equal to their general Part II expenditure.
- (2) “General Part II expenditure” is expenditure which—  
(a) is attributable to the payment of remuneration to persons providing services in pursuance of Part II; but  
(b) does not fall within paragraphs (b) to (e) of subsection (4).

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- (3) The Secretary of State shall pay to each Health Board, in respect of each financial year, sums not exceeding the amount allotted for that year by the Secretary of State to the Board towards meeting their main expenditure.
- (4) In subsection (3) “main expenditure” means expenditure which is attributable to—
  - (a) the performance by the Board of their functions in that year, but—
    - (i) is not general Part II expenditure; and
    - (ii) does not fall within paragraphs (b) 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 27A) in respect of such of those services as are designated;
  - (d) 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; or
  - (e) remuneration which is referable to the cost of drugs for which the Health Board is accountable in that year (whether paid by it or by another Health Board).
- (5) In paragraphs (b) to (e) of subsection (4), “designated” means designated in writing by the Secretary of State for the purposes of that paragraph and in relation to the allotment in question.
- (6) An amount is allotted to a Health Board for a year under this section when they are notified by the Secretary of State that it is allotted to them for that year; and the Secretary of State may make an allotment under this section increasing or reducing an allotment previously so made.
- (7) Where the Secretary of State proposes to pay any sum to a Health Board, he may, with the consent of the Treasury, instead pay that sum to an NHS trust in discharge of the whole or any part of any liability of the Health Board to the NHS trust.
- (8) The Secretary of State may give directions to a Health Board with respect to the application of sums paid to them and a Board to whom directions have been given under this subsection shall comply with the directions.
- (9) The expenditure of a University Liaison Committee shall, for the purposes of this section, be deemed to be the expenditure of the Health Board for whose area it is constituted, and, where a University Liaison Committee is constituted for the areas of more than one Health Board, its expenditure shall be apportioned between the Boards concerned in such manner as may be determined by the Secretary of State.
- (10) Payments under this section shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may determine.

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- (11) In this section and section 85AB, “drugs” includes medicines and listed appliances (within the meaning of section 27).

**85AB Further provision as to expenditure on drugs.**

- (1) For each financial year, the Secretary of State shall apportion, in such manner as he thinks appropriate, among all Health Boards the total of the remuneration referable to the cost of drugs which is paid by each Health Board in that year.
- (2) A Health Board is accountable in any year for remuneration referable to the cost of drugs to the extent (and only to the extent) that such remuneration is apportioned to it under subsection (1).
- (3) Where in any financial year any remuneration referable to the cost of drugs for which a Health Board is accountable is paid by another Health Board, the remuneration is to be treated (for the purposes of this section) as having been paid by the first Health Board in the performance of its functions.
- (4) The Secretary of State may, in particular, exercise his discretion under subsection (1)—
  - (a) so that any apportionment reflects, in the case of each Health Board, the financial consequences of orders for the provision of drugs, being orders which in his opinion are attributable to the Board in question;
  - (b) by reference to averaged or estimated amounts.
- (5) The Secretary of State may make provision for any remuneration referable to the cost of drugs which is paid by a Health Board other than the Health Board which is accountable for the payment to be reimbursed in such manner as he may determine.
- (6) The Secretary of State shall determine what remuneration paid by Health Boards to persons providing pharmaceutical services is to be treated for the purposes of section 85AA and this section as remuneration referable to the cost of drugs.

**85 Expenses of certain bodies.**

- (1) There shall, in respect of each financial year, be paid by the Secretary of State sums not exceeding the amount allotted by him for that year to each of the following bodies towards meeting the expenditure attributable to the performance by that body of their functions in that year—
  - (a) the Agency;
  - (b) every Special Health Board;
  - (c) the Medical Practices Committee;
  - (d) the Dental Estimates Board;
  - (e) the tribunal;
  - (f) every local health council.
- (2) The date on which an allotment under subsection (1) (including an allotment increasing or reducing an allotment previously made) takes effect is the date on which the body receiving the allotment are notified of its amount by the Secretary of State.

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- (3) The Secretary of State may give directions to a body referred to in subsection (1) with respect to the application of the sums paid to them under that subsection and it shall be the duty of any body to whom directions have been given under this subsection to comply with the directions.
- (4) Payments under subsection (1) shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may determine.”

### **53 Public dividend capital. S**

- (1) Section 12E of the 1978 Act (originating capital debt of, and other financial provisions relating to, NHS trusts) is amended as provided in subsections (2) to (5).
- (2) In subsections (1), (2) and (3), for “originating capital debt” there is substituted “originating capital”.
- (3) For subsection (4) there is substituted—
  - “(4) An NHS trust’s originating capital shall be public dividend capital.”
- (4) Subsections (5) and (6) are omitted.
- (5) In subsection (7), for the words from “the terms” to the end there is substituted—
  - (a) the dividend which is to be payable at any time on any public dividend capital issued, or treated as issued, under this Act;
  - (b) the amount of any such public dividend capital which is to be repaid at any time;
  - (c) any other terms on which any public dividend capital is so issued, or treated as issued”.
- (6) In Schedule 7B to that Act—
  - (a) in paragraph 3 (limits on indebtedness), sub-paragraph (2) is omitted,
  - (b) in paragraph 5 (additional public dividend capital), sub-paragraph (2) is omitted.

### **54 Existing NHS trusts: conversion of initial loan. S**

- (1) This section applies to any NHS trust in existence immediately before commencement.
- (2) On commencement so much of the originating capital debt of the NHS trust as remains outstanding immediately before commencement is to be treated as the originating capital of the NHS trust and accordingly is public dividend capital.
- (3) Any reference in any enactment, instrument or other document to the originating capital debt of the NHS trust is to be construed (except where the context otherwise requires) as a reference to its originating capital.
- (4) The Secretary of State may with the consent of the Treasury determine the amount and time for payment of interest on the NHS trust’s initial loan in respect of the period ending with commencement.
- (5) In this section—
  - “commencement” means the coming into force of this section,

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“initial loan” has the meaning given by section 12E(5) of the 1978 Act.

## 55 **Borrowing.** S

- (1) Schedule 7B to the 1978 Act is amended as follows.
- (2) In paragraph 1 (borrowing powers of NHS trusts), in sub-paragraph (1), after “Subject to” there is inserted “ any direction given by the Secretary of State, to ”.
- (3) Sub-paragraphs (3) to (5) of that paragraph are omitted.
- (4) For sub-paragraph (6) there is substituted—
  - “(6) It shall be for the Secretary of State, with the consent of the Treasury, to determine the terms of any loan made by him to an NHS trust (including terms as to the payment of interest, if any).”

### *Indemnity cover*

## 56 **Indemnity cover for Part II services.** S

- (1) After section 28B of the 1978 Act there is inserted—

### **“28C Indemnity cover.**

- (1) Regulations may make provision for the purpose of securing that, in prescribed circumstances, prescribed Part II practitioners hold approved indemnity cover.
- (2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—
  - (a) for securing that a person is not be added to any list unless he holds approved indemnity cover;
  - (b) for the removal from a list prepared by a Health Board of a Part II practitioner who does not within a prescribed period after the making of a request by the Health Board in the prescribed manner satisfy the Health Board that he holds approved indemnity cover.
- (3) For the purposes of this section—

“approved body” means a person or persons approved in relation to indemnity cover of any description, after such consultation as may be prescribed, by the Secretary of State or by such other person as may be prescribed;

“approved indemnity cover” means indemnity cover made—

  - (a) on prescribed terms; and
  - (b) with an approved body;

“indemnity cover”, in relation to a Part II practitioner (or person who proposes to provide Part II services), means a contract of insurance or other arrangement made for the purpose of indemnifying him and any person prescribed in relation to him to any prescribed extent against any liability which—



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- (a) arises out of the provision of Part II services in accordance with arrangements made by him with a Health Board under this Part of this Act; and
- (b) is incurred by him or any such person in respect of the death or personal injury of a person;

“list” has the same meaning as in section 29;

“Part II practitioner” means a person whose name is on a list;

“Part II services” means general medical services, general dental services, general ophthalmic services or pharmaceutical services;

“personal injury” means any disease or impairment of a person’s physical or mental condition and includes the prolongation of any disease or such impairment;

and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover.

- (4) The regulations may provide that a person of any description who has entered into a contract or arrangement which is—
  - (a) in a form identified in accordance with the regulations in relation to persons of that description; and
  - (b) made with a person or persons so identified,is to be treated as holding approved indemnity cover for the purposes of the regulations.”

- (2) <sup>F1</sup> .....
- (3) <sup>F2</sup> .....
- (4) <sup>F2</sup> .....

**Textual Amendments**

**F1** S. 56(2) omitted (1.4.2004) by virtue of [The Primary Medical Services \(Scotland\) Act 2004 \(Modification of Enactments\) Order 2004 \(S.S.I. 2004/167\)](#), art. 2, **Sch. para. 5(a)**

**F2** S. 56(3)(4) repealed (1.4.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), ss. 42(2), 43, **Sch. 3**; S.S.I. 2006/121, **art. 3(b)**, Sch. 2 Table

*Remuneration*

**57 Remuneration for Part II services. S**

- (1) For sections 28A and 28B of the 1978 Act (regulations as to remuneration) there is substituted—

**“28A Remuneration for Part II services.**

- (1) The remuneration to be paid to persons who provide general medical services, general dental services, general ophthalmic services or pharmaceutical services under this Part of this Act shall be determined by determining authorities (and they may also determine the remuneration to be paid to persons providing those services in respect of the instruction of any person in matters relating to those services).

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- (2) For the purposes of this section and section 28B, determining authorities are—
  - (a) the Secretary of State; and
  - (b) so far as authorised by him to exercise the functions of determining authorities, any Health Board or other person appointed by him in an instrument (referred to in this section and section 28B as an instrument of appointment).
- (3) An instrument of appointment—
  - (a) may contain requirements with which a determining authority appointed by that instrument must comply in making determinations; and
  - (b) may be contained in regulations.
- (4) Subject to this section and section 28B, regulations may make provision about determining remuneration under subsection (1) and may in particular impose requirements with which determining authorities must comply in making, or in connection with, determinations (including requirements as to consultation and publication).
- (5) Regulations may provide—
  - (a) that determinations may be made by reference to any of the following—
    - (i) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or to be fixed or determined, otherwise than by way of a determination under subsection (1);
    - (ii) scales, indices or other data of any description specified in the regulations;
  - (b) that any determination which in accordance with regulations made by virtue of paragraph (a)(ii) falls to be made by reference to a scale or an index or to any other data may be made not only by reference to that scale or index or those data in the form current at the time of the determination but also by reference to the scale, index or data in any subsequent form attributable to amendment or revision taking effect after that time or to any other cause.
- (6) Regulations may—
  - (a) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates;
  - (b) provide that any such determination which does not specify such a date shall have effect in relation to remuneration in respect of a period beginning—
    - (i) if it is required to be published, on the date of publication;
    - (ii) if it is not so required, on the date on which it is made.
- (7) A reference in this section or section 28B to a determination is a reference to a determination of remuneration under subsection (1) of this section.

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### **28B Part II remuneration: supplementary.**

- (1) Before a determination is made by the Secretary of State which relates to all persons who provide services of, or of a category falling within, one of the descriptions of services mentioned in section 28A(1), he—
  - (a) shall consult a body appearing to him to be representative of persons to whose remuneration the determination would relate, and
  - (b) may consult such other persons as he considers appropriate.
- (2) Determinations may make different provision for different cases including different provision for any particular case, class of case or area.
- (3) Determinations may—
  - (a) be made in more than one stage;
  - (b) be made by more than one determining authority;
  - (c) be varied or revoked by subsequent determinations.
- (4) A determination may be varied—
  - (a) to correct an error; or
  - (b) where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact.
- (5) Determinations may, in particular, provide that the whole or any part of the remuneration—
  - (a) is payable only if the determining authority is satisfied as to certain conditions; or
  - (b) is to be applied for certain purposes or is otherwise subject to certain conditions.
- (6) Subject to sections 19(3) and 25(3), remuneration under section 28A may consist of payments by way of—
  - (a) salary;
  - (b) fees;
  - (c) allowances;
  - (d) reimbursement (in full or in part) of expenses incurred or expected to be incurred in connection with the provision of the services or instruction,and may be determined from time to time.
- (7) At the time a determination is made or varied, certain matters which require determining may be reserved to be decided at a later date.
- (8) The matters which may be reserved include in particular—
  - (a) the amount of remuneration to be paid in particular cases;
  - (b) whether any remuneration is to be paid in particular cases.
- (9) Any determination shall be made after taking into account all the matters which are considered to be relevant by the determining authority and such matters may include in particular—
  - (a) the amount or estimated amount of expenses (taking into account any discounts) incurred in the past or likely to be incurred in the future

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(whether or not by persons to whose remuneration the determination will relate) in connection with the provision of services of the description in section 28A(1) to which the determination will relate or of any category falling within that description;

- (b) the amount or estimated amount of any remuneration paid or likely to be paid to persons providing such services;
- (c) the amount or estimated amount of any other payments or repayments or other benefits received or likely to be received by any such persons;
- (d) the extent to which it is desirable to encourage the provision, either generally or in particular places, of the description or category of services to which the determination will relate;
- (e) the desirability of promoting services which are—
  - (i) economic and efficient; and
  - (ii) of an appropriate standard.

(10) If the determination is of remuneration for a category of services falling within one of the descriptions of services mentioned in section 28A(1), the reference in subsection (9)(a) to a category of services is a reference to the same category of services or to any other category of services falling within the same description.”

- (2) Sections 28A and 28B of the 1978 Act as substituted by this section have effect in relation to—
- (a) the making of determinations on or after the commencement of this section; and
  - (b) the variation or revocation on or after the commencement of this section of determinations whenever made,

and in this subsection “determinations” means determinations under Part II of the 1978 Act of the remuneration to be paid to persons who provide services mentioned in section 28A(1).

- (3) Section 7(4) of the <sup>M2</sup>Health and Social Security Act 1984 and section 15(3) of the <sup>M3</sup>Health and Medicines Act 1988 (determinations of remuneration for services under Part II of the 1978 Act deemed to be valid) have effect in relation to Scotland as if—
- (a) after “inserted by this section” in section 7(4)(b) of the 1984 Act; and
  - (b) after “section 7 of the Health and Social Security Act 1984” in section 15(3) of the 1988 Act,

there were inserted “ and before the coming into force of section 57 of the <sup>M4</sup>Health Act 1999 ”.

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**Marginal Citations**

- M2** 1984 c.48.
- M3** 1988 c.49.
- M4** 1999 c.8.

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## *Fraud*

### **58 Disqualification etc. of Part II practitioners. S**

- (1) For section 29 of the 1978 Act (disqualification of persons providing services) there is substituted—

#### **“29 The NHS tribunal.**

- (1) The tribunal constituted in accordance with Schedule 8 shall continue under the name of “the NHS Tribunal” and that Schedule shall continue to have effect in relation to the Tribunal.
- (2) If the Tribunal receive from a Health Board representations that—
- (a) a person who is included in any list meets either of the conditions for disqualification, or
  - (b) a person who has applied to be included in any list meets the second condition for disqualification,
- the Tribunal shall inquire into the case.
- (3) If the Tribunal receive such representations from any other person, they may inquire into the case.
- (4) Representations under this section shall be made—
- (a) in the prescribed manner; and
  - (b) where the representations are that the second condition for disqualification is met and regulations prescribe the time within which such representations are to be made, within that time.
- (5) Subsections (6) to (11) apply for the purposes of this group of sections.
- (6) The first condition for disqualification is that the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide.
- (7) The second condition for disqualification is that the person concerned—
- (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit; and
  - (b) knew that he or (as the case may be) the other was not entitled to the benefit.
- (8) A “list” means—
- (a) a list of medical practitioners undertaking to provide general medical services;
  - (b) a list of medical practitioners undertaking to provide general ophthalmic services;
  - (c) a list of dental practitioners undertaking to provide general dental services;
  - (d) a list of ophthalmic opticians undertaking to provide general ophthalmic services; or
  - (e) a list of persons undertaking to provide pharmaceutical services,

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prepared (in each case) under this Part.

- (9) “Health scheme” means—
- (a) any of the health services under section 1(1) or any corresponding enactment extending to England and Wales or Northern Ireland; and
  - (b) any prescribed scheme,
- and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.
- (10) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.
- (11) Cases in which representations are made that the first condition for disqualification is met are referred to below as efficiency cases; and cases in which representations are made that the second condition for disqualification is met are referred to below as fraud cases.
- (12) In this section and sections 29A to 29C—
- (a) “this group of sections” means this and those sections and Schedule 8; and
  - (b) the NHS Tribunal is referred to as the Tribunal.

### **29A The NHS Tribunal: supplementary.**

- (1) Where an ophthalmic optician is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).
- (2) Where a body corporate carries on a retail pharmacy business, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any one of the body of persons controlling the body corporate meets that condition (whether or not he first met that condition when he was one of them).
- (3) A person who is included in any list (“the practitioner”) is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if—
  - (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 29(8) on the practitioner’s behalf, meets that condition; and
  - (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 29(7)(a) occurring in the course of the provision of those services on his behalf.
- (4) The Tribunal is not required to inquire into a fraud case if they have previously inquired into representations in respect of the person concerned and the same acts or omissions.
- (5) In a fraud case, regulations may make provision (including provision modifying the effect of this Part) for the purpose of securing that the person

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subject to the inquiry is not added to any list until proceedings in that case are finally concluded.

- (6) For the purposes of this group of sections, in a fraud or efficiency case proceedings are finally concluded—
- (a) if the Tribunal determine not to disqualify or conditionally disqualify him when they make that determination;
  - (b) if they determine to disqualify or conditionally disqualify him and no appeal is brought against the determination, at the end of the period for bringing an appeal;
  - (c) if they determine to disqualify or conditionally disqualify him and an appeal is brought against the determination, when the appeal process is exhausted.
- (7) An inquiry under section 29 is not affected by the person subject to the inquiry withdrawing from, withdrawing any application to be included in or being removed from the list to which the case relates.

#### **29B Powers of NHS Tribunal.**

- (1) Subsection (2) applies where the Tribunal are of the opinion—
- (a) on inquiring into an efficiency case, that the person meets the first condition for disqualification;
  - (b) on inquiring into a fraud case, that the person meets the second condition for disqualification.
- (2) The Tribunal—
- (a) shall make a local disqualification, that is disqualify him for inclusion in the list to which the case relates; and
  - (b) may also make a national disqualification, that is disqualify him for inclusion in all lists within the same paragraph of section 29(8) as that list.
- (3) If the Tribunal make a national disqualification they may also declare that the person is not fit to be engaged in any capacity in the provision of the services to which the lists in question relate (referred to in this group of sections as a declaration of unfitness).
- (4) The Tribunal shall not make any disqualification or declaration under this section if they are of the opinion that it would be unjust to do so.
- (5) A disqualification under this section shall have effect when the case is finally concluded.
- (6) If a person is disqualified for inclusion in any list prepared by a Health Board, the Board must not enter him in the list and (if he is already included in the list) must remove him from the list.

#### **29C Conditional disqualification etc.**

- (1) The functions of making disqualifications under section 29B include making a conditional disqualification, that is, a disqualification which is to come into effect only if the Tribunal determine (on a review under section 30) that the

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person subject to the inquiry has failed to comply with any conditions imposed by them.

- (2) Conditions may be imposed by virtue of subsection (1) with a view to—
  - (a) removing any prejudice to the efficiency of the services in question; or
  - (b) preventing any acts or omissions within section 29(7)(a),
 (as the case may be).
- (3) Conditions so imposed shall have effect when proceedings in the case are finally concluded.
- (4) Section 29B(4) applies to a conditional disqualification as it applies to a disqualification.
- (5) The Tribunal may by directions—
  - (a) vary the terms of service of the person subject to the inquiry (including terms imposed by regulations under this Part);
  - (b) confer functions on any Health Board,
 for the purpose of or in connection with the imposition of any conditions by virtue of this section.
- (6) References in any enactment to a disqualification by the Tribunal do not include a conditional disqualification.”

(2) For section 30 of the 1978 Act (removal of disqualification) there is substituted—

**“30 Review etc. of disqualification.**

- (1) The Tribunal may review any disqualification, conditional disqualification or declaration of unfitness—
  - (a) if the disqualified or conditionally disqualified person requests a review; or
  - (b) in any other circumstances in which they consider it appropriate.
- (2) On a review under subsection (1), the Tribunal may—
  - (a) remove a disqualification or provide that a declaration of unfitness is to cease to have effect;
  - (b) make a disqualification conditional;
  - (c) in the case of a conditional disqualification, remove it, vary the conditions or make it unconditional,

and, on a review of a fraud case, may make any further disqualification or conditional disqualification which they consider appropriate.

- (3) If any Health Board request a review of a conditional disqualification on the ground that—
  - (a) there has been a change in the circumstances by reference to which the conditions were imposed;
  - (b) the person concerned has failed to comply with the conditions; or
  - (c) in a fraud case, the person concerned has since the Tribunal imposed the conditions (or made the disqualification conditional) again satisfied the second condition for disqualification,
 the Tribunal shall review the conditional disqualification.



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- (4) In the case of a person who is providing services in England and Wales or Northern Ireland, the reference in subsection (3) to a Health Board includes any corresponding authority under the provisions in force in England and Wales or Northern Ireland corresponding to this Part.
- (5) On a review under subsection (3) of a conditional disqualification, the Tribunal may remove it, vary the conditions or make it unconditional and, on a review of a fraud case, may make any further disqualification or conditional disqualification which they consider appropriate.
- (6) If, on a review under this section of a fraud case—
  - (a) there is a national disqualification which the Tribunal do not remove or make conditional;
  - (b) there is a national disqualification which is conditional and which the Tribunal make unconditional; or
  - (c) the Tribunal make a national disqualification,they may also make a declaration of unfitness.
- (7) The Tribunal shall not under this section—
  - (a) in the case of a conditional disqualification, make it unconditional or vary the conditions; or
  - (b) make any further disqualification or conditional disqualification;
  - (c) make a declaration of unfitness,if they are of the opinion that it would be unjust to do so.
- (8) A determination by the Tribunal under this section shall have effect—
  - (a) if no appeal is brought against it, at the end of the period for bringing an appeal;
  - (b) if an appeal is brought against it, when the appeal process is exhausted.
- (9) The Tribunal may hold an inquiry for the purposes of any review under this section.”

#### Commencement Information

- II** [S. 58](#) wholly in force at 4.3.2004: s. 58 not in force at Royal Assent see [s. 67](#); [s. 58](#) in force at 31.1.2004 for certain purposes and wholly in force at 4.3.2004 by [S.S.I. 2004/32](#), [art. 2](#)

## 59 Recovery of charges and payments. **S**

- (1) After section 99 of the 1978 Act there is inserted—

### “99ZA Recovery of charges and payments.

- (1) Where goods or services to which this section applies are provided and either—
- (a) any charge payable by any person under this Act in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment; or

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- (b) any payment under this Act is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services but that person is not entitled to, or to the benefit of, the payment, the amount mentioned in subsection (2) is recoverable as a debt from the person in question by the responsible authority.
- (2) That amount—
- (a) in a case within subsection (1)(a), is the amount of the charge or (where it has been reduced) reduction;
- (b) in a case within subsection (1)(b), is the amount of the payment.
- (3) Where two or more persons are liable under section 99 or this section to pay an amount in respect of the same charge or payment, those persons shall be jointly and severally liable.
- (4) For the purposes of this section, the circumstances in which a person is to be treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—
- (a) on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description;
- (b) on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it;
- (c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.
- (5) In this section and section 99ZB, “responsible authority” means—
- (a) in relation to the recovery of any charge under section 99 in respect of the provision of goods or services to which this section applies, the person by whom the charge is recoverable;
- (b) in relation to the recovery by virtue of this section of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable;
- (c) in a case within subsection (1)(b), the person who made the payment.
- (6) But the Secretary of State may by directions provide for—
- (a) the functions of any responsible authority of recovering any charges under this Act in respect of the provision of goods or services to which this section applies;
- (b) the functions of any responsible authority under this section and section 99ZB,
- to be exercised on behalf of the authority by another health service body.
- (7) This section applies to the following goods and services—
- (a) dental treatment and appliances provided in pursuance of this Act;
- (b) drugs and medicines provided in pursuance of this Act;
- (c) the testing of sight;
- (d) optical appliances;
- (e) any other appliances provided in pursuance of this Act.

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- 99ZB.—(1) Regulations may provide that, where a person fails to pay—
- (a) any amount recoverable from him under section 99 in respect of the provision of goods or services to which section 99ZA applies; or
  - (b) any amount recoverable from him under section 99ZA,

a notice (referred to in this section as a penalty notice) may be served on the person, by or on behalf of the responsible authority, requiring him to pay to the authority, within a prescribed period, that amount together with a charge (referred to in this section as a penalty charge) of an amount determined in accordance with the regulations.

- (2) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—
  - (a) £100;
  - (b) the amount referred to in subsection (1)(a) or (b) multiplied by 5.
- (3) The Secretary of State may by order provide for subsection (2) to have effect as if, for the sum specified in paragraph (a) or the multiplier specified in paragraph (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or (as the case may be) multiplier specified in the order.
- (4) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.
- (5) The further sum must not exceed 50 per cent. of the amount of the penalty charge.
- (6) Any sum payable under the regulations (including the amount referred to in subsection (1)(a) or (b)) may be recovered by the responsible authority as a debt.
- (7) But a person is not liable by virtue of a penalty notice—
  - (a) to pay at any time so much of any amount referred to in subsection (1) (a) or (b) for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other; or
  - (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.
- (8) Section 99ZA and this section apply to charges which may be made and recovered under section 20 of the <sup>M5</sup>National Health Service (Primary Care) Act 1997 as they apply to charges under this Act which may be recovered under section 99; and the reference to this Act in section 99ZA(7)(a) includes a reference to a pilot scheme (within the meaning of the 1997 Act).”

- (2) In section 105(3) of the 1978 Act (Parliamentary procedure for certain regulations) after “endowments)” there is inserted “ or orders under section 99ZB(3) ”.

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**Marginal Citations**

**M5** [1997 c.46.](#)

**Changes to legislation:**

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