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# National Health Service (Scotland) Act 1978

1978 CHAPTER 29

## PART I

### ORGANISATION

#### *Co-operation and assistance*

VALID FROM 30/09/2004

#### **[<sup>F1</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,
  - (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,

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(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

**F1** 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>F2</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

**F2** 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)

**C1** S. 13 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), Sch. Pt. I

**C2** 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>F3</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>F4</sup>by Health Boards and such of the authorities as mentioned in that section as may be concerned]

(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;

[<sup>F5</sup>(c) joint plans under paragraph (a) consider appropriate, of those joint plans.]

(2) This section applies to—

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- (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

- F3** S. 13A inserted by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), s. 5(1)
- F4** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(5)
- F5** 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)

- C3** 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))
- C4** 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>F6</sup>13B [<sup>F7</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

- F6** 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
- F7** S. 13B inserted (prosp.) by National Health Services (Amendment) Act 1968 (c. 66, SIF 113:2), s. 5(1)

## 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”.

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- (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 providing general medical, general dental or general ophthalmic services, or pharmaceutical services under Part II such equipment, goods or materials as may be prescribed;
  - (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>F8</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 section [<sup>F9</sup>1(5)(c) of the <sup>M1</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, the <sup>M2</sup>Vehicles (Excise) Act 1971 and Part VI of the <sup>M3</sup>Road Traffic Act 1972 shall have effect with such modifications as are specified in the order.

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**Textual Amendments**

- F8 Words inserted by [Health Services Act 1980 \(c. 53\), s. 3\(2\)](#)
- F9 Words substituted by [Education \(Scotland\) Act 1980 \(c. 44\), Sch. 4 para. 16](#)

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

- C5 [S. 15\(1\)\(b\)–\(e\), \(2\)](#) applied (1.4.1991) by [S.I. 1990/2639, art. 5\(1\)\(2\), Sch. Pt. I](#)
- C6 [S. 15\(1\)\(b\)–\(e\)\(2\)](#) applied (with modifications) (1.4.1993) by [S.I. 1993/577, art. 5\(1\), Sch. 1 Pt. I.](#)

**Marginal Citations**

- M1 [1980 c. 44.](#)
- M2 [1971 c. 10.](#)
- 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, 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, the Vehicles (Excise) Act 1971 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>F10</sup>

**Textual Amendments**

- F10 [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)**

- C7 [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

**Marginal Citations**

- M4 [1972 c. 20.](#)

**[<sup>F11</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 regional, islands or district council towards expenditure incurred or to be incurred by them in connection with the performance of the following functions—
  - (a) any function relating to a matter which, by virtue of section 2(2) of the <sup>M5</sup>Social Work (Scotland) Act 1968 or any other enactment (other than section 3 of the Disabled Persons (Employment) Act <sup>M6</sup>1958), stands referred to the social work committee of a regional or islands council;

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- (b) any of a regional or islands council's functions under section 1 of the Education (Scotland) Act <sup>M7</sup>1980 in making provision for—
    - (i) special educational needs;
    - (ii) further education,
 within the meaning of those terms in that section;
  - (c) any of a district or islands council's functions under Part VII of the Housing (Scotland) Act <sup>M8</sup>1966 (provision of housing accommodation); and
  - (d) any of a regional or islands council's functions under the following provisions—
    - (i) Part III of the National Assistance Act <sup>M9</sup>1948;
    - (ii) section 116 of the Mental Health Act 1983;
    - (iii) section 1 or 2 of the Chronically Sick and Disabled Persons Act <sup>M10</sup>1970;
    - (iv) section 23 or 297 of the Criminal Procedure (Scotland) Act <sup>M11</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>F12</sup>(a) Associations Act 1985;]
  - (b) any development corporation established under section 2 of the New Towns (Scotland) Act <sup>M12</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

- F11** S. 16A substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 2
- F12** 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)

- C8** S. 16A applied (1.4.1995) by [S.I. 1995/574](#), art. 5(1)(2), [Sch. Pt. I](#) (with art. 6)

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#### Marginal Citations

- M5** 1968 c. 49.(81:3).
- M6** 1958 c.33(43:1).
- M7** 1980 c.44(41:2).
- M8** 1966 c.49.
- M9** 1948 c.29(81:3).
- M10** 1970 c.44(81:3).
- M11** 1975 c.21(39:1).
- M12** 1968 c.16(123:4).

### [<sup>F13</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

- F13** 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)

- C9** 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
- C10** 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 ..... F14

#### Textual Amendments

- F14** S. 17 repealed by Overseas Development and Co-operation Act 1980 (c. 63), Sch. 2 Pt. I

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VALID FROM 01/09/1997

**[<sup>F15</sup>17AA 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.
- (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>M13</sup>National Health Service Act 1977; or
  - (c) Article 62(2)(a) of the <sup>M14</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**

**F15** S. 17AA inserted (1.9.1997) by 1997 c. 46, s. 31(2); S.I. 1997/1780, art. 2(3)

**Marginal Citations**

**M13** 1977 c. 49.

**M14** S.I. 1972/1265 (N.I.14).

**[<sup>F16</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>F17</sup>paragraphs (f) to (g)] of that subsection.
- (2) The persons and bodies referred to in subsection (1) are—



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- (a) Health Boards;
  - (b) the Agency;
  - (c) the Scottish Dental Practice Board;
  - (d) a State Hospital Management Committee constituted under section 91 of the <sup>M15</sup> Mental Health (Scotland) Act 1984;
  - (e) NHS trusts established under section 12A;
  - (f) health authorities within the meaning of section 128(1) (interpretation) of the <sup>M16</sup> National Health Service Act 1977;
  - (g) the Dental Practice Board;
  - (h) the Public Health Laboratory Service Board;
  - (i) Family Health Services Authorities within the meaning of section 10 of the National Health Service Act 1977;
  - (j) recognised fund-holding practices;
  - (k) NHS trusts established under section 5 of the National Health Service and Community Care Act 1990;
  - (l) Health and Social Services Boards constituted under the Health and Personal Social Services (Northern Ireland) Order <sup>M17</sup>1972; <sup>F18</sup> . . .
  - (m) the Secretary of State.
  - <sup>F19</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.]
- (3) In subsection (1)—
- (a) “goods” includes accommodation; and
  - (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.

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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.
  - (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.
- [ Where a body mentioned in subsection (2)(1), (n), (o), (p) or (q) is a party or
- <sup>F20</sup>(10) 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

- F16** 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
- F17** Words in s. 17A(1)(b) substituted (1.4.1991) by S.I. 1991/195, art. 4(2)
- F18** Word in s. 17A(2) repealed (1.4.1991) by S.I. 1991/195, art. 4(3)
- F19** S. 17A(2)(n)-(q) added (1.4.1991) by S.I. 1991/195, art. 4(3)
- F20** S. 17A(10) added (1.4.1991) by S.I. 1991/195 art. 4(4)

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

- C11** S. 17A applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), Sch. Pt. I (with art. 6)

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S. 17A applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)

**C12** S. 17A applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

#### Marginal Citations

**M15** 1984 c.36(85).

**M16** 1977 c.49(113:2).

**M17** S.I. 1972/1265 (N.I. 14).

### <sup>F21</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 District 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) a Health Board provide goods or services for the benefit of an individual; and
  - (b) the provision of those goods and services is not pursuant to an NHS contract; and
  - (c) 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.
- (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>F22</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

**F21** 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**

**F22** Words in s. 17B(4) added (1.4.1991) by S.I. 1991/195, art. 4(5).

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VALID FROM 05/03/2001

**F23 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—
  - (a) personal medical services are provided (otherwise than by the Board); or
  - (b) personal dental services are provided (otherwise than by the Board).
- (2) An agreement made under this section—
  - (a) may not combine arrangements for the provision of personal medical services with arrangements for the provision of personal dental services; but
  - (b) may include arrangements for the provision of services—
    - (i) which are not personal medical services or personal dental services; but
    - (ii) which may be provided under this Part.
- (3) Except to such extent as may be prescribed—
  - (a) a patient for whom personal medical services are provided in accordance with 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 19;
  - (b) 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 personal medical services or 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—
  - (a) 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 Health Authority; and
  - (b) for functions which are exercisable by a Health Authority in relation to an agreement made under section 28C of the <sup>M18</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—
 

“Health Authority” has the same meaning as in the National Health Service Act 1977;

“personal medical services” means medical services of a kind that may be provided by a general medical practitioner in accordance with arrangements made under Part II; and

“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.

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#### Textual Amendments

**F23** 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

#### Marginal Citations

**M18** 1977 c. 49.

VALID FROM 08/11/2010

### <sup>F24</sup>17CAPrimary 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
  - (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,

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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.
- (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

- F24** 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

VALID FROM 05/03/2001

#### [<sup>F25</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;
  - (b) in the case of an agreement under which personal medical services are provided—
    - (i) a qualifying medical practitioner;
    - (ii) an individual who is providing personal medical services in accordance with section 17C arrangements or section 28C arrangements;
  - (c) in the case of an agreement under which personal dental services are provided—

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- (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 or a section 28C employee;
- (e) a qualifying body.

(2) In this section—

“the 1977 Act” means the <sup>M19</sup>National Health Service Act 1977;

“NHS employee” means an individual who, in connection with the provision of services in the health service in Scotland or England and Wales, is employed by—

- (a) an NHS trust;
- (b) in the case of an agreement under which personal medical services are provided—
  - (i) a medical practitioner whose name is included in a medical list kept under this Act or in a corresponding list kept under the 1977 Act; or
  - (ii) a medical practitioner who is providing personal medical services in accordance with section 17C arrangements or section 28C arrangements;

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

- (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>M20</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;

“qualifying medical practitioner” means a medical 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;

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

“section 28C arrangements” means arrangements for the provision of services made under section 28C of the 1977 Act; and

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

#### Textual Amendments

**F25** 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

#### Marginal Citations

**M19** 1977 c. 49.

**M20** 1984 c. 24.

VALID FROM 05/03/2001

#### <sup>F26</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.
- (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 medical practitioners performing personal medical services, and 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;
  - (d) require details of section 17C arrangements to be published;
  - (e) make provision with respect to the variation and termination of section 17C arrangements;
  - (f) prevent (except in such circumstances and to such extent as may be prescribed) a medical practitioner who performs personal medical services in accordance with section 17C arrangements from providing general medical services;
  - (g) make provision with respect to medical lists, including provision for preferential treatment for medical practitioners;



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- (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.

<sup>F27</sup>(4) .....

- (5) The Secretary of State must—
  - (a) consider whether section 17C arrangements are likely to have an adverse effect on the distribution of medical practitioners providing general medical services or performing personal medical services in Scotland;
  - (b) if he thinks that the arrangements are likely to have that effect, consider whether it is necessary to include in the regulations provisions designed to secure that, so far as is possible, the arrangements do not have that effect; and
  - (c) if he thinks that it is necessary, include such provisions in the regulations.
- (6) Regulations which impose conditions on persons performing personal medical services or persons performing personal dental services (whether made by virtue of subsection (2)(b) or otherwise) may, in particular, include provision of a kind that may be made by regulations under section 22.
- (7) Regulations made by virtue of subsection (3)(g) may, in particular, include provision—
  - (a) requiring (except in prescribed circumstances) Health Boards to remove from their medical lists persons who are performing personal medical services in accordance with section 17C arrangements or corresponding services under section 28C of the <sup>M21</sup>National Health Service Act 1977;
  - (b) conferring a right to transfer to a medical list on persons who have ceased to perform such services;
  - (c) that any provision in relation to medical lists made by or under any enactment is not to apply;
  - (d) as to conditions to be attached to entries in medical lists;
  - (e) conferring powers of disqualification on the Tribunal constituted under section 29.
- (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

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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

**F26** S. 17E inserted (*prosp.*) by 1997 c. 46, ss. 22(2), 41(3)

**F27** 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, Sch. 1, 2

#### Marginal Citations

**M21** 1977 c. 49.

VALID FROM 28/02/2003

#### <sup>F28</sup> 17EAServices lists

- (1) Regulations may make provision for the preparation and publication by each Health Board of one or more lists of medical practitioners approved by the Board to perform personal medical services—
  - (a) in accordance with section 17C arrangements; or
  - (b) in connection with the provision of such services under a pilot scheme.
- (2) Such a list is in this Act referred to as a “services list”.
- (3) A medical practitioner whose name is not included in the Board’s medical list or supplementary list may not perform medical services in the Board’s area—
  - (a) in accordance with such arrangements; or
  - (b) in such connection
 unless his name is included in the Board’s services list as that of a person approved to do so.
- (4) The regulations may (either or both)—
  - (a) make provision for the application (with such modifications as the Scottish Ministers think fit) to services lists or to persons who are, have been or seek to be included in a services list, of;
  - (b) in relation to such lists and persons, make provision analogous to any provision made by,
 any regulations made under this Act in relation to medical lists or to persons who are, have been or seek to be included in a medical list.]

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#### Textual Amendments

**F28** S. 17EA inserted (28.2.2003 in regard to s. 17EA(1)(2)(4) and otherwise prosp.) by 2002 asp 5, ss. 18(1), 27(2); S.S.I. 2003/62, art. 2(1)(a)

VALID FROM 28/02/2003

#### [<sup>F29</sup>17EB] Application for inclusion in services list

- (1) No medical practitioner—
  - (a) who is a national of a member State and is registered by virtue of a qualification granted in a member State shall be entitled to have his name included in a Health Board’s services list unless he satisfies the Board that he has that knowledge of English which, in the interests of himself and his patients, is necessary for the performance of personal medical services in the Board’s area; or
  - (b) shall be so entitled unless he is suitably experienced.
- (2) For the purposes of subsection (1)(b) a medical practitioner is “suitably experienced” if, but only if, he either—
  - (a) has acquired such medical experience as may be prescribed; or
  - (b) is by virtue of regulations made under this subsection, being regulations analogous to those made under section 22, exempt from the need to have acquired that experience,and “medical experience” includes hospital experience in any speciality.
- (3) Subsections (2) and (3) of section 22 apply in relation to regulations under subsection (2) above as they apply in relation to regulations under that section except that, for that purpose, the reference in subsection (2) of that section to the “prescribed experience” shall be construed as a reference to the medical experience prescribed by virtue of paragraph (a) of subsection (2) above.]

#### Textual Amendments

**F29** S. 17EB inserted (28.2.2003) by 2002 asp 5, ss. 18(1), 27(2); S.S.I. 2003/62, art. 2(1)(a)

PROSPECTIVE

#### [<sup>F30X1</sup>17FL] 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;

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- (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;
- (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)**

#### Textual Amendments

**F30** S. 17F inserted (prosp.) by virtue of [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), **ss. 18, 43(3)**

VALID FROM 01/10/1998

#### [<sup>F31</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

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(b) provided under Part II as general dental services.]

#### Textual Amendments

**F31** S. 17G inserted (1.10.1998) by 1997 c. 46, s. 24(2); S.I. 1998/1998, art. 2(2)(a), **Sch. 1**

VALID FROM 01/04/1998

#### [<sup>F32</sup>17H Immunisation.

Where the Secretary of State arranges with medical practitioners for the vaccination or immunisation of persons against any disease, he shall so far as reasonably practicable give every person providing, and every medical practitioner performing, personal medical services in accordance with section 17C arrangements an opportunity to participate in the arrangements for vaccination or immunisation.]

#### Textual Amendments

**F32** S. 17H inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 37**; S.I. 1998/631, art. 2(a), **Sch. 1**

VALID FROM 01/04/1998

#### [<sup>F33</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 personal 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

**F33** 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**

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