



National Health Service (Scotland) Act 1978

1978 CHAPTER 29

PART V **E+W+S**

PROPERTY AND FINANCE

Finance and accounts

[^{F1}85AA Means of meeting expenditure of Health Boards out of public funds. **S**

- (1) The Secretary of State shall pay to each Health Board sums equal to their general Part II expenditure.
- (2) "General Part II expenditure" is expenditure which—
 - (a) is attributable to the payment of remuneration to persons providing services in pursuance of Part II; but
 - (b) does not fall within paragraphs (b) to (e) of subsection (4).
- (3) The Secretary of State shall pay to each Health Board, in respect of each financial year, sums not exceeding the amount allotted for that year by the Secretary of State to the Board towards meeting their main expenditure.
- (4) In subsection (3) "main expenditure" means expenditure which is attributable to—
 - (a) the performance by the Board of their functions in that year, but—
 - (i) is not general Part II expenditure; and
 - (ii) does not fall within paragraphs (b) to (d);
 - (b) the reimbursement of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services);

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- (c) remuneration which is paid to persons providing additional pharmaceutical services (in accordance with directions under section 27A) in respect of such of those services as are designated;
 - (d) remuneration which is—
 - (i) paid to persons providing general medical services under Part II;
 - (ii) determined by the Health Board concerned; and
 - (iii) of a designated description; or
 - (e) remuneration which is referable to the cost of drugs for which the Health Board is accountable in that year (whether paid by it or by another Health Board).
- (5) In paragraphs (b) to (e) of subsection (4), “designated” means designated in writing by the Secretary of State for the purposes of that paragraph and in relation to the allotment in question.
- (6) An amount is allotted to a Health Board for a year under this section when they are notified by the Secretary of State that it is allotted to them for that year; and the Secretary of State may make an allotment under this section increasing or reducing an allotment previously so made.
- (7) Where the Secretary of State proposes to pay any sum to a Health Board, he may, with the consent of the Treasury, instead pay that sum to an NHS trust in discharge of the whole or any part of any liability of the Health Board to the NHS trust.
- (8) The Secretary of State may give directions to a Health Board with respect to the application of sums paid to them and a Board to whom directions have been given under this subsection shall comply with the directions.
- (9) The expenditure of a University Liaison Committee shall, for the purposes of this section, be deemed to be the expenditure of the Health Board for whose area it is constituted, and, where a University Liaison Committee is constituted for the areas of more than one Health Board, its expenditure shall be apportioned between the Boards concerned in such manner as may be determined by the Secretary of State.
- (10) Payments under this section shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may determine.
- (11) In this section and section 85AB, “drugs” includes medicines and listed appliances (within the meaning of section 27).]

Textual Amendments

F1 S. 85, 85AA, 85AB substituted for s. 85 (1.10.1999) by 1999 c. 8, s. 52; S.I. 1999/90, art. 2(a), Sch. 1

Modifications etc. (not altering text)

- C1** S. 85AA applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), Sch. Pt. I
S. 85AA applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), Sch. Pt. I
S. 85AA applied (31.3.2002) by S.S.I. 2002/103, art. 6, Sch. Pt. I (with art. 4(4))
S.85AA applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), Sch. Pt. I (with art. 4(4))
- C2** S. 85AA 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(e))

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[^{F2}85AB Further provision as to expenditure on drugs. **S**

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

Textual Amendments

F2 S. 85, 85AA, 85AB substituted for s. 85 (1.10.1999) by 1999 c. 8, s. 52; S.I. 1999/90, art. 2(a), Sch. I

[^{F3}85 Expenses of certain bodies. **S**

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

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be the duty of any body to whom directions have been given under this subsection to comply with the directions.

- (4) Payments under subsection (1) shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may determine.]

Textual Amendments

F3 S. 85,85AA, 85AB substituted for s. 85 (1.10.1999) by 1999 c. 8, s. 52 ; S.S.I. 1999/90, art. 2(a), **Sch. 1**

Modifications etc. (not altering text)

C3 S. 85(1)(2)(3)(4) applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 85(1)(2)(3)(4) applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 85(1)(2)(3)(4) applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S. 85(1)(2)(3)(4) applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

[^{F4}85A Financial duties of bodies referred to in section 85. **S**

- (1) It is the duty of each such body as is referred to in section [^{F5}85AA(1) or]85(1), in respect of each financial year, so to perform their functions as to secure that the expenditure attributable to the performance of their functions in that year does not exceed the aggregate of—
- the amounts allotted to that body for that year under section [^{F5}85AA(1) or]85(1) [^{F6}and, as the case may be, section [^{F7}85AA(3)]];
 - any other sums received under this Act in that year by that body; and
 - any sums received otherwise than under this Act in that year by that body for the purposes of enabling them to defray any such expenditure.
- (2) [^{F8}Subsection (9) of section 85AA]shall apply for the purposes of this section as it applies for the purposes of that section.
- (3) The Secretary of State may give such directions to a body referred to in section [^{F9}85AA(1) or]85(1) as appear to him to be requisite to secure that the body comply with the duty imposed on them by subsection (1) and it shall be the duty of the body to comply with the directions.

Directions under this subsection may be specific in character.

- (4) To the extent to which—
- any expenditure of a Health Board or a local health council is defrayed by that body as trustee; or
 - any sums are received by such a body as trustee or under section 84A,
- that expenditure and, subject to subsection (5), those sums shall be disregarded for the purposes of this section, and, for those purposes, sums which, in the hands of such a body, cease to be trust funds and become applicable by the body otherwise than as trustee shall be treated, on their becoming so applicable, as having been received by the body otherwise than as trustee.
- (5) Of the sums received by a body under section 84A so much only as accrues to the body after defraying any expenses incurred in obtaining them shall be disregarded under subsection (4).

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- (6) Subject to subsection (4), the Secretary of State may, by directions, determine—
- (a) whether sums of a description specified in the directions are or are not to be treated for the purposes of this section as being receivable under this Act by a body of a description so specified;
 - (b) whether expenditure of a description specified in the directions is or is not to be treated for the purposes of this section as being attributable to the performance of functions by a body of a description so specified; or
 - (c) the extent to which and the circumstances in which sums received but not yet spent by a body under section ^{F10}85AA(1)]85(1) ^{F11}, or, as the case may be, section ^{F12}85AA(3)] are to be treated for the purposes of this section as part of the expenditure of the body and to which financial year's expenditure they are to be attributed.]

Textual Amendments

- F4** S. 85A inserted by [Health Services Act 1980 \(c. 53\)](#), s. 6(4)(5) in relation to the financial year 1980 to 1981 and subsequent years
- F5** Words in s. 85A(1) inserted (1.10.1999) by 1999 c. 8, s. 65(1), [Sch. 4 para. 55\(a\)](#); S.S.I. 1999/90, art. 2(a)(b), [Sch. 1](#)
- F6** Words inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 16(4)(a)
- F7** Word in s. 85A(1)(a) substituted (1.10.1999) by 1999 c. 8, s. 65(1), [Sch. 4 para. 55\(a\)](#); S.S.I. 1999/90, art. 2(a)(b), [Sch. 1](#)
- F8** Words in s. 85A(2) substituted (1.10.1999) by 1999 c. 8, s. 65(1), [Sch. 4 para. 55\(b\)](#); S.S.I. 1999/90, art. 2(a)(b), [Sch. 1](#)
- F9** Words in s. 85A(3) inserted (1.10.1999) by 1999 c. 8, s. 65(1), [Sch. 4 para. 55\(c\)](#); S.S.I. 1999/90, art. 2(a)(b), [Sch. 1](#)
- F10** Word in s. 85A(6)(c) inserted (1.10.1999) by 1999 c. 8, s. 65(1), [Sch. 4 para. 55\(d\)](#); S.S.I. 1999/90, art. 2(a)(b), [Sch. 1](#)
- F11** Words inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 16(4)(b)
- F12** Word in s. 85A(6)(c) substituted (1.10.1999) by 1999 c. 8, s. 65(1), [Sch. 4 para. 55\(d\)](#); S.S.I. 1999/90, art. 2(a)(b), [Sch. 1](#)

Modifications etc. (not altering text)

- C4** S. 85A(1)(3) extended by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), ss. 2(8)(b), 17(2), 91(2), [Sch. 1 para. 8\(d\)](#)
- C5** Ss. 85(1)(2A), 85A(1)(3)(4) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), [Sch. Pt. I](#)
- C6** S. 85A(1)(3)(4) applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), [Sch. Pt. I](#) (with S. 85A(1)(3)(4) applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), [Sch. Pt. I](#) (with art. 6) S. 85A(1)(3)(4) applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), [Sch. Pt. I](#) S. 85A(1)(3)(4) applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), [Sch. Pt. I](#) S. 85A(1)(3)(4) applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), [Sch. Pt. I](#) S. 85A(1)(3)(4) applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), [Sch. Pt. I](#) S. 85A(1)(3)(4) applied (31.3.2002) by S.S.I. 2002/103, art. 6, [Sch. Pt. I](#) (with art. 4(4)) S. 85A(1)(3)(4) applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), [Sch. Pt. I](#) (with art. 4(4))
- C7** S. 85A(1) applied (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 4(3), 333(2)-(4), [Sch. 1 para. 9\(b\)](#), S.S.I. 2005/161, [art. 3](#)
- C8** S. 85A(3) applied (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), ss. 4(3), 333(2)-(4), [Sch. 1 para. 9\(b\)](#), S.S.I. 2005/161, [art. 3](#)

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[^{F13}85B Schemes for meeting losses and liabilities etc. of certain health service bodies. **S**

- (1) The Secretary of State may by regulations made with the consent of the Treasury establish a scheme whereby any of the bodies mentioned in subsection (2) may make provision to meet—
- (a) expenses arising from any loss of or damage to their property; and
 - (b) liabilities to third parties for loss, damage (including solatium) or injury arising out of the carrying out of the functions of the bodies concerned.
- (2) The bodies referred to in subsection (1) are—
- (a) Health Boards;
 - (b) the Agency;
 - (c) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984;^{F14} . . .
 - (d) NHS trusts [^{F15F16} . . .
 - (e) Special Health Boards]^{F17}; and
 - (f) the Mental Welfare Commission for Scotland],
- but a scheme under this section may limit the class or description of bodies which are eligible to participate in it.
- (3) Without prejudice to the generality of the power conferred by subsection (1), a scheme under this section may-
- (a) provide for the scheme to be administered by the Secretary of State, the Agency, or a Health Board or NHS trust specified in the scheme;
 - (b) require any body which participates in the scheme to make payments in accordance with the scheme; and
 - (c) provide for the making of payments for the purposes of the scheme by the Secretary of State.
- (4) Without prejudice to any other power of direction conferred on the Secretary of State,-
- (a) if the Secretary of State so directs, any body which is eligible to participate in a scheme shall do so; and
 - (b) where a scheme provides for it to be administered by the Secretary of State, the Agency or a Health Board or NHS trust shall carry out such functions in connection with the administration of the scheme as the Secretary of State may direct.
- (5) Neither the Secretary of State nor any body administering a scheme under this section shall, by virtue of their activities under the scheme, be regarded as [^{F18}effecting or carrying out contracts of insurance for the purposes of the Financial Services and Markets Act 2000].]

Textual Amendments

F13 S. 85B inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 41**

F14 Word in s. 85B(2)(c) omitted (1.10.1999) by virtue of [1999 c. 8, s. 65\(1\)](#), **Sch. 4 para. 56(a)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F15 S. 85B(2)(e) and the word preceding it inserted (1.10.1999) by [1999 c. 8, s. 65\(1\)](#), **Sch. 4 para. 56(b)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

F16 Word in s. 85B(2) repealed (13.5.2002) by [2002 asp 5, s.21\(a\)](#); S.S.I. 2002/170, **art. 2**

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- F17** S. 85B(2)(f) and the word preceding it inserted (13.5.2002) by 2002 asp 5, s. 21(b); S.S.I. 2002/170, art. 2(2)
- F18** Words in s. 85B(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 221

Modifications etc. (not altering text)

- C9** Ss. 85B, 86 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), Sch. Pt. I
- C10** S. 85B applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), Sch. Pt. I (with art. 6)
- S. 85B applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), Sch. Pt. I (with art. 6)
- S. 85B applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), Sch. Pt. I
- S. 85B applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), Sch. Pt. I
- S. 85B applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), Sch. Pt. I
- S. 85B applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), Sch. Pt. I
- S. 85B applied (31.3.2002) by S.S.I. 2002/103, art. 6, Sch. Pt. I (with art. 4(4))
- S. 85B applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), Sch. Pt. I (with art. 4(4))

86 Accounts of Health Boards and the Agency. S

[^{F19}(1) The following bodies that is to say—

- (a) every Health Board;
- (b) the Agency; and
- (c) every NHS trust,]

shall keep, in such form as the Secretary of State may, with the approval of the Treasury, direct, accounts of all moneys received or paid out by them, and [^{F20}shall send those accounts to the Scottish Ministers by such time as they may direct].

[^{F21}(1AA) The Scottish Ministers shall send the accounts to the Auditor General for Scotland for auditing.]

[^{F22F23}(1A)]

(1B) In preparing its annual accounts in pursuance of subsection (1), an NHS trust shall comply with any directions given by the Secretary of State with the approval of the Treasury as to—

- (a) the methods and principles according to which the accounts are to be prepared; and
- (b) the information to be given in the accounts.]

(1C)

[^{F24}(2)]

[^{F23}(3) Every [^{F25}body mentioned in paragraphs (a) to (c) of subsection (1)] shall prepare and transmit to the Secretary of State in respect of each financial year accounts in such form as the Secretary of State may, with the approval of the Treasury, direct.

[^{F26}(4) The Scottish Ministers may if they think fit prepare, in respect of any financial year, summarised or consolidated accounts, in such form as they may determine, of such of the bodies mentioned in paragraphs (a) to (c) of subsection (1), or such groups of those bodies, as they may determine; and they shall transmit any such accounts to the Auditor General for Scotland for auditing]

[^{F23}(5)]

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Textual Amendments

- F19** S. 86(1)(a)(b)(c) substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(2)(3)
- F20** Words in s. 86(1) substituted (1.4.2000) by 2000 asp 1, s. 26(1), **Sch. 4 para. 4(3)(a)**; S.S.I. 2000/10, **art. 2(3)**
- F21** S.86(1AA) inserted (1.4.2000) by 2000 asp 1, s. 26(1), **Sch. 4 para. 4(3)(b)**; S.S.I. 2000/10, **art. 2(3)**
- F22** S. 86(1A)(1B) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(2)(4)
- F23** S. 86(1A)(1C)(5) repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 57, **Sch. 5**; S.S.I. 1999/90, art. 2(b)(c), **Sch. 2**
- F24** S. 86(2) repealed (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 36(1), 66(2), Sch. 7 para. 14(4), **Sch. 10**; S.I. 1994/2658, **art. 4(a)(b)** and expressed to be repealed (1.4.2000) by 2000 asp 1, s. 26(1), **Sch. 4 para. 4(3)(c)**; S.S.I. 2000/10, **art. 2(3)**
- F25** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 36(6)
- F26** S. 86(4) substituted (1.4.2000) by 2000 asp 1, s. 26(1), **Sch. 4 para. 4(3)(d)**; S.I. 2000/10, **art. 2(3)**

Modifications etc. (not altering text)

- C11** Ss. 85B, 86 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C12** S. 86 extended by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), ss. 2(8)(c), 17(2), 91(2), Sch. 1 para. 8(e)
- C13** S. 86 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 86 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
S. 86 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 86 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
S. 86 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
S. 86 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
S. 86 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
S. 86 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
- C14** S. 86 applied (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 4(3), 333(2)-(4), **Sch. 1 para. 9(c)**, S.S.I. 2005/161, **art. 3**

87 Regulation of financial arrangements of Health Boards, the Agency and the Dental Estimates Board. **S**

- (1) Regulations may provide, in the case of all or any of the following bodies, that is to say, Health Boards, the Agency, and the Dental Estimates Board, for restricting the making of payments by or on behalf of the body otherwise than on such authorisation and subject to such conditions as may be specified in the regulations; but such provision may be made subject to such exceptions as may be so specified.
- (2) Regulations made under this section may contain such other provisions as to the making and carrying out by all or any of those bodies of such arrangements with respect to financial matters as the Secretary of State thinks necessary for the purpose of securing that the affairs of such bodies are conducted, so far as reasonably practicable, in such manner as to prevent financial loss and to ensure and maintain efficiency.
- (3) Without prejudice to the operation of the provisions of any such regulations, the Secretary of State may give to any of the said bodies such directions (which may be specific in character) as to any matter with respect to which regulations may be made under this section as it appears to him is requisite for the purpose of securing that the

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affairs of the body are conducted, so far as reasonably practicable, in such manner as is mentioned in subsection (2); and a body to whom any such directions are given shall comply therewith.

Modifications etc. (not altering text)

- C15** S. 87 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C16** S. 87 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
- S. 87 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
- S. 87 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
- S. 87 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
- S. 87 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
- S. 87 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
- S. 87 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
- S. 87 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

Status:

Point in time view as at 09/07/2003.

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.