



# 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)

#### **[<sup>F2</sup>28A Remuneration for Part II services.**

- (1) The remuneration to be paid to persons who provide <sup>F3</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).
- (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.

*Status: Point in time view as at 07/02/2007.*

*Changes to legislation: National Health Service (Scotland) Act 1978, Cross Heading: Remuneration for services is up to date with all changes known to be in force on or before 14 August 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. (See end of Document for details)*

- (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

- F2** 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**
- F3** 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>F4</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—
- (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.

*Status: Point in time view as at 07/02/2007.*

*Changes to legislation: National Health Service (Scotland) Act 1978, Cross Heading: Remuneration for services is up to date with all changes known to be in force on or before 14 August 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. (See end of Document for details)*

- (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 [F5section] 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;
  - (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;

*Status: Point in time view as at 07/02/2007.*

**Changes to legislation:** National Health Service (Scotland) Act 1978, Cross Heading: Remuneration for services is up to date with all changes known to be in force on or before 14 August 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. (See end of Document for details)

- (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

- F4** 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**
- F5** 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)

- C1** S. 28B modified (1.10.1999) by 1999 c. 8, s. 57(2); S.S.I. 1999/90, art. 2(a), **Sch. 1**

### [<sup>F6</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

*Status: Point in time view as at 07/02/2007.*

*Changes to legislation: National Health Service (Scotland) Act 1978, Cross Heading: Remuneration for services is up to date with all changes known to be in force on or before 14 August 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. (See end of Document for details)*

(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 [F7]29(8)(b) to (e)];

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

“Part II services” means F8. . . 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

**F6** S. 28C and sidenote inserted (1.3.2000) by 1999 c. 8, s. 56(1); S.S.I. 2000/38, art. 2

**F7** 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)

**F8** 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)

**Status:**

Point in time view as at 07/02/2007.

**Changes to legislation:**

National Health Service (Scotland) Act 1978, Cross Heading: Remuneration for services is up to date with all changes known to be in force on or before 14 August 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.