



National Health Service (Scotland) Act 1978

1978 CHAPTER 29

PART I

ORGANISATION

[^{F1}Meaning of “ independent health care services ”

Textual Amendments

F1 [Ss. 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, 19.6.2024 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](#); [S.S.I.2024/131](#), art. 2, [sch. 1](#)

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

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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;
- (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;

[^{F2}“independent clinic” means, subject to subsection (2A), a clinic which is not comprised in a hospital and in or from which services are provided by a medical practitioner, dental practitioner, registered nurse, registered midwife [^{F3}, registered pharmacist, registered pharmacy technician] or dental care professional;]

[^{F4}“independent medical agency” means, subject to subsection (2D), an undertaking which consists of or includes the provision of services, other than in pursuance of this Act, by—

- (a) a medical practitioner;
- (b) a dental practitioner;
- (c) a dental care professional;
- (d) a registered nurse;
- (e) a registered midwife;
- (f) a registered pharmacist; or
- (g) a registered pharmacy technician;]

“ 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).

[A clinic does not fall within the definition of “independent clinic” in subsection (2) ^{F5}(2A) if it—

- (a) is comprised in a post-16 education body;
- (b) is comprised in a school;

[is provided by the Agency, a Health Board or a Special Health Board;]

^{F6}(ba)

- (c) is provided by an employer and services are provided only to the employees of that employer;

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- (d) provides general dental services in accordance with an agreement pursuant to section 25 of this Act;
- (e) provides primary medical services in accordance with an agreement pursuant to section 17C of this Act;
- (f) provides services under a general medical services contract pursuant to section 17J of this Act; ^{F7}...
- (g) only provides one or both of the following services—
 - (i) first aid in situations requiring medical treatment or medical care;
 - (ii) therapy effected only through the provider of the therapy and the recipient communicating through speech;
- ^{F8}[(h) provides pharmaceutical services in accordance with arrangements made pursuant to section 27 of this Act; or
- (i) is a registered pharmacy within the meaning of section 74 of the Medicines Act 1968.]

[^{F9}(2B) In the definitions of “independent clinic” and “independent medical agency” in subsection (2)—

- (a) “dental care professional” means a registered dental care professional and has the same meaning as in section 53 of the Dentists Act 1984 (interpretation); and
- (b) “registered pharmacy technician” has the same meaning as in article 3 of the Pharmacy Order 2010 (interpretation).]

(2C) In subsection (2A)—

- “post-16 education body” has the same meaning as in section 35(1) of the Further and Higher Education (Scotland) Act 2005; and
- “school” has the same meaning as in section 135(1) of the Education (Scotland) Act 1980.]

[An undertaking does not fall within the definition of “independent medical agency” ^{F10}(2D) in subsection (2) if it—

- (a) is an independent clinic;
- (b) is a hospital;
- (c) is a registered pharmacy within the meaning of section 74 of the Medicines Act 1968;
- (d) is a nurse agency registered with Social Care and Social Work Improvement Scotland by virtue of section 59 of the Public Services Reform (Scotland) Act 2010;
- (e) is provided by an employer and services are provided only to the employees of that employer; or
- (f) only provides one or both of the following services—
 - (i) first aid in situations requiring medical treatment or medical care;
 - (ii) therapy effected only through the provider of the therapy and the recipient communicating through speech.]

(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;

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- (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;
 - “ 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.

Textual Amendments

- F2** Definition "independent clinic" in s. 10F(2) substituted (1.4.2016) by [The National Health Service \(Scotland\) Act 1978 \(Independent Clinic\) Amendment Order 2016 \(S.S.I. 2016/148\)](#), arts. 1, **2(2)**
- F3** Words in s. 10F(2) inserted (19.6.2024) by [The National Health Service \(Scotland\) Act 1978 \(Independent Health Care\) Modification Order 2024 \(S.S.I. 2024/172\)](#), arts. 1, **3(2)(a)**
- F4** Words in s. 10F(2) substituted (19.6.2024) by [The National Health Service \(Scotland\) Act 1978 \(Independent Health Care\) Modification Order 2024 \(S.S.I. 2024/172\)](#), arts. 1, **3(2)(b)**
- F5** S. 10F(2A)-(2C) inserted (1.4.2016) by [The National Health Service \(Scotland\) Act 1978 \(Independent Clinic\) Amendment Order 2016 \(S.S.I. 2016/148\)](#), arts. 1, **2(3)**
- F6** S. 10F(2A)(ba) inserted (1.4.2017) by [The National Health Service \(Scotland\) Act 1978 \(Independent Clinic\) Amendment Order 2017 \(S.S.I. 2017/67\)](#), arts. 1, **2**
- F7** Word in s. 10F(2A)(f) omitted (19.6.2024) by virtue of [The National Health Service \(Scotland\) Act 1978 \(Independent Health Care\) Modification Order 2024 \(S.S.I. 2024/172\)](#), arts. 1, **3(3)(a)**
- F8** S. 10F(2A)(h)(i) inserted (19.6.2024) by [The National Health Service \(Scotland\) Act 1978 \(Independent Health Care\) Modification Order 2024 \(S.S.I. 2024/172\)](#), arts. 1, **3(3)(b)**

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F9 S. 10F(2B) substituted (19.6.2024) by [The National Health Service \(Scotland\) Act 1978 \(Independent Health Care\) Modification Order 2024 \(S.S.I. 2024/172\)](#), arts. 1, **3(4)**

F10 S. 10F(2D) inserted (19.6.2024) by [The National Health Service \(Scotland\) Act 1978 \(Independent Health Care\) Modification Order 2024 \(S.S.I. 2024/172\)](#), arts. 1, **3(5)**

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).]

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 16A(5) added by [2002 asp 5 Sch. 2 para. 2\(2\)](#)
- s. 19A(2)(b) words repealed by [2003 asp 4 sch. 4 para. 5\(4\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(a) words substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(b) substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(c) words substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(e) word substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 70A inserted by [1997 c. 46 s. 26\(2\)](#)
- s. 70A(2) word substituted by [2005 asp 13 s. 14\(3\)](#)
- s. 85AB(7) inserted by [2005 asp 13 sch. 2 para. 2\(18\)\(b\)](#)
- Sch. 11 para. 2(1A) inserted by [2005 asp 13 s. 14\(6\)\(a\)](#)