



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART I

#### ORGANISATION

*<sup>F1</sup>Proposals and applications in relation to registered independent health care services*

#### Textual Amendments

**F1** Ss. 10A-10Z19 and cross-headings inserted (1.8.2010 for the insertion of s. 10A for specified purposes, 1.10.2010 for specified purposes, 1.4.2011 for specified purposes, 1.4.2016 for specified purposes with the exception of the insertion of s. 10Z9(1)(a), 1.4.2017 for specified purposes, 19.6.2024 for specified purposes) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 108, 134(7)**; [S.S.I. 2010/221](#), art. 3(2)(3), **sch.**; [S.S.I. 2010/321](#), art. 3, **sch.**; [S.S.I. 2011/122](#), art. 2, **sch.**; [S.S.I. 2016/22](#), art. 2(1)(2), sch. 1, **sch. 2**; [S.S.I.2024/131](#), art. 2, **sch. 1**

#### 10S Cancellation of registration

- (1) HIS may, at any time after the expiry of the period specified in an improvement notice under section 10R given in respect of an independent health care service, propose to cancel the registration of the service—
  - (a) on the ground that any person has been convicted of a relevant offence in relation to the service;
  - (b) on the ground that the service is being, or has at any time been, carried on other than in accordance with the relevant requirements; or
  - (c) on any other ground which may be prescribed.
- (2) For the purposes of—
  - (a) paragraph (a) of subsection (1) the following are relevant offences—

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- (i) an offence under any of sections 10G to 10Z18 (in this section, “this group of sections”);
- (ii) an offence under regulations made under this group of sections; or
- (iii) an offence which, in the opinion of HIS, makes it appropriate that the registration should be cancelled; and
- (b) paragraph (b) of that subsection, the following are relevant requirements—
  - (i) any requirements or conditions imposed by or under this group of sections; or
  - (ii) the requirements of regulations made under this group of sections.
- (3) Where a person providing a registered independent health care service ceases to provide the service, HIS may cancel the registration of the service.

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

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

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- (ii) Health Board,  
within whose area the independent health care service is provided; and
- (b) any other body established by or under an enactment whom HIS thinks it appropriate to notify.

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

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

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

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

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

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

- (1) Section 10Z1 does not apply to a condition notice given by virtue of section 10V(5)(a).

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

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

- (1) A person—
  - (a) who is given an emergency condition notice; and
  - (b) who—
    - (i) makes no written representations in accordance with section 10V(4)(a); or
    - (ii) makes such representations but is notified as mentioned in section 10V(5)(b),
 may, within 14 days after the relevant date, appeal to the sheriff against the imposition of the condition.
- (2) In subsection (1), “relevant date” means—
  - (a) where sub-paragraph (i) of subsection (1)(b) applies, the date of service of the emergency condition notice;
  - (b) where sub-paragraph (ii) of that subsection applies, the date notification mentioned in that sub-paragraph is given.
- (3) The sheriff may, on an appeal under subsection (1)—
  - (a) direct that the condition specified in the emergency condition notice is to continue to have effect;
  - (b) direct that the condition is to cease to have effect;
  - (c) direct that the condition be varied as specified in the direction;
  - (d) impose an additional condition in relation to the registration.

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

- (1) A person providing a registered independent health care service may apply to HIS—
  - (a) for the variation or removal of any condition for the time being in force, or for the addition of a condition, in relation to the registration; or
  - (b) for cancellation of the registration,
 but no such application is competent in circumstances mentioned in subsection (2).
- (2) The circumstances are that HIS has given the person notice—
  - (a) under section 10Z(2) of its proposal to cancel the registration (unless HIS has decided not to take that step); or
  - (b) under section 10Z2(3) of its decision to cancel the registration and the time within which an appeal may be brought has not expired or, if an appeal has been brought, that appeal has not been determined.
- (3) An application under subsection (1) must be made in such manner and state such particulars as may be prescribed; and, without prejudice to subsection (1)(b) of

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section 10Z5, must be accompanied by the fee imposed under subsection (2)(a) or, as the case may be, (c) of that section.

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

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

- (1) If an application has been made under section 10P and HIS proposes—
- (a) to grant that application but to do so subject to a condition which has not been agreed in writing between it and the applicant, it must give the applicant notice of the proposed condition;
  - (b) to refuse that application, it must give such notice of the proposed refusal.
- (2) HIS must give any person who provides a registered independent health care service notice of a proposal to cancel the registration (other than in accordance with an application under subsection (1)(b) of section 10Y).
- (3) HIS must give an applicant under subsection (1)(a) of section 10Y notice of a proposal to refuse that application.
- (4) A notice under this section must give HIS's reasons for its proposal.

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

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

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