



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART VII

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Miscellaneous*

#### 98 Charges in respect of non-residents.

Regulations may provide for the making and recovery in such manner as may be prescribed of such charges as [<sup>F1</sup>the Secretary of State may determine] in respect of the provision of such services under this Act as may be prescribed for such persons not ordinarily resident in Great Britain as may be prescribed; and the regulations may provide that the charges are only to be made in such cases as may be determined in accordance with the regulations. [<sup>F2</sup>The Secretary of State may calculate charges under this section on any basis that he considers to be the appropriate commercial basis.]

#### Textual Amendments

F1 Words substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 7\(13\)](#)

F2 Words added by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 7\(14\)](#)

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

C1 [S. 98](#) applied (1.4.1999) by [S.I. 1999/686](#), [art. 5\(1\)\(2\)](#), [Sch. 1](#)

#### 99 Evasion of charges.

If any person, for the purpose of evading the payment of any charge under this Act, or of reducing the amount of any such charge—

- (a) knowingly makes any false statement or false representation, or

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- (b) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,

the charge, or as the case may be the balance of the charge, may be recovered from him as a simple contract debt by the person by whom the cost of the service in question was defrayed.

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

C2 S. 99 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), Sch. 1

**[F399ZA Recovery of charges and payments.**

- (1) Where goods or services to which this section applies are provided and either—
- (a) any charge payable by any person under this Act in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment; or
  - (b) any payment under this Act is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services but that person is not entitled to, or to the benefit of, the payment,
- the amount mentioned in subsection (2) is recoverable as a debt from the person in question by the responsible authority.
- (2) That amount—
- (a) in a case within subsection (1)(a), is the amount of the charge or (where it has been reduced) reduction;
  - (b) in a case within subsection (1)(b), is the amount of the payment.
- (3) Where two or more persons are liable under section 99 or this section to pay an amount in respect of the same charge or payment, those persons shall be jointly and severally liable.
- (4) For the purposes of this section, the circumstances in which a person is to be treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—
- (a) on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description;
  - (b) on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it;
  - (c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.
- (5) In this section and section 99ZB, “responsible authority” means—
- (a) in relation to the recovery of any charge under section 99 in respect of the provision of goods or services to which this section applies, the person by whom the charge is recoverable;
  - (b) in relation to the recovery by virtue of this section of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable;

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- (c) in a case within subsection (1)(b), the person who made the payment.
- (6) But the Secretary of State may by directions provide for—
- (a) the functions of any responsible authority of recovering any charges under this Act in respect of the provision of goods or services to which this section applies;
  - (b) the functions of any responsible authority under this section and section 99ZB, to be exercised on behalf of the authority by another health service body.
- (7) This section applies to the following goods and services—
- (a) dental treatment and appliances provided in pursuance of this Act;
  - (b) drugs and medicines provided in pursuance of this Act;
  - (c) the testing of sight;
  - (d) optical appliances;
  - (e) any other appliances provided in pursuance of this Act.]

#### Textual Amendments

**F3** Ss. 99ZA-ZB inserted (14.10.1999) by 1999 c. 8, s. 59(1); S.S.I. 1999/115, art. 2

#### [<sup>F4</sup>99ZB

- (1) Regulations may provide that, where a person fails to pay—
- (a) any amount recoverable from him under section 99 in respect of the provision of goods or services to which section 99ZA applies; or
  - (b) any amount recoverable from him under section 99ZA,
- a notice (referred to in this section as a penalty notice) may be served on the person, by or on behalf of the responsible authority, requiring him to pay to the authority, within a prescribed period, that amount together with a charge (referred to in this section as a penalty charge) of an amount determined in accordance with the regulations.
- (2) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—
- (a) £100;
  - (b) the amount referred to in subsection (1)(a) or (b) multiplied by 5.
- (3) The Secretary of State may by order provide for subsection (2) to have effect as if, for the sum specified in paragraph (a) or the multiplier specified in paragraph (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or (as the case may be) multiplier specified in the order.
- (4) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.
- (5) The further sum must not exceed 50 per cent. of the amount of the penalty charge.
- (6) Any sum payable under the regulations (including the amount referred to in subsection (1)(a) or (b)) may be recovered by the responsible authority as a debt.
- (7) But a person is not liable by virtue of a penalty notice—

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- (a) to pay at any time so much of any amount referred to in subsection (1)(a) or (b) for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other; or
  - (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.
- (8) Section 99ZA and this section apply to charges which may be made and recovered under section 20 of the <sup>M1</sup>National Health Service (Primary Care) Act 1997 as they apply to charges under this Act which may be recovered under section 99; and the reference to this Act in section 99ZA(7)(a) includes a reference to a pilot scheme (within the meaning of the 1997 Act).]

#### Textual Amendments

**F4** S. 99ZA-ZB inserted (14.10.1999) by 1999 c. 8, s. 59(2); S.I. 1999/115, art. 2

#### Marginal Citations

**M1** 1997 c.46.

### [<sup>F5</sup>99A Holidays for patients etc.

The Secretary of State's functions may be performed outside Scotland, in so far as they relate—

- (a) to holidays for patients;
- (b) to the transfer of patients to or from England, Wales, Northern Ireland, the Isle of Man or the Channel Islands; or
- (c) to the return of patients who have received treatment in Scotland to countries or territories outside the British Islands.]

#### Textual Amendments

**F5** S. 99A added by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 9(2)

### 100 Accommodation for persons displaced in course of development.

- (1) Where the carrying out of a scheme for the provision by the Secretary of State in pursuance of this Act or the [<sup>F6</sup>Mental Health (Care and Treatment) (Scotland) Act 2003] of accommodation or other facilities will involve the displacement from any premises of persons residing in them, the Secretary of State may make arrangements with one or more of the following bodies—
- (a) an authority who are a local authority for the purposes of the Housing (Scotland) Act [<sup>F7</sup>1987],
  - [<sup>F8</sup>(b) the Scottish Special Housing Association;
  - (c) a Housing Association or Housing Trust within the meaning of the Housing Associations Act 1985.]
  - [<sup>F9</sup>(d)] a development corporation established under the <sup>M2</sup>New Towns (Scotland) Act 1968,

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for securing, in so far as it appears to him that there is no other residential accommodation suitable for the reasonable requirements of those persons available on reasonable terms, the provision of residential accommodation in advance of the displacements from time to time becoming necessary as the carrying out of the scheme proceeds.

- (2) Arrangements made under subsection (1) may include provision for the making by the Secretary of State to the body with whom the arrangements are made of payments of such amounts, and for such purposes, as may be approved by the Treasury.

#### Textual Amendments

- F6** Words in s. 100(1) substituted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), arts. 1, 2, **Sch. 1 para. 7(2)**
- F7** “1987” substituted for “1966” by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), ss. 335, 339(2), **Sch. 23 para. 24(a)**
- F8** S. 100(1)(b)(c) substituted for paragraph (b) by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), ss. 335, 339(2), **Sch. 23 para. 24(b)**
- F9** “(d)” substituted for “(c)” by [Housing \(Scotland\) Act 1987 \(c. 26, SIF 61\)](#), ss. 335, 339(2), **Sch. 23 para. 24(c)**

#### Marginal Citations

- M2** 1968 c. 16.

### 101 Protection of Health Boards and Common Services Agency.

Section 166 of the <sup>M3</sup>Public Health (Scotland) Act 1897 (which relates to the protection of local authorities and their officers) shall apply in relation to a Health Board [<sup>F10</sup>, an NHS trust] and the Agency in like manner as the said section applies in relation to a local authority, but with the substitution for any reference to that Act of a reference to this Act.

#### Textual Amendments

- F10** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 19(19)**

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

- C3** S. 101 excluded by [National Health Service \(Amendment\) Act 1986 \(c.66, SIF 113:2\)](#), **ss. 1(6), 2(3)**
- C4** S. 101 applied by [S.I. 1990/2639](#), art. 5(1)(2), **Sch. Pt. I**
- C5** S. 101 applied (1.4.1993) by [S.I. 1993/577](#), art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
S. 101 applied (1.4.1995) by [S.I. 1995/574](#), art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
S. 101 applied (1.4.1999) by [S.I. 1999/686](#), art. 5(1)(2), **Sch. Pt. I**  
S. 101 applied (1.4.1999) by [S.I. 1999/726](#), art. 5(1)(2), **Sch. Pt. I**  
S. 101 applied (1.4.2000) by [S.S.I. 2000/47](#), art. 5(1)(2), **Sch. Pt. I**  
S. 101 applied (6.4.2001) by [S.S.I. 2001/137](#), art. 5(1), **Sch. Pt. I**  
S. 101 applied (31.3.2002) by [S.S.I. 2002/103](#), art. 6, **Sch. Pt. I** (with art. 4(4))  
S. 101 applied (27.6.2002) by [S.S.I. 2002/305](#), art. 5(1), **Sch. Pt. I** (with art. 4(4))

#### Marginal Citations

- M3** 1897 c. 38.

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## [<sup>F11</sup>102 State hospitals.

- (1) The Secretary of State shall provide such hospitals as appear to him to be necessary for persons subject to detention under [<sup>F12</sup>the Criminal Procedure (Scotland) Act 1995 (c. 46) or] the [<sup>F13</sup>Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)] who require treatment under conditions of special security on account of their dangerous, violent or criminal propensities.
- (2) Hospitals provided by the Secretary of State under subsection (1) are referred to in this Act as “state hospitals”.
- (3) Subject to subsection (4) and section 2, state hospitals shall be under the control and management of the Secretary of State.
- (4) The Secretary of State may provide for the management of a state hospital to be undertaken on his behalf by—
  - (a) <sup>F14</sup> . . . . .
  - [ A Health Board, a Special Health Board, the Agency or an NHS trust to the
  - <sup>F15</sup>(b) extent that power to do so is delegated to the Board, Agency or trust by the Secretary of State.
- (5) <sup>F16</sup> . . . . .]]

### Textual Amendments

- F11** S. 102 substituted (1.4.1995) by 1994 c. 16, s. 1; S.I. 1995/576, art. 2
- F12** Words in s. 102(1) inserted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(1), 333(2)-(4), Sch. 4 para. 3(a), S.S.I. 2005/161, art. 3
- F13** Words in s. 102(1) substituted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(1), 333(2)-(4), Sch. 4 para. 3(b), S.S.I. 2005/161, art. 3
- F14** S. 102(4)(a) and word repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 280(a), 331(1)(2), 333(2)-(4), Sch. 5 Pt. 1; S.S.I. 2005/161, art. 3
- F15** S. 102(4)(b) substituted (1.10.1999) by 1999 c. 8, s. 65(1), Sch. 4 para. 59; S.S.I. 1999/90, art. 2(a)(b), Sch. 1
- F16** S. 102(5) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 280(b), 331(1)(2), 333(2)-(4), Sch. 5 Pt. 1; S.S.I. 2005/161, art. 3

### Modifications etc. (not altering text)

- C6** S. 102 restricted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 210(6), 215(8), 333(2)-(4); S.S.I. 2005/161, art. 3

## 103 Arbitration.

Any question which is required by this Act or by any regulation thereunder to be determined by arbitration shall be determined by a single arbiter agreed upon by the parties, or, failing such agreement, appointed by the Court of Session on the application of any of the parties to the question; and at any stage in the proceedings in any such arbitration the arbiter may, and shall if so directed by the Court of Session, state a case for the opinion of that Court on any question of law arising in the arbitration.

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## 104 Exemption from stamp duty.

- (1) Stamp duty shall not be payable on any conveyance, agreement or assignment made, or instrument executed, solely for the purpose of giving effect to any transfer of property, rights or liabilities by, or by an order made under, sections 2 or 82 or paragraph 7 of Schedule 6.
- (2) Section 12 of the <sup>M4</sup>Finance Act 1895 (which requires Acts to be stamped as conveyances on sale in certain cases) shall not apply to the transfer of property, rights or liabilities by, or by an order made under, section 2, and stamp duty shall not be payable on any such order.

### Marginal Citations

M4 1895 c. 16.

## [<sup>F17</sup>104A Exemption from stamp duty land tax

- (1) This section applies to a land transaction effected by a conveyance, agreement or assignment made, or an instrument executed, solely for the purpose of giving effect to any transfer of property, rights or liabilities held upon trust under section 82.
- (2) For the purposes of stamp duty land tax the land transaction is exempt from charge.
- (3) Relief under this section must be claimed in a land transaction return or an amendment of such a return.
- (4) 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.]

### Textual Amendments

F17 S. 104A 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(3)

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