



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART IV

#### POWERS OF THE SECRETARY OF STATE

##### *Control of maximum prices for medical supplies*

**[<sup>F1</sup>49] Maximum prices of medical supplies may be controlled.**

- (1) The Secretary of State may by order provide for controlling maximum prices to be charged for any medical supplies required for the purposes of this Act.
- (2) The Secretary of State may by direction given with respect to any undertaking, or by order made with respect to any class or description of undertakings, being an undertaking or class or description of undertakings concerned with medical supplies required for the purposes of this Act, require persons carrying on the undertaking or undertakings of that class or description—
  - (a) to keep such books, accounts and records relating to the undertaking as may be prescribed by the direction or, as the case may be, by the order or a notice served under the order;
  - (b) to furnish at such times, in such manner and in such form as may be so prescribed such estimates, returns or information relating to the undertaking as may be so prescribed.
- (3) The additional provisions set out in Schedule 10 have effect in relation to this section; and

“medical supplies” in this section includes surgical, dental and optical materials and equipment; and

“undertaking” in this section and that Schedule means any public utility undertaking or any undertaking by way of trade or business.]

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**Changes to legislation:** National Health Service (Scotland) Act 1978, Part IV is up to date with all changes known to be in force on or before 27 July 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)

**Textual Amendments**  
F1 S. 49 ceased to have effect in relation to health service medicines (1.9.1999 and 1.11.1999 for specified purposes) by virtue of 1999 c. 8, s. 38(5); S.I. 1999/2177, art. 2(3)(4)(b)

*Additional powers as to services and supplies; and the use of those services and supplies for private patients*

50 ..... F2

**Textual Amendments**  
F2 S. 50 repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), Sch. 3

51, 52. .... F3

**Textual Amendments**  
F3 Ss. 16(3), 20(2), 51, 52, 59–63, 65–68, 96(2), Sch. 16 paras. 25, 43 repealed by Health Services Act 1980 (c. 53), Sch. 7

53 ..... F4

**Textual Amendments**  
F4 S. 53 repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), Sch. 3

**54 Restriction of powers under sections 44, 50 and 53.**

The Secretary of State shall exercise the powers conferred on him by the provisions of section 44 (supplies of blood and other substances) <sup>F5</sup> only if and to the extent that he is satisfied that anything which he proposes to do or allow under those powers—

- (a) will not to a significant extent interfere with the performance by him of any duty imposed on him by this Act to provide accommodation or services of any kind; and
- (b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than as private patients.

**Textual Amendments**  
F5 Words repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), Sch. 3

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*Further provisions as to payments by patients for health service accommodation and services*

## **55 Hospital accommodation on part payment.**

- (1) The Secretary of State may authorise the accommodation described in this section to be made available, [<sup>F6</sup>for patients to such extent as he may determine, and may recover such charges as he may determine in respect of such accommodation and calculate them on any basis that he considers to be the appropriate commercial basis].

The accommodation mentioned above is—

- (a) in single rooms or small wards which are not for the time being needed by any patient on medical grounds;
- (b) at any hospital [<sup>F7</sup>vested in the Secretary of State].

(2<sup>F8</sup>)

### **Textual Amendments**

- F6** Words substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 7\(9\)\(a\)](#)
- F7** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 19\(9\)](#)
- F8** [S. 55\(2\)](#) repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), ss. 7\(9\)\(b\), 25\(2\), Sch. 3](#)

## **56 Expenses payable by remuneratively employed resident patients.**

The Secretary of state may require any person—

- (a) who is a resident patient for whom the Secretary of State provides services under this Act; and
- (b) who is absent during the day for the purpose of engaging in remunerative employment from the hospital where he is a patient,

to pay such part of the cost of his maintenance in the hospital and any costs incidental thereto as may seem reasonable to the Secretary of State having regard to the amount of that person's remuneration, and the Secretary of State may recover the payment so required.

## **[<sup>F9</sup>57 Accommodation and services for private patients.**

- (1) If the Secretary of State is satisfied, in the case of a health service hospital [<sup>F10</sup>vested in the Secretary of State] that it is reasonable to do so, he may authorise accommodation and services at the hospital in question to be made available, to such extent as he may determine, for patients who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation and services made available, such charges as the Secretary of State may determine and may make and recover such charges as he may determine in respect of such accommodation and services and calculate them on any basis that he considers to be the appropriate commercial basis; but he shall do so only if and to the extent that he is satisfied that to do so—

- (a) will not to a significant extent interfere with the performance by him of any duty imposed on him by this Act to provide accommodation or services of any kind; and
- (b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health

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service hospitals (whether as resident or non-resident patients) otherwise than under this section.

- (2) The Secretary of State may allow accommodation and services to which an authorisation under subsection (1) above relates to be made available in connection with treatment, in pursuance of arrangements made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of a health service hospital for the treatment of private patients of that practitioner.

- [ The Secretary of State shall revoke an authorisation under this section only if and <sup>F11</sup>(3) to the extent that he is satisfied that sufficient accommodation and facilities for the private practice of medicine and dentistry are otherwise reasonably available (whether privately or at health service hospitals) to meet the reasonable demand for them in the area served by the hospital in question. ]

#### Textual Amendments

- F9** S. 57 substituted for ss. 57, 58 by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), **s. 7(11)**  
**F10** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), **Sch. 9 para. 19(10)**  
**F11** Section 57(3) repealed (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(2), **Sch. 10**

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

- C1** S. 57 applied (1.4.1999) by [S.I. 1999/686](#), art. 5(1), **Sch. Pt. I**

**58A** ..... <sup>F12</sup>

#### Textual Amendments

- F12** S. 58A repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), **Sch. 3**

**59—** ..... <sup>F13</sup>  
**63.**

#### Textual Amendments

- F13** Ss. 16(3), 20(2), 51, 52, 59–63, 65–68, 96(2), Sch. 16 paras. 25, 43 repealed by [Health Services Act 1980 \(c. 53\)](#), **Sch. 7**

*Use by practitioners of health service accommodation and facilities for private practice*

#### **64 Permission for use of facilities in private practice.**

- (1) A person to whom this section applies who wishes to use any relevant health service accommodation or facilities for the purpose of providing medical, dental, pharmaceutical, ophthalmic or chiropody services to non-resident private patients may apply in writing to the Secretary of State for permission under this section.

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- (2) Any application for permission under this section must specify—
  - (a) which of the relevant health service accommodation or facilities the applicant wishes to use for the purpose of providing services to such patients; and
  - (b) which of the kinds of services mentioned in subsection (1) he wishes the permission to cover.
- (3) On receiving an application under this section the Secretary of State—
  - (a) shall consider whether anything for which permission is sought would interfere with the giving of full and proper attention to persons seeking or afforded access otherwise than as private patients to any services provided under this Act; and
  - (b) shall grant the permission applied for unless in his opinion anything for which permission is sought would so interfere.
- (4) Any grant of permission under this section shall be on such terms (including terms as to the payment of charges for the use of the relevant health service accommodation or facilities pursuant to the permission) as the Secretary of State may from time to time determine.
- (5) The persons to whom this section applies are—
  - (a) persons of any of the following descriptions who provide services under Part II, namely, medical practitioners, dental practitioners, registered pharmacists, and ophthalmic<sup>F14</sup> opticians; and
  - (b) other persons who provide pharmaceutical or ophthalmic services under Part II; and
  - (c) chiroprodists who provide services under this Act at premises where services are provided under Part II.
- (6) In this section—
  - (a) “relevant health service accommodation or facilities”, in relation to a person to whom this section applies, means any accommodation or facilities available at premises provided by the Secretary of State by virtue of this Act, being accommodation or facilities which that person is for the time being authorised to use for the purposes of Part II; or
  - (b) in the case of a person to whom this section applies by virtue of paragraph (c) of subsection (5), accommodation or facilities which that person is for the time being authorised to use for purposes of this Act at premises where services are provided under Part II.

**Textual Amendments**

**F14** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 24, [Sch. 8 Pt. I](#)

65— .....<sup>F15</sup>  
68.

**Textual Amendments**

**F15** [Ss. 16\(3\), 20\(2\), 51, 52, 59–63, 65–68, 96\(2\)](#), [Sch. 16 paras. 25, 43](#) repealed by [Health Services Act 1980 \(c. 53\)](#), [Sch. 7](#)

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### *Regulations as to certain charges*

#### **69 Charges for drugs, medicines or appliances or pharmaceutical services.**

- (1) Regulations may provide for the making and recovery in such manner as may be prescribed of such charges as may be prescribed in respect of—
  - (a) the supply under this Act (otherwise than under Part II) of drugs, medicines or appliances (including the replacement and repair of those appliances),
  - (b) such of the pharmaceutical services referred to in Part II as may be prescribed.
- (2) Regulations under subsection (1) may provide for the grant, on payment of such sums as may be prescribed by those regulations, of certificates conferring on the persons to whom the certificates are granted exemption from charges otherwise exigible under the regulations in respect of drugs, medicines and appliances supplied during such period as may be prescribed, and different sums may be so prescribed in relation to different periods.
- (3) The additional provisions of paragraphs 1 and 4 of Schedule 11 have effect in relation to this section.

#### **70 Charges for dental or optical appliances.**

- (1) Regulations may provide for the making and recovery in such manner as may be prescribed of charges of such amounts as are mentioned in sub-paragraph (1) of paragraph 2 of Schedule 11, in respect of the supply under this Act of such <sup>F16</sup> optical appliances as are mentioned in that sub-paragraph.
- <sup>F17</sup>(1A) Regulations may provide for the making and recovery in such manner as may be prescribed of charges of amounts calculated in accordance with section 71A in respect of the supply under this Act of dentures and other dental appliances of prescribed descriptions.]
- (2) If the Secretary of State, after consultation with the university associated with any hospital providing facilities for clinical dental teaching, is satisfied that it is expedient in the interests of dental training or education that the charges imposed by subsection <sup>F18</sup>(1A) should be remitted in the case of dental services provided at that hospital, either generally or subject to limitations or conditions, he may by order provide for that purpose.  
  
Any order made under this subsection may be revoked or varied by a subsequent order made by the Secretary of State after such consultation as is mentioned above.
- (3) The additional provisions of paragraphs 2 and 5 of Schedule 11 have effect in relation to this section.

#### **Textual Amendments**

**F16** Words repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), [Sch. 3](#)

**F17** S. 70(1A) inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. [11\(4\)](#)

**F18** “(1A)” substituted for “(1)” by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(1), [Sch. 2 para. 12](#)

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## 71 Charges for dental treatment.

(1) A charge of [<sup>F19</sup>an amount calculated in accordance with section 71A] may be made and recovered, in such manner as may be prescribed, in respect of any services provided as part of the general dental services under Part II, not being—

(a)

<sup>F20</sup>(b) the repair of appliances other than prescribed appliances;

(c) the arrest of bleeding; <sup>F20</sup>

(d)

<sup>F20</sup>The additional provisions of paragraphs 3 and 5 of Schedule 11 have effect in relation to this subsection.

(2) Regulations may provide that, in the case of such special dental treatment as may be prescribed, being treatment provided as part of the general dental services, such charges as may be prescribed may be made and recovered by the person providing the services.

### Textual Amendments

**F19** Words substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 11\(5\)](#)

**F20** [S. 71\(1\)\(a\)\(d\)](#) and word “or” preceding (d) repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 25\(2\)](#), [Sch. 3](#)

### Modifications etc. (not altering text)

**C2** By [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 11\(7\)](#) it is provided that [s. 71\(1\)](#) shall cease to have effect so far as it provides that a charge may not be authorised for the clinical examination of a patient and any report on that examination

## [<sup>F21</sup>71A Calculation of charges for dental appliances and treatment.

(1) Subject to the following provisions of this section, regulations may make such provision as to the amount of any charge—

(a) authorised by section 70(1A) for the supply of dentures or other dental appliances; or

(b) authorised by section 71 for the provision of services,

as appears to the Secretary of State to be appropriate.

(2) Without prejudice to the generality of subsection (1) above, regulations may provide that any such charge in respect of appliances or services supplied or provided under Part II of this Act—

(a) shall be of an amount equal—

(i) to the practitioner’s remuneration in respect of the supply or provision; or

(ii) to any part of that remuneration; or

(b) shall be otherwise calculated by reference to that remuneration.

(3) Without prejudice to the generality of subsection (1) above, regulations may provide that any charge which is so authorised in respect of appliances supplied otherwise than under Part II of this Act—

(a) shall be of an amount equal—



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- (i) to the remuneration a practitioner would receive for a supply under that Part of equivalent appliances; or
  - (ii) to any part of such remuneration; or
  - (b) shall be otherwise calculated by reference to such remuneration.
- (4) The charge shall not exceed the amount which the Secretary of State considers to be the cost to the health service of the supply or provision.
- (5) In this section “cost to the health service” does not include—
- (a) any fee in respect of a visit by a practitioner to a patient; or
  - (b) any fee or part of a fee payable by a patient in pursuance of regulations under section 71(2) or section 73(b) or 74(b).]

#### Textual Amendments

**F21** S. 71A inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), **s. 11(6)**

## 72 Charges in respect of services etc. provided under sections 37, 38 and 41.

Regulations may provide for the recovery of such charges as may be prescribed—

- (a) in respect of such services provided under section 37 (prevention of illness, care and after-care) as may be prescribed, not being services provided in a hospital;
- (b) in respect of such articles or services provided under section 38 (care of mothers and young children) as may be prescribed, not being articles or services provided in a hospital, and not being a drug, a medicine or an appliance of a type normally supplied;
- (c) from persons availing themselves of any service under section 41 (except advice on contraception),

and may provide for the remission of any such charge, in whole or in part, in such circumstances as may be prescribed.

## 73 Charges for more expensive supplies.

Regulations may provide for the making and recovery of such charges as may be prescribed—

- (a) by the Secretary of State in respect of the supply by him of any appliance or vehicle which is, at the request of the person supplied, of a more expensive type than the prescribed type, or in respect of the replacement or repair of any such appliance, or the replacement of any such vehicle, or the taking of any such action in relation to the vehicle as is mentioned in section 46(2).
- (b) by persons providing [<sup>F22</sup>personal dental services in accordance with section 17C arrangements or] general dental services <sup>F23</sup> in respect of the supply, as part of those services, of any dental <sup>F23</sup> appliance which is, at the request of the person supplied, of a more expensive type than the prescribed type or in respect of replacement or repair of any such appliance.
- [<sup>F24</sup>(c) by a National Health Service trust in respect of the supply by them of any appliance or vehicle which is, at the request of the person supplied, of a more expensive type than the prescribed type, or in respect of the replacement or repair of any such appliance, or the replacement of any such vehicle.]



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#### Textual Amendments

- F22** Words in 73(b) inserted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I paras. 32, 47; S.I. 1998/1998, art. 2(2)(b), **Sch. 2**
- F23** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**
- F24** S. 73(c) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(11)**

### 74 Charges for repairs and replacements in certain cases.

Regulations may provide for the making and recovery of such charges as may be prescribed—

- (a) by the Secretary of State in respect of the replacement or repair of any appliance or vehicle supplied by him, or
- (b) by persons providing [<sup>F25</sup>personal dental services in accordance with section 17C arrangements or]general dental services <sup>F26</sup> in respect of the replacement or repair of any dental <sup>F26</sup> appliance supplied as part of those services, [<sup>F27</sup>or]
- [<sup>F27</sup>(c) by an NHS trust in respect of the replacement or repair of any appliance or vehicle supplied by them,]

if it is determined in the prescribed manner that the replacement or repair is necessitated by an act or omission of the person supplied or (if the act or omission occurred when the person supplied was under 16 years of age) of the person supplied or of the person having charge of him when the act or omission occurred.

#### Textual Amendments

- F25** Words in s. 74(b) inserted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I paras. 32, 48; S.I. 1998/1998, art. 2(2)(b), **Sch. 2**
- F26** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**
- F27** S. 74(c) and preceding word “or” inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(12)**

### 75 Sums otherwise payable to those providing services.

Regulations made—

- (a) under sections 69 to 71 and under sections 73 and 74 providing for the making and recovery of charges in respect of any services, may provide for the reduction of the sums which would otherwise be payable by a Health Board to the persons by whom those services are provided by the amount of the charges authorised by the regulations in respect of those services;
- [<sup>F28</sup>(b) for the purposes of section 70(1A) in relation to appliances provided as part of—
  - (i) general dental services, or
  - (ii) personal dental services provided in accordance with section 17C arrangements,

may provide for the reduction of the sums which would otherwise be payable by a Health Board to the persons by whom those services are provided by

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the amount of the charges authorised by section 70(1A) in respect of those appliances.]

#### Textual Amendments

**F28** S. 75(b) substituted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I paras. 32, 49; S.I. 1998/1998, art. 2(2)(b), Sch. 2

#### [<sup>F29</sup>75A Remission and repayment of charges and payment of travelling expenses.

- (1) Regulations may provide in relation to prescribed descriptions of persons—
  - (a) for the remission or repayment of the whole or any part of any charges which would otherwise be payable by them in pursuance of section 69(1) above, section 70(1) [<sup>F30</sup>or, (1A)] above [<sup>F31</sup>section 70A(1) above] or section 71 above [<sup>F32</sup>or section 20 of the National Health Service (Primary Care) Act 1997];
  - (b) for the payment by the Secretary of State in such cases as may be prescribed of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred for the purpose of their availing themselves of any services provided under this Act; and
  - (c) where they are persons whose travelling expenses are payable by virtue of paragraph (b) above, for the payment by the Secretary of State in such cases as may be prescribed of expenses necessarily incurred by them (and by any companion whose travelling expenses are so payable) in obtaining overnight accommodation for the purpose mentioned in that paragraph [<sup>F33</sup>and]
  - [<sup>F33</sup>(d) for the payment by the Secretary of State to NHS trusts of such sums as will reimburse them for any sums paid by them as travelling expenses in such cases as may be prescribed].
- (2) Descriptions of persons may be prescribed for the purposes of paragraph (a), (b) [<sup>F34</sup>, (c) or (d)] of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria—
  - (a) their age;
  - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
  - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
  - (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit;
  - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits; and
  - (f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.
- (3) Regulations under this section may direct how a person's resources and requirements are to be calculated and, without pre-judice to the generality of this subsection, may direct that they shall be calculated—
  - (a) by a method set out in the regulations;
  - (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an

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- instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;
- (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
  - (d) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.
- (4) Regulations under this section which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—
- (a) as it has effect at the time when the regulations are made; or
  - (b) both as it has effect at that time and as amended subsequently.]

#### Textual Amendments

- F29** S. 75A inserted by Social Security Act 1988 (c. 7, SIF 113:1), s. 14(2)
- F30** Words inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), Sch. 2 para. 13
- F31** Words in s. 75A(1)(a) inserted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I paras. 32, 51; S.I. 1998/1998, art. 2(2)(b), Sch. 2
- F32** Words in s. 75A(1)(a) inserted (29.9.1998) by S.I. 1998/2385, art. 3
- F33** S. 75A(1)(d) and preceding word "and" inserted by National Health Service and Community Care Act 1990 (c.19, SIF 113:2), s. 66(1), Sch. 9 para. 19(13)(a)
- F34** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(13)(b)

VALID FROM 07/07/2010

#### <sup>F35</sup>75B Reimbursement of the cost of services provided in another EEA state

- (1) A Health Board must reimburse the cost of eligible services incurred by or on behalf of an eligible person on or after 23rd August 2010, but this is subject to the limits applicable under subsections (3) and (4), to subsections (6) and (7) and to any deduction applicable under section 75D.
- (2) Eligible services are services provided by an authorised provider in an EEA state other than the UK, which are necessary to treat or diagnose a medical condition of the eligible person and are—
- (a) services, not being specified services, that are the same as or equivalent to those that the Health Board in whose area the eligible person resides would make or have made available under this Act in the circumstances of the person's case;
  - (b) specified services for which the Health Board in whose area the eligible person resides has given authorisation under section 75C; or
  - (c) services—
    - (i) which are neither the same as nor equivalent to services that the Health Board would make available under this Act in the circumstances of the person's case; and
    - (ii) for which the Health Board has given authorisation under section 75C.

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- (3) In respect of services other than dental services, a Health Board may limit the amount payable by way of reimbursement under subsection (1) to the amount that the same or equivalent services would have cost the Health Board in whose area the eligible person resides if those services had been provided under this Act otherwise than in accordance with this section and section 75C.
- (4) In respect of dental services a Health Board may limit the amount payable by way of reimbursement under subsection (1) to the amount that would have been payable in respect of the same or equivalent services if those services had been provided under this Act otherwise than in accordance with this section and section 75C.
- (5) Where the same or equivalent services referred to in subsection (4) would have required approval from the Dental Practice Board, the Health Board—
- (a) may require the eligible person to submit evidence as to the clinical necessity of the dental services; and
  - (b) may decline to reimburse the costs of any services which were not clinically necessary.
- (6) The duty in subsection (1) does not apply where the cost of the eligible services was incurred in connection with an arrangement which was entered into by or on behalf of the eligible person in the course of business and under which the applicant for reimbursement has gained or might be expected to gain any financial benefit.
- (7) This section and section 75C do not apply in circumstances where Articles 20 and 27(3) of Regulation (EC) 883/2004 apply.
- (8) In this section and sections 75C and 75D—
- “authorised provider” in relation to services provided in an EEA state other than the United Kingdom means a person who is lawfully providing services;
- “eligible person” means a person who is ordinarily resident in Scotland;
- “eligible services” has the meaning given in subsection (2) of this section;
- “services” includes any goods, including drugs, medicines and appliances which are used or supplied in connection with the provision of a service, but does not include accommodation other than hospital accommodation; and
- “specified services” means those services comprising—
- (a) services which would require a stay in hospital accommodation for at least one night;
  - (b) medical treatment that involves general anaesthesia, epidural anaesthesia or intravenously administered sedation;
  - (c) dental treatment that involves general anaesthesia or intravenously administered sedation;
  - (d) services whose provision involves the use of specialised or cost-intensive medical infrastructure or medical equipment.

#### Textual Amendments

**F35** Ss. 75B-75D inserted (7.7.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/283\)](#), **reg. 3(3)**

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VALID FROM 07/07/2010

### 75C Prior authorisation

- (1) An eligible person may apply to the Health Board in whose area that person resides for prior authorisation for the purposes of section 75B.
- (2) Prior authorisation must be given if the eligible services are specified services which—
  - (a) are the same as or equivalent to those that the Health Board in whose area the eligible person resides would make available under this Act in the circumstances of the person's case; and
  - (b) are not available to the eligible person from the Health Board without undue delay.
- (3) Prior authorisation may be given for any other eligible services falling within section 75B(2)(b) or (c).
- (4) “Undue delay” means that the services cannot be provided within a period of time which is acceptable on the basis of medical evidence as to the clinical needs of the eligible person, taking into account that person's state of health at the time the decision is made and the probable course of the medical condition to which the services relate.
- (5) In assessing whether there is undue delay for the purposes of subsection (2), the Health Board must consider—
  - (a) the eligible person's medical history;
  - (b) the extent of any pain, disability, discomfort or other suffering that is attributable to the medical condition to which the services are to relate;
  - (c) whether any such pain, disability, discomfort or suffering makes it impossible or extremely difficult for the patient to carry out ordinary daily tasks; and
  - (d) the extent to which the services would be likely to alleviate, or enable the alleviating of, the pain, disability, discomfort or suffering.
- (6) Any authorisation under this section must be in writing.

#### Textual Amendments

**F35** Ss. 75B-75D inserted (7.7.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/283\)](#), **reg. 3(3)**

VALID FROM 07/07/2010

### 75D Deduction of NHS charges

- (1) A Health Board may deduct from any amount to be reimbursed under section 75B(1), in whole or in part, any NHS charge which would have been payable by the eligible person for the same service or an equivalent service if the service had been made available by the Health Board in whose area the eligible person resides.

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- (2) Subsection (1) does not apply to the extent that the eligible person would, if the services received had been provided under this Act otherwise than in accordance with sections 75B and 75C, be entitled to any exemption or remission from any NHS charge.
- (3) In this section “NHS charge” means any charge payable in accordance with sections 69 to 74 or regulations made under those sections.]

#### Textual Amendments

**F35** Ss. 75B-75D inserted (7.7.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/283\)](#), **reg. 3(3)**

### *Inquiries, and default and emergency powers*

#### **76 Inquiries.**

- (1) The Secretary of State may cause an inquiry to be held in any case where he deems it advisable to do so in connection with any matter arising under this Act.
- (2) The provisions of Schedule 12 shall have effect with regard to any inquiry which the Secretary of State is, under this Act, required or authorised to hold.

#### **77 Default powers.**

- (1) Where the Secretary of State is of the opinion, on representations made to him or otherwise, that—
- (a) any Health Board;
  - [<sup>F36</sup>(aa) an NHS trust]
  - (b) the Medical Practices Committee; or
  - (c) the Dental Estimates Board;
- have failed to carry out any functions conferred or imposed on them by or under this Act, or have in carrying out those functions failed to comply with any regulations, schemes, proposals or directions relating to those functions, he may after holding an inquiry make an order declaring them to be in default.
- (2) When such an order is made, the members of the body shall forthwith vacate their office, and the order—
- (a) shall provide for the appointment, in accordance with the provisions of this Act, of new members of the body; and
  - (b) may contain such provisions as seem to the Secretary of State expedient for authorising any person to act in the place of the body in question pending the appointment of new members.
- (3) An order made under this section may contain such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient.



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### Textual Amendments

- F36** S. 77(1)(aa) inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(14\)](#)

### Modifications etc. (not altering text)

- C3** S. 77 extended by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), ss. 17(2), 91(2), [Sch. 1 para. 8\(a\)](#)
- C4** S. 77 applied (1.4.1991) by [S.I. 1990/2639](#), art. 5(1)(2), [Sch. Pt. I](#)
- C5** S. 77 applied (1.4.1993) by [S.I. 1993/577](#), art. 5(1)(2), [Sch. Pt. I](#) (with art. 6)  
S. 77 applied (1.4.1995) by [S.I. 1995/574](#), art. 5(1)(2), [Sch. Pt. I](#) (with art. 6)  
S. 77 applied (1.4.1999) by [S.I. 1999/686](#), art. 5(1)(2), [Sch. Pt. I](#)  
S. 77 applied (1.4.1999) by [S.I. 1999/726](#), art. 5(1)(2), [Sch. Pt. I](#)  
S. 77 applied (1.4.2000) by [S.S.I. 2000/47](#), art. 5(1)(2), [Sch. Pt. I](#)  
S. 77 applied (6.4.2001) by [S.S.I. 2001/137](#), art. 5(1), [Sch. Pt. I](#)  
S. 77 applied (31.3.2002) by [S.S.I. 2002/103](#), art. 6, [Sch. Pt. I](#) (with art. 4(4))  
S. 77 applied (27.6.2002) by [S.S.I. 2002/305](#), art. 5(1), [Sch. Pt. I](#) (with art. 4(4))
- C6** S. 77 modified (15.8.1997) by [1997 c. 46](#), s. 41(10), [Sch. 2 Pt. I paras. 32, 51](#); [S.I. 1997/1780](#), art. 2(1), [Sch.](#)

## 78 Emergency powers.

If the Secretary of State is of the opinion that an emergency exists, and thinks it necessary in order to secure the effective continuance of any service under this Act, he shall have power to direct that any function conferred by or under this Act on any body or person shall, during the period of the emergency, be performed by such other body or person as he may specify in the direction.

### Modifications etc. (not altering text)

- C7** S. 78 extended by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), ss. 17(2), 91(2), [Sch. 1 para. 8\(b\)](#)
- C8** S. 78 modified (1.10.1998) by [1997 c. 46](#), s. 41(10), [Sch. Pt. I paras. 32, 52](#); [S.I. 1998/1998](#), [art. 2\(2\)\(b\)](#) [Sch. 2](#)

VALID FROM 30/09/2004

### <sup>F37</sup>78A Powers in case of service failure

- (1) This section applies where—
- it is a function of a body or person under or by virtue of this Act to provide, or secure the provision of, a service, and
  - the Scottish Ministers consider that the body or person has failed, is failing or is likely to fail—
    - to provide the service, or
    - to provide it to a standard which they regard as acceptable.
- (2) The Scottish Ministers may, where they consider it necessary for the purpose of ensuring the provision of the service in question to a standard which they regard as



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- acceptable, direct that specified functions of the body or person under or by virtue of this Act be performed, for a specified period and to a specified extent, by—
- (a) a body falling within subsection (4), or
  - (b) one or more persons falling within subsection (5).
- (3) In subsection (2), “specified” means specified in the direction.
- (4) A body falls within this subsection if it is—
- (a) a Health Board,
  - (b) a Special Health Board, or
  - (c) the Agency.
- (5) A person falls within this subsection if the person is—
- (a) an employee of a Health Board, a Special Health Board or the Agency,
  - (b) a member of the staff of the Scottish Administration, or
  - (c) an employee of a local authority.
- (6) A body or person appointed by a direction given under subsection (2) to perform functions of a body or person referred to in subsection (1) is referred to in this section as an “appointed person”.
- (7) An appointed person must comply with a direction given under subsection (2).
- (8) The remuneration and expenses of, and any other costs reasonably incurred by, an appointed person in performing the functions specified in the direction shall, unless otherwise specified in the direction, be paid by the body or person referred to in subsection (1).
- (9) Anything done or omitted by an appointed person in performing the functions specified in the direction is to be regarded as done or omitted by the body or person referred to in subsection (1).
- (10) A person dealing with an appointed person in good faith and for value is not concerned to inquire whether the appointed person is acting within the powers conferred by virtue of the direction.
- (11) The Scottish Ministers may vary or withdraw a direction given under subsection (2).]

#### Textual Amendments

**F37** Ss. 78A, 78B inserted (30.9.2004) by [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\)](#), ss. 6, 12(1); S.S.I. 2004/361, [art. 2\(b\)\(i\)](#)

VALID FROM 30/09/2004

#### [<sup>F37</sup>78B Relationship of sections 77, 78 and 78A

The powers conferred by each of sections 77, 78 and 78A are without prejudice to the powers conferred by the other two sections.]

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#### Textual Amendments

**F37** Ss. 78A, 78B inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 6, 12(1); S.S.I. 2004/361, art. 2(b)(i)

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