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# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART II

#### PROVISION OF SERVICES

*[<sup>F1</sup> Remuneration for services]*

#### Textual Amendments

**F1** S. 28A inserted (*prosp.*) by Health and Social Security Act 1984 (c. 48, SIF 113:1), ss. 7(2), 27(1)

#### **28A Regulations as to remuneration.**

- (1) Regulations shall make provision as to the remuneration to be paid to persons who provide general medical services, general dental services, general ophthalmic services or pharmaceutical services under this Part of this Act [<sup>F2</sup> and may include provision for the remuneration of persons providing those services in respect of the instruction of any person in matters relating to those services]
- (2) Subject to sections 19(3) and 25(3), remuneration under the regulations 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 [<sup>F3</sup> or instruction].and the regulations may provide that the remuneration shall be determined from time to time by such authority as may be specified.

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- (3) If section 10 of the National Health Service Act <sup>M1</sup>1966 is brought into operation, upon the date of its commencement the words “section 10 of the National Health Service Act 1966 and section” shall be substituted for the words “sections 19(3) and” in subsection (2) above.

#### Textual Amendments

- F2** Words added by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), **s. 15(1)**  
**F3** Words added by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), **s. 15(2)**

#### Marginal Citations

- M1** [1966 c.8\(113:2\)](#).

### [<sup>F4</sup>28B Remuneration— supplementary.

- (1) The authority specified in regulations under the preceding section may be the Secretary of State or some other person or persons and is referred to in this section as a “determining authority”.
- (2) The power conferred by the preceding section includes power to make regulations providing for a determination in more than one stage and by more than one determining authority.
- (3) Regulations under the preceding section shall provide—
- (a) that determination may be made with respect either to any of the descriptions of services mentioned in subsection (1) of the preceding section generally or to any category of services falling within such a description;
  - (b) that, before making such a determination, the determining authority shall consult—
    - (i) a prescribed body established to provide advice in connection with the matters to be determined; or
    - (ii) an organisation appearing to the Secretary of State to be representative of persons to whose remuneration the determination would relate, or both such a body and such an organisation.
- (4) Regulations under the preceding section may provide—
- (a) that a determination such as is mentioned in subsection (3) above shall 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; and
  - (b) 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.
- (5) Regulations under the preceding section may provide—
- (a) for determinations of the remuneration of particular persons or descriptions of persons for particular items of service or in particular circumstances;

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- (b) that a determining authority shall have a discretion, when making a determination by virtue of this subsection,—
    - (i) as to the amount of remuneration to be paid; and
    - (ii) as to the persons to whom and conditions on which it is to be paid; and
  - (c) that a determination made by virtue of this subsection may be revised—
    - (i) to correct an error; or
    - (ii) where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact.
- (6) Regulations under the preceding section 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 the regulations;
    - (ii) scales, indices or other data of any description specified in the regulations; and
  - (b) that any determination which in accordance with regulations made by virtue of paragraph (a)(ii) above 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 index or scale 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.
- (7) Any determination under regulations under the previous section shall be made after taking into account all the matters which are considered to be relevant by the determining authority and, without prejudice to the generality of this subsection, such matters may include—
- (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 [<sup>F5</sup>the description 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;
  - (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;
  - [<sup>F6</sup>(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.

[<sup>F7</sup>(8) If the determination is of remuneration for a category of services falling within one of the descriptions of services mentioned in subsection (1) of the preceding section, the reference in subsection (7)(a) above 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.]]

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### Textual Amendments

- F4** S. 28B added (*prosp.*) by Health and Social Security Act 1984 (c. 48, SIF 113:1), ss. 7(3), 27(1)
- F5** Words substituted by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), s. 4(6)(a)
- F6** Para. (d) substituted by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), s. 4(6)(b)
- F7** Subsection (8) inserted by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), s. 4(7)

VALID FROM 01/03/2000

### [<sup>F8</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—

- (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 29;

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

“Part II services” means general medical services, 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;

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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.]

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**Textual Amendments**

**F8** S. 28C and sidenote inserted (1.3.2000) by 1999 c. 8, s. 56(1); S.S.I. 2000/38, art. 2

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