



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART II

#### PROVISION OF SERVICES

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

- C1** Pt II (ss. 18-35) restricted (1.4.1998) by 1997 c. 46, s. 12(1); S.I. 1998/631, art. 2(2)(b), Sch. 2  
Pt. II (ss. 18-35) power to modify conferred (1.4.1998) by 1997 c. 46, s. 15(2)(a); S.I. 1998/631, art. 2(2)(b), Sch. 2  
Pt. II (ss. 18-35) power to apply conferred (1.4.1998) by 1997 c. 46, s. 15(2)(b); S.I. 1998/631, art. 2(2)(b), Sch. 2

#### *General Services*

### 18 Duty of Secretary of State.

It shall be the duty of the Secretary of State to secure the provision of <sup>F1</sup> . . . general dental and general ophthalmic services, and of pharmaceutical services, in accordance with the provisions of this Part.

##### Textual Amendments

- F1** Words in s. 18 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 1(3), 9(1); S.S.I. 2004/58, art. 2(3)

*Status: Point in time view as at 07/03/2006.*

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*General medical services*

**19 Arrangements and regulations for general medical services.**

F2 .....

**Textual Amendments**  
F2 S. 19 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(7); S.S.I. 2004/58, art. 2(3)

**19A Medical lists.**

F3 .....

**Textual Amendments**  
F3 Ss. 19-23 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(7); S.S.I. 2004/58, art. 2(3)

**19B Vacancies for medical practitioners.**

F4 .....

**Textual Amendments**  
F4 Ss. 19-23 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(7); S.S.I. 2004/58, art. 2(3)

**20 Applications to provide general medical services.**

F5 .....

**Textual Amendments**  
F5 Ss. 19-23 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(7); S.S.I. 2004/58, art. 2(3)

**21 Requirement of suitable experience.**

F6 .....

**Textual Amendments**  
F6 S. 21 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(7); S.S.I. 2004/58, art. 2(3)

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## 22 Regulations as to section 21.

F7 .....

### Textual Amendments

F7 S. 22 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(7); S.S.I. 2004/58, art. 2(3)

## 23 Distribution of general medical services.

F8 .....

### Textual Amendments

F8 Ss. 19-23 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(7); S.S.I. 2004/58, art. 2(3)

## 24 Regulations for Medical Practices Committee.

F9 .....

### Textual Amendments

F9 S. 24 repealed (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), Sch. 4 para. 5(10); S.S.I. 2004/148, art. 2(c)

## 24A Liabilities and obligations in relation to deputies.

F10 .....

### Textual Amendments

F10 Ss. 24A-24C repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(7); S.S.I. 2004/58, art. 2(3)

## 24B Supplementary lists

F11 .....

### Textual Amendments

F11 Ss. 24A-24C repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(7); S.S.I. 2004/58, art. 2(3)

## 24C Application for inclusion in supplementary list

F12 .....

*Status: Point in time view as at 07/03/2006.*

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### Textual Amendments

**F12** Ss. 24A-24C repealed (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), ss. 8, 9(1), [Sch. para. 1\(7\)](#); S.S.I. 2004/58, [art. 2\(3\)](#)

## General dental services

### 25 Arrangements for provision of general dental services.

- (1) It shall be the duty of every Health Board, in accordance with regulations, to make as respects their area arrangements with dental practitioners under which any person for whom a dental practitioner undertakes in accordance with the arrangements to provide dental treatment and appliances shall receive such treatment and appliances; and the services provided in accordance with those arrangements are in this Act referred to as “general dental services”.
- (2) Regulations may make provision as to the arrangements to be made under subsection (1), and shall include provision—
- (a) for the preparation and publication of lists of dental practitioners who undertake to provide general dental services;
  - <sup>F13</sup>(b) for conferring a right, subject to—
    - (i) <sup>F14</sup>subsections (2A) and (2B)]
    - (ii) the provisions of this Part relating to the disqualification of persons providing services; and
    - (iii) section 8 (persons over retiring age) of the Health and Medicines Act 1988 and regulations made under that section, on any dental practitioner who wishes to be included in any such list to be so included;]
  - <sup>F15</sup>(c) .....
  - (d) for the removal from the list of dental practitioners undertaking to provide general dental services for persons in any area of the name of a dental practitioner in whose case it has been determined in such manner as may be prescribed that he has never provided, or has ceased to provide, general dental services for persons in that area.
- <sup>F16</sup>(2A) No dental practitioner 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 the list kept by a Health Board 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 provisions of general dental services in the Board’s area.]
- <sup>F17</sup>(2B) Regulations may make the exercise of the right conferred by virtue of paragraph (b) of subsection (2) subject to any provision made by or under the regulations, and, in such cases as may be prescribed, may confer a right of appeal to a prescribed body in respect of a refusal to include a dental practitioner on such a list as is referred to in paragraph (a) of that subsection.]
- (3) The remuneration to be paid under arrangements made under this section to a dental practitioner who provides general dental services elsewhere than at a health centre shall not, <sup>F18</sup>, consist wholly or mainly of a fixed salary [<sup>F19</sup>unless either—

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- (a) the remuneration is paid in pursuance of arrangements made under section 33, or
- (b) the services are provided in prescribed circumstances and the practitioner consents,

and it shall be the Secretary of State's duty, before he prescribes any circumstances for the purposes of paragraph (b), to consult such organisations as appear to him to be representative of the dental profession.]

[<sup>F20</sup>[<sup>F21</sup>(4) Subsection (4B) applies where the registration of a dental practitioner in the dentists register is suspended—

- (a) by an interim suspension order under section 32 of the Dentists Act 1984 (interim orders); or
- (b) by a direction or order of the Health Committee, the Professional Performance Committee or the Professional Conduct Committee of the General Dental Council under any of sections 27B, 27C or 30 of that Act following a relevant determination that that practitioner's fitness to practise is impaired.

(4A) For the purposes of subsection (4), a “relevant determination” that a practitioner's fitness to practise is impaired is a determination which is based solely on—

- (a) the ground mentioned in paragraph (b) of subsection (2) of section 27 of the Dentists Act 1984 (deficient professional performance);
- (b) the ground mentioned in paragraph (c) of that subsection (adverse physical or mental health); or
- (c) both those grounds.

(4B) Where this subsection applies, the suspension shall not terminate any arrangements made with the dental practitioner for the provision of general dental services, but he shall not provide such services in person during the suspension.]

(5) Regulations may provide for the making of payments in consequence of suspension to a dental practitioner whose registration [<sup>F22</sup>is suspended as described in subsection (4)].]

#### Subordinate Legislation Made

- P1** S. 25: for previous exercises fo this power see Index to Government Orders.
- P2** S. 25(1)(2): s. 25(1)(2) (with ss. 105(7) and 108(1)) power exercised by [S.I. 1991/1349](#)
- P3** S. 25(1)(2)(2B): s. 25(1)(2)(2B) (with ss. 70(1A), 71(1), 71A, 75, 105(7), 108(1) and Sch. 11 paras. 2(6) and 3(3)(5)) power exercised by [S.I. 1991/569](#)  
S. 25(2): s. 19 (with ss. 25(2), 26(2), 27(2), 105(7) and 108(1)) power exercised by [S.I. 1991/1188](#)

#### Textual Amendments

- F13** S. 25(2)(b) substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(6\)](#)
- F14** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 40(2)
- F15** S. 25(2)(c) repealed (1.10.1998) by [1997 c. 46, s. 41\(10\)\(12\)](#), [Sch. 2 Pt. I para. 43](#), [Sch. 3 Pt. I](#); 1998/1998, art. 2(2)(b), Sch. 2
- F16** S. 25(2A) inserted by [S.I. 1981/432](#), [art. 4\(3\)\(b\)](#)
- F17** S. 25(2B) inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 40(3)
- F18** Words repealed by [Health Services Act 1980 \(c. 53\)](#), [Sch. 7](#)

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- F19** Words inserted by [Health Services Act 1980 \(c. 53\)](#), **Sch. 6 para. 4**
- F20** S. 25(4)(5) added by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), **s. 16(a)**
- F21** S. 25(4)(4A)(4B) substituted for s. 25(4) (coming into force in accordance with art. 1 of the amending S.I.) by [The Dentists Act 1984 \(Amendment\) Order 2005 \(S.I. 2005/2011\)](#), art. 49, **Sch. 6 para. 2(2)(a)** (with transitional provisions in Sch. 7 and S.I. 2006/1671)
- F22** Words in s. 25(5) substituted (coming into force in accordance with art. 1 of the amending S.I.) by [The Dentists Act 1984 \(Amendment\) Order 2005 \(S.I. 2005/2011\)](#), art. 49, **Sch. 6 para. 2(2)(b)** (with transitional provisions in Sch. 7 and S.I. 2006/1671)

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

- C2** S. 25 restricted (28.11.1997) by 1997 c. 46, **s. 1(5)(b)**; S.I. 1997/2620, **art. 2(2)**
- C3** S. 25(2) extended by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), **s. 17(1)**
- C4** S. 25(2)(b) modified (4.3.2004) by [The National Health Service \(Tribunal\) \(Scotland\) Regulations 2004 \(S.S.I. 2004/38\)](#), **reg. 26(2)(b)** (with regs. 32-34)

*General ophthalmic services*

**26 Arrangements for provision of general ophthalmic services.**

- (1) It shall be the duty of every Health Board to make as respects their area, in accordance with regulations, arrangements with medical practitioners having the prescribed qualifications, [<sup>F23</sup>and with ophthalmic opticians], for securing [<sup>F24</sup>the carrying out of eye examinations including where clinically necessary testing of sight.]
- (1A) <sup>F25</sup> .....
- (1B) <sup>F25</sup> .....
- (1C) <sup>F25</sup> .....
- (1D) <sup>F25</sup> .....
- (1E) <sup>F25</sup> .....
- (1F) Regulations shall define the services for the provision of which arrangements under this section are to be made and the services so defined are in this Act referred to as “general ophthalmic services”.
- [<sup>F26</sup>(2) Regulations may make provision as to the arrangements to be made under subsection (1), and shall include provision—
- (a) as to the preparation, maintenance and publication by every Health Board of a list—
- (i) the first part of which shall be of medical practitioners and ophthalmic opticians who undertake to provide general ophthalmic services under arrangements with the Board;
- (ii) the second part of which shall be of persons who do not undertake to provide such services under such arrangements but who are approved by the Board to assist in the provision of such services provided under such arrangements;
- (b) conferring on any person a right to choose in accordance with the prescribed procedure the medical practitioner or ophthalmic optician by whom his eyes

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are to be examined, his sight is to be tested or from whom any prescription for the supply of optical appliances is to be obtained.

(2A) In making provision as to the matters referred to in subsection (2)(a), the regulations may include in particular provision as to—

- (a) the division of either part (or both parts) of a list into further sub-parts;
- (b) eligibility for inclusion in a list;
- (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.

(2B) Regulations may provide that—

- (a) a medical practitioner or ophthalmic optician who undertakes to provide general ophthalmic services under arrangements with a Health Board may not provide such services unless his name is included in the first part of the Board's list referred to in subsection (2)(a)(i);
- (b) a person who does not undertake to provide general ophthalmic services under arrangements with a Health Board may not assist in the provision of such services provided under arrangements with the Board unless his name is included in the second part of the Board's list referred to in subsection (2)(a)(ii).]

(3) The power conferred by this section to prescribe the qualifications to be possessed by any medical practitioner includes—

- (a) power to prescribe a requirement that the practitioner shall show, to the satisfaction of a committee recognised by the Secretary of State for the purpose, that he possesses such qualifications (including qualifications as to experience) as may be mentioned in the regulations, and
- (b) power to confer on a person who is dissatisfied with the determination of such a committee, a right of appeal to a committee appointed by the Secretary of State, and to make provision for any matter for which it appears to the Secretary of State to be requisite or expedient to make provision in consequence of the conferring of that right.

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### Textual Amendments

- F23** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(7), [Sch. 1 Pt. II para. 1](#)
- F24** Words in s. 26(1) substituted (7.3.2006 for certain purposes otherwise 1.4.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), [ss. 13\(2\)\(a\)](#), 43(3); S.S.I. 2005/492, [art. 3\(e\)](#), Sch. 3; S.S.I. 2006/121, [art. 3\(a\)](#), Sch. 1
- F25** S. 26(1A)-(1E) repealed (7.3.2006 for certain purposes otherwise 1.4.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), [ss. 13\(2\)\(b\)](#), 43(3); S.S.I. 2005/492, [art. 3\(e\)](#), Sch. 3; S.S.I. 2006/121, [art. 3\(a\)](#), Sch. 1
- F26** S. 26(2)-(2B) substituted for s. 26(2) (7.3.2006 for certain purposes otherwise 1.4.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), [ss. 19](#), 43(3); S.S.I. 2006/121, [art. 3\(a\)\(b\)](#), Schs. 1, 2

### Pharmaceutical services

## 27 Arrangements for provision of pharmaceutical services.

(1) It shall be the duty of every Health Board to make, in accordance with regulations, arrangements as respects its area for the <sup>F27</sup>[provision] to persons who are in that area of—

- (a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the health service for England and Wales, the Northern Ireland health service or the armed forces of the Crown (excluding forces of a Commonwealth country and forces raised in a colony), and
- <sup>F28</sup>(b) proper and sufficient drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of the provision by that Board <sup>F29</sup>[or by an NHS trust] of dental services; and
- (c) listed drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of the provision by him of general dental services;  
<sup>F30</sup> . . .
- <sup>F31</sup>(cc) <sup>F32</sup>[such drugs and medicines and such listed appliances as may be determined by the Scottish Ministers for the purposes of this paragraph] which are ordered for those persons by a prescribed description of <sup>F32</sup>[person in accordance with such conditions, if any, as may be prescribed,] in pursuance of functions in the health service, the health service for England and Wales, the Northern Ireland health service or the armed forces of the Crown (excluding forces of a Commonwealth country and forces raised in a colony); and]
- <sup>F33</sup>(d) <sup>F33</sup>[such services as may be prescribed,]

and the <sup>F34</sup>[provision of drugs, medicines, appliances and services in accordance with the arrangements is] <sup>F35</sup>[together with additional pharmaceutical services provided in accordance with a direction under section 27A, referred to in this Act] as “pharmaceutical services”.

In this subsection—

“listed” means included in a list for the time being approved by the Secretary of State for the purposes of this subsection;



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“the health service for England and Wales” and “the Northern Ireland health service” mean respectively the health service established in pursuance of section 1 of the <sup>M1</sup>National Health Service Act 1946 or any service provided in pursuance of Article 4(a) of the <sup>M2</sup>Health and Personal Social Services (Northern Ireland) Order 1972.

[<sup>F36</sup>(1A) The descriptions of persons which may be prescribed for the purposes of subsection (1) (cc) are the following, or any sub-category of such a description—

[<sup>F37</sup>(a) persons who are registered in the register maintained under article 5 of the Health Professions Order 2001;]

(b) persons who are registered pharmacists;

[<sup>F38</sup>(c) persons who are registered in the dental care professionals register established under section 36B of the Dentists Act 1984;]

(d) persons who are ophthalmic opticians;

(e) persons who are registered osteopaths within the meaning of the Osteopaths Act 1993 (c. 21);

(f) persons who are registered chiropractors within the meaning of the Chiropractors Act 1994 (c. 17);

[<sup>F39</sup>(g) persons who are registered nurses or registered midwives;]

(h) persons [<sup>F40</sup>not mentioned above] who are registered in any register established, continued or maintained under an Order in Council under section 60(1) of the Health Act 1999 (c. 8);

(i) any other description of persons which appears to the Scottish Ministers to be a description of persons whose profession is regulated by or under a provision of, or made under, Northern Ireland legislation and which the Scottish Ministers consider it appropriate to specify.

(1B) A determination under subsection (1)(cc) may—

(a) make different provision for different cases;

(b) provide for the circumstances or cases in which a drug, medicine or appliance may be ordered;

(c) provide that persons falling within a description specified in the determination may exercise discretion in accordance with any provision made by the determination in ordering drugs, medicines and listed appliances.]

[<sup>F41</sup>(2) Regulations shall provide for securing that arrangements made by a Health Board under subsection (1) will enable persons in the Board’s area for whom drugs, medicines or appliances mentioned in that subsection are ordered as there mentioned [<sup>F42</sup>, or to whom services mentioned in subsection (1)(d) are to be provided,] to receive them from persons with whom such arrangements have been made.

(3) The regulations shall include provision—

(a) for the preparation and publication by a Health Board of one or more lists of persons, other than medical practitioners and dental practitioners, who undertake to provide pharmaceutical services from premises in the Board’s area;

(b) that an application to a Health Board for inclusion in such a list shall be made in the prescribed manner and shall state—

(i) the [<sup>F43</sup>pharmaceutical] services which the applicant will undertake to provide and, if they consist of or include the supply of appliances, which appliances he will undertake to supply; and

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- (ii) the premises from which he will undertake to provide those services;
  - (c) that, except in prescribed cases—
    - (i) an application for inclusion in such a list by a person not already included; and
    - (ii) an application by a person already included in such a list for inclusion also in respect of [<sup>F43</sup>pharmaceutical] services or premises other than those already listed in relation to him,
 shall be granted only if the Health Board is satisfied, in accordance with the regulations, that it is necessary or desirable to grant it in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included in the list of the services, or some of the services, specified in the application; and
  - (d) for the removal of an entry in respect of premises from a list if it has been determined in the prescribed manner that the person to whom the entry relates—
    - (i) has never provided from those premises; or
    - (ii) has ceased to provide from them, the [<sup>F43</sup>pharmaceutical] services, or any of the services, which he is listed as undertaking to provide from them.
- (4) The regulations may include provision—
- (a) that an application to a Health Board may be granted in respect of some only of the [<sup>F43</sup>pharmaceutical] services specified in it;
  - (b) that an application to a Health Board relating to [<sup>F43</sup>pharmaceutical] services of a prescribed description shall be granted only if it appears to the Board that the applicant has satisfied such conditions with regard to the provision of those [<sup>F43</sup>pharmaceutical] services as may be prescribed;
  - [<sup>F44</sup>(ba) that an application to a Health Board by a person who qualified to have his name registered under the Pharmacy Act 1954 by virtue of section 4A of that Act (qualification by European diploma) shall not be granted unless the applicant satisfies the Board that he has the knowledge of English which, in the interests of himself and the persons making use of the services to which the application relates, is necessary for the provision of pharmaceutical services in the Board's area.]
  - (c) that the inclusion of a person in a list in pursuance of such an application may be for a fixed period;
  - (d) that, where the premises from which an application states that the applicant will undertake to provide [<sup>F43</sup>pharmaceutical] services are in an area of a prescribed description, the applicant shall not be included in the list unless his inclusion is approved by a prescribed body and by reference to [<sup>F45</sup>prescribed criteria]; and
  - (e) that the prescribed body may give its approval subject to conditions.
- (5) The regulations shall include provision conferring on such persons as may be prescribed rights of appeal from decisions made by virtue of subsection (3) or (4).
- (6) The regulations shall be so framed as to preclude—
- (a) a person included in a list published under subsection (3)(a) above; and
  - (b) an employee of such a person;

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from taking part in the decision whether an application such as is mentioned in subsection (3)(c) above should be granted or an appeal against such a decision brought by virtue of subsection (5) above should be allowed.]

#### Subordinate Legislation Made

- P4** S. 27: s. 19 (with ss. 23, 24, 27, 28, 105(7) and 108(1)) power exercised by [S.I. 1991/572](#)  
S. 27: s. 19 (with ss. 27, 69, 75(a), 105(7), 108(1) and Sch. 11 para. 1) power exercised by [S. I. 1991/574](#)  
S. 27: for previous exercises of power see Index to Governmental Orders
- P5** S. 27: s. 19 (with ss. 27 and 108(1)) power exercised by [S.I. 1991/2241](#)
- P6** S. 27(2): s. 19 (with ss. 25(2), 26(2), 27(2), 105(7) and 108(1)) power exercised by [S.I. 1991/1188](#).

#### Textual Amendments

- F27** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(7\)\(a\)\(i\)](#)
- F28** S. 27(1)(b)(c) substituted for s. 27(1)(b) by [Health Services Act 1980 \(c. 53\)](#), [s. 20\(2\)](#)
- F29** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(7\)\(a\)\(ii\)](#)
- F30** Word “and” at end of s. 27(1)(c) omitted (1.7.1996) by virtue of [Medicinal Products: Prescription by Nurses etc. Act 1992 \(c. 28\)](#), [s. 3](#); [S.I. 1996/1505](#), [art. 2](#)
- F31** S. 27(1)(cc) inserted (1.7.1996) by [Medicinal Products; Prescription by Nurses etc. Act 1992 \(c. 28\)](#), [s. 3](#); [S.I. 1996/1505](#), [art. 2](#)
- F32** Words in s. 27(1)(cc) substituted (11.5.2001 for conferring power to make any order or regulations, otherwise 1.4.2002) by [2001 c. 15](#), [s. 44\(2\)](#) (with ss. 64(9), 65(4)); [S.S.I. 2002/75](#), [art. 2](#)
- F33** S. 27(1)(d) and “; and” preceding it inserted by [National Health Service and Community Care Act 1990 \(c.19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(7\)\(a\)\(iii\)](#)
- F34** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(7\)\(a\)\(iv\)](#)
- F35** Words in s. 27(1) substituted (15.8.1997) by [1997 c. 46](#), s. 41(10), [Sch. 2 Pt. I para. 44](#); [S.I. 1997/1780](#), [art. 2\(1\)](#), [Sch.](#)
- F36** S. 27(1A)(1B) inserted (11.5.2001 for conferring power to make any order or regulations, otherwise 1.4.2002) by [2001 c. 15](#), [s. 44\(3\)](#) (with ss. 64(9), 65(4)); [S.S.I. 2002/75](#), [art. 2](#)
- F37** S. 27(1A)(a) substituted (9.7.2003) by [The Health Professions Order 2001 \(Consequential Amendments\) Order 2003 \(S.I. 2003/1590\)](#), [art. 3](#), [Sch. para. 2](#)
- F38** Words in s. 27(1A)(c) substituted (coming into force in accordance with art. 1 of the amending S.I.) by [The Dentists Act 1984 \(Amendment\) Order 2005 \(S.I. 2005/2011\)](#), [art. 49](#), [Sch. 6 para. 2\(3\)](#) (with transitional provisions in [Sch. 7](#) and [S.I. 2006/1671](#))
- F39** S. 27(1A)(g) substituted (1.8.2004) by [The Health Act 1999 \(Consequential Amendments\) \(Nursing and Midwifery\) Order 2004 \(S.I. 2004/1771\)](#), [art. 3](#), [Sch. para. 6\(a\)](#)
- F40** Words in s. 27(1A)(h) inserted (1.8.2004) by [The Health Act 1999 \(Consequential Amendments\) \(Nursing and Midwifery\) Order 2004 \(S.I. 2004/1771\)](#), [art. 3](#), [Sch. para. 6\(b\)](#)
- F41** S. 27(2)–(6) substituted for (2) by [National Health Service \(Amendment\) Act 1986 \(c. 66, SIF 113:2\)](#), [s. 3\(3\)](#)
- F42** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(7\)\(b\)](#)
- F43** Word inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(7\)\(c\)](#)
- F44** S. 27(4)(ba) inserted by [S.I. 1987/2202](#), [art. 5](#)
- F45** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(7\)\(d\)](#)

*Status: Point in time view as at 07/03/2006.*

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

- C5** Words in s. 27 modified (4.3.2004) by [The National Health Service \(Tribunal\) \(Scotland\) Regulations 2004 \(S.S.I. 2004/38\)](#), [reg. 26\(2\)\(d\)](#) (with regs. 32-34)
- C6** S. 27(2) extended by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 17\(1\)](#)

#### Marginal Citations

- M1** 1946 c. 81.
- M2** S.I. 1972/1265.

### [<sup>F46</sup>27A Arrangements for providing additional pharmaceutical services.

- (1) The Secretary of State may—
  - (a) give directions to a Health Board requiring them to arrange for the provision to persons in their area of additional pharmaceutical services; or
  - (b) by giving directions to a Health Board authorise them to arrange for such provision if they wish to do so.
- (2) Directions under this section may make different provision in relation to different services specified in the directions.
- (3) The Secretary of State must publish any directions under this section in the Drug Tariff or in such other manner as he thinks appropriate.
- (4) In this section—
 

“additional pharmaceutical services”, in relation to directions, means such services (of a kind that do not fall within section 27) as may be specified in the directions; and

“Drug Tariff” means the Drug Tariff published under regulation 9 of the <sup>M3</sup>National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995 or under any corresponding provision replacing, or otherwise derived from, that regulation.]

#### Textual Amendments

- F46** S. 27A inserted (15.8.1997) by [1997 c. 46, s. 27\(2\)](#); [S.I. 1997/1780, art. 2\(1\)](#), [Sch.](#)

#### Marginal Citations

- M3** S.I. 1995/414.

### [<sup>F47</sup>27B Terms and conditions etc.

- (1) Directions under section 27A may require the Health Authority to whom they apply, when making arrangements—
  - (a) to include, in the terms on which the arrangements are made, such terms as may be specified in the directions;
  - (b) to impose, on any person providing a service in accordance with the arrangements, such conditions as may be so specified.
- (2) The arrangements must secure that any service to which they apply is provided only by a person whose name is included in a pharmaceutical list.

*Status: Point in time view as at 07/03/2006.*

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- (3) Different arrangements may be made with respect to—
  - (a) the provision of the same service by the same person but in different circumstances; or
  - (b) the provision of the same service by different persons.
- (4) A Health Authority must provide details of proposed arrangements (including the remuneration to be offered for the provision of services) to any person who asks for them.
- (5) After making any arrangements, a Health Authority must publish, in such manner as the Secretary of State may direct, such details of the arrangements as he may direct.
- (6) In this section, “pharmaceutical list” means, subject to any provision of the directions in question, a list—
  - (a) published by the Health Authority concerned, or by any other Health Authority, in accordance with regulations made under section 27(2)(a) of this Act; or
  - (b) published by any body in accordance with regulations made under section 42(2)(a) of the <sup>M4</sup>National Health Service Act 1977 or Article 63(2A) (a) of the <sup>M5</sup>Health and Personal Social Services (Northern Ireland) Order 1972.]

#### Textual Amendments

**F47** S. 27B inserted (15.8.1997) by 1997 c. 46, s. 28(2); S.I. 1997/1780, art. 2(1), Sch.

#### Marginal Citations

**M4** 1978 c. 29.

**M5** S.I. 1972/1265 (N.I.14).

## 28 Persons authorised to provide pharmaceutical services.

- (1) Except as may be provided by [<sup>F48</sup>or under] regulations, no arrangements shall be made by a Health Board with a medical practitioner or dental practitioner under which he is required or agrees to provide pharmaceutical services to any person to whom he is rendering [<sup>F49</sup>primary medical services under Part 1] or general dental services.
- (2) Except as may be provided by [<sup>F50</sup>or under] regulations, no arrangements for the dispensing of medicines [<sup>F51</sup>or the provision of pharmaceutical services] shall be made with persons other than persons who are registered pharmacists or are persons lawfully conducting a retail pharmacy business in accordance with section 69 of the <sup>M6</sup>Medicines Act 1968, and who undertake [<sup>F52</sup>(a)] that all medicines [<sup>F53</sup>provided] by them under the arrangements made under this Part shall be dispensed [<sup>F54</sup>, and (b) that
  - <sup>F55</sup>(i)] all services mentioned in section 27(1)(d) provided by them under those arrangements
  - <sup>F56</sup>(ii) direction under section 27A,] shall be provided] either by, or under the direct supervision of, a registered pharmacist.

*Status: Point in time view as at 07/03/2006.*

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[<sup>F57</sup>(2A) Regulations shall provide for the preparation and publication by a Health Board of one or more lists of medical practitioners who undertake to supply drugs and appliances in the Board's area.

(2B) The regulations shall include provision for the removal of an entry from a list in prescribed circumstances.]

#### Textual Amendments

- F48** Words inserted by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), **s. 3(4)**
- F49** Words in s. 28(1) substituted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(8)**; S.S.I. 2004/58, **art. 2(3)**
- F50** Words inserted by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), **s. 3(4)**
- F51** Words inserted by National Health Service and Community Care Act 1990 (c.19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(8)(a)**
- F52** "(a)" inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(8)(b)**
- F53** Word substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(8)(c)**
- F54** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(8)(d)**
- F55** S. 28(2)(b) "(i)" inserted (15.8.1997) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 45**; S.I. 1997/1780, art 2(1), **Sch.**
- F56** S. 28(2)(b)(ii) inserted (15.8.1997) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 45**; S.I. 1997/1780, art. 2(1), **Sch.**
- F57** S. 28(2A)(2B) inserted (1.4.1998) by National Health Service (Primary Care) Act 1997 (c. 46), **ss. 29(2), 41(3)**; S.I. 1998/631, art. 2(a), Sch. 1 (with arts. 3-5)

#### Marginal Citations

- M6** 1968 c. 67.(84).

[<sup>F58</sup> Remuneration for services]

#### Textual Amendments

- F58** S. 28A inserted (*prosp.*) by Health and Social Security Act 1984 (c. 48, SIF 113:1), **ss. 7(2), 27(1)**

#### [<sup>F59</sup>28A Remuneration for Part II services.

- (1) The remuneration to be paid to persons who provide <sup>F60</sup>. . . , general dental services, general ophthalmic services or pharmaceutical services under this Part of this Act shall be determined by determining authorities (and they may also determine the remuneration to be paid to persons providing those services in respect of the instruction of any person in matters relating to those services).
- (2) For the purposes of this section and section 28B, determining authorities are—
  - (a) the Secretary of State; and
  - (b) so far as authorised by him to exercise the functions of determining authorities, any Health Board or other person appointed by him in an instrument (referred to in this section and section 28B as an instrument of appointment).

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- (3) An instrument of appointment—
- (a) may contain requirements with which a determining authority appointed by that instrument must comply in making determinations; and
  - (b) may be contained in regulations.
- (4) Subject to this section and section 28B, regulations may make provision about determining remuneration under subsection (1) and may in particular impose requirements with which determining authorities must comply in making, or in connection with, determinations (including requirements as to consultation and publication).
- (5) Regulations may provide—
- (a) that determinations may be made by reference to any of the following—
    - (i) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or to be fixed or determined, otherwise than by way of a determination under subsection (1);
    - (ii) scales, indices or other data of any description specified in the regulations;
  - (b) that any determination which in accordance with regulations made by virtue of paragraph (a)(ii) falls to be made by reference to a scale or an index or to any other data may be made not only by reference to that scale or index or those data in the form current at the time of the determination but also by reference to the scale, index or data in any subsequent form attributable to amendment or revision taking effect after that time or to any other cause.
- (6) Regulations may—
- (a) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates;
  - (b) provide that any such determination which does not specify such a date shall have effect in relation to remuneration in respect of a period beginning—
    - (i) if it is required to be published, on the date of publication;
    - (ii) if it is not so required, on the date on which it is made.
- (7) A reference in this section or section 28B to a determination is a reference to a determination of remuneration under subsection (1) of this section.]

#### Textual Amendments

**F59** S. 28A and side-note substituted (1.10.1999) by 1999 c. 8, s. 57(1)(2); S.S.I. 1999/90, art. 2(a), Sch. 1

**F60** Words in s. 28A(1) repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(9); S.S.I. 2004/58, art. 2(3)

#### [<sup>F61</sup>28B Part II remuneration: supplementary.

- (1) Before a determination is made by the Secretary of State which relates to all persons who provide services of, or of a category falling within, one of the descriptions of services mentioned in section 28A(1), he—

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- (a) shall consult a body appearing to him to be representative of persons to whose remuneration the determination would relate, and
  - (b) may consult such other persons as he considers appropriate.
- (2) Determinations may make different provision for different cases including different provision for any particular case, class of case or area.
- (3) Determinations may—
  - (a) be made in more than one stage;
  - (b) be made by more than one determining authority;
  - (c) be varied or revoked by subsequent determinations.
- (4) A determination may be varied—
  - (a) to correct an error; or
  - (b) where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact.
- (5) Determinations may, in particular, provide that the whole or any part of the remuneration—
  - (a) is payable only if the determining authority is satisfied as to certain conditions; or
  - (b) is to be applied for certain purposes or is otherwise subject to certain conditions.
- (6) Subject to [F62section] 25(3), remuneration under section 28A may consist of payments by way of—
  - (a) salary;
  - (b) fees;
  - (c) allowances;
  - (d) reimbursement (in full or in part) of expenses incurred or expected to be incurred in connection with the provision of the services or instruction,and may be determined from time to time.
- (7) At the time a determination is made or varied, certain matters which require determining may be reserved to be decided at a later date.
- (8) The matters which may be reserved include in particular—
  - (a) the amount of remuneration to be paid in particular cases;
  - (b) whether any remuneration is to be paid in particular cases.
- (9) Any determination shall be made after taking into account all the matters which are considered to be relevant by the determining authority and such matters may include in particular—
  - (a) the amount or estimated amount of expenses (taking into account any discounts) incurred in the past or likely to be incurred in the future (whether or not by persons to whose remuneration the determination will relate) in connection with the provision of services of the description in section 28A(1) to which the determination will relate or of any category falling within that description;
  - (b) the amount or estimated amount of any remuneration paid or likely to be paid to persons providing such services;



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- (c) the amount or estimated amount of any other payments or repayments or other benefits received or likely to be received by any such persons;
  - (d) the extent to which it is desirable to encourage the provision, either generally or in particular places, of the description or category of services to which the determination will relate;
  - (e) the desirability of promoting services which are—
    - (i) economic and efficient; and
    - (ii) of an appropriate standard.
- (10) If the determination is of remuneration for a category of services falling within one of the descriptions of services mentioned in section 28A(1), the reference in subsection (9)(a) to a category of services is a reference to the same category of services or to any other category of services falling within the same description.]

#### Textual Amendments

**F61** S. 28B and sidenote substituted (1.10.1999) by 1999 c. 8, s. 57(1)(2); S.S.I. 1999/90, art. 2(a), Sch. 1

**F62** Words in s. 28B(6) substituted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(10); S.S.I. 2004/58, art. 2(3)

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

**C7** S. 28B modified (1.10.1999) by 1999 c. 8, s. 57(2); S.S.I. 1999/90, art. 2(a), Sch. 1

### [<sup>F63</sup>28C Indemnity cover.

- (1) Regulations may make provision for the purpose of securing that, in prescribed circumstances, prescribed Part II practitioners hold approved indemnity cover.
- (2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—
  - (a) for securing that a person is not be added to any list unless he holds approved indemnity cover;
  - (b) for the removal from a list prepared by a Health Board of a Part II practitioner who does not within a prescribed period after the making of a request by the Health Board in the prescribed manner satisfy the Health Board that he holds approved indemnity cover.
- (3) For the purposes of this section—
  - “approved body” means a person or persons approved in relation to indemnity cover of any description, after such consultation as may be prescribed, by the Secretary of State or by such other person as may be prescribed;
  - “approved indemnity cover” means indemnity cover made—
    - (a) on prescribed terms; and
    - (b) with an approved body;
  - “indemnity cover”, in relation to a Part II practitioner (or person who proposes to provide Part II services), means a contract of insurance or other arrangement made for the purpose of indemnifying him and any person prescribed in relation to him to any prescribed extent against any liability which—

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(a) arises out of the provision of Part II services in accordance with arrangements made by him with a Health Board under this Part of this Act; and

(b) is incurred by him or any such person in respect of the death or personal injury of a person;

“list” has the same meaning as in section [F64 29(8)(b) to (e)];

“Part II practitioner” means a person whose name is on a list;

“Part II services” means F65 . . . general dental services, general ophthalmic services or pharmaceutical services;

“personal injury” means any disease or impairment of a person’s physical or mental condition and includes the prolongation of any disease or such impairment;

and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover.

(4) The regulations may provide that a person of any description who has entered into a contract or arrangement which is—

(a) in a form identified in accordance with the regulations in relation to persons of that description; and

(b) made with a person or persons so identified,

is to be treated as holding approved indemnity cover for the purposes of the regulations.]

#### Textual Amendments

**F63** S. 28C and sidenote inserted (1.3.2000) by 1999 c. 8, s. 56(1); S.S.I. 2000/38, art. 2

**F64** Words in s. 28C(3) substituted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(11)(a); S.S.I. 2004/58, art. 2(3)

**F65** Words in s. 28C(3) repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(11)(b); S.S.I. 2004/58, art. 2(3)

[F66 *Assistance and support: general dental services*

#### Textual Amendments

**F66** S. 28D and preceding cross-heading inserted (17.10.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 16, 43(3); S.S.I. 2005/492, art. 3(a), Sch. 1

### 28D Assistance and support: general dental services

(1) A Health Board may provide assistance and support to any person providing, or proposing to provide, general dental services.

(2) Assistance and support provided by a Health Board under subsection (1) is to be provided on such terms, including terms as to payment, as the Board think fit.

(3) In this section, “assistance” includes financial assistance.]

*Status: Point in time view as at 07/03/2006.*

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### *Provisions as to disqualification of practitioners*

#### **[<sup>F67</sup>29 The NHS tribunal.**

(1) The tribunal constituted in accordance with Schedule 8 shall continue under the name of “the NHS Tribunal” and that Schedule shall continue to have effect in relation to the Tribunal.

[<sup>F68</sup>(2) If the Tribunal receive from a Health Board representations that a person—

- (a) who has applied to be included; or
- (b) who is included,

in any list meets any of the conditions for disqualification, the Tribunal shall inquire into the case.]

(3) If the Tribunal receive such representations from any other person, they may inquire into the case.

(4) Representations under this section shall be made—

- (a) in the prescribed manner; and
- (b) where [<sup>F69</sup>the representations are that the second condition for disqualification is met and] regulations prescribe the time within which such representations are to be made, within that time.

(5) Subsections (6) to (11) apply for the purposes of this group of sections.

(6) The first condition for disqualification is that the [<sup>F70</sup>inclusion or continued] inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the [<sup>F71</sup>list—

- (a) in relation to a list referred to in subsection (8)(a), (cc) or (e), perform;
- (b) in relation to a list referred to in subsection (8)(c) or (d), undertake to provide or are approved to assist in providing;]

. undertake to provide <sup>F72</sup>. . . .

(7) The second condition for disqualification is that the person concerned—

- (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit; and
- (b) knew that he or (as the case may be) the other was not entitled to the benefit.

[ The third condition for disqualification is that the person concerned is unsuitable <sup>F73</sup>(7A) (by virtue of professional or personal conduct) to be included, or to continue to be included, in the list.]

(8) A “list” means—

[<sup>F74</sup>(a) a list of health care professionals of a prescribed description performing primary medical services [<sup>F75</sup>or approved to assist in the provision of such services];]

[ <sup>F76</sup>(aa) a list of medical practitioners approved to perform personal medical services—

- (i) in accordance with section 17C arrangements; or
- (ii) in connection with the provision of such services under a pilot scheme;]

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- (b) [<sup>F77</sup>a list of medical practitioners undertaking to provide general ophthalmic services;]
  - [<sup>F78</sup>(c) a list of dental practitioners and bodies corporate referred to in section 25(1) undertaking to provide, and of persons who are approved to assist in providing, general dental services;
  - (cc) a list of persons performing personal dental services;
  - (d) a list of medical practitioners and ophthalmic opticians undertaking to provide, and of persons who are approved to assist in providing, general ophthalmic services; or
  - (e) a list of registered pharmacists performing pharmaceutical care services,] prepared (in each case) under [<sup>F79</sup>or by virtue of this Part or Part I of this Act].
- [ In subsection (8)(a), “health care professional” has the same meaning as in <sup>F80</sup>(8A) section 17D.]
- (9) “Health scheme” means—
    - (a) any of the health services under section 1(1) or any corresponding enactment extending to England and Wales or Northern Ireland; and
    - (b) any prescribed scheme,
 and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.
  - (10) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.
  - (11) Cases in which representations are made that the first condition for disqualification is met are referred to below as efficiency cases; [<sup>F81</sup>and] cases in which representations are made that the second condition for disqualification is met are referred to below as fraud cases [<sup>F82</sup>; and cases in which representations are made that the third condition for disqualification is met are referred to below as unsuitability cases].
  - (12) In this section and sections 29A to 29C—
    - (a) “this group of sections” means this and those sections and Schedule 8; and
    - (b) the NHS Tribunal is referred to as the Tribunal.]

#### Textual Amendments

- F67** S. 29 substituted (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, art. 2(1)(2) (with saving for effect of 1999 c. 8, s. 58 by S.S.I. 2004/31, art. 3)
- F68** Words in s. 29(2) substituted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 26(2)(a), 43(3); S.S.I. 2006/121, art. 3(a)(b), Schs. 1, 2
- F69** Words in s. 29(4)(b) repealed (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 26(2)(b), 43(3); S.S.I. 2006/121, art. 3(a)(b), Schs. 1, 2
- F70** Words in s. 29(6) substituted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 26(2)(c)(i), 43(3); S.S.I. 2006/121, art. 3(a)(b), Schs. 1, 2

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- F71** Words in s. 29(6) substituted (7.3.2006, 1.4.2006 and 2.7.2010 for certain purposes and otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(c)(ii)**, 43(3); S.S.I. 2006/121 {art. 3(a)(b)}, Schs. 1, 2; S.S.I. 2010/185 {art. 3(b)}, Sch. 2
- F72** Words in s. 29(6) omitted (1.4.2004) by virtue of The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(1)(a)**
- F73** S. 29(7A) inserted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(d)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2
- F74** S. 29(8)(a) substituted for s. 29(8)(a)(aa) (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 5(3)(b)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.
- F75** Words in s. 29(8)(a) added (4.3.2004) by 2002 asp 5, ss. 25, 27(2), **Sch. 2 para. 2(4)(b)(i)**; S.S.I. 2004/33, **art. 2(1)(c)** (with savings for effects of 2002 asp 5, Sch. 2 para. 2(4) by S.S.I. 2004/34, art. 3(2))
- F76** S. 29(8)(aa) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), **Sch. 2 para. 2(4)(b)(ii)**; S.S.I. 2004/33, **art. 2(2)** (with savings for effects of 2002 asp 5, Sch. 2 para. 2(4) by S.S.I. 2004/34, art. 3(2))
- F77** S. 29(8)(b) repealed (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(e)(i)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2
- F78** S. 29(8)(c)-(e) substituted (7.3.2006, 1.4.2006 and 2.7.2010 for certain purposes otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(e)(ii)**, 43(3); S.S.I. 2006/121 {art. 3(a)(b)}, Schs. 1, 2; S.S.I. 2010/185 {art. 3(b)}, Sch. 2
- F79** Words in s. 29(8) substituted (4.3.2004 for certain purposes otherwise 1.4.2004) by 2002 asp 5, ss. 25, 27(2), **Sch. 2 para. 2(4)(b)(iii)**; S.S.I. 2004/33, **art. 2(1)(d)**, Sch. (with savings for effects of 2002 asp 5, Sch. 2 para. 2(4) by S.S.I. 2004/34, art. 3(2))
- F80** S. 29(8A) inserted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 5(3)(c)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.
- F81** Word in s. 29(11) repealed (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(f)(i)**, 43(3); S.S.I. 2006/121 {art. 3(a)(b)}, Schs. 1, 2
- F82** Words in s. 29(11) inserted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(2)(f)(ii)**, 43(3); S.S.I. 2006/121 {art. 3(a)(b)}, Schs. 1, 2

### [<sup>F83</sup>29A The NHS Tribunal: supplementary.

- (1) Where an ophthalmic optician is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification [<sup>F84</sup>or, as the case may be, the third condition for disqualification] if any director meets that condition (whether or not he first met that condition when he was a director).

[ A body corporate entitled, by virtue of section 43 of the Dentists Act 1984 (c. 24),  
<sup>F85</sup>(1A) to carry on the business of dentistry is to be treated for the purposes of this group of sections as meeting the second condition for disqualification or, as the case may be, the third condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).]

- (2) Where a body corporate carries on a retail pharmacy business, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any one of the body of persons controlling the body corporate meets that condition (whether or not he first met that condition when he was one of them).
- (3) A person who is included in any list (“the practitioner”) is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if—

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- (a) another person, because of an act or omission of his occurring in the course of providing [<sup>F86</sup>assisting in providing,][<sup>F87</sup>, or as the case may be performing,] any services mentioned in section 29(8) on the practitioner's behalf, meets that condition; and
  - (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 29(7)(a) occurring in the course of the provision [<sup>F88</sup>, [<sup>F89</sup>assistance in provision,] or performance,] of those services on his behalf.
- (3A) <sup>F90</sup> . . . . .
- (4) The Tribunal is not required to inquire into a fraud case if they have previously inquired into representations in respect of the person concerned and the same acts or omissions.
  - (5) In [<sup>F91</sup>an unsuitability case, a fraud case or an efficiency case], regulations may make provision (including provision modifying the effect of this Part) for the purpose of securing that the person subject to the inquiry is not added to any list until proceedings in that case are finally concluded.
  - (6) For the purposes of this group of sections, in [<sup>F92</sup>an unsuitability,] a fraud or efficiency case proceedings are finally concluded—
    - (a) if the Tribunal determine not to disqualify or conditionally disqualify him when they make that determination;
    - (b) if they determine to disqualify or conditionally disqualify him and no appeal is brought against the determination, at the end of the period for bringing an appeal;
    - (c) if they determine to disqualify or conditionally disqualify him and an appeal is brought against the determination, when the appeal process is exhausted.
  - (7) An inquiry under section 29 is not affected by the person subject to the inquiry withdrawing from, withdrawing any application to be included in or being removed from the list to which the case relates.]

#### Textual Amendments

- F83** Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)
- F84** Words in s. 29A(1) inserted (7.3.2006 for certain purposes otherwise 1.4.2006) by *Smoking, Health and Social Care (Scotland) Act 2005* (asp 13), **ss. 26(3)(a)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2
- F85** S. 29A(1A) inserted (7.3.2006 for certain purposes otherwise 2.7.2010) by *Smoking, Health and Social Care (Scotland) Act 2005* (asp 13), **ss. 26(3)(b)**, 43(3); S.S.I. 2006/121, **art. 3(a)**, Sch. 1; S.S.I. 2010/185 {art. 3(b)}, Sch. 2
- F86** Words in s. 29A(3)(a) inserted (7.3.2006, 1.4.2006 and 2.7.2010 for certain purposes and otherwise prosp.) by *Smoking, Health and Social Care (Scotland) Act 2005* (asp 13), **ss. 26(3)(c)(i)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2; S.S.I. 2010/185, **art. 3(b)**, Sch. 2
- F87** Words in s. 29A(3)(a) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(5)(a)(i); S.S.I. 2004/33, **art. 2(2)(b)**
- F88** Words in s. 29A(3)(b) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(5)(a)(ii); S.S.I. 2004/33, **art. 2(2)(b)**



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- F89** Words in s. 29A(3)(b) inserted (7.3.2006, 1.4.2006 and 2.7.2010 for certain purposes and otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 26(3)(c)(ii), 43(3); S.S.I. 2006/121, art. 3(a)(b), Schs. 1, 2; S.S.I. 2010/185, art. 3(b), Sch. 2
- F90** S. 29A(3A) repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), Sch. para. 1(12); S.S.I. 2004/58, art. 2(3)
- F91** Words in s. 29A(5) substituted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 26(3)(d), 43(3); S.S.I. 2006/121, art. 3(a)(b), Schs. 1, 2
- F92** Words in s. 29A(6) inserted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 26(3)(e), 43(3); S.S.I. 2006/121, art. 3(a)(b), Schs. 1, 2

### [<sup>F93</sup>29B Powers of NHS Tribunal.

- (1) Subsection (2) applies where the Tribunal are of the opinion—
- on inquiring into an efficiency case, that the person meets the first condition for disqualification;
  - on inquiring into a fraud case, that the person meets the second condition for disqualification<sup>F94</sup>;
  - on inquiring into an unsuitability case, that the person meets the third condition for disqualification.]

[<sup>F95</sup>(2) The Tribunal shall disqualify him for inclusion in—

- the list to which the case relates;
  - all lists within the same paragraph of subsection (8) of section 29 as that list; and
  - where the list to which the case relates is a list referred to in—
    - paragraph (c) of that subsection, all lists within paragraph (cc) of that subsection;
    - that paragraph (cc), all lists within that paragraph (c).]
- (3) If the Tribunal make a national disqualification they may also declare that the person is not fit to be engaged in any capacity in the provision [<sup>F96</sup> of the services to which the lists in question relate (referred to in this group of sections as a declaration of unfitness).
- (4) The Tribunal shall not make [<sup>F97</sup>a] disqualification or declaration under this section if they are of the opinion that it would be unjust to do so.
- (5) A disqualification under this section shall have effect when the case is finally concluded.
- (6) If a person is disqualified for inclusion in any list prepared by a Health Board, the Board must not enter him in the list and (if he is already included in the list) must remove him from the list.]

#### Textual Amendments

- F93** Ss. 29, 29A-29C and sidenotes substituted for s. 29 and sidenote (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, art. 2(1)(2) (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

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- F94** S. 29B(1)(c) inserted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 26(4)(a), 43(3); S.S.I. 2006/121, art. 3(a)(b), Schs. 1, 2
- F95** Words in s. 29B(2) substituted (7.3.2006 and 1.4.2006 for certain purposes and otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 26(4)(b), 43(3); S.S.I. 2006/121, art. 3(a)(b), Schs. 1, 2
- F96** Words in s. 29B(3) inserted (1.4.2004) by 2002 asp 5 ss. 25, 27(2), Sch. 2 para. 2(6)(c); S.S.I. 2004/33, art. 2(2)(b)
- F97** Word in s. 29B(4) substituted (7.3.2006 for certain purposes and otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 26(4)(c), 43(3); S.S.I. 2006/121, art. 3(a)(b), Schs. 1, 2

### [<sup>F98</sup>29C Conditional disqualification etc.

- (1) The functions of making disqualifications under section 29B include making a conditional disqualification, that is, a disqualification which is to come into effect only if the Tribunal determine (on a review under section 30) that the person subject to the inquiry has failed to comply with any conditions imposed by them.
- (2) Conditions may be imposed by virtue of subsection (1) with a view to—
  - (a) removing any prejudice to the efficiency of the services in question; [<sup>F99</sup>or]
  - (b) preventing any acts or omissions within section 29(7)(a) [<sup>F100</sup>;
  - (c) ensuring that the person—
    - (i) performs, undertakes to provide or assists in providing only services specified (or of a description specified) in the condition;
    - (ii) undertakes an activity (or course of activity) of a personal or professional nature, or refrains from conduct of a personal or professional nature, so specified (or of a description so specified),]
 (as the case may be).
- (3) Conditions so imposed shall have effect when proceedings in the case are finally concluded.
- (4) Section 29B(4) applies to a conditional disqualification as it applies to a disqualification.
- (5) The Tribunal may by directions—
  - (a) vary the terms of service of the person subject to the inquiry (including terms imposed by regulations under this Part);
  - [ vary any requirements to which the person subject to the inquiry is subject
  - <sup>F101</sup>(aa) under or by virtue of section [<sup>F102</sup>17F, 17P or 17X or this Part];]
  - (b) confer functions on any Health Board,
 for the purpose of or in connection with the imposition of any conditions by virtue of this section.
- (6) References in any enactment to a disqualification by the Tribunal do not include a conditional disqualification.]

#### Textual Amendments

- F98** Ss. 29, 29A-29C and sidenotes substituted for s. 29 and sidenote (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, art. 2(1)(2) (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)



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- F99** Word in s. 29C(2) repealed (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 26(5)(a)(i), 43(3); S.S.I. 2006/121, art. 3(a)(b), Schs. 1, 2
- F100** S. 29C(2)(c) inserted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 26(5)(a)(ii), 43(3); S.S.I. 2006/121, art. 3(a)(b), Schs. 1, 2
- F101** S. 29C(5)(aa) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, Sch. para. 1(1)(b)
- F102** Words in s. 29C(5)(aa) substituted (7.3.2006 for certain purposes otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 26(5)(b), 43(3); S.S.I. 2006/121, art. 3(a), Sch. 1

### [<sup>F103</sup>30 Review etc. of disqualification.

- (1) The Tribunal may review any disqualification, conditional disqualification or declaration of unfitness—
  - (a) if the disqualified or conditionally disqualified person requests a review; or
  - (b) in any other circumstances in which they consider it appropriate.
- (2) On a review under subsection (1), the Tribunal may—
  - (a) remove a disqualification or provide that a declaration of unfitness is to cease to have effect;
  - (b) make a disqualification conditional;
  - (c) in the case of a conditional disqualification, remove it, vary the conditions or make it unconditional,and, on a review of a fraud case, may make any further disqualification or conditional disqualification which they consider appropriate.
- (3) If any Health Board request a review of a conditional disqualification on the ground that—
  - (a) there has been a change in the circumstances by reference to which the conditions were imposed;
  - (b) the person concerned has failed to comply with the conditions; or
  - (c) in a fraud case, the person concerned has since the Tribunal imposed the conditions (or made the disqualification conditional) again satisfied the second condition for disqualification,the Tribunal shall review the conditional disqualification.
- (4) In the case of a person who is providing [<sup>F104</sup>, or as the case may be performing,]services in England and Wales or Northern Ireland, the reference in subsection (3) to a Health Board includes [<sup>F105</sup>a reference to any authority which] under the provisions in force in England and Wales or Northern Ireland corresponding to this Part [<sup>F106</sup>would be entitled to request a review corresponding to that mentioned in the subsection].
- (5) On a review under subsection (3) of a conditional disqualification, the Tribunal may remove it, vary the conditions or make it unconditional and, on a review of a fraud case, may make any further disqualification or conditional disqualification which they consider appropriate.
- (6) If, on a review under this section of a fraud case—

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- (a) there is a national disqualification which the Tribunal do not remove or make conditional;
  - (b) there is a national disqualification which is conditional and which the Tribunal make unconditional; or
  - (c) the Tribunal make a national disqualification,
- they may also make a declaration of unfitness.
- (7) The Tribunal shall not under this section—
- (a) in the case of a conditional disqualification, make it unconditional or vary the conditions; or
  - (b) make any further disqualification or conditional disqualification;
  - (c) make a declaration of unfitness,
- if they are of the opinion that it would be unjust to do so.
- (8) A determination by the Tribunal under this section shall have effect—
- (a) if no appeal is brought against it, at the end of the period for bringing an appeal;
  - (b) if an appeal is brought against it, when the appeal process is exhausted.
- (9) The Tribunal may hold an inquiry for the purposes of any review under this section.]

#### Textual Amendments

**F103** S. 30 substituted (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 58(2), 67(1);

S.S.I. 2004/32, art. 2(1)(a)(2)(a)

**F104** Words in s. 30(4) inserted (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(7)(a); S.S.I. 2004/33,

art. 2(1)(c)

**F105** Words in s. 30(4) substituted (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(7)(b); S.S.I.

2004/33, art. 2(1)(c)

**F106** Words in s. 30(4) added (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(7)(c); S.S.I. 2004/33,

art. 2(1)(c)

### 31 Disqualification provisions in England or Wales or Northern Ireland.

<sup>F107</sup>(1) If—

- (a) under [<sup>F108</sup>or by virtue of] any provisions in force in England or Wales or Northern Ireland corresponding to the provisions of this Part, a person is for the time being disqualified for inclusion in all lists prepared under [<sup>F109</sup>or by virtue of—]
  - <sup>F109</sup>(i) those provisions so in force; or
  - (ii) provisions so in force corresponding to the provisions of Part I of this Act,]
 of persons [<sup>F110</sup>performing,] undertaking to provide [<sup>F111</sup>, approved to assist in providing or approved to perform][<sup>F112</sup>any of the services mentioned in one of the paragraphs of section 29(8)], then
- (b) [<sup>F113</sup>in relation to the services in question] that person shall, so long as that disqualification is in force, be disqualified for inclusion in [<sup>F114</sup>any list and (if also the subject of such a declaration under those provisions corresponding to a declaration of unfitness) be treated as if a declaration of unfitness had been made in respect of him].

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- [<sup>F115</sup>(2) Where under the conditional disqualification provisions in England and Wales or Northern Ireland—
- (a) any conditions are imposed in relation to the provision [<sup>F116</sup>, assistance in provision or performance] by any person of any of the services mentioned in section 29(8); or
  - (b) any conditions so imposed are varied,
- the Secretary of State may, by a notice in writing given to each Health Board and to the person in question, impose those conditions in relation to the provision [<sup>F116</sup><sup>F117</sup> . . . or performance] by that person of those services under this Part [<sup>F118</sup>, [<sup>F119</sup>Part 1 of this Act.] section 17C arrangements or a pilot scheme].
- (3) A notice under subsection (2) may make such modifications of the conditions as the Secretary of State considers necessary for them to have the like effect in relation to Scotland as they have in relation to England and Wales or (as the case may be) Northern Ireland, but only if the Secretary of State has previously given the person concerned written notice of the proposed modifications and an opportunity (in accordance with such requirements, if any, as may be prescribed) to make representations about them.
  - (4) Conditions imposed by a notice under subsection (2) shall cease to have effect if the Secretary of State withdraws the notice by giving written notice to the person concerned.
  - (5) In this section, “the conditional disqualification provisions in England and Wales or Northern Ireland” means any provisions in force in England and Wales or Northern Ireland corresponding to sections 29C and (so far as relating to conditional disqualifications) 30.]

#### Textual Amendments

- F107** S. 31 renumbered as s. 31(1) (4.3.2004) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 49; S.S.I. 2004/32, **art. 2(2)(b)(c)**
- F108** Words in s. 31(1)(a) inserted (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(8)(a)(i); S.S.I. 2004/33, **art. 2(1)(c)**
- F109** Words in s. 31(1)(a) inserted (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(8)(a)(ii); S.S.I. 2004/33, **art. 2(1)(c)**
- F110** Word in s. 31(1)(a) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(2)(a)**
- F111** Words in s. 31(1)(a) inserted (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(8)(a)(iii); S.S.I. 2004/33, **art. 2(1)(c)**
- F112** Words in s. 31(1)(a) substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 49(a); S.S.I. 2004/32, **art. 2(2)(b)(c)**
- F113** Words in s. 31(1)(b) inserted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 49(b); S.S.I. 2004/32, **art. 2(2)(b)(c)**
- F114** Words in s. 31(1)(b) substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 49(b); S.S.I. 2004/32, **art. 2(2)(b)(c)**
- F115** S. 31(2)-(5) inserted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 49(c); S.S.I. 2004/32, **art. 2(2)(b)(c)**
- F116** Words in s. 31(2) inserted (4.3.2004 for certain purposes otherwise 1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(8)(b)(i); S.S.I. 2004/33, **art. 2(1)(d)(2)(b)**, Sch.
- F117** Words in s. 31(2) omitted (1.4.2004) by virtue of The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(2)(b)(i)**

*Status: Point in time view as at 07/03/2006.*

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**F118** Words in s. 31(2) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(8)(b)(ii); S.S.I. 2004/33, **art. 2(2)(b)**

**F119** Words in s. 31(2) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(2)(b)(ii)**

## 32 Regulations as to sections 29 to 31.

[<sup>F120</sup>(1)] Regulations shall make provision—

- (a) [<sup>F121</sup>for inquiries]. . . under sections 29 to 31 [<sup>F122</sup>to be held in accordance with such procedure as may be prescribed by or determined under the regulations]. . . and, in particular, for <sup>F123</sup>. . . any person who is the subject of such an inquiry [<sup>F124</sup>to be] informed, as soon as may be, of the substance of any charge or complaint to which the inquiry relates and [<sup>F125</sup>to have] an opportunity—
- (i) of appearing, either in person or by counsel or solicitor or such other representative as may be prescribed, before the Tribunal <sup>F126</sup>. . . , and
  - (ii) of being heard by the Tribunal <sup>F126</sup>. . . , and of calling witnesses and producing other evidence on his behalf,
- and [<sup>F127</sup>for the hearing], <sup>F126</sup>. . . [<sup>F124</sup>to be] in public if the person who is the subject of the inquiry so requests;
- (b) for conferring on the Tribunal <sup>F126</sup>. . . such powers as the Secretary of State considers necessary for the purpose of holding such inquiries, including power to require the attendance of witnesses and the production of documents and to administer oaths; and
- (c) for the publication of decisions of the Tribunal <sup>F126</sup>. . . under this section and of the imposition and removal of any disqualification [<sup>F128</sup>or condition]imposed by virtue of this section, and for the intimation to any person who is the subject of such an inquiry of the grounds upon which any disqualification [<sup>F128</sup>or condition]has been imposed in his case.

[<sup>F129</sup>(2)] Regulations under subsection (1)(a) may in particular provide that, where (apart from the regulations) it would be the duty of the Tribunal to inquire into [<sup>F130</sup>an efficiency case and a fraud case or an unsuitability case or any other combination of more than one such category of case] in respect of the same person, they may inquire into one case before inquiring into the other and, after proceedings in the first case are finally disposed of, may if they think it appropriate adjourn the other case indefinitely.]

### Textual Amendments

**F120** S. 32 renumbered as s. 32(1) (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 50; S.S.I. 2004/32, **art. 2(1)(c)(2)(c)**

**F121** Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, **s. 11(2)(a)**; S.I. 1995/3214, art. 2, **Sch.**(with art. 3)

**F122** Words in s. 32(a) inserted (1.1.1996) by 1995 c. 31, **s. 11(2)(b)**; S.I. 1995/3214, art. 2, **Sch.** (with art. 3)

**F123** Words in s. 32(a) repealed (1.1.1996) by 1995 c. 31, ss. 11(2)(c), 14(2), **Sch.**; S.I. 1995/3214, art. 2, **Sch.**(with art. 3)

**F124** Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, **s. 11(2)(d)**; S.I. 1995/3214, art. 2, **Sch.** (with art. 3)

**F125** Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, **s. 11(2)(e)**; S.I. 1995/3214, art. 2, **Sch.** (with art. 3)

*Status: Point in time view as at 07/03/2006.*

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- F126** Words in s. 32(a)(i)(ii)(b)(c) repealed (1.1.1996) by 1995 c. 31, s. 14(2), **Sch.**; S.I. 1995/3214, art. 2, **Sch.** (with art. 3)
- F127** Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, s. 11(2)(f); S.I. 1995/3214, art. 2, **Sch.** (with art. 3)
- F128** Words in s. 32(1)(c) inserted (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), **Sch. 4 para. 50(a)**; S.S.I. 2004/32, **art. 2(1)(c)(2)(c)**
- F129** S. 32(2) inserted (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), **Sch. 4 para. 50(b)**; S.S.I. 2004/32, **art. 2(1)(c)(2)(c)**
- F130** Words in s. 32(2) substituted (7.3.2006 for certain purposes otherwise 1.4.2006) by **Smoking, Health and Social Care (Scotland) Act 2005 (asp 13)**, ss. 26(6), 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

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

- C8** S. 32(a) extended (1.1.1996) by 1995 c. 31, s. 11(1); S.I. 1995/3214, **art. 2 Sch.**(with art. 3)

**[<sup>F131</sup>32A Applications for interim suspension.**

- (1) A Health Board who have made representations under section 29 may, at any time before the case is disposed of by the Tribunal, apply to the Tribunal for a direction to be made under subsection (2) below in relation to the person to whom the case relates.

[ A Health Board may, if they have requested a review of a conditional disqualification  
<sup>F132</sup>(1A) on the ground mentioned in section 30(3)(b) or (c), at any time before the review is concluded apply to the Tribunal for a direction to be made under subsection (2) in relation to the person to whom the review relates.]]

- (2) If, on an application under this section, the Tribunal are satisfied that [<sup>F133</sup>either of the conditions for doing so is satisfied], they shall direct that subsection (3) below shall apply to the person concerned as respects

- [<sup>F134</sup>(a) services of the kind to which the case in question, or the case to which the review in question, relates; and  
(b) if the services are either general dental services or personal dental services, both general dental services and personal dental services.]

[<sup>F135</sup>(2A) The conditions for giving such a direction are—

- (a) that it is necessary to do so in order to protect persons who are, or may be, provided with [<sup>F136</sup>primary medical services [<sup>F137</sup>, pharmaceutical care services] or] services under this Part [<sup>F138</sup>, section 17C arrangements or a pilot scheme] to which the case in question, or the case to which the review in question, relates; [<sup>F139</sup> or  
(b) that it is otherwise in the public interest to do so.]]

(3) A person to whom this subsection applies shall—

- (a) be deemed to have been removed from any relevant list in which his name is included,  
(b) be disqualified for inclusion in any relevant list in which his name is not included, and  
(c) be deemed to be a person in relation to whom there is in force a declaration [<sup>F140</sup>of unfitness in relation to ]the provision [<sup>F141</sup>or performance ]of services of the relevant kind.

(4) A direction under subsection (2) above shall cease to have effect on the Tribunal's disposing of the case [<sup>F142</sup>or review] in connection with which it is made.

*Status: Point in time view as at 07/03/2006.*

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- [<sup>F143</sup>(5) In subsection (2) above, the reference to patients is to persons to whom services of the kind to which the case in question relates are, or may be, provided under this Part of this Act.]
- (6) In the application of subsection (3) above to any person—
- (a) “relevant list” means
- [<sup>F144</sup>(i) a list of persons performing;
- (ii) a list of persons undertaking to provide and of persons approved to assist in providing,
- services] of the kind to which the direction applying the subsection to him relates, and
- (b) “services of the relevant kind” means services of the kind to which that direction relates.
- [<sup>F145</sup>(7) Regulations may provide that where a Health Board, in accordance with regulations made under section 17F, 17P, 17X, 25(2) or 26(2), suspend a person from a list prepared under regulations made under the section in question and the Board apply to the Tribunal for a direction to be made under subsection (2) in relation to the person to whom the suspension applies, the suspension may continue until the Tribunal determine the application.]

#### Textual Amendments

- F131** S. 32A inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 8; S.I. 1995/3214, art. 2, **Sch.**(with art. 3); S.I. 1996/552, **art. 2**
- F132** S. 32A(1A) inserted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(a); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)
- F133** Words in s. 32A(2) substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(b); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)
- F134** S. 32A(2)(a)(b) substituted for words (7.3.2006 for certain purposes otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(7)(a)**, 43(3); S.S.I. 2006/121, **art. 3(a)**, Sch. 1
- F135** S. 32A(2A) inserted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(c); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)
- F136** Words in s. 32A(2A)(a) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(3)(a)**
- F137** Words in s. 32A(2A)(a) inserted (7.3.2006 for certain purposes otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(7)(b)(i)**, 43(3); S.S.I. 2006/121, **art. 3(a)**, Sch. 1
- F138** Words in s. 32A(2A)(a) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(9)(a); S.S.I. 2004/33, **art. 2(2)(b)** (with savings for effects of 2002 asp 5, Sch. 2 para. 2(9) by S.S.I. 2004/34, art. 3(2))
- F139** S. 32A(2A)(b) and word substituted for s. 32A(2A)(b) (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(7)(b)(ii)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2
- F140** Words in s. 32A(3)(c) substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(d); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)
- F141** Words in s. 32A(3)(c) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(9)(b); S.S.I. 2004/33, **art. 2(2)(b)** (with savings for effects of 2002 asp 5, Sch. 2 para. 2(9) by S.S.I. 2004/34, art. 3(2))
- F142** Words in s. 32A(4) inserted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(e); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)



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- F143** S. 32A(5) repealed (4.3.2004) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 51(f), Sch. 5; S.S.I. 2004/32, **art. 2(2)(b)(c)(d)** (with S.S.I. 2004/31, art. 3)
- F144** Words in s. 32A(6)(a) substituted (7.3.2006 for certain purposes otherwise 1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(7)(c)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2
- F145** Words in s. 32A(7) inserted (7.3.2006 and 1.4.2006 for certain purposes and otherwise prosp.) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 26(7)(d)**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2

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

- C9** S. 32A functions modified (4.3.2004) by The National Health Service (Tribunal) (Scotland) Regulations 2004 (S.S.I. 2004/38), **reg. 27** (with savings in regs. 32-34)

### **[<sup>F146</sup>32B <sup>F147</sup>Suspension pending appeal.**

- <sup>F146</sup>(1) Where, on disposing of a case under section 29B, the Tribunal make a national disqualification, they may, if they consider that either of the conditions mentioned in section 32A(2A) is satisfied, direct that section 32A(3) shall apply or, if a direction has been given under section 32A(2), shall continue to apply to him as respects services of the kind to which the disqualification relates.]
- (2) A direction under subsection (1) above shall cease to have effect—
- where no appeal against the [<sup>F148</sup>national disqualification] is brought, at the end of the period for bringing an appeal, and
  - where an appeal against [<sup>F148</sup>the disqualification] is brought, when the appeal process has been exhausted.
- (3) Where the power conferred by subsection (1) above is exercisable by virtue of a [<sup>F149</sup>disqualification which is not coupled with a declaration of unfitness], section [<sup>F150</sup>32A(3)] shall have effect, in relation to the exercise of that power, with the omission of paragraph (c).
- [<sup>F151</sup>(4) In subsection (1) above, the reference to patients is to persons to whom services of the kind to which the direction under section 29(3)(b) relates are, or may be, provided under this Part of this Act.]

#### **Textual Amendments**

- F146** S. 32B(1) and preceding side-note substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 52(a); S.S.I. 2004/32, **art. 2(2)(c)** (with savings for effects of 1999 c. 8 by S.S.I. 2004/31, art. 3)
- F147** S. 32B inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, **s. 8**; S.I. 1995/3124, **art. 2, Sch.** (with art. 3); S.I. 1996/552
- F148** Words in s. 32B(2)(a)(b) substituted (prosp.) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 52(b) and also same words substituted (4.3.2004) by 2002 asp 5, s. 25, Sch. 2, para. 2(10); S.S.I. 2004/33, **art. 2(1)(c)** (with savings for effects of 2002 asp 5 by S.S.I. 2004/34, art. 3(2))
- F149** Words in s. 32B(3) substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 52(c); S.S.I. 2004/32, **art. 2(2)(e)** (with savings for effects of 1999 c. 8 by S.S.I. 2004/31, art. 3)
- F150** Words in s. 32B(3) substituted (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(10)(b); S.S.I. 2004/33, **art. 2(1)(e)** (with savings for effects of 2002 asp 5 by S.S.I. 2004/34, art. 3(2))
- F151** S. 32B(4) repealed (4.3.2004) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 52(d), Sch. 5; S.S.I. 2004/32, **art. 2(2)(c)(d)** (with savings for effects of 1999 c. 8 by S.S.I. 2004/31, art. 3)

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

**C10** S. 32B(1) functions modified (4.3.2004) by [The National Health Service \(Tribunal\) \(Scotland\) Regulations 2004 \(S.S.I. 2004/38\)](#), [reg. 27](#) (with regs. 32-34))

### [<sup>F152F153</sup> **Sections 32A and 32B: procedure etc.**

- (1) Before making a direction under section 32A(2) or 32B(1) in relation to any person, the Tribunal shall give him an opportunity—
  - (a) to appear before them, either—
    - (i) in person; or
    - (ii) by counsel or solicitor or such other representative as may be prescribed; and
  - (b) to be heard and to call witnesses and produce other evidence.
- (2) Regulations may—
  - (a) make provision for, or for the determination of, procedure in relation to determining applications under section 32A or the exercise of the power conferred by section 32B(1), and
  - (b) provide for the functions of the Tribunal under section 32A or 32B to be carried out, or to be carried out in prescribed circumstances, by the chairman or a deputy chairman of the Tribunal.

#### Textual Amendments

**F152** Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, [art. 2\(1\)\(2\)](#) (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

**F153** S. 32C inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, [s. 8](#); S.I. 1995/3214, [art. 2](#), [Sch.](#)(with art. 3); S.I. 1996/552, [art. 2](#)

### [<sup>F154F155</sup> **Corresponding provision in England or Wales or Northern Ireland**

- (1) This section applies where it appears to the Scottish Ministers that there is provision in England or Wales or Northern Ireland under which a person may be dealt with in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under sections 29 to 32B.
- (2) A decision in England or Wales or Northern Ireland to deal with such a person in such a way is referred to in this section as a “corresponding decision”.
- (3) If this section applies, the Scottish Ministers may make regulations providing for the effect to be given in Scotland to a corresponding decision; and where the decision corresponds (whether or not exactly) with a decision which may be made under section 29C or (so far as relating to conditional disqualification) 30 the regulations may provide for the effect to be given to be determined in the prescribed manner by the Scottish Ministers.
- (4) That effect need not be the same as the effect of the corresponding decision in the place where it was made.]]



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#### Textual Amendments

- F152** Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, **art. 3**)
- F154** S. 32D substituted (7.3.2006 for certain purposes otherwise 1.4.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), **ss. 27**, 43(3); S.S.I. 2006/121, **art. 3(a)(b)**, Schs. 1, 2
- F155** S. 32D inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, **s. 8**; S.I. 1995/3214, **art. 2**, **Sch.** (with **art. 3**); S.I. 1996/552, **art. 2**

#### <sup>F156</sup>**32E Payments in consequence of suspension.**

- (1) Regulations may provide for the making to persons to whom section 32A(3) or 32D(2) applies of payments in consequence of the application of that provision.
- (2) Regulations under subsection (1) above may provide for the determination by the Secretary of State in a prescribed manner of anything for which provision may be made by regulations under that subsection.

#### Textual Amendments

- F156** S. 32E inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, **s. 8**; S.I. 1995/3214, **art. 2**, **Sch.** (with **art. 3**); S.I. 1996/552, **art. 2**

### *Supplementary provisions relating to Part II*

#### **33 Powers of Secretary of State where services are inadequate.**

If the Secretary of State is satisfied, after such inquiry as he may think fit, as respects the area of any Health Board or part of any such area that the persons included in any list prepared under this Part—

- (a) of medical practitioners undertaking to provide general medical services,
- (b) of dental practitioners undertaking to provide general dental services,
- (c) of persons undertaking to provide general ophthalmic services, or
- (d) of persons undertaking to provide pharmaceutical services,

are not such as to secure the adequate provision of the services in question in that area or part, or that for any other reason any considerable number of persons in any such area or part are not receiving satisfactory services under the arrangements in force under this Part, he may authorise the Health Board to make such other arrangements as he may approve, or may himself make other arrangements, and may dispense with any of the requirements of regulations made under this Part so far as appears to him to be necessary to meet exceptional circumstances and enable such arrangements to be made.

#### **34 Exercise of choice of medical practitioner etc. in certain cases.**

Regulations may provide that where a right to choose the person by whom services are to be provided under this Part is conferred by or under any provision of this Part,

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that right shall, in the case of such persons as may be specified in the regulations, be exercisable on their behalf by other persons so specified.

### [<sup>F157</sup>35 Sale of medical practices.

(1) It is unlawful to sell the goodwill of the medical practice of a person who has at any time—

- (a) provided general medical services under arrangements made with any Executive Council or Health Board under the <sup>M7</sup>National Health Service (Scotland) Act 1947, the <sup>M8</sup>National Health Service (Scotland) Act 1972 or [<sup>F158</sup>(prior to its repeal) section 19 of] this Act, or
- (b) provided or performed personal medical services in accordance with section 17C arrangements, [<sup>F159</sup>(prior to the coming into force of section 2C)]<sup>F160</sup> or
- (c) provided or performed primary medical services in accordance with section 17C arrangements or arrangements under section 2C(2) or under a general medical services contract—
  - (i) in prescribed circumstances; or
  - (ii) if regulations so provide, in all circumstances.]

unless that person no longer provides or performs such services and has never carried on the practice in a relevant area .

(2) In this section—

“goodwill” includes any part of goodwill and, in relation to a person practising in partnership, means his share of the goodwill of the partnership practice;

“medical practice” includes any part of a medical practice; and

“relevant area”, in relation to any Executive Council or Health Board by arrangement [<sup>F161</sup>or contract] with whom a person has at any time [<sup>F162</sup>provided or performed services as specified in subsection (1)]

(3) Schedule 9 supplements the provisions of this section.]

#### Textual Amendments

**F157** S. 35 substituted (1.4.1998) by 1997 c. 47, s. 34(2); S.I. 1998/631, art. 2(a), Sch. 1

**F158** Words in s. 35(1)(a) inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1)(2), Sch. para. 1(14)(a)(i); S.S.I. 2004/58, art. 2, Sch.

**F159** Words in s. 35(1)(b) inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1)(2), Sch. para. 1(14)(a)(ii); S.S.I. 2004/58, art. 2, Sch.

**F160** S. 35(1)(c) and word inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1)(2), Sch. para. 1(14)(a)(iii); S.S.I. 2004/58, art. 2, Sch.

**F161** S. 35(2): words in the "definition of relevant" inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1)(2), Sch. para. 1(14)(b)(i); S.S.I. 2004/58, art. 2, Sch.

**F162** Words in s. 35(2) substituted (13.2.2004 for certain purposes, otherwise 1.4.2004) for s. 35(2)(a)(b) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1)(2), Sch. para. 1(14)(b)(ii); S.S.I. 2004/58, art. 2, Sch.

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

**C11** S. 35(1)(c) modified (1.4.2004) by The General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004 (S.S.I. 2004/163), **art. 96**

**Marginal Citations**

**M7** 1947 c. 27.

**M8** 1972 c. 58.

[<sup>F163</sup>**35A Interpretation of Part II.**

Where, under a direction by the Secretary of State, a Health Board has delegated any of its functions to an NHS trust, any reference in this Part to a Health Board in relation to such a delegated function shall, unless the context otherwise requires, include a reference to an NHS trust.]

**Textual Amendments**

**F163** S. 35A inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 55**; S.S.I. 1999/90, **art. 2(a)(b)**

**Status:**

Point in time view as at 07/03/2006.

**Changes to legislation:**

National Health Service (Scotland) Act 1978, Part II is up to date with all changes known to be in force on or before 18 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.