



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART I

#### ORGANISATION

##### *Secretary of State*

#### **1 General duty of Secretary of State.**

- (1) It shall continue to be the duty of the Secretary of State to promote in Scotland a comprehensive and integrated health service designed to secure—
  - (a) improvement in the physical and mental health of the people of Scotland, and,
  - (b) the prevention, diagnosis and treatment of illness,and for that purpose to provide or secure the effective provision of services in accordance with the provisions of this Act.
- (2) The services so provided shall be free of charge, except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed.

#### **[<sup>F1</sup>1A Duty of the Scottish Ministers to promote health improvement**

- (1) It is the duty of the Scottish Ministers to promote the improvement of the physical and mental health of the people of Scotland.
- (2) The Scottish Ministers may do anything which they consider is likely to assist in discharging that duty including, in particular—
  - (a) giving financial assistance to any person,
  - (b) entering into arrangements or agreements with any person,
  - (c) co-operating with, or facilitating or co-ordinating the activities of, any person.

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- (3) Subsections (1) and (2) are without prejudice to section 1 and any other provision of this Act conferring or imposing functions on the Scottish Ministers.]

#### Textual Amendments

- F1** S. 1A inserted (1.1.2005) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 9(1), 12(1); S.S.I. 2004/361, art. 2(c)

### *Administrative bodies*

## 2 Health Boards.

### (1) The Secretary of State

[<sup>F2</sup>(a)] shall by order constitute in accordance with Part I of Schedule 1 boards for such areas as he may by order determine, for the purpose of exercising [<sup>F3</sup>such of his functions [<sup>F4</sup>relating to the health service] as he may so determine], and for the purpose of making arrangements on his behalf for the provision of the services mentioned in Part II; and those boards shall [<sup>F5</sup>, without prejudice to subsection (1B),] be called Health Boards [<sup>F6</sup>and]

<sup>F6</sup>(b) subject to subsections (1A) and (1C), may by order constitute boards, either for the whole of Scotland or for such parts of Scotland as he may so determine, for the purpose of exercising such of his functions [<sup>F4</sup>relating to the health service] as he may so determine; and those boards shall, without prejudice to subsection (1B), be called Special Health Boards.

[<sup>F7</sup>(1A) An order made under subsection (1)(b) may determine an area for a Special Health Board constituted under that subsection which is the same as the areas determined—

- (a) for any other Special Health Board; or
- (b) for any Health Board or Health Boards constituted by an order or orders made under subsection (1)(a).

(1B) An order under subsection [<sup>F8</sup>(1)] may specify the name by which a board constituted by the order shall be known.

(1C) The Secretary of State may by order provide that such of the provisions of this Act or of any other enactment, or of any orders, regulations, schemes or directions made under or by virtue of this Act or of any other enactment, as apply in relation to Health Boards shall, subject to such modifications and limitations as may be specified in the order, so apply in relation to any Special Health Board so specified.]

(2) The order or orders made under subsection [<sup>F9</sup>(1)(a)] determining the areas for which the Health Boards are to be constituted shall be separate from the order or orders constituting those Boards; and, before making any order determining such an area, the Secretary of State shall consult with such bodies and organisations as appear to him to be concerned.

(3) The Secretary of State may by order vary the area of any Health Board, whether or not the variation involves the constitution of a new Board, or the termination of the functions of an existing Board; and, before making such an order, the Secretary of State shall consult with such bodies and organisations as appear to him to be concerned.

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- (4) Any order under subsection (3) may make provision for any supplementary and incidental matters for which it appears to the Secretary of State to be necessary or expedient to provide, in particular for the transfer of officers and of property and liabilities.
- (5) In carrying out the purposes mentioned in subsection (1) [<sup>F10</sup>and in exercising any function otherwise conferred on them by or under this Act] each Health Board shall act subject to, and in accordance with, such regulations as may be made, and such directions as may be given, by the Secretary of State; and such regulations and directions may be made or given generally or to meet the circumstances of a particular area or matter.
- (6) Regulations under subsection (5) shall make provision requiring each Health Board to submit to the Secretary of State a scheme for the exercise of their functions, and enabling the Secretary of State to approve any such scheme with or without modifications, and to make such a scheme in the event of the failure of any Health Board to do so.
- (7) A Health Board may at any time, and if directed by the Secretary of State shall, within such period as he may specify, submit a new scheme for the exercise of their functions, and regulations making the provision mentioned in subsection (6) shall, with any necessary modifications, apply to any such scheme.
- (8) A Health Board shall, notwithstanding that it is exercising functions on behalf of the Secretary of State, be entitled to enforce any rights acquired, and shall be liable in respect of any liabilities incurred (including liability in damages for wrongful or negligent acts or omissions), in the exercise of those functions in all respects as if the Health Board were acting as a principal; and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the Health Board in its own name.
- [<sup>F11</sup>(9) A Health Board shall not be entitled to claim in any proceedings any privilege of the Crown in respect of the recovery or production of documents; but this subsection shall be without prejudice to any right of the Crown to withhold, or procure the withholding from production of, any document on the ground that its disclosure would be contrary to the public interest.]
- (10) Schedule 1 shall have effect in relation to the Boards constituted under this section.
- (11) Where it appears to the Secretary of State to be expedient in the interests of efficiency that a joint committee should be established for the areas of two or more Health Boards for the purpose of exercising some but not all of their functions, the Secretary of State may by order constitute such a joint committee and provide for the exercise by that committee or such of those functions as may be specified in the order, and for the application, with such modifications as may be so specified, to that committee of any provisions of this Act relating to those functions, and for any of the matters for which, in relation to a Health Board, provision is or may be made by or under Part II of Schedule 1.

#### Textual Amendments

- F2** "(a)" inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 28\(a\)\(i\)](#)
- F3** Words substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), [s. 14\(2\)](#), [Sch. 7 para. 1](#)

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- F4** Words in s. 2(1)(a)(b) substituted (6.8.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(2), **Sch. 2 para. 2(2)**
- F5** Words in s. 2(1)(a) inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 11(1), 12(1), **Sch. 1 para. 1(2)(a)**; S.S.I. 2004/361, **art. 2(b)(iv)**
- F6** S. 2(1)(b) and word “and” preceding it inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 28(a)(ii)**
- F7** S. 2(1A)–(1C) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 28(b)**
- F8** Word in s. 2(1B) substituted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 11(1), 12(1), **Sch. 1 para. 1(2)(b)**; S.S.I. 2004/361, **art. 2(b)(iv)**
- F9** “1(a)” substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 28(c)**
- F10** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(1)**
- F11** S. 2(9) repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

#### **Modifications etc. (not altering text)**

- C1** S. 2 modified (15.8.1997) by 1997 c. 46, **s. 10(2)**; S.I. 1997/1780, art. 2(1), **Sch.**
- C2** S. 2(3)–(5), (8) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C3** S. 2(3)–(5), (8) applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
S. 2(3)(4)(5)(8) applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
S. 2(3)(4)(5)(8) applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**  
S. 2(3)(4)(5)(8) applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**  
S. 2(3)(4)(5)(8) applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**  
S. 2(3)(4)(5)(8) applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**  
S. 2(3)(4)(5)(8) applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))  
S. 2(3)(4)(5)(8) applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
- C4** S. 2(5) amended by Hospital Complaints Procedure Act 1985 (c. 42, SIF 113:2), **s. 1(1)**

### **[<sup>F12</sup>2A Duty of Health Board, Special Health Board and the Agency to promote health improvement**

- (1) It is the duty of every Health Board and Special Health Board and of the Agency to promote the improvement of the physical and mental health of the people of Scotland.
- (2) A Health Board, a Special Health Board or the Agency may do anything which they consider is likely to assist in discharging that duty including, in particular—
- giving financial assistance to any person,
  - entering into arrangements or agreements with any person,
  - co-operating with, or facilitating or co-ordinating the activities of, any person.
- (3) Subsections (1) and (2) are without prejudice to any other provision of this Act conferring or imposing functions on a Health Board, a Special Health Board or the Agency.
- (4) Anything done by a Health Board or Special Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on—
- the Health Board by the order under section 2(1)(a) which constituted the Board, or

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- (b) the Special Health Board by the order under section 2(1)(b) which constituted the Board,  
as the case may be.]

#### Textual Amendments

**F12** S. 2A inserted (1.1.2005) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 9(2), 12(1); S.S.I. 2004/361, art. 2(c)

### [<sup>F13</sup>2B Duty to encourage public involvement

- (1) It is the duty of every body to which this section applies to take action with a view to securing, as respects health services for which it is responsible, that persons to whom those services are being or may be provided are involved in, and consulted on—
- (a) the planning and development, and
  - (b) decisions to be made by the body significantly affecting the operation, of those services.
- (2) This section applies to—
- (a) Health Boards,
  - (b) Special Health Boards, and
  - (c) the Agency.
- (3) For the purposes of subsection (1) a body is responsible for health services if they are health services—
- (a) which it is the function of the body to provide, or secure the provision of, and
  - (b) which are provided, or to be provided, to individuals by—
    - (i) the body, or
    - (ii) another person on the body's behalf, at the body's direction or in accordance with an agreement made by the body with that other person.]

#### Textual Amendments

**F13** S. 2B inserted after s. 2A (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 7, 12(1); S.S.I. 2004/361, art. 2(b)(i)

### [<sup>F14</sup>2C Functions of Health Boards: primary medical services

- (1) Every Health Board—
- (a) must, to the extent that they consider necessary to meet all reasonable requirements, provide or secure the provision of primary medical services as respects their area; and
  - (b) may, to such extent, provide or secure the provision of primary medical services as respects the area of another Health Board,
- and primary medical services provided, or the provision of which is secured, by a Health Board under or by virtue of this subsection may be performed outside their area.

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- (2) For the purpose of securing the provision of primary medical services under subsection (1), a Health Board may make such arrangements for the provision of the services as they think fit (and may in particular make contractual arrangements with any person).
- (3) A Health Board must publish information about such matters as may be prescribed in relation to the primary medical services provided under this Part.
- (4) Without prejudice to [<sup>F15</sup>sections 12J and] 13, Health Boards must co-operate with one another in discharging their respective functions relating to the provision of primary medical services under this Part.
- (5) Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary medical services for the purposes of this Act.
- (6) Such regulations may in particular describe services by reference to the manner or the circumstances in which they are provided.
- (7) Arrangements made under this Part by a Health Board for the provision of primary medical services may provide for such services to be performed outside Scotland.
- (8) Anything done by a Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on the Health Board by an order under section 2(1)(a).]

#### Textual Amendments

- F14** S. 2C inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 1\(2\), 9\(1\)](#); S.S.I. 2004/58, [art. 2\(1\)\(3\)](#), Sch.
- F15** Words in s. 2C(4) substituted (30.9.2004) by [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\), ss. 11\(1\), 12\(1\), Sch. 1 para. 1\(3\)](#); S.S.I. 2004/361, [art. 2\(b\)\(iv\)](#)

VALID FROM 07/07/2010

#### [<sup>F16</sup>2CA

#### Functions of Health Boards outside Scotland

- (1) Where it is the function of a Health Board to provide or to secure the provision of a service, the Health Board may secure the provision of that service outside Scotland.
- (2) For the purposes of securing the provision of any service referred to in subsection (1), a Health Board may make such arrangements for the provision of the service as they think fit (and may in particular make contractual arrangements with any person).
- (3) Anything done by a Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on the Health Board by an order under section 2(1)(a).]

#### Textual Amendments

- F16** S. 2CA inserted (7.7.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/283\), reg. 3\(2\)](#)

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## PROSPECTIVE

### [<sup>F17</sup>2CB Functions of Health Boards: planning of pharmaceutical care services

- (1) Regulations may make provision requiring every Health Board, in accordance with the regulations, to—
  - (a) prepare a plan for the discharge of their duty under section 2CA(1);
  - (b) keep a plan prepared under paragraph (a) under review;
  - (c) prepare a revised plan; and
  - (d) without prejudice to section 2CA(3), publish a plan so prepared or revised.
- (2) Regulations under subsection (1) may in particular make provision as to—
  - (a) identification by a Health Board in any such plan prepared by them of—
    - (i) what pharmaceutical care services they consider are necessary in order to discharge their duty under section 2CA(1);
    - (ii) whether as respects their area there is convenient access (as regards location and opening hours) to pharmaceutical care services; and
    - (iii) any under-provision of pharmaceutical care services as respects their area;
  - (b) the period within which a plan is to be prepared and published;
  - (c) consultation which a Health Board must undertake in relation to the preparation of a plan;
  - (d) the duration of a plan;
  - (e) the frequency with which a plan must be reviewed and revised by a Health Board;
  - (f) the availability and accessibility of a plan to persons who are resident in a Health Board's area; and
  - (g) such other matters as the Scottish Ministers consider appropriate.
- (3) Regulations making provision as to a matter referred to in subsection (2)(a) may provide that the matter is to be identified in accordance with such criteria as may be specified in directions given by the Scottish Ministers.]

#### Textual Amendments

**F17** Ss. 2CA, 2CB inserted (prosp.) by virtue of [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), ss. 20(2), 43(3)

### [<sup>F18</sup>2D Equal opportunities

- (1) Health Boards, Special Health Boards and the Agency must discharge their functions in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (2) In this section “equal opportunities” and “equal opportunity requirements” have the same meaning as in Section L2 (equal opportunities) of Part II of Schedule 5 to the Scotland Act 1998 (c. 46).]

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#### Textual Amendments

**F18** S. 2D inserted (30.9.2004) by [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\)](#), [ss. 4, 12\(1\)](#); [S.S.I. 2004/361](#), [art. 2\(b\)\(i\)](#)

### 3 Scottish Medical Practices Committee.

**F19** . . . . .

#### Textual Amendments

**F19** S. 3 repealed (1.4.2004) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), [ss. 17, 21\(2\)](#), [Sch. 4 para. 5\(2\)](#); [S.S.I. 2004/148](#), [art. 2\(c\)](#)

### 4 Scottish Dental Estimates Board.

(1) For the purpose of carrying out such duties as may be prescribed with respect to . . .  
<sup>F20</sup> dental treatment and appliances, regulations shall make provision for constituting a board, to be called the Scottish Dental Estimates Board, (hereafter in this Act referred to as “the Dental Estimates Board”), of whom the chairman and a majority of members shall be dental practitioners.

[<sup>F21</sup>(1A) Regulations may empower the Dental Practice Board—

- (a) to direct a dental practitioner to submit to the Board, in relation to treatment which he has carried out or contemplates carrying out or to a description of such treatment specified in the direction, such estimates and information and such radiographs, models or other items as may be prescribed; and
- (b) to direct a dental practitioner not to carry out treatment, or a description of treatment specified in the direction, without first obtaining approval of an estimate from the Board.

(1B) If regulations include any such provision as is mentioned in subsection (1A)(b) above, regulations shall confer on a dental practitioner in whose case a direction such as is mentioned in that paragraph has been given a right of appeal against the direction to a prescribed person or body, but before making regulations conferring such a right the Secretary of State shall consult such organisations as appear to him to be representative of persons providing general dental services.

(1C) Regulations may be made authorising or requiring the Dental Practice Board to carry on any such additional activity relating to the provision of general dental services as may be prescribed and, without prejudice to the generality of this subsection, to conduct or commission surveys or other research relating to the provision of such services.]

(2) Regulations made in pursuance of this section shall include provision, in relation to the Dental Estimates Board, for any of the matters for which, in relation to a Health Board, provision is or may be made by or under Part II of Schedule 1.

#### Textual Amendments

**F20** Words repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 25\(2\)](#), [Sch. 3](#)



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**F21** S. 4(1A)–(1C) inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 12(3)

## *<sup>F22</sup>Community health partnerships*

### Textual Amendments

**F22** Ss. 4A, 4B inserted (1.9.2004 for certain purposes otherwise 30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 2, 12(1); S.S.I. 2004/361, art. 2(a)(ii)(b)(ii)

## 4A Community health partnerships

- (1) Every Health Board shall establish, in accordance with a scheme under section 4B approved by the Scottish Ministers (an “approved scheme”)—
  - (a) a community health partnership for the area of the Board, or
  - (b) two or more community health partnerships for districts which, taken together, include the whole area of the Board.
- (2) Community health partnerships shall be established as committees or sub-committees of a Health Board.
- (3) Where the area or district of a community health partnership includes all or part of the areas of two or more Health Boards, the community health partnership (a “joint community health partnership”) shall be established jointly by those Boards in accordance with their approved schemes.
- (4) Joint community health partnerships shall be established as joint committees of the Health Boards by which they are established.
- (5) The functions of a community health partnership are—
  - (a) to co-ordinate, for its area or district, the planning, development and provision of—
    - (i) such of the services which it is the function of its Health Board to provide, or secure the provision of, as may be prescribed by regulations under section 4B(6) or specified in the approved scheme, and
    - (ii) such other of those services as its Health Board may specify, with a view to improving those services,
  - (b) to provide, or secure the provision of—
    - (i) such of the services which it is the function of its Health Board to provide, or secure the provision of, as may be prescribed by regulations under section 4B(6) or specified in the approved scheme, and
    - (ii) such other of those services as its Health Board may specify, and
  - (c) to exercise such other functions of its Health Board—
    - (i) as may be prescribed by regulations under section 4B(6),
    - (ii) as may be specified in the approved scheme,
    - (iii) as the Health Board may delegate to it.
- (6) In this section, references to the Health Board of a joint community health partnership are to each of the Health Boards by which it was established.

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#### **4B Community health partnerships: further provision**

- (1) Every Health Board shall, within such period as the Scottish Ministers may specify, prepare and submit to them a scheme for the establishment of one or more community health partnerships in pursuance of section 4A(1).
- (2) In preparing a scheme under subsection (1) or (5) a Health Board shall—
  - (a) have regard to—
    - (i) any guidance issued under subsection (7),
    - (ii) community planning under section 15(1) of the Local Government in Scotland Act 2003 (asp 1) so far as relating to the area of the Board,
  - (b) consult—
    - (i) each local authority whose area includes all or part of the area or district of a community health partnership proposed by the scheme, and
    - (ii) any other person whom the Health Board think fit, and
  - (c) encourage the involvement of local authorities and other persons consulted under paragraph (b) in the preparation of the scheme.
- (3) The Scottish Ministers may—
  - (a) approve (with or without modifications), or
  - (b) refuse to approve,a scheme submitted to them under subsection (1) or (5) or in pursuance of subsection (4).
- (4) Where the Scottish Ministers refuse to approve a scheme, they must return it to the Health Board and may direct the Board to resubmit the scheme with—
  - (a) such modifications (if any) as the direction may specify, and
  - (b) any further modifications which the Board consider appropriate,by such time as the direction may specify.
- (5) A Health Board—
  - (a) may, at any time,
  - (b) if so directed by the Scottish Ministers, must, within such period as they may specify,submit to the Scottish Ministers a new scheme under this section.
- (6) Regulations may make provision in relation to—
  - (a) the membership of a community health partnership,
  - (b) the form and content of, and the procedure in relation to, schemes under this section,
  - (c) the functions of a community health partnership and the exercise of those functions,
  - (d) the application in relation to joint community health partnerships, with such modifications as may be specified, of the provisions of this Act, and any provision made under this Act, so far as applying in relation to community health partnerships,
  - (e) such other matters with respect to community health partnerships as the Scottish Ministers think fit.

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- (7) The Scottish Ministers may, after consulting such persons as they think fit, issue guidance about community health partnerships and shall publish such guidance.
- (8) For the purposes of establishing a joint community health partnership in pursuance of section 4A(3), any power to appoint committees conferred on Health Boards by virtue of this Act shall include power for two or more Health Boards jointly to appoint joint committees.
- (9) Nothing in section 4A or this section affects the extent of any power under this Act so far as relating to committees or sub-committees of Health Boards.]

### *National advisory bodies*

5—6. .... F23

#### **Textual Amendments**

**F23** Ss. 5, 6 repealed by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), ss. 29(1), 66(2), [Sch. 10](#)

### *Local advisory bodies*

#### **7 Local health councils.**

- (1) Every Health Board shall, within such period as the Secretary of State may specify, submit to him a scheme for the establishment of a local health council or councils for their area or for such districts covering their whole area as the Board thinks fit; and it shall be the general function of any such council to represent the interests of the public in the health service in the area or district for which they have been established.
- (2) A scheme under subsection (1) shall provide for the appointment . . . F24 by the Health Board, after consultation with such other organisations as may be specified in the scheme, of such number of members as may be so specified.
- (3) The Secretary of State may approve, with or without modifications, any scheme submitted to him under subsection (1), or may refuse to approve it.
- (4) A Health Board may at any time, and if directed by the Secretary of State shall, within such period as he may specify, submit a new scheme under this section, and subsection (3) shall apply to any such new scheme.
- (5) The members of a local health council may appoint one of their own number as the chairman of the council.
- (6) The Secretary of State shall pay to the members of a local health council, and of the committees and sub-committees thereof [F25 and of any body established under subsection (9)(g),] such travelling and other allowances, including compensation for loss of remunerative time, as he may with the approval of the Minister for the Civil Service, from time to time determine.

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- (7) Allowances shall not be paid under subsection (6) except in connection with the performance of such powers or duties, in such circumstances, as the Secretary of State may determine.
- (8) Health Boards shall consult with local health councils on such occasions and to such extent as may be prescribed.
- (9) Regulations may make provision—
- (a) enabling local health councils to consider questions relating to the health service in their area or district, whether at the request of their Health Board or otherwise, and to advise the Health Board thereon;
  - (b) enabling or requiring local health councils to submit reports to their Health Board on the operation of the health service in their area or district;
  - (c) requiring local health councils to submit annual reports on their activities to their Health Board and requiring Health Boards to transmit a copy of any such report to the Secretary of State;
  - (d) enabling local health councils to obtain information from their Health Board [<sup>F26</sup>and from any NHS trust in their area or district] on such subjects and subject to such conditions as may be prescribed;
  - (e) enabling or requiring members of a local health council to visit establishments administered by their Health Board [<sup>F27</sup>and establishments in their area or district administered by NHS trusts], subject to such conditions as may be prescribed;
  - (f) relating to the submission of schemes under subsection (1) and to the functions, procedures, staffing and expenses of local health councils;
  - [<sup>F28</sup>(g) for the establishment of a body—
    - (i) to advise local health councils with respect to the performance of their functions, and to assist those councils in the performance of their functions; and
    - (ii) to perform such other functions as may be prescribed;
  - (h) relating to the membership, proceedings, staff, premises and expenses of any body established under paragraph (g).]

#### Textual Amendments

- F24** Words repealed by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), ss. 29(3)(a), 66(2), [Sch. 10](#)
- F25** Words inserted by [Health Services Act 1980 \(c. 53\)](#), [Sch. 6 para. 1\(1\)](#)
- F26** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 29\(3\)\(b\)](#)
- F27** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 29\(3\)\(c\)](#)
- F28** [S. 7\(9\)\(g\)\(h\)](#) inserted by [Health Services Act 1980 \(c. 53\)](#), [Sch. 6 para. 1\(2\)](#)

## 8 University Liaison Committees.

- (1) The Secretary of State may by order constitute, in accordance with Schedule 4, for the area of a Health Board or for the combined areas of two or more Health Boards, a University Liaison Committee for the purpose of advising that Board or those Boards [<sup>F29</sup>and any NHS trusts in the area or combined areas] on the administration of the

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health service in [<sup>F30</sup>that area or those] areas so far as relating to the provision of facilities for undergraduate or post-graduate clinical teaching or for research, and for the purpose of advising that Board or those Boards [<sup>F31</sup>, any such NHS trust] and the university or universities concerned on any matter of common interest to them.

- (2) Paragraphs 11 to 15 of Schedule 1 (other than sub-paragraph (d) of paragraph 11) shall have effect in relation to the Committees constituted under this section.

#### Textual Amendments

- F29** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 29(4)(a)
- F30** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 29(4)(b)
- F31** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 29(4)(c)

## 9 Local consultative committees.

- (1) Where, [<sup>F32</sup>a Health Board is satisfied that a committee formed for its area is representative]—
- of the medical practitioners of that area, or
  - of the dental practitioners of that area, or
  - of the nurses and midwives of that area, or
  - of the pharmacists of that area, or
  - of the ophthalmic and dispensing opticians of that area,
- the [<sup>F33</sup>Health Board] shall recognise that committee.
- (2) Any committee so recognised shall be called—
- the area medical committee,
  - the area dental committee,
  - the area nursing and midwifery committee,
  - the area pharmaceutical committee, or
  - the area optical committee,
- as the case may be, for the area concerned.
- (3) Where, [<sup>F32</sup>a Health Board is satisfied that a committee formed for its area is representative] of any other profession engaged in the provision of care or treatment under this Act, and that it is in the interests of the health service to recognise that committee for the purposes of this Act, [<sup>F34</sup>the Board] may so recognise it.
- (4) Where, [<sup>F32</sup>a Health Board is satisfied that a committee formed for its area is representative] of two or more of the professions mentioned in subsection (1) or (3), and that it is in the interests of the health service to recognise that committee for the purposes of this Act, [<sup>F34</sup>the Board] may so recognise it.
- (5) It shall be the general function of a committee recognised under this section to advise the Health Board for its area [<sup>F35</sup>and, where the Secretary of State so directs, an NHS trust on the provision of services under this Act or under a pilot scheme under section 1 of the <sup>M1</sup>National Health Service (Primary Care) Act 1997], being services with which that committee is concerned in that area, but, except in so far as regulations otherwise

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provide, in exercising functions conferred by or under this section, such a committee shall not concern itself with the remuneration and conditions of service of practitioners or other persons of whom it is representative.

- (6) In addition to any other functions which committees recognised under this section may exercise, they shall exercise such functions as may be prescribed.
- (7) In exercising their functions under this Act, Health Boards [<sup>F36</sup>or, where the Secretary of State so directs, NHS trusts] shall consult with committees recognised under this section on such occasions and to such extent as [<sup>F37</sup>the Secretary of State may direct].
- (8) Any committee recognised under this section may, with the approval of the Health Board for its area, delegate any of its functions, with or without restrictions or conditions, to sub-committees and may appoint to any sub-committee persons who are not members of the committee.
- (9) Health Boards shall defray the reasonable expenses of committees recognised under this section and shall pay to members of such committees and sub-committees thereof such travelling and other allowances, including compensation for loss of remunerative time, as the Secretary of State may, with the approval of the Minister for the Civil Service, from time to time determine; but payments under this subsection may only be made as respects the exercise of functions conferred by or under this section.

#### Textual Amendments

- F32** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 29(5)(a)
- F33** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 29(5)(b)
- F34** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 29(5)(c)
- F35** Words in s. 9(5) substituted (1.10.1999) by 1999 c. 8, s. 65(1), Sch. 4 para. 43(a); S.S.I. 1999/90, art. 2(a)(b), Sch. 1
- F36** Words in s. 9(7) inserted (1.10.1999) by 1999 c. 8, s. 65(1), Sch. 4 para. 43(b); S.S.I. 1999/90, art. 2(a)(b), Sch. 1
- F37** Words in s. 9(7) substituted (1.10.1999) by 1999 c. 8, s. 65(1), Sch. 4 para. 43(b); S.S.I. 1999/90, art. 2(a)(b), Sch. 1

#### Marginal Citations

- M1** 1997 c.46.

### *Agency for Secretary of State and other bodies*

## 10 Common Services Agency.

- (1) There shall be constituted a body, to be called the Common Services Agency for the [<sup>F38</sup>Scottish Health Service] (hereafter in this Act referred to as “the Agency”), which shall have the functions conferred on it by this section.
- (2) Schedule 5 shall have effect in relation to the Agency.
- (3) The Secretary of State may by order delegate to the Agency such of his functions [<sup>F39</sup>relating to the health service] as he considers appropriate.

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- (4) After consultation with . . . <sup>F40</sup>, the Health Boards [<sup>F41</sup>the NHS trusts] and any other interests which appear to the Secretary of State to be concerned, the Secretary of State, where he considers it expedient for the efficient discharge of the functions of the Health Boards [<sup>F42</sup>or of the NHS trusts], may by order provide that the performance of such functions as he may determine shall stand referred to the Agency and be discharged by it on behalf of any or all of the Health Boards [<sup>F43</sup>or NHS trusts].
- (5) The Secretary of State may by order withdraw from the Agency any function delegated or referred to it under this section.
- (6) The Agency shall provide such services and carry out such tasks for bodies associated with the health service as the Secretary of State and those bodies may agree, and on such terms and conditions as may be agreed.
- (7) In carrying out its functions the Agency shall act subject to, and in accordance with, such directions as may be given by the Secretary of State.
- (8) The Agency shall, notwithstanding that it is exercising functions on behalf of the Secretary of State or any other body associated with the health service, be entitled to enforce any rights acquired, and shall be liable in respect of any liabilities incurred (including liability in damages for wrongful or negligent acts or omissions), in the exercise of those functions, in all respects as if the Agency were acting as a principal; and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the Agency in its own name.
- [<sup>F44</sup>(9) The Agency shall not be entitled to claim in any proceedings any privilege of the Crown in respect of the recovery or production of documents; but this subsection shall be without prejudice to any right of the Crown to withhold, or procure the withholding from production of, any document on the ground that its disclosure would be contrary to the public interest.]

#### Textual Amendments

- F38** Words substituted by [Health Services Act 1980 \(c. 53\), Sch. 6 para. 2](#)
- F39** Words in s. 10(3) substituted (6.8.2005) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\), ss. 42\(1\), 43\(2\), Sch. 2 para. 2\(4\)](#)
- F40** Words repealed by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(2\), Sch. 10](#)
- F41** Words in s. 10(4) inserted (1.10.1999) by [1999 c. 8, s. 65\(1\), Sch. 4 para. 44\(a\); S.S.I. 1999/90, art. 2\(a\)\(b\), Sch. 1](#)
- F42** Words in s. 10(4) inserted (1.10.1999) by [1999 c. 8, s. 65\(1\), Sch. 4 para. 44\(b\); S.S.I. 1999/90, art. 2\(a\)\(b\), Sch. 1](#)
- F43** Words in s. 10(4) inserted (1.10.1999) by [1999 c. 8, s. 65\(1\), Sch. 4 para. 44\(c\); S.S.I. 1999/90, art. 2\(a\)\(b\), Sch. 1](#)
- F44** S. 10(9) repealed (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(2\), Sch. 10](#)

#### Modifications etc. (not altering text)

- C5** S. 10(4) applied (1.4.1991) by [S.I. 1990/2639, art. 5\(1\)\(2\), Sch. Pt. I](#)
- C6** S. 10(4) applied (1.4.1993) by [S.I. 1993/577, art. 5\(1\), Sch. Pt. I \(with art. 6\)](#)  
S. 10(4) applied (1.4.1995) by [S.I. 1995/574, art. 5\(1\)\(2\), Sch. Pt. I \(with art. 6\)](#)  
S. 10(4) applied (1.4.1999) by [S.I. 1999/686, art. 5\(1\)\(2\), Sch. Pt. I](#)  
S. 10(4) applied (1.4.1999) by [S.I. 1999/726, art. 5\(1\)\(2\), Sch. Pt. I](#)

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- S. 10(4) applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**  
 S. 10(4) applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**  
 S. 10(4) applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))  
 S. 10(4) applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

VALID FROM 01/08/2010

## <sup>F45</sup>Healthcare Improvement Scotland

### Textual Amendments

- F45** S. 10A-10Z19 and cross-headings inserted (1.8.2010 for the insertion of s. 10A for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 for specified purposes, 1.4.2016 for specified purposes with the exception of the insertion of s. 10Z9(1)(a), 1.4.2017 for specified purposes) by Public Services Reform (Scotland) Act 2010 (asp 8), ss. 108, 134(7); S.S.I. 2010/221, art. 3(2)(3), sch.; S.S.I. 2010/321, art. 3, sch.; S.S.I. 2011/122, art. 2, sch.; S.S.I. 2016/22, art. 2(1)(2), sch. 1, sch. 2

### 10A Healthcare Improvement Scotland

- (1) There is established a body to be known as Healthcare Improvement Scotland (in this Act referred to as “HIS”) which—
  - (a) is to exercise the functions conferred on it by virtue of this Act and any other enactment; and
  - (b) has the general duty of furthering improvement in the quality of health care.
- (2) In subsection (1)(b), “health care” means services for or in connection with the prevention, diagnosis or treatment of illness provided—
  - (a) under the health service; or
  - (b) by persons providing independent health care services.
- (3) In carrying out its functions, HIS is to act subject to and in accordance with such directions as may be given by the Scottish Ministers.
- (4) The Scottish Ministers may vary or revoke any direction given under subsection (3).
- (5) Schedule 5A (which makes further provision about the status, constitution, proceedings etc. of HIS) has effect.

VALID FROM 01/10/2010

## Principles

### 10B Principles

- (1) HIS must exercise its functions in accordance with the principles set out in the following subsections.



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- (2) The safety and wellbeing of all persons who use services provided under the health service and independent health care services are to be protected and enhanced.
- (3) Good practice in the provision of those services is to be identified, promulgated and promoted.
- (4) The provision of those services in a manner which takes appropriate account of guidance and other information (including evidence) published or endorsed by HIS is to be promoted and encouraged.

VALID FROM 01/10/2010

### *Functions related to the health service*

#### **10C Health service functions**

- (1) HIS is to exercise the following functions of the Scottish Ministers—
  - (a) functions in relation to supporting, ensuring and monitoring the quality of health care provided or secured by the health service including, without prejudice to the foregoing generality, providing quality assurance and accreditation;
  - (b) functions in relation to supporting, ensuring and monitoring the discharge of the duty under section 2B by each body to whom that section applies;
  - (c) functions in relation to supporting, ensuring and monitoring the discharge of the duty under section 2D by each body to whom that section applies, other than HIS, insofar as the discharge of that duty is relevant to—
    - (i) the quality of health care provided or secured by the health service; or
    - (ii) the discharge of the duty under section 2B;
  - (d) functions in relation to the evaluation and provision of advice to the health service on the clinical and cost effectiveness of new and existing health technologies including drugs,

conferred on them by this Act including, without prejudice to the foregoing generality, those functions specified in section 1(1).
- (2) HIS is to exercise the following functions of the Scottish Ministers subject to any limitations specified—
  - (a) the power of the Scottish Ministers under section 16(1) to assist voluntary organisations whose activities include the provision of a service similar to or related to the functions of HIS;
  - (b) the power of the Scottish Ministers under section 16B to give financial assistance to voluntary organisations whose activities consist of or include the provision of services similar to or related to the functions of HIS; and such assistance may be given only on such terms and conditions as the Scottish Ministers determine;
  - (c) the power of the Scottish Ministers under section 42 to disseminate, in respect of the functions of HIS, information relating to the promotion and maintenance of health and the prevention of illness;
  - (d) the duties of the Scottish Ministers under section 47—

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- (i) to make available such facilities as appear to HIS to be reasonably required for undergraduate and post-graduate clinical teaching and research and for the education and training of persons providing or intending to provide services under this Act; and
  - (ii) to conduct, or assist by grants or otherwise under that section any person to conduct, research into matters relating to the functions of HIS;
  - (e) the powers of the Scottish Ministers under section 79(1) to take on lease or to purchase moveable property and land so far as required for the purposes of HIS and to use for those purposes and manage any heritable or moveable property so acquired;
  - (f) the powers of the Scottish Ministers under section 79(1A) to dispose of land no longer required for the purposes of HIS.
- (3) HIS is to exercise the following functions—
- (a) a duty to provide information to the public about the availability and quality of services provided under the health service;
  - (b) a duty to provide such information to a person in such form as that person may reasonably request;
  - (c) when requested by the Scottish Ministers, a duty to provide to the Scottish Ministers advice about any matter relevant to the health service functions of HIS;
  - (d) a power to provide such advice to Scottish Ministers at any time;
  - (e) when asked to do so, a duty to provide such advice to—
    - (i) persons who provide, seek to provide or may provide services under the health service;
    - (ii) persons, or groups of persons, representing those who use, or are eligible to use, such services;
    - (iii) persons, or groups of persons, representing those who care for those who use, or are eligible to use, such services;
    - (iv) local authorities;
    - (v) a Health Board, Special Health Board or the Agency (each a “body” for the purposes of subsection (4));
    - (vi) such other persons, or groups of persons as may be prescribed;
  - (f) a power to disseminate such information as HIS considers relevant of general or specific application arising out of or in connection with the exercise of its health service functions.
- (4) HIS may charge a reasonable fee determined by it for any advice, forms or documents provided for the assistance of any such person, authority or body as is mentioned in subsection (3)(e).
- (5) References in this Act to the health service functions of HIS are, subject to subsections (6) and (7), to the functions conferred by virtue of this section and section 10D (including any functions delegated by order under that section).
- (6) Where a provision of this section which confers a function on HIS refers to the health service functions of HIS, that reference is to be construed as a reference to the functions conferred by virtue of this section and section 10D other than the function conferred by the provision.

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- (7) Where a provision of this section which confers a function on HIS refers to the functions of HIS, that reference is to be construed as including a reference to the functions conferred by virtue of this section and section 10D other than the function conferred by the provision.

#### **10D Health service functions: further provision**

- (1) The Scottish Ministers may by order delegate to HIS such of their functions relating to the health service as they consider appropriate.
- (2) HIS is to provide such services, and carry out such tasks, for bodies associated with the health service as the Scottish Ministers and those bodies may agree; and is to do so on such terms and conditions as may be so agreed.
- (3) Notwithstanding that it is exercising functions relating to the health service on behalf of the Scottish Ministers or other bodies associated with the health service, HIS—
- (a) is entitled to enforce any rights acquired in the exercise of those functions;
  - (b) is to be liable in respect of any liabilities incurred (including liability in damages for wrongful or negligent acts or omissions) in the exercise of those functions,
- in all respects as if HIS were acting as a principal.
- (4) All proceedings for the enforcement of such rights or liabilities are to be brought by or against HIS in its own name.

VALID FROM 01/10/2010

#### *Functions related to independent health care*

#### **10E Independent health care functions**

- (1) HIS is to exercise the following functions—
- (a) a duty to provide information to the public about the availability and quality of independent health care services;
  - (b) a duty to provide such information to a person in such form as that person may reasonably request;
  - (c) when requested by the Scottish Ministers, a duty to provide to the Scottish Ministers advice about any matter relevant to the independent health care functions of HIS;
  - (d) a power to provide such advice to the Scottish Ministers at any time;
  - (e) when asked to do so, a duty to provide such advice to—
    - (i) persons who provide, seek to provide or may seek to provide independent health care services;
    - (ii) persons, or groups of persons, representing those who use, or are eligible to use, such services;
    - (iii) persons, or groups of persons, representing those who care for those who use, or are eligible to use, such services;
    - (iv) local authorities;

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- (v) a Health Board, Special Health Board or the Agency (each a “body” for the purposes of subsection (2));
  - (vi) such other persons, or groups of persons as may be prescribed;
  - (f) a power to disseminate such information as HIS considers relevant of general or specific application arising out of or in connection with the exercise of its independent health care functions.
- (2) HIS may charge a reasonable fee determined by it for any advice, forms or documents provided for the assistance of any person, authority or body as is mentioned in subsection (1)(e).
- (3) References in this Act to the independent health care functions of HIS are, subject to subsection (4)—
- (a) to the functions conferred on HIS, or on a person acting on behalf of HIS, by this section and by sections 10J, 10K, 10P to 10Z3, 10Z5, 10Z8 and 10Z19;
  - (b) to any functions delegated to HIS under section 10H(6) to the extent that such functions relate to standards and outcomes applicable to independent health care services;
  - (c) to the functions conferred on HIS by section 10M to the extent that such functions relate to inspections of independent health care services; and
  - (d) to the functions conferred on HIS by section 10N to the extent that such functions relate to reports on inspections of independent health care services.
- (4) Where a provision of this section, or those sections, which confers a function on HIS refers to the independent health care functions of HIS, the reference is to be construed as a reference to the functions conferred by this section and those sections other than the function conferred by the provision.

VALID FROM 01/10/2010

*Meaning of “independent health care services”*

**10F Meaning of “independent health care services”**

- (1) In this Act, an “independent health care service” is any of the following—
- (a) an independent hospital;
  - (b) a private psychiatric hospital;
  - (c) an independent clinic;
  - (d) an independent medical agency;
  - (e) an independent ambulance service.
- (2) In subsection (1)—
- “independent hospital” means a hospital which is neither a health service hospital nor a private psychiatric hospital; and for the purposes of this definition includes part of a health service hospital if (not being a private psychiatric hospital)—
- (a) it is carried on as a separate unit;
  - (b) it does not provide treatment or nursing in pursuance of this Act;

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(c) no part of it is contained within the same building as any such part which does provide treatment or nursing in pursuance of this Act;

“private psychiatric hospital” means any premises used or intended to be used for the provision of medical treatment to one or more patients subject to an order or direction under the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) or the Criminal Procedure (Scotland) Act 1995 (c. 46) (whether or not other persons are treated there), not being—

- (a) a health service hospital;
- (b) a state hospital; or
- (c) otherwise an independent health care service;

“independent clinic” means a clinic which is not comprised in a hospital and in or from which services are provided, other than in pursuance of this Act, by a medical practitioner or dental practitioner;

“independent medical agency” means an undertaking which is neither an independent clinic nor an undertaking comprised in a hospital and which consists of or includes the provision of services, other than in pursuance of this Act, by a medical practitioner;

“independent ambulance service” means, subject to subsection (5), a service which consists of or includes—

- (a) provision (other than provision falling within paragraph (b) below) of medical treatment, medical care or other care to relevant patients while such patients are being transported to or from a place of medical treatment;
- (b) provision, at or in connection with a public event, of medical treatment outwith relevant premises under arrangements made between the provider of the service and another (whether or not the service includes a means of transport for transporting patients from the event to relevant premises).

(3) In paragraph (a) of the definition of “independent ambulance service” in subsection (2)—

“relevant patient” is a patient—

- (a) whose condition or recovery would or might be impaired were the treatment or care mentioned in that paragraph not to be provided;
- (b) whose condition affects the patient's mobility to such an extent that, were such treatment or care not to be provided while the patient is being transported as mentioned in that paragraph, the patient's condition or recovery would or might be impaired;
- (c) whose mobility is such that, without such treatment or care, it would be difficult or impossible for the patient to be transported as mentioned in that paragraph;

“place of medical treatment” means a hospital or other premises used or intended to be used for the provision of medical or dental treatment, and includes an independent health care service mentioned in paragraphs (a) to (d) of subsection (1).

(4) In paragraph (b) of the definition of “independent ambulance service” in subsection (2)—

“public event” means an event, function or other organised activity of any kind to which members of the public have access;

“medical treatment” includes medical care and medical advice;

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“relevant premises” means premises used or intended to be used for the provision of medical treatment, medical care or medical advice, but does not include—

- (a) any means of transport as mentioned in that paragraph; or
  - (b) any temporary premises at or near, and provided in connection with, the public event.
- (5) A service does not fall within the definition of “independent ambulance service” in subsection (2) if it is provided under the health service, unless it is so provided for remuneration.
- (6) In subsection (5), “remuneration” does not include remuneration payable by a health service body under arrangements made for the provision of the service.
- (7) Where, by virtue of payment of remuneration, the provider of a service under the health service acts as an independent ambulance service, HIS's independent health care functions are exercisable in relation to that provider only where, and to the extent that, the provider is so acting.

#### **10G Power to modify definitions**

The Scottish Ministers, after consulting such persons (or groups of persons) as they consider appropriate, may by order—

- (a) modify the independent health care functions of HIS by amending, removing or adding to those functions;
- (b) modify the definition of independent health care service in section 10F(1).

VALID FROM 01/10/2010

### *Standards and outcomes*

#### **10H Standards and outcomes**

- (1) The Scottish Ministers may prepare and publish standards and outcomes applicable to—
- (a) services provided under the health service;
  - (b) independent health care services.
- (2) The Scottish Ministers must keep any standards and outcomes so published under review and may under subsection (1) publish amended standards and outcomes whenever they consider it appropriate to do so.
- (3) Before publishing under subsection (1) any—
- (a) standards and outcomes;
  - (b) amended standards and outcomes which in the opinion of the Scottish Ministers are substantially different from the standards and outcomes (or amended standards and outcomes) last so published,
- the Scottish Ministers must consult such persons, or groups of persons, as they consider appropriate.

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- (4) In relation to a service provided under the health service, or an independent health care service, any applicable standards and outcomes published under subsection (1) must be taken into account—
- (a) by HIS in making any decision under this Part;
  - (b) in any proceedings on an appeal under section 10Z4; and
  - (c) in any proceedings for an offence in relation to registration under section 10P.
- (5) The Scottish Ministers may make different provision for different services under subsection (1).
- (6) The Scottish Ministers may delegate their functions under subsections (1) to (3) to HIS or such other persons as they consider appropriate.

VALID FROM 01/10/2010

### *Inspections*

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

- (1) HIS may, in pursuance of its general duty of furthering improvement in the quality of health care in Scotland, inspect any service provided under the health service.
- (2) An inspection under this section must be conducted in accordance with a plan—
- (a) prepared in accordance with section 10L; and
  - (b) approved by the Scottish Ministers.

#### **10J Inspections of independent health care services**

- (1) HIS may inspect—
- (a) any independent health care service;
  - (b) the organisation or co-ordination of any independent health care service.
- (2) The purposes of an inspection under this section may include—
- (a) reviewing and evaluating the effectiveness of the provision of the services which are the subject of the inspection;
  - (b) encouraging improvement in the provision of those services;
  - (c) enabling consideration as to the need for any recommendations to be prepared as to any such improvement to be included in the report prepared under section 10N;
  - (d) investigating any incident, event or cause for concern; and
  - (e) enabling consideration as to the need for—
    - (i) an improvement notice under section 10R;
    - (ii) a condition notice under section 10U.
- (3) An inspection under this section may be in relation to—
- (a) any independent health care service or combination of independent health care services;
  - (b) such of the services concerned provided to particular groups of persons;

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(c) any part of Scotland.

(4) An inspection under this section must be conducted in accordance with a plan—

(a) prepared in accordance with section 10L; and

(b) approved by the Scottish Ministers.

(5) HIS may at any time require a person providing any independent health care service to supply it with any information relating to the service which it considers necessary or expedient to have for the purposes of its independent health care functions.

(6) References in this section to a person providing an independent health care service include, in the case of a service which is provided by a body corporate, a reference to a director, manager, secretary or other similar officer of the body.

(7) An inspection under this section may, subject to any regulations made under section 10O, take such form as HIS considers appropriate.

#### **10K Authorised persons**

(1) Any inspection under section 10J must be carried out by a person authorised by HIS (an “authorised person”).

(2) A person may be authorised by HIS to carry out inspections in relation to any independent health care service or all of them.

(3) An authorised person may at any time enter and inspect premises which are used, or which the person has reasonable cause to believe are used, for the purpose of providing the independent health care service which is the subject of the inspection.

(4) Where an authorised person is in possession of confidential information which has been obtained for the purposes of an inspection under section 10J the authorised person must not use or disclose that information other than—

(a) for the purposes of that inspection;

(b) so as to comply with an enactment or court order requiring disclosure;

(c) to the extent considered necessary by the authorised person for the purpose of protecting the welfare of—

(i) any child under the age of 16 years;

(ii) any adult at risk (within the meaning of section 3 of the Adult Support and Protection (Scotland) Act 2007 (asp 10)); or

(d) to the extent considered necessary by the authorised person for the purpose of the prevention or detection of crime or the apprehension or prosecution of offenders.

(5) For the purposes of subsection (4), information is “confidential information” where—

(a) the identity of an individual is ascertainable—

(i) from that information; or

(ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person holding that information; and

(b) the information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.



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

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

### **10M Inspections at request of Scottish Ministers**

- (1) HIS must, at the request of the Scottish Ministers, inspect—
  - (a) any service provided under the health service as they may specify;
  - (b) any independent health care service so specified;
  - (c) the organisation or co-ordination of any service mentioned in paragraph (a) or (b) so specified;
  - (d) any independent health care service so specified together with any service provided under the health service so specified.
- (2) The Scottish Ministers may specify purposes for any inspection under this section.
- (3) An inspection under this section is to be conducted in accordance with a timetable approved by the Scottish Ministers.

### **10N Inspections: reports**

- (1) Where an inspection under section 10I, 10J or section 10M has been completed, HIS—
  - (a) must prepare a report on the matters inspected; and
  - (b) must without delay send a copy of that report to the person providing the service which has been inspected.
- (2) Before finalising a report prepared under subsection (1), HIS must give the person providing the service an opportunity of commenting on a draft of the report.
- (3) HIS must make copies of any report prepared under subsection (1) available for inspection at its offices by any person at any reasonable time; and it must take such other steps as it considers appropriate for publicising any such report.

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- (4) Regulations may make further provision concerning the preparation, content and effect of reports under subsection (1), and in particular may make—
- (a) different provision in relation to different independent health care services and different services provided under the health service;
  - (b) provision requiring copies of reports to be sent to the Scottish Ministers (or such other persons as may be specified in regulations) in such circumstances as may be so specified;
  - (c) provision (including provision modifying any duties under this section) specifying circumstances in which—
    - (i) any right to receive;
    - (ii) access to;
    - (iii) availability of,
 copies of reports (or of parts of such reports) may be restricted, refused or withheld.

#### **100 Regulations relating to inspections**

- (1) Regulations may make further provision concerning inspections under—
- (a) section 10I;
  - (b) section 10J;
  - (c) section 10M.
- (2) Regulations under subsection (1) may make different provision for different inspections provided for under the provisions mentioned in that subsection.
- (3) Regulations under subsection (1) may, in particular, make provision—
- (a) as to types of inspection which may be conducted;
  - (b) as to timing and frequency of inspections;
  - (c) as to seizure and removal of anything found during the course of an inspection;
  - (d) as to persons who may be authorised to carry out inspections;
  - (e) requiring or facilitating the sharing or production of information (including health records) for the purposes of an inspection;
  - (f) as to interviews and examinations (including physical and mental examinations) which may be carried out in connection with the inspections;
  - (g) requiring any person to provide to an authorised person an explanation of information produced to an authorised person;
  - (h) requiring information produced to an authorised person to be held in compliance with prescribed conditions and further disclosures to be made in compliance with such conditions;
  - (i) empowering an authorised person to disclose to a person prescribed for the purposes of this paragraph any information of a prescribed nature which the authorised person holds in consequence of an inspection;
  - (j) creating offences punishable on summary conviction by a fine not exceeding level 4 on the standard scale for the purpose of enforcing any provision of the regulations.
- (4) In subsection (3)(e), “health records” means records relating to the physical or mental health of an individual (including dental records and medical records); and for the purposes of this subsection “medical records” means records which have been

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prepared by a medical practitioner who is, or has been, responsible for the clinical care of the individual.

VALID FROM 01/10/2010

### *Registration*

#### **10P Registration of independent health care services**

- (1) A person who seeks to provide a independent health care service must apply to HIS for registration of the service.
- (2) An application must—
  - (a) give such information as may be prescribed about prescribed matters;
  - (b) identify an individual (who may be the applicant) who is to manage the service;
  - (c) give any other information which HIS may reasonably require the applicant to give;
  - (d) without prejudice to subsection (1)(b) of section 10Z5, be accompanied by the fee imposed under subsection (2)(a) of that section.

#### **10Q Grant or refusal of registration**

- (1) HIS may grant or refuse registration of an independent health care service under section 10P.
- (2) A grant of registration may be subject to such conditions as HIS considers appropriate.
- (3) If HIS is satisfied, in relation to the application, that the requirements of—
  - (a) such regulations as are applicable under section 10Z7; and
  - (b) any other enactment which appears to HIS to be relevant,will be complied with in relation to that service, it must give notice under section 10Z(1)(a), or as the case may be section 10Z2; otherwise it must give notice under section 10Z(1)(b).
- (4) On granting a registration HIS must issue a certificate of registration to the applicant.
- (5) The person for the time being providing the service must ensure that the certificate (or a copy of it) is, while the certificate is current, kept affixed in a conspicuous place in each of the premises in or from which that service is provided; and, if those premises do not include the principal (or only) office of the service, then in that office also.

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### *Improvement notices*

#### **10R Improvement notices: independent health care services**

HIS may at any time give a notice (an “improvement notice”) to the person for the time being providing a registered independent health care service that, unless within such reasonable period as may be specified in the notice, there is a significant improvement, of such a nature as may be so specified, in the provision of that service, it intends to make a proposal under section 10S.

VALID FROM 01/10/2010

### *Proposals and applications in relation to registered independent health care services*

#### **10S Cancellation of registration**

- (1) HIS may, at any time after the expiry of the period specified in an improvement notice under section 10R given in respect of an independent health care service, propose to cancel the registration of the service—
  - (a) on the ground that any person has been convicted of a relevant offence in relation to the service;
  - (b) on the ground that the service is being, or has at any time been, carried on other than in accordance with the relevant requirements; or
  - (c) on any other ground which may be prescribed.
- (2) For the purposes of—
  - (a) paragraph (a) of subsection (1) the following are relevant offences—
    - (i) an offence under any of sections 10G to 10Z18 (in this section, “this group of sections”);
    - (ii) an offence under regulations made under this group of sections; or
    - (iii) an offence which, in the opinion of HIS, makes it appropriate that the registration should be cancelled; and
  - (b) paragraph (b) of that subsection, the following are relevant requirements—
    - (i) any requirements or conditions imposed by or under this group of sections; or
    - (ii) the requirements of regulations made under this group of sections.
- (3) Where a person providing a registered independent health care service ceases to provide the service, HIS may cancel the registration of the service.

#### **10T Emergency cancellation of registration**

- (1) HIS may apply to the sheriff for an order cancelling the registration of an independent health care service.

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- (2) The application may be granted if it appears to the sheriff that, unless the order is made, there will be a serious risk to the life, health or wellbeing of persons.
- (3) The sheriff may make such interim order as the sheriff thinks fit.
- (4) As soon as practicable after HIS has applied for an order under subsection (1), it must notify the appropriate authorities.
- (5) Where the order applied for is made (or an interim order is made), HIS must as soon as reasonably practicable give a copy of it to the person who provides the independent health care service.
- (6) The sheriff may determine an application under this section in the absence of the person providing the independent health care service to which the application relates.
- (7) An order under this section has effect—
  - (a) from the time at which it is made; or
  - (b) from such other time as the sheriff considers appropriate.
- (8) Within 14 days of the day on which an order under this section is made, an appeal may be made to the sheriff principal against the making of the order.
- (9) On an appeal under subsection (8), the sheriff principal may—
  - (a) confirm the order;
  - (b) revoke the order;
  - (c) modify the order;
  - (d) make such other order as the sheriff principal thinks fit.
- (10) The decision of the sheriff principal on an appeal under subsection (8) is final.
- (11) An order under this section has effect notwithstanding the making of an appeal in relation to the order.
- (12) For the purposes of this section, the appropriate authorities are—
  - (a) each—
    - (i) local authority; and
    - (ii) Health Board,
 within whose area the independent health care service is provided; and
  - (b) any other body established by or under an enactment whom HIS thinks it appropriate to notify.

#### **10U Condition notices**

HIS may at any time give notice (in sections 10V, 10W, 10Z1 and 10Z2 referred to as a “condition notice”) to the person for the time being providing a registered independent health care service that it proposes to—

- (a) vary or remove a condition for the time being in force; or
  - (b) impose an additional condition,
- in relation to the registration.

#### **10V Emergency condition notices**

- (1) Subsection (2) applies where—

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- (a) a person is providing a registered independent health care service; and
  - (b) HIS believes that the absence of a condition in relation to the registration of that service poses a serious risk to the life, health or wellbeing of persons.
- (2) HIS may at any time give notice (an “emergency condition notice”) to the person providing the registered independent health care service specifying a condition, in relation to registration, in respect of that risk.
- (3) The condition so specified takes effect immediately on receipt of the emergency condition notice.
- (4) An emergency condition notice must—
- (a) state that, within 14 days after service of the notice, the person to whom it is given may make written representations to HIS concerning any matter which that person wishes to dispute; and
  - (b) explain the right of appeal conferred by section 10X(1).
- (5) HIS must consider any representations made under subsection (4)(a) and, following such consideration, must—
- (a) give the person providing the registered independent health care service a condition notice stating that HIS proposes to vary or remove the condition specified in the emergency condition notice; or
  - (b) notify the person that it does not intend to give such a condition notice.
- (6) When notifying a person under subsection (5)(b), HIS must explain the right of appeal conferred by section 10X(1).
- (7) Where a condition notice has been given by virtue of subsection (5)(a) containing a proposal to remove the condition, HIS must implement the proposal unless it appears to it that it would be inappropriate to do so.

#### **10W Application of Act to condition notices following emergency condition notices**

- (1) Section 10Z1 does not apply to a condition notice given by virtue of section 10V(5) (a).
- (2) The reference in section 10Z2(5) to a proposal in relation to which a condition notice has been given does not include a reference to a proposal contained in a condition notice given by virtue of section 10V(5)(a) to remove the condition mentioned in that provision.
- (3) The reference to a proposal in section 10Z4(1) does not include a reference to a proposal contained in a condition notice given by virtue of section 10V(5)(a) to remove the condition mentioned in that provision.

#### **10X Emergency condition notices: appeals**

- (1) A person—
- (a) who is given an emergency condition notice; and
  - (b) who—
    - (i) makes no written representations in accordance with section 10V(4) (a); or

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(ii) makes such representations but is notified as mentioned in section 10V(5)(b),

may, within 14 days after the relevant date, appeal to the sheriff against the imposition of the condition.

(2) In subsection (1), “relevant date” means—

- (a) where sub-paragraph (i) of subsection (1)(b) applies, the date of service of the emergency condition notice;
- (b) where sub-paragraph (ii) of that subsection applies, the date notification mentioned in that sub-paragraph is given.

(3) The sheriff may, on an appeal under subsection (1)—

- (a) direct that the condition specified in the emergency condition notice is to continue to have effect;
- (b) direct that the condition is to cease to have effect;
- (c) direct that the condition be varied as specified in the direction;
- (d) impose an additional condition in relation to the registration.

#### **10Y Applications in respect of conditions**

(1) A person providing a registered independent health care service may apply to HIS—

- (a) for the variation or removal of any condition for the time being in force, or for the addition of a condition, in relation to the registration; or
- (b) for cancellation of the registration,

but no such application is competent in circumstances mentioned in subsection (2).

(2) The circumstances are that HIS has given the person notice—

- (a) under section 10Z(2) of its proposal to cancel the registration (unless HIS has decided not to take that step); or
- (b) under section 10Z2(3) of its decision to cancel the registration and the time within which an appeal may be brought has not expired or, if an appeal has been brought, that appeal has not been determined.

(3) An application under subsection (1) must be made in such manner and state such particulars as may be prescribed; and, without prejudice to subsection (1)(b) of section 10Z5, must be accompanied by the fee imposed under subsection (2)(a) or, as the case may be, (c) of that section.

(4) If HIS decides to grant an application under subsection (1)(a) it must give the applicant notice of its decision (stating, where applicable, the condition varied, removed or added) and issue a new certificate of registration.

#### **10Z Further provision as respects notice of proposals**

(1) If an application has been made under section 10P and HIS proposes—

- (a) to grant that application but to do so subject to a condition which has not been agreed in writing between it and the applicant, it must give the applicant notice of the proposed condition;
- (b) to refuse that application, it must give such notice of the proposed refusal.

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- (2) HIS must give any person who provides a registered independent health care service notice of a proposal to cancel the registration (other than in accordance with an application under subsection (1)(b) of section 10Y).
- (3) HIS must give an applicant under subsection (1)(a) of section 10Y notice of a proposal to refuse that application.
- (4) A notice under this section must give HIS's reasons for its proposal.

#### **10Z1 Right to make representations to HIS as respects proposals**

- (1) A condition notice or a notice under section 10Z must state that, within 14 days after service of the notice, the person to whom it is given may make written representations to HIS concerning any matter which that person wishes to dispute.
- (2) Where such a notice has been given—
  - (a) HIS may not decide to implement the proposal until (whichever first occurs)
    - (i) where the person to whom the notice was given makes such representations as are mentioned in subsection (1), it has considered those representations;
    - (ii) that person notifies HIS in writing that such representations will not be made;
    - (iii) the period of 14 days mentioned in that subsection elapses without such representations being made and without HIS receiving such notification; and
  - (b) where the circumstances are as mentioned in paragraph (a)(ii) or (iii) above, HIS must implement the proposal unless it appears to it that it would be inappropriate to do so.

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#### *Notice of decision on application for registration*

#### **10Z2 Notice of HIS's decisions**

- (1) If HIS decides to grant unconditionally an application made under section 10P, or to grant such application subject only to a condition which has been agreed in writing between HIS and the applicant, it must give the applicant notice of its decision.
- (2) A notice under subsection (1) must state the agreed condition.
- (3) If HIS decides to implement a proposal in relation to which it has given a person a condition notice or a notice under section 10Z, it must give that person notice of the decision.
- (4) A notice under subsection (3) must—
  - (a) explain the right of appeal conferred by section 10Z4; and
  - (b) in the case of a decision to implement a proposal—



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- (i) in relation to which a condition notice has been given, state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed; or
  - (ii) of which notice has been given under subsection (1)(a) of section 10Z, state the condition subject to which the application is granted.
- (5) Subject to subsection (6), a decision to implement a proposal in relation to which a condition notice has been given or of which notice has been given under subsection (1)(a) or (2) of section 10Z does not take effect—
- (a) if no appeal is brought, until the period of 14 days referred to in section 10Z4(1) has elapsed; and
  - (b) if an appeal is brought, until that appeal is finally determined or is abandoned.
- (6) Where the decision is to implement a proposal of which notice has been given under subsection (1)(a) of section 10Z and the applicant notifies HIS in writing, before the period of 14 days referred to in section 10Z4(1) has elapsed, that there will be no appeal, the decision takes effect on receipt of that notification.

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*Conditions as to numbers*

**10Z3 Conditions as to numbers**

Without prejudice to the generality of section 10Q(2) or 10U, a condition imposed under either of those provisions in relation to an independent health care service may limit the number of persons to whom the service may be provided.

VALID FROM 01/10/2010

*Appeal against decision to implement proposal*

**10Z4 Appeal against decision to implement proposal**

- (1) A person given notice under section 10Z2(3) of a decision to implement a proposal may, within 14 days after that notice is given, appeal to the sheriff against the decision.
- (2) The sheriff may, on appeal under subsection (1), confirm the decision or direct that it is not to have effect; and where the registration is not to be cancelled may (either or both)—
  - (a) vary or remove any condition for the time being in force in relation to the registration;
  - (b) impose an additional condition in relation to the registration.

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## *Fees*

### **10Z5 Registration fees**

- (1) The Scottish Ministers, after consulting such persons, or groups of persons, as they consider appropriate on the potential effect of so prescribing on the services which the persons, or persons they represent, provide, may prescribe—
  - (a) maximum fees which may be imposed by HIS under this section;
  - (b) circumstances in which fees so imposed are or are not to be payable.
- (2) Subject to the provisions of this section, HIS must impose fees in respect of—
  - (a) any application made for registration of an independent health care service or for cancellation of any such registration;
  - (b) the annual continuation of any such registration;
  - (c) any application made for the variation or removal of a condition for the time being in force in relation to any such registration;
  - (d) issuing to a person a new certificate of registration—
    - (i) at the instance of that person;
    - (ii) by virtue of any application by that person; or
    - (iii) by virtue of any new information provided by that person in pursuance of regulations under this group of sections (within the meaning of section 10S(2)(a)).
- (3) Without prejudice to subsection (1)—
  - (a) HIS must, in fixing fees under this section, have regard to its reasonable expenses in carrying out its functions; but
  - (b) where it appears to HIS to be appropriate it may charge a nominal fee, or remit the fee altogether.

VALID FROM 01/10/2010

## *Regulations*

### **10Z6 Regulations: registers and registration**

- (1) Regulations may—
  - (a) make provision about the keeping of registers by HIS;
  - (b) make provision about registration under section 10P and in particular about—
    - (i) the making of applications for such registration;
    - (ii) the content of certificates of registration;
    - (iii) categories of applicant who cannot competently make certain applications;
  - (c) require HIS to secure that, on such conditions, in such circumstances and, subject to subsection (2) on payment of such fees as may be specified in

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- regulations, any person is to be afforded access to, and provided with a copy of an entry in or with an extract from, a register kept by HIS;
- (d) except such part of a register as may be specified in the regulations from any requirement made by virtue of paragraph (c);
  - (e) confer additional functions on HIS in relation to registration under section 10P.

- (2) Regulations under paragraph (c) of subsection (1) may specify circumstances in which the fees mentioned in that paragraph are not to be payable; and the fees must in any event not be payable in any case where HIS consider it appropriate to provide the copy or extract in question free of charge.

### **10Z7 Regulations: independent health care services**

- (1) Regulations may impose, in relation to independent health care services, any requirements which the Scottish Ministers consider appropriate for the purposes of this Part.
- (2) Without prejudice to the generality of subsection (1) regulations may make it an offence to contravene or fail to comply with—
  - (a) any specified provision of the regulations; or
  - (b) a condition of registration for the time being in force.
- (3) A person who commits an offence under the regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Before the Scottish Ministers make regulations containing provision as mentioned in subsection (2), they must consult such persons, or groups of persons, as they consider appropriate.

VALID FROM 01/10/2010

### *Complaints about independent health care services*

### **10Z8 Complaints about independent health care services**

- (1) HIS must establish a procedure by which a person, or someone acting on a person's behalf, may make complaints (or other representations) in relation to the provision to the person of an independent health care service or about the provision of an independent health care service generally.
- (2) The procedure must provide for it to be available whether or not procedures established by the provider of the service for making complaints (or other representations) about that service have been or are being pursued.
- (3) Before establishing a procedure under subsection (1), HIS must consult the Scottish Public Services Ombudsman and such persons, or groups of persons, as it considers appropriate on its proposals for such a procedure.
- (4) HIS must keep the procedure under review and must vary it whenever, after such consultation, it considers it appropriate to do so.

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- (5) HIS must give such publicity to the procedure (including the procedure as varied under subsection (4)) as it considers appropriate and must give a copy of the procedure to any person who requests it.

VALID FROM 01/10/2010

## Offences

### 10Z9 Offences in relation to registration

- (1) Any person who—
- (a) provides an independent health care service while it is not registered under section 10P; or
  - (b) with intent to deceive, pretends that an independent health care service is so registered,
- commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.
- (2) Any person who fails to comply with section 10Q(5) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### 10Z10 False statements in applications

Any person who, in an application—

- (a) for registration of an independent health care service; or
- (b) for variation or removal of a condition in force in relation to such a registration,

knowingly makes a statement which is false or misleading in a material respect commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### 10Z11 Offences by bodies corporate etc.

Where an offence under this group of sections (within the meaning of section 10S(2)(a)), or under regulations made under those sections, committed by—

- (a) a body corporate other than a local authority, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
  - (i) is a director, manager or secretary of the body corporate; or
  - (ii) purports to act in any such capacity;
- (b) a firm, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
  - (i) is a partner in the firm; or
  - (ii) purports to act in that capacity;

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- (c) an unincorporated association other than a firm, is committed with the consent or connivance of, or is attributed to any neglect on the part of, a person who—
- (i) is concerned in the management or control of the association; or
  - (ii) purports to act in the capacity of a person so concerned,
- the person (as well as the body corporate or, as the case may be, firm or association) commits the offence and is liable to be proceeded against and punished accordingly.

VALID FROM 01/10/2010

## *Inquiries*

### **10Z12 Inquiries**

- (1) HIS may cause an inquiry to be held into any matter connected with—
  - (a) the exercise of its functions; or
  - (b) the provision of an independent health care service or a service provided under the health service.
- (2) Before there is commenced an inquiry under subsection (1), HIS may direct that it be held in private; but where no such direction has been given the person holding the inquiry may if that person thinks fit hold it, or any part of it, in private.
- (3) Subject to subsection (4), subsections (2) to (6) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (provisions relating to local inquiries) apply in relation to an inquiry under subsection (1) as they apply in relation to a local inquiry under that section.
- (4) For the purposes of an inquiry under subsection (1), any reference in those subsections which, by virtue of the Scotland Act 1998 (c. 46), falls to be construed as a reference to—
  - (a) the Scottish Ministers, is to be construed as a reference to HIS; and
  - (b) a member of the staff of the Scottish Ministers, is to be construed as a reference to a member of staff of HIS.
- (5) The expenses incurred by HIS in relation to an inquiry under subsection (1) (including such reasonable sum as HIS may determine for the services of any of its staff engaged in the inquiry) must, unless HIS is of the opinion that those expenses should be defrayed in whole or in part by it, be paid by such party to the inquiry as it may direct; and HIS may certify the amount of the expenses so incurred.
- (6) Any sum certified under subsection (5) and to be defrayed in accordance with a direction under that subsection is a debt due by the party directed and is to be recoverable accordingly.
- (7) In relation to an inquiry under subsection (1), HIS may make an award as to the expenses of the parties and as to the parties by whom such expenses are to be paid.

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*Arrangements to provide independent health care services: registration*

**10Z13 Arrangements entered into by certain bodies: services to be registered**

Where, in the performance of its functions—

- (a) a local authority;
- (b) a Health Board; or
- (c) a Special Health Board,

makes arrangements with any person to provide an independent health care service, it must ensure that the service, when provided, is registered under section 10P.

VALID FROM 01/10/2010

*Duty of certain bodies to be aware of reports, etc.*

**10Z14 Local authorities and other bodies: awareness of HIS reports etc.**

- (1) For the purposes of its functions as they relate to the provision of independent health care services (including the making of arrangements with other persons to provide such services)—

- (a) a local authority;
- (b) a Health Board;
- (c) a Special Health Board,

must take into account the matters mentioned in subsection (3).

- (2) In carrying out its duty under subsection (1), a local authority, Health Board or Special Health Board must have regard to any guidance issued by the Scottish Ministers in respect of that duty.

- (3) The matters are such—

- (a) reports;
- (b) information;
- (c) notices,

prepared, disseminated, given or otherwise produced by HIS as are relevant to the provision of the services mentioned in subsection (1) or, as the case may be, to the organisation or co-ordination of those services.

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### *Giving of notice*

#### **10Z15 Giving of notice**

- (1) In this Part, any reference to a notice being given to a person providing, or seeking to provide, an independent health care service is to be construed as a reference to its being—
  - (a) delivered, where the person is—
    - (i) an individual, to that individual;
    - (ii) a body corporate, to the secretary or clerk of that body; or
    - (iii) a firm, to a partner of that firm; or
  - (b) sent by post, properly addressed to the person, in a registered letter or by the recorded delivery service,but a notice sent by post is deemed not given until the third day after the day of posting.
- (2) For the purposes of subsection (1), a letter is properly addressed to—
  - (a) a body corporate, if addressed to the body at its registered or principal office;
  - (b) a firm, if addressed to the firm at its principal office; or
  - (c) any other person, if addressed to the person at the address last known.

VALID FROM 01/10/2010

### *Scottish Health Council*

#### **10Z16 Establishment of Scottish Health Council**

- (1) HIS must establish under paragraph 8(1) of Schedule 5A a committee to be known as the Scottish Health Council.
- (2) When the Scottish Health Council is established—
  - (a) HIS must delegate to the Council the functions mentioned in section 10C(1) (b) and (c); and
  - (b) the Scottish Ministers are to appoint a member of HIS to chair the Council.
- (3) The Scottish Ministers may, by order—
  - (a) modify subsection (2)(a) in relation to the functions of HIS which must be delegated to the Scottish Health Council; or
  - (b) dissolve the Council.
- (4) Where the Scottish Ministers make an order under subsection (3)(b) dissolving the Scottish Health Council, subsection (1) has no effect for so long as the order is in force in that respect.
- (5) This section is without prejudice to Schedule 5A.

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*Miscellaneous*

**10Z17 Transfer of staff**

For the purposes of section 12CA, the functions conferred on, delegated to or otherwise exercisable by HIS are to be treated as functions transferred from a health service body; and for the purposes of that transfer—

- (a) NHS Quality Improvement Scotland is to be treated as the transferor authority;
- (b) HIS is to be treated as the transferee authority; and
- (c) the date on which section 10A is commenced is to be treated as the transfer date.

**10Z18 “Provide” in relation to independent health care services**

In this Part, “provide” in relation to an independent health care service, means to carry on or manage such a service; and related expressions are to be construed accordingly.

VALID FROM 01/10/2010

*Consultation with Mental Welfare Commission for Scotland*

**10Z19 Duty of HIS to consult the Mental Welfare Commission for Scotland**

HIS must, in the exercise of its functions relating to the provision of guidance, advice or information, consult the Mental Welfare Commission for Scotland in every case in which it appears to HIS appropriate having regard to the Commission's functions under sections 5(b) and 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).]

*Trusts*

**11 Scottish Hospital Trust.**

F46

**Textual Amendments**

**F46** S. 11 repealed (6.5.2004) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), ss. 17, 21(2), [Sch. 4 para. 5\(3\)](#); S.S.I. 2004/198, [art. 2\(c\)](#)



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## 12 Scottish Hospital Endowments Research Trust.

- (1) <sup>F47</sup> . . . . .
- (2) <sup>F48</sup> . . . . .
- (3) It shall be the duty of [<sup>F49</sup> the Scottish Hospital Endowments Research Trust (referred to in this Act as “the Research Trust”)] to hold and administer funds on trust for the purpose of assisting the conduct of research into any matters relating to the causation, prevention, diagnosis or treatment of illness or to the development of medical or surgical appliances, including hearing aids.
- (4) The Research Trust shall have power to accept, hold and administer, in accordance with Schedule 7, any property on trust for the purpose aforesaid.
- [<sup>F50</sup>(4A) The Research Trust shall have power to engage in activities intended to stimulate the giving of money or other property to assist them in carrying out the purpose aforesaid.
- (4B) <sup>F51</sup> . . . the activities authorised by subsection (4A) include public appeals or collections, and the soliciting of sponsorship, donations, legacies, bequests and gifts.
- (5) <sup>F52</sup> . . . . .
- (6) The Research Trust shall cause proper accounts to be kept of the capital, income and expenditure vested in, received by, and expended by them <sup>F53</sup> . . . .
- (6A) <sup>F54</sup> . . . . .
- [<sup>F55</sup>(7) The Research Trust shall prepare an annual report of their proceedings which shall include an abstract of their accounts.]
- [ Schedule 7 shall have effect in relation to the Research Trust.]]
- <sup>F56</sup>(8)

### Textual Amendments

- F47** S. 12(1)(2) repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(a)**, 43(3) ; S.S.I. 2005/492, **art. 3(b)**, Sch. 2
- F48** S. 12(1)(2) repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(a)**, 43(3) ; S.S.I. 2005/492, **art. 3(b)**, Sch. 2
- F49** Words in s. 12(3) substituted (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2
- F50** S. 12(4A)(4B) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(3)**
- F51** Words in s. 12(4B) repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(c)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2
- F52** S. 12(5) repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(d)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2
- F53** Words in s. 12(6) repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(e)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2
- F54** S. 12(6A) repealed (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(f)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2
- F55** S. 12(7) substituted (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(g)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2
- F56** S. 12(8) inserted (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 38(2)(h)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

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## **[<sup>F57</sup>12A National Health Service trusts.**

[<sup>F58</sup>(1) Subject to subsection (2), the Secretary of State may by order establish bodies, to be known as National Health Service trusts (in this Act referred to as “NHS trusts”) [<sup>F59</sup>to provide goods and services for the purposes of the health service]

(2) The Secretary of State shall by regulations provide for such consultation as may be so prescribed to be carried out by a Health Board or the Agency, before he makes an order under subsection (1).

(3) Every NHS trust—

[<sup>F60</sup>(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 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”)]

(b) shall have the functions conferred on it by an order under subsection (1) and by Schedule 7A.

[<sup>F61</sup>(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.]

[<sup>F62</sup>(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).]

(5) Regulations may make general provision with respect to—

(a) the qualifications for and the tenure of office of the chairman [<sup>F63</sup>, directors and trustees] of an NHS trust (including the circumstances in which they shall cease to hold, or may be removed from, office or may be suspended from performing the functions of the office);

(b) the persons by whom the directors [<sup>F64</sup>, trustees,] and any of the officers are to be appointed and the manner of their appointment;

(c) the maximum and minimum numbers of the directors [<sup>F65</sup>and trustees];

(d) the circumstances in which a person who is not an employee of the trust is nevertheless, on appointment as a director [<sup>F66</sup>trustee, to be regarded as an executive director rather than as a trustee];

(e) the proceedings of the trust (including the validation of proceedings in the event of a vacancy or defect in appointment);

(f) the appointment, constitution and exercise of functions by committees and sub-committees of the trust (whether or not consisting of or including any members of the board); and

(g) the application of the seal of the trust and the constitution and proof of instruments.

(6) Part I of Schedule 7A shall have effect with respect to orders under subsection (1); Part II of that Schedule shall have effect, subject to subsection (7), with respect to the general duties and the powers and status of NHS trusts; the supplementary provisions of Part III of that Schedule shall have effect; and Part IV of that Schedule shall have effect with respect to the dissolution of NHS trusts.

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- (7) The specific powers conferred by paragraphs 14 and 15 in Part II of Schedule 7A may be exercised only to the extent that the exercise will not—
- (a) interfere with the duty of the trust to comply with directions under paragraph 6 of that Schedule and
  - (b) to any significant extent interfere with the performance by the trust of its obligations under any NHS contract or any obligations imposed by an order under subsection (1).
- (8) The Secretary of State may by order confer on NHS trusts specific powers additional to those contained in paragraphs 10 to 15 of Schedule 7A.]]

#### Textual Amendments

- F57** Ss. 12A–12F inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 31
- F58** S. 12A repealed (1.9.2004 but only for the purpose stated in art. 2(a)(i) of the commencing S.S.I.) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 1(1), 12(1), S.S.I. 2004/361, art. 2(a)(i)
- F59** Words in s. 12A(1) substituted for s. 12A(1)(a)(b)(*retrospectively*) by 1999 c. 8, s. 46(1)(a)(8); S.S.I. 1999/90, art. 2(a), Sch. 1
- F60** S. 12A(3)(a) substituted (1.10.1999) by 1999 c. 8, s. 48; S.S.I. 1999/90, art. 2(a), Sch. 1
- F61** S. 12A(4) substituted (*retrospectively*) by 1999 c. 8, s. 46(1)(b)(8); S.S.I. 1999/90, art. 2(a), Sch. 1
- F62** S. 12A(4A) inserted (5.3.2001) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 34; S.S.I. 2001/58, art. 2
- F63** Words in s. 12A(5)(a) substituted (1.10.1999) by 1999 c. 8, s. 65(1), Sch. 4 para. 45(a), Sch. 1; S.S.I. 1999/90, art. 2(a)(b), Sch. 1
- F64** Word in s. 12A(5)(b) inserted (1.10.1999) by 1999 c. 8, s. 65(1), Sch. 4 para. 45(b); S.S.I. 1999/90, art. 2(a)(b), Sch. 1
- F65** Words in s. 12A(5)(c) inserted (1.10.1999) by 1999 c. 8, s. 65(1), Sch. 4 para. 45(c); S.S.I. 1999/90, art. 2(a)(b), Sch. 1
- F66** Words in s. 12A(5)(d) substituted (1.10.1999) by 1999 c. 8, s. 65(1), Sch. 4 para. 45(d); S.S.I. 1999/90, art. 2(a)(b), Sch. 1

#### Modifications etc. (not altering text)

- C7** S12A(1) extended (*retrospectively*) by 1999 c. 8, s. 46(3)(b)(8); S.S.I. 1999/90, art. 2(a), Sch. 1

#### [<sup>F67</sup> 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.]

#### Textual Amendments

- F67** S. 12AA inserted (1.10.1999) by 1999 c. 8 s. 47; S.S.I. 1999/90, art. 2(a), Sch. 1

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## [<sup>F68</sup>12B Transfer of staff to NHS trusts.

- (1) Subject to subsection (5), this section applies to any person who, immediately before an NHS trust's operational date—
  - (a) is employed by a Health Board or the Agency (in this section and section 12C referred to as a “transferor authority”) to work solely at, or for the purposes of, a hospital or other establishment or facility which is to become the responsibility of the trust; or
  - (b) is employed by a transferor authority to work at, or for the purposes of, any such hospital, establishment or facility and is designated for the purposes of this section by a scheme made by the body specified as mentioned in paragraph 3(1)(f) of Schedule 7A.
- (2) A scheme under this section shall not have effect unless approved by the Secretary of State.
- (3) Subject to section 12C, the contract of employment between a person to whom this section applies and the transferor authority shall have effect from the operational date as if originally made between him and the NHS trust.
- (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 NHS trust on its operational date; and
  - (b) anything done before that date by or in relation to the transferor authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the NHS trust.
- (5) In any case where—
  - (a) an order under section 12A(1) provides for the establishment of an NHS trust with effect from a date earlier than the operational date of the trust; and
  - (b) on or after that earlier date but before its operational date the NHS trust makes an offer of employment by the trust to a person who at that time is employed by a Health Board or the Agency to work, whether solely or otherwise, at, or for the purposes of, the hospital or other establishment or facility which is to become the responsibility of the trust; and
  - (c) as a result of the acceptance of the offer, the person to whom it was made becomes an employee of the NHS trust,
 subsections (3) and (4) shall have effect in relation to that person's contract of employment as if he were a person to whom this section applies and any reference in those subsections to the operational date of the trust were a reference to the date on which he takes up employment with the trust.
- (6) 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 detriment in his working conditions; but no such right shall arise by reason only of the change in employer effected by this section.
- (7) A scheme under this section may designate a person either individually or as a member of a class or description of employees.]

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### Textual Amendments

**F68** Ss. 12A–12F inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 31

### [<sup>F69</sup>12C Supplementary provisions as to transfer of staff.

- (1) In the case of a person who falls within subsection (1)(b) of section 12B, a scheme under that section may provide that, with effect from the NHS trust’s operational date, his contract of employment (in this section referred to as “his original contract”) shall be treated in accordance with the scheme as divided so as to constitute—
  - (a) a contract of employment with the NHS trust; and
  - (b) a contract of employment with the transferor authority by whom he was employed before that date.
- (2) Where a scheme makes provision as mentioned in subsection (1)—
  - (a) the scheme shall secure that the benefits to the employee under the two contracts referred to in that subsection, when taken together, are not less favourable than the benefits under his original contract;
  - (b) section 12B shall apply in relation to the contract referred to in subsection (1) (a) as if it were a contract transferred under that section from the transferor authority to the NHS trust;
  - (c) so far as necessary to preserve any rights and obligations, the contract referred to in subsection (1)(b) shall be regarded as a continuation of the employee’s original contract;<sup>F70</sup> . . .
  - (d) . . . . .
- (3) Where, as a result of the provisions of section 12B, by virtue of his employment during any period after the NHS trust’s operational date—
  - (a) an employee has contractual rights against an NHS trust to benefits in the event of his redundancy, and
  - (b) he also has statutory rights against the NHS trust under [<sup>F71</sup>Part XI of the Employment Rights Act 1976] (redundancy payments),any benefits provided to him by virtue of the contractual rights referred to in paragraph (a) shall be taken as satisfying his entitlement to benefits under [<sup>F72</sup>that Part of that Act.]

### Textual Amendments

- F69** Ss. 12A–12F inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 31
- F70** S. 12C(2)(d) and word “and” immediately preceding it repealed (6.2.1995) by S.I. 1995/31, reg. 6, Sch.
- F71** Words in s. 12C(3) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 13(a) (with ss. 191-195, 202)
- F72** Words in s. 12C(3) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 13(b) (with ss. 191-195, 202)

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### [<sup>F73</sup>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 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.]

#### **Textual Amendments**

**F73** S. 12CA inserted (1.10.1999) by 1999 c. 8, s. 50; S.S.I. 1999/90, art. 2(a), Sch. 1

### [<sup>F74</sup>12D] **Transfer of property rights and liabilities to NHS trusts.**

- (1) The Secretary of State may by order provide for the transfer to an NHS trust, with effect from such date as may be specified in the order, of such of the property, liabilities and obligations of a Health Board, the Agency or the Secretary of State as, in his opinion, need to be transferred to the NHS trust for the purpose of enabling it to carry out its functions.
- (2) An order under this section may create or impose, or provide for the creation or imposition of, such new rights, liabilities or obligations in respect of what is transferred or what is retained by a Health Board or the Agency as appear to the Secretary of State to be necessary or expedient.

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- (3) Nothing in this section affects the power of the Secretary of State or any power of a Health Board or the Agency to transfer property, liabilities or obligations to an NHS trust otherwise than under subsection (1).
- (4) Stamp duty shall not be chargeable in respect of any transfer to an NHS trust effected by virtue of an order under this section.
- (5) Where an order under this section provides for the transfer—
  - (a) of land held on lease from a third party, that is to say, a person other than the Secretary of State; or
  - (b) of any other asset leased or hired from a third party or in which a third party has an interest,
 the transfer shall be binding on the third party notwithstanding that, apart from this subsection, it would have required his consent or concurrence, or would have required to be intimated to him.
- (6) Any property, liabilities and obligations which are to be transferred to an NHS trust shall be identified by agreement between, on the one hand, the NHS trust and, on the other hand, a Health Board or the Agency; or, in default of agreement, by direction of the Secretary of State.
- (7) Where, for the purpose of a transfer pursuant to an order under this section, it becomes necessary to apportion any property, liabilities and obligations, the order may contain such provisions as appear to the Secretary of State to be appropriate for the purpose; and where any such property falls within subsection (5), the order shall contain such provisions as appear to the Secretary of State to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.
- (8) Without prejudice to section 105(7), an order under this section may include provision for matters to be settled by arbitration by a person determined in accordance with the order.]

#### Textual Amendments

**F74** Ss. 12A–12F inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 31

#### [<sup>F75</sup> 12DA Stamp duty land tax

- (1) A land transaction effected by virtue of an order under section 12D(1) is exempt from charge for the purposes of stamp duty land tax.
- (2) Relief under this section must be claimed in a land transaction return or an amendment of such a return.
- (3) In this section—
 

“land transaction” has the meaning given by section 43(1) of the Finance Act 2003;

“land transaction return” has the meaning given by section 76(1) of that Act.]

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### Textual Amendments

**F75** S. 12DA inserted (1.12.2003) by [The Stamp Duty Land Tax \(Consequential Amendment of Enactments\) Regulations 2003 \(S.I. 2003/2867\)](#), reg. 2, [Sch. para. 9\(2\)](#)

### [<sup>F76</sup>12E Originating capital debt of, and other financial provisions relating to NHS trusts.

- (1) Each NHS trust shall have an [<sup>F77</sup>originating capital] of an amount specified in an order made by the Secretary of State with the consent of the Treasury, being an amount representing, subject to subsection (2), the excess of the valuation of the assets which, on or in connection with the establishment of the trust, are or are to be transferred to it (whether before, on or after its operational date) over the amounts of the liabilities which are or are to be so transferred.
- (2) In determining the [<sup>F77</sup>originating capital] of an NHS trust, there shall be left out of account such assets or, as the case may be, such liabilities as are, or are of a class, determined for the purposes of this section by the Secretary of State, with the consent of the Treasury.
- (3) An NHS trust's [<sup>F77</sup>originating capital] shall be deemed to have been issued out of moneys provided by Parliament and shall constitute an asset of the Consolidated Fund.

[ An NHS trust's originating capital shall be public dividend capital.]

<sup>F78</sup>(4)

<sup>F79</sup>(5) .....

<sup>F79</sup>(6) .....

- (7) With the consent of the Treasury, the Secretary of State may determine
  - [ <sup>F80</sup>(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]
- (8) Schedule 7B shall have effect with respect to—
  - (a) borrowing by NHS trusts;
  - (b) the limits on their indebtedness;
  - (c) the payment of additional public dividend capital to them; and
  - (d) the application of any surplus funds of NHS trusts.]

### Textual Amendments

**F76** Ss. 12A–12F inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 31

**F77** Words in s. 12E(1)–(3) substituted (1.10.1999) by 1999 c. 8, s. 53(2); S.S.I. 1999/90, art. 2(a), [Sch. 1](#)

**F78** S. 12E(4) substituted (1.10.1999) by 1999 c. 8, s. 53(3); S.S.I. 1999/90, art. 2(a), [Sch. 1](#)

**F79** S. 12E(5)(6) repealed (1.10.1999) by 1999 c. 8, ss. 53(4), 65(2), [Sch. 5](#)

**F80** S. 12E(7)(a)–(c) substituted (1.10.1999) for words in s. 12E(7) by 1999 c. 8, s. 53(5); S.S.I. 1999/90, art. 2(a), [Sch. 1](#)



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### [<sup>F81</sup>12F Financial obligations of NHS trusts.

- (1) Every NHS trust shall ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account.
- (2) It shall be the duty of every NHS trust to achieve such financial objectives as may from time to time be set by the Secretary of State with the consent of the Treasury and as are applicable to it; and any such objectives may be made applicable to NHS trusts generally, or to a particular NHS trust or to NHS trusts of a particular description.]

#### Textual Amendments

**F81** Ss. 12A–12F inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 31**

### [<sup>F82</sup>12G Trust property of NHS trusts.

- (1) Subject to subsection (2), an NHS trust shall have power to accept, hold and administer any property on trust for purposes relating to any service which it is their function to make arrangements for, administer or provide.
- (2) The Secretary of State may by order make such provision as he thinks appropriate in relation to the appointment of trustees in respect of an NHS trust for the purpose of holding in trust any property which is to be so held on behalf of the trust; and any such order may include provision as to the persons by whom, the manner in which, the conditions on which and the time within which, such trustees are to be appointed.
- (3) Where—
  - (a) section 82 applies in relation to any endowment or property which is held on trust by a Health Board; and
  - (b) that endowment or property is, by virtue of an order under section 12D [<sup>F83</sup>or a request under section 6(1) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)], transferred to an NHS trust,
 section 82 shall apply to the use of that endowment or property by the trust as it applied to the use thereof by the Health Board.
- (4) Trustees appointed by virtue of subsection (2) shall cause proper accounts to be kept of the capital, income and expenditure vested in, received by and expended by them; and shall cause such accounts to be audited and an abstract thereof to be published in such manner as the Secretary of State may approve.]

#### Textual Amendments

**F82** S. 12G inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 33**

**F83** Words in s. 12G(3)(b) inserted (12.2.2004) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), **ss. 10(1), 21(2)**; S.S.I. 2003/602, **art. 2(4)**

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## <sup>F84</sup> Quality

### Textual Amendments

**F84** S. 12H and cross-heading inserted (1.10.1999) by 1999 c. 8, s. 51; S.S.I. 1999/90, art. 2(a), Sch. 1

### **12H** <sup>F85</sup> 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.]

### Textual Amendments

**F85** S. 12H inserted (1.10.1999) by 1999 c. 8, s. 51; S.S.I. 1999/90, art. 2(a), Sch. 1

### <sup>F86</sup> **12I** Duty in relation to governance of staff

It shall be the duty of every Health Board and Special Health Board and of the Agency to put and keep in place arrangements for the purposes of—

- (a) improving the management of the officers employed by it;
- (b) monitoring such management; and
- (c) workforce planning.]

### Textual Amendments

**F86** S. 12I inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 3, 12(1); S.S.I. 2004/361, art. 2(b)(i)

## *Co-operation and assistance*

### <sup>F87</sup> **12J** Health Boards: co-operation with other Health Boards, Special Health Boards and the Agency

- (1) In exercising their functions in relation to the planning and provision of services which it is their function to provide, or secure the provision of, under or by virtue of this Act, Health Boards shall co-operate with one another, and with Special Health Boards and the Agency, with a view to securing and advancing the health of the people of Scotland.
- (2) In pursuance of subsection (1) a Health Board may—
  - (a) undertake to provide, or secure the provision of, services as respects the area of another Health Board, and the other Health Board may enter into arrangements with the first Health Board for that purpose,

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- (b) undertake with one or more other Health Boards to provide, or secure the provision of, services jointly as respects their areas.
- (3) A Health Board undertaking to provide, or secure the provision of, services under subsection (2) may—
- (a) enter into arrangements with another Health Board, a Special Health Board or the Agency in relation to the provision of such services,
- (b) do anything in relation to the provision of such services which they could do for the purpose of providing, or securing the provision of, such services as respects their area.
- (4) This section is without prejudice to any other power which a Health Board may have.]

#### Textual Amendments

- F87** S. 12J inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 5, 12(1); S.S.I. 2004/361, art. 2(b)(i)

### 13 Co-operation between Health Boards and other authorities.

In exercising their respective functions, Health Boards, [<sup>F88</sup>NHS trusts,] local authorities and education authorities shall co-operate with one another in order to secure and advance the health of the people of Scotland.

#### Textual Amendments

- F88** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(4)

#### Modifications etc. (not altering text)

- C8** S. 13 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), Sch. Pt. I
- C9** S. 13 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), Sch. Pt. I (with art. 6)
- S. 13 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), Sch. Pt. I (with art. 6)
- S. 13 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), Sch. Pt. I
- S. 13 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), Sch. Pt. I
- S. 13 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), Sch. Pt. I
- S. 13 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), Sch. Pt. I
- S. 13 applied (31.3.2002) by S.S.I. 2002/103, art. 6, Sch. Pt. I (with art. 4(4))
- S. 13 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), Sch. Pt. I (with art. 4(4))

### [<sup>F89</sup>13A Co-operation in planning of services for disabled persons, the elderly and others.

- (1) The duty under section 13, in relation to persons to whom this section applies, includes—
- (a) joint planning of—
- (i) services for those persons; and
- (ii) the development of those services,
- [<sup>F90</sup>by Health Boards and such of the authorities as mentioned in that section as may be concerned]

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- (b) such consultation with voluntary organisations providing services similar to those mentioned in paragraph (a) as might be expected to contribute substantially to the joint planning of the services mentioned in that paragraph;
- [ the publication, at such times and in such manner as the bodies who have made
- <sup>F91</sup>(c) joint plans under paragraph (a) consider appropriate, of those joint plans.]

(2) This section applies to—

- (a) disabled persons within the meaning of the Disabled Persons (Services, Consultation and Representation) Act 1986;
- (b) persons aged 65 or more; and
- (c) such other categories of persons as the Secretary of State may by order specify.]

#### Textual Amendments

- F89** S. 13A inserted by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), s. 5(1)
- F90** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(5)
- F91** Section 13A(1)(c) repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), Sch. 10

#### Modifications etc. (not altering text)

- C10** S. 13A applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), Sch. Pt. I
- S. 13A applied (31.3.2002) by S.S.I. 2002/103, art. 6, Sch. Pt. I (with art. 4(4))
- S. 13A applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), Sch. Pt. I (with art. 4(4))
- C11** S. 13A applied (1.4.2003) by S.I. 1990/2639, art. 5(1), Sch. Pt. 1 (as amended by The Health Education Board for Scotland Amendment Order 2003 (S.S.I. 2003/154), art. 6(a)(i))

#### <sup>F92</sup>13B [<sup>F93</sup>Joint Liaison Committees.

- (1) The Secretary of State may, after consultation with such Health Boards, local authorities, education authorities, associations of such authorities and other organisations and persons as appear to him to be appropriate, by order provide for the formation and as to the functions of committees, to be known as joint liaison committees, to advise Health Boards and local education authorities on the performance of such of their duties under section 13 as consist of co-operation in the planning and operation of services of common concern to Health Boards and such authorities.
- (2) An order under subsection (1) may contain provisions relating to the role of voluntary organisations in joint liaison committees.]

#### Textual Amendments

- F92** Section 13B repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), Sch. 10
- F93** S. 13B inserted (prosp.) by National Health Services (Amendment) Act 1968 (c. 66, SIF 113:2), s. 5(1)

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## 14 Designated medical officers.

- (1) Every Health Board shall, in accordance with regulations, designate a medical officer or officers of the Board for the purpose of exercising such functions on behalf of local authorities as may be assigned to him by or under any enactment and such other functions as local authorities may, with the agreement of the Health Board, assign to him.
- (2) Any such medical officer shall, in any enactment, be known as “the designated medical officer”.
- (3) A designated medical officer may exercise any powers conferred by any enactment on an authorised officer of a local authority if the local authority authorises him in writing to do so.
- (4) A designated medical officer may appoint one or more persons approved by the Board to act as his depute or deputies, and all things required or authorised by law to be done by or to the designated medical officer may be done by or to any depute so appointed by him; and any reference in any enactment or instrument made under any enactment to the designated medical officer shall, where the depute is acting for the officer, include a reference to the depute.

## 15 Supply of goods and services to local authorities, etc.

- (1) The Secretary of State, a Health Board or the Agency may—
  - (a) purchase and store and, on such terms and conditions as may be agreed, supply to persons <sup>F94</sup>—
    - (i) providing <sup>F95</sup>primary medical services under a general medical services contract or], general dental or general ophthalmic services, or pharmaceutical services under Part II<sup>F96</sup> or
    - (ii) providing, in accordance with section 17C arrangements, <sup>F97</sup>primary medical services], personal dental services or other services of a kind that may be provided under this Part or Part III,]
 such equipment, goods or materials as may be prescribed;
  - <sup>F98</sup>(b) purchase and store and, on such terms and conditions as may be agreed, supply to local authorities, education authorities, government departments and such public bodies or classes of public bodies as may be determined by the Secretary of State, any equipment, goods or materials of a kind used in the health service;
  - (c) provide local authorities and education authorities, on such terms and conditions as may be agreed, with any administrative, professional or other services of persons employed by <sup>F99</sup>or having contracts with] the Secretary of State, a Health Board or the Agency;
  - (d) permit local authorities and education authorities, on such terms and conditions as may be agreed, to use premises occupied for the purposes of the health service;
  - (e) permit local authorities and education authorities, on such terms and conditions as may be agreed, to use any vehicle, plant or apparatus belonging to a Health Board or the Agency;
  - (f) permit education authorities, on such terms and conditions as may be agreed, and for the purpose of providing special education within the meaning of

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- section <sup>F100</sup>1(5)(c) of the <sup>M2</sup>Education (Scotland) Act 1980], to use any premises or facilities provided under section 36;
- (g) carry out, on such terms and conditions as may be agreed, maintenance work in connection with land or buildings for the maintenance of which a local authority or education authority is responsible.
- (2) In paragraphs (a) and (b) of subsection (1), the power to supply equipment, goods and materials includes a power to make arrangements with third parties for the supply by them of those things.
- (3) The Secretary of State may by order provide that, in relation to a vehicle which is made available by him in pursuance of this section and is used in accordance with the terms on which it is so available, <sup>F101</sup>the Vehicles Excise and Registration Act 1994] and Part VI of the <sup>M3</sup>Road Traffic Act 1972 shall have effect with such modifications as are specified in the order.

#### Textual Amendments

- F94** Words in s. 15(1)(a) renumbered as "(i)" (1.4.1998 for certain purposes, otherwise prosp.) by 1997 c. 46 s. 41(10), Sch. 2 Pt. I para. 35(a); S.I. 1998/631, art. 2(b), **Sch. 2**
- F95** Words in s. 15(1)(a)(i) substituted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(2)(a)**; S.S.I. 2004/58, art. 2(3).
- F96** S. 15(1)(a)(ii) and preceding word "or" inserted (1.4.1999 for certain purposes, otherwise prosp.) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 35(b)**; S.I. 1998/631, art. 2(b), **Sch. 2**
- F97** Words in s. 15(1)(a)(ii) substituted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(2)(b)**; S.S.I. 2004/58, art. 2(3)
- F98** S. 15(2) applied in part (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
S. 15(2) applied in part (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I**  
S. 15(2) applied in part (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**  
S. 15(2) applied in part (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
- F99** Words inserted by Health Services Act 1980 (c. 53), s. 3(2)
- F100** Words substituted by Education (Scotland) Act 1980 (c. 44), **Sch. 4 para. 16**
- F101** Words in s. 15(3) substituted (1.9.1994) by 1994 c. 22, s. 63, **Sch. 3 para. 13** (with s. 57(4))

#### Modifications etc. (not altering text)

- C12** S. 15(1)(a) modified (1.4.2004) by The General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004 (S.S.I. 2004/163), art. 96
- C13** S. 15(1)(b)–(e), (2) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C14** S. 15(1)(b)–(e) applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
S. 15(1)(b)–(e) applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
S. 15(1)(b)–(e) applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**  
S. 15(1)(b)–(e) applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

#### Marginal Citations

- M2** 1980 c. 44.  
**M3** 1972 c. 20.

## 16 Assistance to voluntary organisations.

- (1) The Secretary of State may assist any voluntary organisation whose activities include the provision of a service similar or related to a service provided under this Act by permitting them to use premises belonging to him on such terms as may be agreed,

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and by making available goods, materials, vehicles or equipment (whether by way of gift, loan or otherwise) and the services of any staff who are employed in connection with the premises or other things which he permits the organisation to use.

- (2) The Secretary of State may by order provide that, in relation to a vehicle which is made available by him in pursuance of this section and is used in accordance with the terms on which it is so available, [<sup>F102</sup>the Vehicles Excise and Registration Act 1994]and Part VI of the <sup>M4</sup>Road Traffic Act 1972 shall have effect with such modifications as are specified in the order.

- (3) ..... <sup>F103</sup>

#### Textual Amendments

**F102** Words in s. 16(2) substituted (1.9.1994) by 1994 c. 22, s.63, **Sch. 3 para. 13** (with s. 57(4))

**F103** Ss. 16(3), 20(2), 51, 52, 59–63, 65–68, 96(2), Sch. 16 paras. 25, 43 repealed by Health Services Act 1980 (c. 53), **Sch. 7**

#### Modifications etc. (not altering text)

**C15** S. 16: by S.I. 1990/2639, **art. 4(2)(a)** certain functions of the Secretary of State under s. 16 are made exercisable (1.4.1991) by the Health Education Board for Scotland

**C16** S. 16(1): functions transferred (31.3.2002) by S.S.I. 2002/103, **art. 4(2)(a)** (with art. 4(4))

S. 16(1): functions transferred (27.6.2002) by S.S.I. 2002/305, **art. 4(2)(a)** (with art. 4(4))

#### Marginal Citations

**M4** 1972 c. 20.

### [<sup>F104</sup>16A Power to make payments towards expenditure on community services.

- (1) A Health Board may, if they think fit, make payments in accordance with this section to any [<sup>F105</sup>local authority] towards expenditure incurred or to be incurred by them in connection with the performance of the following functions—

- (a) any function [<sup>F106</sup>under any of the enactments mentioned in section 5(1B) of the Social Work (Scotland) Act 1968 (power of Secretary of State to issue directions to local authorities in respect of their functions under certain enactments), other than section 3 of the Disabled Persons (Employment) Act 1958];

- (b) any <sup>F107</sup> . . . functions under section 1 of the Education (Scotland) Act <sup>M5</sup>1980 in making provision for—

- (i) <sup>F108</sup> . . .

- (ii) further education,

within the meaning of [<sup>F109</sup>that term] in that section;

- [<sup>F110</sup>(ba) any functions under section 4 or 5 of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) in making provision for additional support needs;]

- (c) any <sup>F107</sup> . . . functions under Part VII of the Housing (Scotland) Act <sup>M6</sup>1966 (provision of housing accommodation); and

- (d) any <sup>F107</sup> . . . functions under the following provisions—

- (i) Part III of the National Assistance Act <sup>M7</sup>1948;

- (ii) section 116 of the Mental Health Act 1983;

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- (iii) section 1 or 2 of the Chronically Sick and Disabled Persons Act <sup>M8</sup>1970;
- (iv) section 23 or 297 of the Criminal Procedure (Scotland) Act <sup>M9</sup>1975.
- (2) A Health Board may, if they think fit, make payments in accordance with this section to any of the following bodies towards expenditure incurred or to be incurred by them in connection with the provision of housing accommodation—
- [ a registered housing association within the meaning of the Housing <sup>F111</sup>(a) Associations Act 1985;]
- (b) any development corporation established under section 2 of the New Towns (Scotland) Act <sup>M10</sup>1968;
- (c) the Housing Corporation; and
- (d) the Scottish Special Housing Association.
- (3) Where a voluntary organisation provides services similar to the functions referred to in this section, payments may be made in accordance with this section to any such organisation towards expenditure incurred or to be incurred in connection with the provision of those services and such payments may be made by-
- (a) any Health Board either instead of or in addition to making payments under this section to any council, authority or other body in respect of such services; and
- (b) any such council, authority or other body which has received payments from a Health Board under this section, out of the sums so received.
- (4) Any payments made under this section, whether in respect of expenditure of a capital or of a revenue nature, or of both, shall be made in accordance with conditions prescribed for payments of that description by the Secretary of State in directions given under this subsection.]

#### Textual Amendments

**F104** S. 16A substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 2

**F105** Words in s. 16A(1) substituted (1.4.1996) by S.I. 1996/974, art. 2(1), **Sch. 1 Pt. I para. 5**

**F106** Words in s. 16A(1)(a) inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 112(2)(a)** (with s. 128(8); S.I. 1996/323, art. 4

**F107** Words in s. 16A(1)(b)-(c) repealed (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 112(2)(b)-(d), **Sch. 14** (with ss. 128(8), 179); S.I. 1996/323, art. 4(1)(d), **Sch. 2**

**F108** S. 16A(1)(b)(i) repealed (14.11.2005) by Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), ss. 33, 35(1), **Sch. 3 para. 2(a)(i)**; S.S.I. 2005/564, art. 2

**F109** Words in s. 16A(1)(b) substituted (14.11.2005) by Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), ss. 33, 35(1), **Sch. 3 para. 2(a)(ii)**; S.S.I. 2005/564, art. 2

**F110** S. 16A(1)(ba) inserted (14.11.2005) by Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4), ss. 33, 35(1), **Sch. 3 para. 2(b)**; S.S.I. 2005/564, art. 2

**F111** Paragraph (a) substituted by Housing (Consequential Provisions) Act 1985 (c. 71, SIF 61), s. 4(1), **Sch. 2 para. 41**

#### Modifications etc. (not altering text)

**C17** S. 16A applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt I** (with art. 6)

#### Marginal Citations

**M5** 1980 c.44(41:2).



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- M6** 1966 c.49.
- M7** 1948 c.29(81:3).
- M8** 1970 c.44(81:3).
- M9** 1975 c.21(39:1).
- M10** 1968 c.16(123:4).

### [<sup>F112</sup>16B Financial assistance by the Secretary of State to voluntary organisations.

- (1) The Secretary of State may, upon such terms and subject to such conditions as he may, with the approval of the Treasury, determine, give to a voluntary organisation to which this section applies assistance by way of grant or loan, or partly in the one way and partly in the other.
- (2) This section applies to a voluntary organisation whose activities consist in or include the provision of a service similar to a relevant service, the promotion or publicising of a relevant service or a similar one or the giving of advice with respect to the manner in which a relevant service or a similar one can best be provided.
- (3) In this section, “relevant service” means a service which must or may, by virtue of the National Health Service (Scotland) Act 1978, be provided or the provision of which must or may, by virtue of that Act, be secured by the Secretary of State, or a service for the provision of which a Health Board is, by virtue of that Act, under a duty to make arrangements.]

#### Textual Amendments

**F112** S. 16B inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 3

#### Modifications etc. (not altering text)

- C18** S. 16B: by [S.I. 1990/2369](#), [art. 4\(2\)\(b\)](#) certain functions of the Secretary of State under s. 16B are made exercisable (1.4.1991) by the Health Education Board for Scotland
- C19** S. 16B: functions transferred (31.3.2002) by [S.S.I. 2002/103](#), [art. 4\(2\)\(b\)](#) (with [art. 4\(4\)](#))  
S. 16B: functions transferred (27.6.2002) by [S.S.I. 2002/305](#), [art. 4\(2\)\(b\)](#) (with [art. 4\(4\)](#))

17 ..... <sup>F113</sup>

#### Textual Amendments

**F113** S. 17 repealed by [Overseas Development and Co-operation Act 1980 \(c. 63\)](#), Sch. 2 Pt. I

### [<sup>F114</sup>17A Provision of certain services under NHS contracts.

- (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.

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(2) Any such arrangement is to be treated as an NHS contract for the purposes of section 17A (other than subsections (5) and (7)).

(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;
- (b) section 39(a) of the <sup>M11</sup>National Health Service Act 1977; or
- (c) Article 62(2)(a) of the <sup>M12</sup>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.]

**Textual Amendments**  
**F114** S. 17AA inserted (1.9.1997) by 1997 c. 46, s. 31(2); S.I. 1997/1780, art. 2(3)

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**Marginal Citations**  
**M11** 1977 c. 49.  
**M12** S.I. 1972/1265 (N.I.14).

**[<sup>F115</sup>17A NHS contracts.**

(1) The persons or bodies mentioned in paragraphs (a) to (e) of subsection (2) may, for the purpose of carrying out their functions under any enactment, and without prejudice to any other power they may have in that regard, enter into arrangements for the provision of goods or services to or by them with—

- (a) one another; or
- (b) any of the persons or bodies mentioned in [<sup>F116</sup>paragraphs (f) to (g)] of that subsection.

(2) The persons and bodies referred to in subsection (1) are—

- (a) Health Boards;  
 [ Special Health Boards]]
- <sup>F117</sup>(aa) the Agency;
- (c) the Scottish Dental Practice Board;
- <sup>F118</sup>(d) .....
- (e) NHS trusts established under section 12A;
- [<sup>F119</sup>(f) Health Authorities established under section 8 of the <sup>M13</sup>National Health Service Act 1977;
- <sup>F119</sup>(ff) Special Health Authorities established under section 11 of the <sup>M14</sup>National Health Service Act 1977;]

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- (g) the Dental Practice Board;
  - [<sup>F120</sup>(h) the Health Protection Agency;]
  - <sup>F121</sup>(i) .....
  - <sup>F118</sup>(j) .....
  - (k) NHS trusts established under section 5 of the National Health Service and Community Care Act 1990;
  - [<sup>F122</sup>(ka) Primary Care Trusts established under section 16A of the National Health Service Act 1977]
  - (l) Health and Social Services Boards constituted under the Health and Personal Social Services (Northern Ireland) Order <sup>M15</sup>1972; <sup>F123</sup> . . .
  - (m) the Secretary of State.
  - [<sup>F124</sup>(n) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972;
  - (o) special health and social services agencies established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990;
  - (p) Health and Social Services trusts established under the Health and Personal Social Services (Northern Ireland) Order 1991; and
  - (q) the Department of Health and Social Services for Northern Ireland.][<sup>F125</sup> and in this Act “health service body” means any of those persons or bodies]
- (3) In subsection (1)—
- <sup>F126</sup>(a) .....
  - (b) “services” includes services of any description,
- and in this Act an arrangement falling within that subsection is referred to as an “NHS contract”.
- (4) Whether or not an arrangement which constitutes an NHS contract would, apart from this subsection, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities, but if any dispute arises with respect to such an arrangement, either party may refer the matter to the Secretary of State for determination under the following provisions of this section.
- (5) If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to either of the prospective parties that—
- (a) the terms proposed by the other party are unfair by reason that that party is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement; or
  - (b) for any other reason arising out of the relative bargaining positions of the prospective parties any of the terms of the proposed arrangements cannot be agreed.
- that party may refer the terms of the proposed arrangement to the Secretary of State for determination under the following provisions of this section.
- (6) Where a reference is made to the Secretary of State under subsection (4) or (5), the Secretary of State may determine the matter himself or, if he considers it appropriate, appoint a person to consider and determine it in accordance with regulations.

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- (7) By his determination of a reference under subsection (5), the Secretary of State or, as the case may be, the person appointed by him under subsection (6) may specify terms to be included in the proposed arrangement and may direct that it be proceeded with; and it shall be the duty of the prospective parties to the proposed arrangement to comply with any such directions.
- (8) A determination of a reference under subsection (4) may contain such directions (including directions as to payment) as the Secretary of State or, as the case may be, the person appointed under subsection (6) considers appropriate to resolve the matter in dispute; and it shall be the duty of the parties to the NHS contract in question to comply with any such directions.
- (9) Without prejudice to the generality of his powers on a reference under subsection (4), the Secretary of State or, as the case may be, the person appointed by him under subsection (6) may by his determination in relation to an arrangement constituting an NHS contract vary the terms of the arrangement or bring it to an end; and where the arrangement is so varied or brought to an end—
- (a) subject to paragraph (b), the variation or termination shall be treated as being effected by agreement between the parties; and
  - (b) directions included in the determination by virtue of subsection (8) may contain such provisions as the Secretary of State or, as the case may be, the person appointed by him under subsection (6) considers appropriate in order satisfactorily to give effect to the variation or to bring the arrangement to an end.
- [<sup>F127</sup>(10) Where a body mentioned in subsection (2)(1), (n), (o), (p) or (q) is a party or prospective party to an arrangement or proposed arrangement which—
- (a) falls within subsection (1); and
  - (b) also falls within the definition of HSS contract in Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991,
- subsections (4) to (9) shall apply in relation to that arrangement or proposed arrangement with the substitution for references to the Secretary of State of references to the Secretary of State and the Department of Health and Social Services for Northern Ireland acting jointly.]

### Textual Amendments

- F115** Ss. 17A and 17B inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 30](#); [S.I. 1990/1793, art. 2\(4\)](#), [Sch. II](#)
- F116** Words in s. 17A(1)(b) substituted (1.4.1991) by [S.I. 1991/195, art. 4\(2\)](#)
- F117** S. 17A(2)(aa) inserted (1.10.1999) by [1999 c. 8, s. 65\(1\)](#), [Sch. 4 para. 46\(a\)\(i\)](#); [S.S.I. 1999/90, art. 2\(a\)\(b\)](#), [Sch. 1](#)
- F118** S. 17A(2)(d)(j) repealed (1.10.1999) by [1999 c. 8, s. 65, Sch. 4 para. 46\(a\)\(iii\)](#), [Sch. 5](#); [S.S.I. 1999/90, art. 2, Sch. 1, 2](#)
- F119** S. 17A(2)(f)(ff) substituted s. 17A(f) (28.6.1998 for certain purposes and 1.4.1996 for all other purposes) by [1995 c. 17, ss. 2\(1\), 2\(3\)](#), [Sch. 1 Pt. III para. 102\(2\)\(a\)](#)(with [Sch. 2 para. 6](#))
- F120** Words in s. 17A(2)(h) substituted (1.4.2005) by [Health Protection Agency Act 2004 \(c. 17\), ss. 11\(1\), 12\(1\)](#), [Sch. 3 para. 9](#); [S.I. 2005/121, art. 2\(2\)](#)
- F121** S. 17A(2)(i) repealed (28.6.1995 for certain purposes and 1.4.1996 for all other purposes) by [1995 c. 17, ss. 2\(1\), 2\(3\)](#), [Sch. 1 Pt. III para. 102\(2\)\(b\)](#) (with [Sch. 6 para. 6](#))
- F122** S. 17A(2)(ka) inserted (1.10.1999) by [1999 c. 8, s. 65\(1\)](#), [Sch. 4 para. 46\(a\)\(ii\)](#); [S.S.I. 1999/90, art. 2\(a\)\(b\)](#), [Sch. 1](#)

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- F123** Word in s. 17A(2) repealed (1.4.1991) by S.I. 1991/195, **art. 4(3)**
- F124** S. 17A(2)(n)-(q) added (1.4.1991) by S.I. 1991/195, **art. 4(3)**
- F125** Words in s. 17A(2) inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 36**; S.I. 1998/631, **art. 2, Sch. 2**
- F126** S. 17A(3)(a) and the word “and” following it repealed (1.10.1999) by 1999 c. 8, s. 65, **Sch. 4 para. 46(b), Sch. 5**; S.S.I. 1999/90, **art. 2, Sch. 1, 2**
- F127** S. 17A(10) added (1.4.1991) by S.I. 1991/195 **art. 4(4)**

#### Modifications etc. (not altering text)

- C20** S. 17A applied (1.4.1993) by S.I. 1993/577, **art. 5(1)(2), Sch. Pt. I**
- S. 17A applied (1.4.1995) by S.I. 1995/574, **art. 5(1)(2), Sch. Pt. I**
- S. 17A extended (30.10.1997 for certain purposes and 11.5.1998 for all other purposes) by 1997 c. 46, **s. 16(5)**; S.I. 1997/2620, **art. 2(1)(b)**; S.I. 1998/631, **art. 2(2)**
- S. 17A applied (1.4.1999) by S.I. 1999/686, **art. 5(1)(2), Sch. Pt. I**
- S. 17A applied (1.4.1999) by S.I. 1999/726, **art. 5(1)(2), Sch. Pt. I**
- S. 17A applied (1.4.2000) by S.S.I. 2000/47, **art. 5(1)(2), Sch. Pt. I**
- S. 17A applied (6.4.2001) by S.S.I. 2001/137, **art. 5(1), Sch. Pt. I**
- S. 17A applied (31.3.2002) by S.S.I. 2002/103, **art. 6, Sch. Pt. I** (with **art. 4(4)**)
- S. 17A applied (27.6.2002) by S.S.I. 2002/305, **art. 5(1), Sch. Pt. I** (with **art. 4(4)**)
- C21** S. 17A applied (1.4.1991) by S.I. 1990/2639, **art. 5(1)(2), Sch. Pt. I**

#### Marginal Citations

- M13** 1977 c. 49.
- M14** 1977 c. 49.
- M15** S.I. 1972/1265 (N.I. 14).

### <sup>F128</sup>17B Reimbursement of Health Board’s costs.

- (1) Where a Health Board provide goods or services under this Act for an individual for whose health care it is not their function to provide by virtue of section 2(1), in circumstances where the condition of the individual is such that he needs those goods or services and, having regard to his condition, it is not practicable, before providing them, to enter into an NHS contract for their provision, that Health Board shall be remunerated in respect of that provision by the Health Board or Health and Social Services Board which has the function, or the [<sup>F129</sup>Health Authority or Special Health Authority] which has the primary functions, of providing those goods or services to that individual.
- (2) The rate of any remuneration payable by virtue of subsection (1) shall be calculated in such manner or on such basis as may be determined by the Secretary of State.
- (3) In any case where—
- a Health Board provide goods or services for the benefit of an individual; and
  - the provision of those goods and services is not pursuant to an NHS contract; and
  - the individual is resident outside the United Kingdom and is of a description (being a description associating the individual with another country) specified for the purposes of this subsection by a direction made by the Secretary of State,

the Health Board shall be remunerated by the Secretary of State in respect of the provision of the goods or services at such rate or rates as he considers appropriate.

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- (4) In subsection (1), “Health and Social Services Board” means such a Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972 <sup>F130</sup> and the reference to a function of a Health and Social Services Board is a reference to a primary function of such a Board within the meaning of Article 9 of the Health and Personal Social Services (Northern Ireland) Order 1991].

#### Textual Amendments

- F128** Ss. 17A and 17B inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 30](#); [S.I. 1990/1793](#), [art. 2\(4\)](#), [Sch. II](#)
- F129** Words in [s. 17B\(1\)](#) substituted (28.6.1995 for certain purposes and 1.4.1996 for all other purposes) by [1995 c. 17](#), [ss. 2\(1\)\(3\)](#), [4\(2\)](#), [8\(1\)](#), [Sch. 1 Pt. III para. 102\(3\)](#) (with [Sch. 2 para. 6](#))
- F130** Words in [s. 17B\(4\)](#) added (1.4.1991) by [S.I. 1991/195](#), [art. 4\(5\)](#).

#### <sup>F131</sup>17C Personal medical or dental services.

- (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—
- <sup>F132</sup>primary medical services] are provided (otherwise than by the Board); or
  - personal dental services are provided (otherwise than by the Board).
- (2) An agreement made under this section—
- may not combine arrangements for the provision of <sup>F132</sup>primary medical services] with arrangements for the provision of personal dental services.
- <sup>F133</sup>(2A) An agreement made under this section—
- for the provision of primary medical services may include arrangements for the provision of services which are not primary medical services and may provide for such other services to be performed in any place where, by virtue of section 2C, primary medical services may be performed;
  - for the provision of personal dental services] may include arrangements for the provision of services—
    - which are not <sup>F132</sup>primary medical services] or personal dental services; but
    - which may be provided under this Part.
- (3) Except to such extent as may be prescribed—
- <sup>F134</sup> .....
  - 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 <sup>F135</sup> . . . 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—
- 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 <sup>F136</sup>Strategic Health Authority or by a] Health Authority; and

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- (b) for functions which are exercisable by a <sup>F136</sup>Strategic Health Authority or by a Health Authority in relation to an agreement made under section 28C of the <sup>M16</sup>National Health Service Act 1977 to be exercisable on behalf of the Authority by a Health Board.
- (6) For the purposes of this section—
- <sup>F137</sup>“Strategic Health Authority” and “Health Authority” have the same meaning as in the National Health Service Act 1977;]
- <sup>F138</sup>.....
- “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.

#### Textual Amendments

- F131** S. 17C inserted (5.3.2001 for certain purposes only and otherwise *prosp.*) by 1997 c. 46, **ss. 21(2), 41(3)**; S.S.I. 2001/58, **art. 2**
- F132** Words in s. 17C(1)(a)(2)(a)(b)(i) substituted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(2)(a), 9(1)**; S.S.I. 2004/58, **art. 2(1)(3)**, Sch.
- F133** S. 17C(2A) substituted for words (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(2)(b), 9(1)**; S.S.I. 2004/58, **art. 2(1)(3)**, Sch.
- F134** S. 17C(3)(a) repealed (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(2)(c), 9(1)**; S.S.I. 2004/58, **art. 2(1)(3)**, Sch.
- F135** Words in s. 17C(4) repealed (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(2)(d), 9(1)**; S.S.I. 2004/58, **art. 2(1)(3)**, Sch.
- F136** Words in s. 17C(5)(a)(b) inserted (1.10.2002) by 2002 c. 17, s. 4(3), **Sch. 3 Pt. 2 para. 12(a)**; S.I. 2002/2478, **art. 3(1)(a)** (with art. 3(3) and transitional provision in art. 4)
- F137** Definition in s. 17C substituted (1.10.2002) by 2002 c. 17, s. 4(3), **Sch. 3 Pt. 2 para. 12(b)**; S.I. 2002/2478, **art. 3(1)(a)** (with art. 3(3) and transitional provision in art. 4)
- F138** S. 17C(6): definition of "personal medical services" repealed (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 2(2)(e), 9(1)**; S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

#### Marginal Citations

- M16** 1977 c. 49.

VALID FROM 08/11/2010

#### <sup>F139</sup>17C **Primary medical services: persons with whom agreements can be made**

- (1) A Health Board may, subject to such conditions as may be prescribed, make an agreement under section 17C under which primary medical services are provided with—
- (a) a medical practitioner,
  - (b) a health care professional (other than a medical practitioner),
  - (c) a qualifying partnership,
  - (d) a qualifying limited liability partnership,
  - (e) a qualifying company, or

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- (f) two or more of the persons mentioned in paragraphs (a) to (e).
- (2) For the purposes of subsection (1)—
- (a) a qualifying partnership is a partnership that satisfies both of the following conditions—
    - (i) at least one partner is a medical practitioner or other health care professional,
    - (ii) all other partners are individuals,
  - (b) a qualifying limited liability partnership is a limited liability partnership that satisfies both of the following conditions—
    - (i) at least one member is a medical practitioner or other health care professional,
    - (ii) all other members are individuals,
  - (c) a qualifying company is a company which satisfies both of the following conditions—
    - (i) at least one member of the company is a medical practitioner or other health care professional,
    - (ii) all other members are individuals.
- (3) A Health Board may only make such an agreement if the Board is satisfied that all the other parties to the agreement (“the contractors”) have sufficient involvement in patient care.
- (4) A contractor has sufficient involvement in patient care if—
- (a) where the contractor is a medical practitioner or a health care professional, the contractor, or
  - (b) where the contractor is a partnership, limited liability partnership or a company, each partner or, as the case may be, member of the contractor, regularly performs, or is engaged in the day to day provision of, primary medical services in accordance with section 17C arrangements, a general medical services contract or any other arrangement made in pursuance of section 2C(2) (or will so perform or be so engaged by virtue of the agreement in question).
- (5) Regulations may—
- (a) make provision as to what constitutes the regular performance of, or being engaged in the day to day provision of, primary medical services for the purposes of subsection (4),
  - (b) provide that references in subsection (4) to a person who is performing or is engaged in the provision of services include a person who has performed or been engaged in providing the services within such period as may be prescribed.
- (6) Regulations under subsection (5)(a) may, in particular, provide that a period of time in which a person is not performing or is not engaged in the provision of primary medical services is, in prescribed circumstances, to be disregarded for the purposes of determining whether the person regularly performs or is engaged in the day to day provision of those services.
- (7) In relation to an agreement under section 17C under which primary medical services are provided which is entered into with a partnership, regulations may make provision as to the effect on the agreement of a change in membership of the partnership.



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(8) In this section, “health care professional” means a member of a profession which is regulated by a body mentioned (at the time the agreement in question is made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c.17).]

#### Textual Amendments

**F139** S. 17CA inserted (8.11.2010 for certain purposes otherwise 22.12.2010) by Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3), ss. 38, 43(3), S.S.I. 2010/372, art. 2, Schs. 1, 2

#### <sup>F140</sup><sup>F141</sup><sup>F143</sup> **17D Persons with whom agreements may be made.**

- (1) A Health Board may make an agreement under section 17C only with one or more of the following—
- (a) an NHS trust;
  - <sup>F143</sup>(b) in the case of an agreement under which primary medical services are provided—
    - (i) a medical practitioner who satisfies the prescribed conditions;
    - (ii) a health care professional who satisfies the prescribed conditions;
    - (iii) a person who is providing primary medical services in accordance with a general medical services contract;
    - (iv) a person who is providing primary medical services in accordance with a section 28Q contract or an individual who is providing general medical services in accordance with Article 56 of the 1972 Order;
    - (v) a person who is providing primary medical services in accordance with section 17C arrangements or section 28C arrangements or personal medical services in accordance with Article 15B arrangements;
    - (vi) an individual who is providing general dental services;
    - (vii) a person who is providing primary dental services in accordance with a section 28K contract or an individual who is providing general dental services in accordance with Article 61 of the 1972 Order;
    - (viii) a person who is providing personal dental services in accordance with section 17C arrangements;
    - (ix) a person who is providing primary dental services in accordance with section 28C arrangements or personal dental services in accordance with Article 15B 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 <sup>F144</sup>, a section 28C employee or (in the case of an agreement under which primary medical services are provided) an Article 15B employee];
  - (e) a qualifying body.

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[ The power under subsection (1) to make an agreement with a person or, as the case  
<sup>F145</sup>(1A) may be, an individual falling within paragraph (b)(iii) to (ix), or (in the case of an agreement under which primary medical services are provided) paragraph (d) or (e), of that subsection is subject to such conditions as may be prescribed.

(1B) In relation to an agreement under section 17C under which primary medical services are provided which is entered into with a partnership, regulations may make provision as to the effect on the agreement of a change in the membership of the partnership.]

(2) In this section—

<sup>F146</sup>“the 1972 Order” means the Health and Personal Social Services (Northern Ireland) Order 1972 (1972 No. 1256 (N.I. 14));]

“the 1977 Act” means the <sup>M17</sup>National Health Service Act 1977;

<sup>F147</sup>“Article 15B arrangements” means arrangements for the provision of services made under Article 15B of the 1972 Order;

“Article 15B employee” means an individual who, in connection with the provision of services in accordance with Article 15B arrangements, is employed by a person providing those services;

“health care professional” means a member of a profession which is regulated by a body mentioned (at the time the agreement in question is made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17);

“Local Health Board” has the same meaning as in the 1977 Act;]

“NHS employee” means an individual who, in connection with the provision of services in the health service in Scotland or England and Wales <sup>F148</sup>or, in relation to paragraph (b) below, Northern Ireland], is employed by—

(a) an NHS trust;

(b) <sup>F149</sup>in the case of an agreement under which primary medical services are provided—

(i) a Health Board;

(ii) a Primary Care Trust or a Local Health Board;

(iii) an NHS trust, an NHS foundation trust or (in Northern Ireland) a Health and Social Services Trust;

(iv) a person who is providing primary medical services in accordance with a general medical services contract or a section 28Q contract or an individual who is providing general medical services in accordance with Article 56 of the 1972 Order;

(v) an individual who is providing general dental services;

(vi) a person who is providing primary dental services in accordance with a section 28K contract or an individual who is providing general dental services in accordance with Article 61 of the 1972 Order;

and in this paragraph NHS foundation trust, NHS trust and Primary Care Trust have the same meanings as in the 1977 Act;]

(c) in the case of an agreement under which personal dental services are provided—

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- (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
- (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 <sup>M18</sup>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;

<sup>F150</sup>

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

- (a) [<sup>F151</sup>where the arrangements are for the provision of primary medical services, a person providing services in accordance with the arrangements;
- (b) where the arrangements are for the provision of personal dental services, an individual providing services in accordance with the arrangements];

“section 28C arrangements” means arrangements for the provision of services made under section 28C of the 1977 Act; <sup>F152</sup> . . .

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

- (a) [<sup>F151</sup>where the arrangements are for the provision of primary medical services, a person providing services in accordance with the arrangements;
- (b) where the arrangements are for the provision of personal dental services, an individual providing services in accordance with the arrangements

[<sup>F153</sup>“section 28K contract” means a general dental services contract under section 28K of the 1977 Act; and

“section 28Q contract” means a general medical services contract under section 28Q of the 1977 Act.

[ The references in subsection (1)(b)(iii) to (ix) to a person or individual who is <sup>F154</sup>(3) providing services include a person or, as the case may be, an individual who has provided them within such period as may be prescribed.]]]]

#### Textual Amendments

**F140** By Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 184, 199(2), **Sch. 11 para. 46(1)(2)(a)**; S.I. 2004/288, arts. 1(5), **5(2)(r)** (as amended by S.I. 2004/866, art. 2(1)) it is provided that in s. 17D(1)(b)(ii) the words "primary medical services in accordance with" be inserted

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- after "arrangements or" (1.4.2004) (which original words were substituted (13.2.2004 for certain purposes and 1.4.2004 otherwise) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 2\(3\)\(a\), 9\(1\); S.S.I. 2004/58, art. 2, Sch.](#))
- F141** S. 17D inserted (5.3.2001 for certain purposes only and otherwise *prosp.*) by 1997 c. 46, [ss. 21\(2\), 40\(3\); S.S.I. 2001/58, art. 2](#)
- F142** By [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 184, 199\(2\), Sch. 11 para. 46\(1\)\(3\)\(a\); S.I. 2004/288, arts. 1\(5\), 5\(2\)\(r\)](#) (as amended by [S.I. 2004/866, art. 2\(1\)](#)) it is provided that in s. 17D(2) the words "primary medical services in accordance with" be inserted after "arrangements or" (1.4.2004) (which original words were substituted (13.2.2004 for certain purposes and 1.4.2004 otherwise) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 2\(3\)\(d\)\(iv\), 9\(1\); S.S.I. 2004/58, art. 2, Sch.](#))
- F143** S. 17D(1)(b) substituted (13.2.2004 for certain purposes otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 2\(3\)\(a\), 9\(1\); S.S.I. 2004/58, art. 2\(1\)\(3\), Sch.](#)
- F144** Words in s. 17D(1)(d) substituted (13.2.2004 for certain purposes otherwise 1.4.2004) by virtue of [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 2\(3\)\(b\), 9\(1\); S.S.I. 2004/58, art. 2\(1\)\(3\), Sch.](#)
- F145** S. 17D(1A)(1B) inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 2\(3\)\(c\), 9\(1\); S.S.I. 2004/58, art. 2\(1\)\(3\), Sch.](#)
- F146** S. 17D(2): definition of "the 1972 Order" inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by virtue of [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 2\(3\)\(d\)\(i\), 9\(1\); S.S.I. 2004/58, art. 2\(1\)\(3\), Sch.](#)
- F147** S. 17D(2): definitions inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 2\(3\)\(d\)\(ii\), 9\(1\); S.S.I. 2004/58, art. 2\(1\)\(3\), Sch.](#)
- F148** S. 17D(2): words in definition of "NHS employee" inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 2\(3\)\(d\)\(iii\), 9\(1\); S.S.I. 2004/58, art. 2\(1\)\(3\), Sch.](#)
- F149** S. 17D(2): definition of "NHS employee" para. (b) substituted (13.2.2004 for certain purposes otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 2\(3\)\(d\)\(iv\), 9\(1\); S.S.I. 2004/58, art. 2\(1\)\(3\), Sch.](#)
- F150** S. 17D(2): definition of "qualifying medical practitioner" repealed (13.2.2004 for certain purposes otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 2\(3\)\(d\)\(v\), 9\(1\); S.S.I. 2004/58, art. 2\(1\)\(3\), Sch.](#)
- F151** S. 17D(2) words in definitions of "section 17C employee" and "section 28C employee" substituted (13.2.2004 for certain purposes otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 2\(3\)\(d\)\(vi\), 9\(1\); S.S.I. 2004/58, art. 2\(1\)\(3\), Sch.](#)
- F152** Word in s. 17D(2) repealed (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 8, 9\(1\), Sch. para. 1\(3\); S.S.I. 2004/58, art. 2\(3\)](#)
- F153** S. 17D(2): definitions of "section 28K contract" and "section 28Q contract" inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 2\(3\)\(d\)\(vii\), 9\(1\); S.S.I. 2004/58, art. 2\(1\)\(3\), Sch.](#)
- F154** S. 17D(3) inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 2\(3\)\(e\), 9\(1\); S.S.I. 2004/58, art. 2\(1\)\(3\), Sch.](#)

#### Marginal Citations

**M17** 1977 c. 49.

**M18** 1984 c. 24.

#### [<sup>F155</sup>17E Personal medical or dental services: regulations.

- (1) The Secretary of State may make regulations with respect to the provision of services in accordance with section 17C arrangements.

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(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 <sup>F156</sup>... 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;
- <sup>F157</sup>(ca) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons performing primary medical services in accordance with section 17C arrangements;
- (cb) provide for the circumstances in which a person providing primary medical services under section 17C arrangements—
  - (i) must, or may, accept a person as a patient to whom such services are provided under section 17C arrangements;
  - (ii) may decline to accept a person as such a patient;
  - (iii) may terminate responsibility for a patient;
- (cc) make provision as to the right of patients to choose the persons from whom they are to receive primary medical services under 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;
- <sup>F158</sup>(f) .....
- <sup>F158</sup>(g) .....
- (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.

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[ The regulations may also require payments to be made as respects the provision  
F159(3A) or performance of primary medical services under section 17C arrangements in  
accordance with directions given for the purpose by the Scottish Ministers.

(3B) A direction under subsection (3A) may make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.

(3C) The regulations may also include provision requiring a Health Board, in prescribed circumstances and subject to prescribed conditions, to enter into a general medical services contract on prescribed terms with any person providing services under section 17C arrangements who so requests.

(3D) The regulations may make provision for the resolution of disputes as to the terms of any proposed section 17C arrangements for the provision of primary medical services, including, without prejudice to that generality, provision for—

- (a) the referral of the terms of the proposed arrangements to the Scottish Ministers; and
- (b) the Scottish Ministers, or a person or panel of persons appointed by them, to determine the terms on which the arrangements may be made.]

F160(4) .....

F161(5) .....

F162(6) .....

F161(7) .....

(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.]

#### Textual Amendments

**F155** S. 17E inserted (5.3.2001 for certain purposes, otherwise prosp.) by 1997 c. 46, ss. 22(2), 41(3) (as amended by [The General and Specialist Medical Practice \(Education, Training and Qualifications\) Order 2003 \(S.I. 2003/1250\)](#), art. 31(5), **Sch. 9 para. 6(c)(ii)** (coming into force in accordance with art. 1(2)(3) of the amending S.I.); S.S.I. 2001/58, **art. 2**

**F156** Words in s. 17E(2)(b) repealed (13.2.2004 for certain purposes, otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), ss. **2(4)(a)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, **Sch.**

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- F157** S. 17E(3)(ca)-(cc) inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 2(4)(b)(i), 9(1); S.S.I. 2004/58, art. 2(1)(3), Sch.
- F158** S. 17E(3)(f)(g) repealed (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 2(4)(b)(ii), 9(1); S.S.I. 2004/58, art. 2(1)(3), Sch.
- F159** S. 17E(3A)-(3D) inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 2(4)(c), 9(1); S.S.I. 2004/58, art. 2(1)(3), Sch.
- F160** S. 17E(4) repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 47, Sch. 5; S.S.I. 1999/90, art. 2, Schs. 1, 2
- F161** S. 17E(5)(7) repealed (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 2(4)(d), 9(1); S.S.I. 2004/58, art. 2(1)(3), Sch.
- F162** S. 17E(6) omitted (30.9.2005 as notified in the London Gazette dated 26.8.2005) by virtue of The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003 (S.I. 2003/1250), arts. 1(2)(3), 31(5), Sch. 9 para. 3(a)

## 17EA Services lists

**F163** .....

### Textual Amendments

- F163** S. 17EA repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(4); S.S.I. 2004/58, art. 2(3)

## 17EB Application for inclusion in services list

**F164** .....

### Textual Amendments

- F164** S. 17EB repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(4); S.S.I. 2004/58, art. 2(3)

PROSPECTIVE

## [<sup>X1</sup>17F Lists of persons performing personal dental services

- (1) Regulations may provide that a person may not perform personal dental services under section 17C arrangements or a pilot scheme with a Health Board unless his name is included in a list maintained under the regulations by the Board.
- (2) Regulations under subsection (1) may make provision in relation to such lists and in particular as to—
  - (a) the preparation, maintenance and publication of a list;
  - (b) eligibility for inclusion in a list;
  - (c) applications for inclusion (including provision for the procedure for applications to be made and dealt with and the documents to be supplied on application);
  - (d) the grounds on which an application for inclusion must be granted or refused;

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- (e) requirements with which a person included in a list must comply (including requirements as to standards of performance and patient care and as to declarations, consents or undertakings);
- (f) suspension or removal from a list (including the grounds for and consequences of suspension or removal);
- (g) circumstances in which a person included in a list may not withdraw from it;
- (h) payments to be made by a Health Board in respect of a person suspended from a list (including provision for the amount of, or the method of calculating, the payment to be determined by the Scottish Ministers);
- (i) criteria to be applied in making decisions under the regulations;
- (j) disclosure of information about applicants for inclusion, refusals of applications, or suspensions, removals or references to the Tribunal, including in particular the disclosure of information about any such matter by a Health Board to the Scottish Ministers and by the Scottish Ministers to a Health Board.]

#### Editorial Information

**X1** This is a new instance of s. 17F, inserted by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), **ss. 18**, 43(3). A separate instance of s. 17F was inserted (1.4.1998) by [National Health Service \(Primary Care\) Act 1997 \(c. 46\)](#), s. 23(2); S.I. 1998/631, art. 2(a), Sch. 1, and repealed (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), ss. 8, 9(1), **Sch. para. 1(5)**; S.S.I. 2004/58, **art. 2(3)**

#### [<sup>F165</sup>17G Right to choose dental practitioner.

- (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 17C arrangements, as personal dental services; or
  - (b) provided under Part II as general dental services.]

#### Textual Amendments

**F165** S. 17G inserted (1.10.1998) by [1997 c. 46, s. 24\(2\)](#); S.I. 1998/1998, art. 2(2)(a), **Sch. 1**

#### 17H Immunisation.

<sup>F166</sup> .....



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### Textual Amendments

**F166** S. 17H repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 2(5), 9(1); S.S.I. 2004/58, art. 2(3)

## [<sup>F167</sup>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 [<sup>F168</sup>primary 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.]

### Textual Amendments

**F167** S. 17I inserted (1.4.1998 for certain purposes, otherwise *prosp.*) by 1997 c. 46, s. 41(1), Sch. 2 Pt. I para. 38; S.I. 1998/631, arts. 2(b), 3(3), Sch. 2

**F168** Words in s. 17I substituted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(6); S.S.I. 2004/58, art. 2(3)

## [<sup>F169</sup>General medical services contracts

### Textual Amendments

**F169** Ss. 17J-17O and cross-heading inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 4, 9(1); S.S.I. 2004/58, art. 2(1)(3), Sch.

## 17J Health Boards' power to enter into general medical services contracts

- (1) A Health Board may enter into a contract under which primary medical services are provided (whether directly or indirectly) by a contractor in accordance with the provisions of this Part.
- (2) A contract under this section is referred to in this Act as a “general medical services contract”.
- (3) Subject to any provision made by or under this Part, a general medical services contract may make such provision as may be agreed between the Health Board and the contractor as respects—
  - (a) the services to be provided under the contract;
  - (b) the remuneration to be paid under the contract; and
  - (c) any other matters.
- (4) The services to be provided under a general medical services contract may include services which are not primary medical services; and the contract may provide for such other services to be performed in any place where, by virtue of section 2C, primary medical services may be performed.
- (5) In this Part, “contractor”, in relation to a general medical services contract with a Health Board, means the other party to the contract.

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### **17K Mandatory contract term: provision of prescribed primary medical services**

- (1) A general medical services contract must require the contractor to provide for the contractor's patients primary medical services of such descriptions as may be prescribed.
- (2) Regulations under subsection (1) may in particular describe the primary medical services by reference to the manner or circumstances in which they are provided.

### **17L Eligibility to be contractor under general medical services contract**

- (1) A Health Board may, subject to such conditions as may be prescribed, enter into a general medical services contract with—
  - (a) a medical practitioner;
  - (b) a partnership, where the conditions mentioned in subsection (2) are satisfied; or
  - (c) a company limited by shares, where the conditions in subsection (3) are satisfied.
- (2) The conditions referred to in subsection (1)(b) are that—
  - (a) all of the partners are individuals;
  - (b) at least one partner is a medical practitioner; and
  - (c) any partner who is not a medical practitioner is—
    - (i) an NHS employee;
    - (ii) a section 17C employee;
    - (iii) a section 28C employee or an Article 15B employee;
    - (iv) a health care professional who is engaged in the provision of services under this Act, the 1977 Act or the 1972 Order;
    - (v) an individual who is providing primary medical services in accordance with a general medical services contract;
    - (vi) an individual who is providing primary medical services in accordance with a section 28Q contract or general medical services in accordance with Article 56 of the 1972 Order;
    - (vii) an individual who is providing primary medical services in accordance with section 17C arrangements or section 28C arrangements or personal medical services in accordance with Article 15B arrangements;
    - (viii) an individual who is providing general dental services;
    - (ix) an individual who is providing primary dental services in accordance with a section 28K contract or general dental services in accordance with Article 61 of the 1972 Order;
    - (x) an individual who is providing personal dental services in accordance with section 17C arrangements; or
    - (xi) an individual who is providing primary dental services in accordance with section 28C arrangements or personal dental services in accordance with Article 15B arrangements.
- (3) The conditions referred to in subsection (1)(c) are that—
  - (a) at least one share in the company is legally and beneficially owned by a medical practitioner; and

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- (b) any share which is not so owned is legally and beneficially owned by an individual referred to in subsection (2)(c)(i) to (xi).
- (4) Regulations may make provision as to the effect on a general medical services contract entered into with a partnership of a change in the membership of the partnership.
- (5) In this section—
- “health care professional” means a member of a profession regulated by a body mentioned (at the time the contract in question is entered into) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17);
  - “NHS employee” has the same meaning as it has in section 17D in relation to an agreement under which primary medical services are provided;
  - “the 1972 Order”, “the 1977 Act”, “Article 15B arrangements”, “Article 15B employee”, “section 17C arrangements”, “section 17C employee”, “section 28C arrangements”, “section 28C employee”, “section 28K contract” and “section 28Q contract” each has the same meaning as in section 17D.
- (6) The references in—
- (a) subsection (2)(c)(iv) to a health care professional who is engaged in the provision of services include a health care professional who has been so engaged;
  - (b) subsection (2)(c)(v) to (xi) to a person or individual who is providing services include a person or individual who has provided the services, within such period as may be prescribed.

### **17M Payments by Health Boards under general medical services contracts**

- (1) The Scottish Ministers may give directions as to payments to be made under general medical services contracts.
- (2) A general medical services contract must require payments to be made under it in accordance with directions for the time being in force under this section.
- (3) A direction under subsection (1) may in particular—
  - (a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;
  - (b) provide for payments to be made by reference to—
    - (i) any scheme or scale specified in the direction;
    - (ii) a determination made by any person in accordance with factors specified in the direction;
  - (c) provide for the making of payments in respect of individual practitioners;
  - (d) provide that the whole or any part of a payment is subject to conditions (including a condition that the whole or any part of a payment is liable to be paid by a Health Board only if they are satisfied as to such conditions as may be specified in the direction);
  - (e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.
- (4) Before giving a direction under subsection (1), the Scottish Ministers—

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- (a) must consult any body appearing to them to be representative of persons to whose remuneration the direction would relate; and
  - (b) may consult such other persons as they think appropriate.
- (5) References in this section to payments include fees, allowances, reimbursements, loans and repayments.

## **17N Other mandatory contract terms**

- (1) A general medical services contract must include (in addition to provisions required by or under other provisions of this Part) such provision as may be prescribed.
- (2) Regulations under subsection (1) may in particular make provision as to—
  - (a) the manner in which, and the standards to which, services must be provided;
  - (b) the persons who are to perform services;
  - (c) the persons to whom services are to be provided;
  - (d) the right of patients to choose the persons from whom they are to receive services;
  - (e) the variation of terms of the contract (except terms required by or under this Part);
  - (f) rights of entry and inspection (including inspection of clinical records and other documents);
  - (g) the circumstances in which, and the manner in which, the contract may be terminated;
  - (h) enforcement;
  - (i) the adjudication of disputes.
- (3) Regulations making provision in pursuance of subsection (2)(c) may make provision as to the circumstances in which a contractor—
  - (a) must, or may, accept a person as a patient to whom services are provided under the contract;
  - (b) may decline to accept a person as such a patient; or
  - (c) may terminate the contractor's responsibility for a patient.
- (4) Regulations making provision in pursuance of subsection (2)(e) may—
  - (a) make provision as to the circumstances in which a Health Board may unilaterally vary the terms of a contract;
  - (b) make provision suspending or terminating any duty under the contract to provide services of a prescribed description.
- (5) Regulations making provision of the kind described in subsection (4)(b) may prescribe services by reference to the manner or circumstances in which they are provided.
- (6) A general medical services contract must contain provision requiring the contractor to comply with any directions given by the Scottish Ministers for the purposes of this section as to the drugs, medicines or other substances which may, or may not, be ordered for patients in the provision of primary medical services under the contract.

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## 170 Resolution of disputes and entry into NHS contracts

- (1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general medical services contract, including, without prejudice to that generality, provision for—
  - (a) the referral of the terms of the proposed contract to the Scottish Ministers; and
  - (b) the Scottish Ministers, or a person or panel of persons appointed by them, to determine the terms on which the contract may be entered into.
- (2) Regulations may make provision for any person entering, or who has entered, into a general medical services contract to be regarded as a health service body for any purposes of section 17A, in circumstances where the person so elects.
- (3) Where a person is to be regarded as a health service body for any purposes of section 17A by reason only of an election by virtue of subsection (2) of this section, that section has effect in relation to that person with the omission of the words “under any enactment” in subsection (1) and with such other modifications (if any) as may be prescribed.
- (4) Regulations under subsection (2) may include provision as to the application of section 17A in cases where—
  - (a) a partnership is to be regarded as a health service body; and
  - (b) there is a change in the membership of the partnership.]

*<sup>F170</sup>Persons performing primary medical services*

### Textual Amendments

**F170** S. 17P and cross-heading inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\), ss. 5\(2\), 9\(1\); S.S.I. 2004/58, art. 2\(1\)\(3\), Sch.](#)

## 17P Persons performing primary medical services

- (1) Regulations may provide that a health care professional of a prescribed description may not perform any primary medical service which a Health Board is, under section 2C(1), under a duty to provide or secure the provision of unless that professional is included in a list maintained under the regulations by the Health Board.
- (2) For the purposes of this section, “health care professional” means a member of a profession regulated by a body for the time being mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17).
- (3) Regulations under subsection (1) may make provision in relation to such lists and in particular as to—
  - (a) the preparation, maintenance and publication of a list;
  - (b) eligibility for inclusion in a list;
  - (c) applications for inclusion (including provision for the procedure for applications to be made and dealt with and the documents to be supplied on application);
  - (d) the grounds on which an application for inclusion may or must be granted or refused;

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- (e) requirements with which a person included in a list must comply (including requirements as to standards of performance and patient care and as to declarations, consents or undertakings);
  - (f) suspension or removal from a list (including the grounds for and consequences of suspension or removal);
  - (g) circumstances in which a person included in a list may not withdraw from it;
  - (h) payments to be made by a Health Board in respect of a person suspended from the list (including provision for the amount of, or the method of calculating, the payment to be determined by the Scottish Ministers);
  - (i) the criteria to be applied in making decisions under the regulations;
  - (j) appeals against decisions made by a Health Board under the regulations;
  - (k) disclosure of information about applicants for inclusion, refusals of applications, or suspensions, removals or references to the Tribunal.
- (4) Regulations making provision as to the matters referred to in subsection (3)(k) may in particular authorise the disclosure of information—
- (a) by a Health Board to the Scottish Ministers; and
  - (b) by the Scottish Ministers to a Health Board.

## **Assistance and support**

**F171** **17Q**

- (1) A Health Board may provide assistance and support to—
- (a) any person providing, or proposing to provide, primary medical services under a general medical services contract;
  - (b) any person providing, or proposing to provide, such services in accordance with section 17C arrangements.
- (2) Assistance and support provided by a Health Board under subsection (1) is to be provided on such terms, including terms as to payment, as the Board think fit.
- (3) In this section, “assistance” includes financial assistance.]]

### **Textual Amendments**

**F171** S. 17Q inserted (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), ss. 6, 8, 9(1); S.S.I. 2004/58, art. 2(3)

### **Modifications etc. (not altering text)**

**C22** Ss. 17Q-17V and preceding cross-heading substituted for s. 17Q (prosp.) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), s. 21, 43(3)

PROSPECTIVE

## ***F172** Pharmaceutical care services contracts*

### **Textual Amendments**

**F172** Ss. 17Q-17V and cross-heading substituted for s. 17Q (prosp.) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), ss. 21, 43(3)

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### **17R Mandatory contract term: provision of prescribed pharmaceutical care services**

- (1) A pharmaceutical care services contract must require the contractor to provide as respects the area of the Health Board pharmaceutical care services of such descriptions as may be prescribed.
- (2) Regulations under subsection (1) may in particular describe the pharmaceutical care services by reference to the manner or circumstances in which they are provided.

### **17S Eligibility to be contractor under pharmaceutical care services contract**

- (1) A Health Board may, subject to such conditions as may be prescribed, enter into a pharmaceutical care services contract with—
  - (a) a registered pharmacist; or
  - (b) a person other than a registered pharmacist who, by virtue of section 69 of the Medicines Act 1968 (c. 67), is taken to be a person lawfully conducting a retail pharmacy business in accordance with that section,
 who undertakes that all pharmaceutical care services provided under the contract will be provided by, or under the supervision of, a registered pharmacist.

[ In such circumstances, and subject to such conditions, as may be prescribed, <sup>F173</sup>(1A) subsection (1) has effect with the omission of the words from “who undertakes” to the end.]

- (2) Regulations may make provision as to the effect on a pharmaceutical care services contract entered into with a partnership of a change in the membership of the partnership.

#### **Textual Amendments**

**F173** S. 17S(1A) inserted (prosp.) by [Health Act 2006 \(c. 28\)](#), ss. **36(2)**, 83(2)

### **17T Payments by Health Boards under pharmaceutical care services contracts**

- (1) The Scottish Ministers may give directions as to payments to be made under pharmaceutical care services contracts.
- (2) A pharmaceutical care services contract must require payments to be made under it in accordance with directions for the time being in force under this section.
- (3) A direction under subsection (1) may in particular—
  - (a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;
  - (b) provide for payments to be made by reference to—
    - (i) any scheme or scale specified in the direction;
    - (ii) a determination made by any person in accordance with factors specified in the direction;
  - (c) provide that the whole or any part of a payment is subject to conditions (including a condition that the whole or any part of a payment is liable to be paid by a Health Board only if they are satisfied as to such conditions as may be specified in the direction);

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- (d) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.
- (4) Before giving a direction under subsection (1), the Scottish Ministers—
  - (a) must consult any body appearing to them to be representative of persons to whose remuneration the direction would relate; and
  - (b) may consult such other persons as they think appropriate.
- (5) The Scottish Ministers must publish directions given by them under subsection (1) in the Drug Tariff or in such other manner as they consider appropriate.
- (6) References in this section to payments include fees, allowances and reimbursements.

#### **17U Other mandatory contract terms: pharmaceutical care services contracts**

- (1) A pharmaceutical care services contract must include (in addition to provisions required by or under other provisions of this Part) such provision as may be prescribed.
- (2) Regulations under subsection (1) may in particular—
  - (a) make provision as to the manner in which, and the standards to which, services must be provided;
  - (b) provide that the Scottish Ministers may give directions as to the manner in which, and the standards to which, services must be provided;
  - (c) make provision as to—
    - (i) the persons who are to perform services;
    - (ii) the area in which services are to be provided;
    - (iii) the persons to whom services are to be provided;
    - (iv) requirements to be complied with where a contractor provides any pharmaceutical care services indirectly (including requirements as to the pharmaceutical care services which may or may not be so provided);
    - (v) the variation of terms of the contract (except terms required by or under this Part);
    - (vi) rights of entry and inspection (including inspection of clinical records and other documents);
    - (vii) the circumstances in which, and the manner in which, the contract may be terminated;
    - (viii) enforcement;
    - (ix) the adjudication of disputes.
- (3) Regulations making provision in pursuance of subsection (2)(c)(iii) may make provision as to the circumstances in which a contractor—
  - (a) must, or may, accept a person as a person to whom services are provided under the contract;
  - (b) may decline to accept a person as such a person; or
  - (c) may terminate the contractor's responsibility for a person.
- (4) Regulations making provision in pursuance of subsection (2)(c)(v) may—
  - (a) make provision as to the circumstances in which a Health Board may unilaterally vary the terms of a contract;



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- (b) make provision suspending or terminating any duty under the contract to provide services of a prescribed description.
- (5) Regulations making provision of the kind described in subsection (4)(b) may prescribe services by reference to the manner or circumstances in which they are provided.
- (6) A pharmaceutical care services contract must contain provision requiring the contractor to comply with directions for the time being in force given by the Scottish Ministers under regulations under subsection (1).

#### **17V Resolution of disputes and entry into NHS contracts: pharmaceutical care services contracts**

- (1) Regulations may make provision for the resolution of disputes as to the terms of a proposed pharmaceutical care services contract, including, without prejudice to that generality, provision for—
  - (a) the referral of the terms of the proposed contract to the Scottish Ministers; and
  - (b) the Scottish Ministers, or a person or panel of persons appointed by them, to determine the terms on which the contract may be entered into.
- (2) Regulations may make provision for any person entering, or who has entered, into a pharmaceutical care services contract to be regarded as a health service body for any purposes of section 17A, in circumstances where the person so elects.
- (3) Where a person is to be regarded as a health service body for any purposes of section 17A by reason only of an election by virtue of subsection (2) of this section, that section has effect in relation to that person with the omission of the words “under any enactment” in subsection (1) and with such other modifications (if any) as may be prescribed.
- (4) Regulations under subsection (2) may include provision as to the application of section 17A in cases where—
  - (a) a partnership is to be regarded as a health service body; and
  - (b) there is a change in the membership of the partnership.]

PROSPECTIVE

### *[<sup>F174</sup>Drug Tariff*

#### **Textual Amendments**

**F174** S. 17W and preceding cross-heading inserted (prosp.) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), ss. 22, 43(3)

#### **17W Drug Tariff**

- (1) The Scottish Ministers must prepare, maintain and publish a document (to be known as the “Drug Tariff”).
- (2) The Scottish Ministers—

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- (a) must include in the Drug Tariff, such information relating to pharmaceutical care services as may be prescribed;
- (b) may include in it such other information relating to such services as they consider appropriate.]

## PROSPECTIVE

### *[<sup>F175</sup>Persons performing pharmaceutical care services*

#### Textual Amendments

**F175** S. 17X and preceding cross-heading inserted (prosp.) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\), ss. 23, 43\(3\)](#)

#### **17X Persons performing pharmaceutical care services**

- (1) Regulations may provide that a registered pharmacist may not perform any pharmaceutical care service which a Health Board is, under section 2CA(1), under a duty to provide or secure the provision of unless that pharmacist is included in a list maintained under the regulations by the Health Board.
- (2) Regulations under subsection (1) may make provision in relation to such lists and in particular as to—
  - (a) the preparation, maintenance and publication of a list;
  - (b) eligibility for inclusion in a list;
  - (c) applications for inclusion (including provision for the procedure for applications to be made and dealt with and documents to be supplied on application);
  - (d) the grounds on which an application for inclusion must be granted or refused;
  - (e) requirements with which a person included in a list must comply (including requirements as to standards of performance and patient care and as to declarations, consents or undertakings);
  - (f) suspension or removal from a list (including the grounds for and consequences of suspension or removal);
  - (g) circumstances in which a person included in a list may not withdraw from it;
  - (h) payments to be made by a Health Board in respect of a person suspended from the list (including provision for the amount of, or the method of calculating, the payment to be determined by the Scottish Ministers);
  - (i) criteria to be applied in making decisions under the regulations;
  - (j) disclosure of information about applicants for inclusion, refusals of applications, or suspensions, removals or references to the Tribunal.
- (3) Regulations making provision as to the matters referred to in subsection (2)(j) may in particular authorise the disclosure of information—
  - (a) by a Health Board to the Scottish Ministers; and
  - (b) by the Scottish Ministers to a Health Board.]

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PROSPECTIVE

*<sup>F176</sup>Assistance and support: primary medical services and pharmaceutical care services*

#### Textual Amendments

**F176** S. 17Y and preceding cross-heading inserted (prosp.) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), ss. 24, 43(3)

### **17Y Assistance and support: primary medical services and pharmaceutical care services**

- (1) A Health Board may provide assistance and support to—
  - (a) any person providing, or proposing to provide, primary medical services under a general medical services contract;
  - (b) any person providing, or proposing to provide, such services in accordance with section 17C arrangements;
  - (c) any person providing, or proposing to provide, pharmaceutical care services under a pharmaceutical care services contract.
- (2) Assistance and support provided by a Health Board under subsection (1) is to be provided on such terms, including terms as to payment, as the Board think fit.
- (3) In this section, “ assistance ” includes financial assistance. ]

**Status:**

Point in time view as at 14/11/2005. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are outstanding changes not yet made by the legislation.gov.uk editorial team to National Health Service (Scotland) Act 1978. Any changes that have already been made by the team appear in the content and are referenced with annotations.