



National Health Service (Scotland) Act 1978

1978 CHAPTER 29

PART IV

POWERS OF THE SECRETARY OF STATE

Control of maximum prices for medical supplies

^{F1}49 Maximum prices of medical supplies may be controlled.

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Textual Amendments

F1 S. 49 omitted (7.8.2017) by virtue of Health Services Medical Supplies (Costs) Act 2017 (c. 23), ss. 10(1)(a), 12(3); S.I. 2017/809, reg. 2(h) (with reg. 3)

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F2 S. 50 repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), Sch. 3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

Status: Point in time view as at 07/08/2017.

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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F3 Ss. 16(3), 20(2), 51, 52, 59–63, 65–68, 96(2), Sch. 16 paras. 25, 43 repealed by [Health Services Act 1980 \(c. 53\)](#), [Sch. 7](#)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F4 S. 53 repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), [Sch. 3](#)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) ^{F5} 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F5 Words repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), [Sch. 3](#)

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, [^{F6}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 [^{F7}vested in the Secretary of State].

(2)^{F8}

Textual Amendments

F6 Words substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 7\(9\)\(a\)](#)

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- 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.

[^{F9}57 Accommodation and services for private patients.

- (1) If the Secretary of State is satisfied, in the case of a health service hospital [^{F10}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 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 ^{F11}(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\(11\)](#)

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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 **F12**

Textual Amendments

F12 S. 58A repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

59— **F13**
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.
- (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

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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—

- [^{F14}(za) persons providing primary medical services; and]
- (a) persons of any of the following descriptions who provide services under Part II, namely, medical practitioners, dental practitioners, registered pharmacists, and ophthalmic ^{F15}opticians; and
- (b) other persons who provide [^{F16}dental,] pharmaceutical or ophthalmic services under Part II; and
- (c) chiropodists 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 [^{F17}this Act]; 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** S. 64(5)(za) inserted (1.2.2006) by The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(5)(a)}
- F15** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, Sch. 8 Pt. I
- F16** Word in s. 64(5)(b) inserted (2.7.2010) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), {Sch. 2 para. 2(16)}; S.S.I. 2010/185, art. 3(b), Sch. 2
- F17** Words in s. 64(6)(a) substituted (1.2.2006) by The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(5)(b)}

65— ^{F18}
68.

Textual Amendments

- F18** 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

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—

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- (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^{F19} optical appliances as are mentioned in that sub-paragraph.
- [^{F20}(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 [^{F21}(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

F19 Words repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 25\(2\), Sch. 3](#)

F20 S. 70(1A) inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 11\(4\)](#)

F21 “(1A)” substituted for “(1)” by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 25\(1\), Sch. 2 para. 12](#)

71 Charges for dental treatment.

- (1) A charge of [^{F22}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—
- [^{F23}(a) oral health assessments and dental examinations carried out on or after 1st April 2006;]

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- (a)
- ^{F24}(b) the repair of appliances other than prescribed appliances;
- (c) the arrest of bleeding; ^{F24}
- (d)

^{F24}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 [^{F25}(but not being oral health assessments or dental examinations carried out on or after 1st April 2006)], such charges as may be prescribed may be made and recovered by the person providing the services.

Textual Amendments

- F22** Words substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 11\(5\)](#)
- F23** S. 71(1)(a) inserted (7.3.2006 for certain purposes, otherwise 1.4.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), [ss. 12\(2\)\(b\)\(i\)](#), 43(3); S.S.I. 2005/492, [art. 3\(e\)](#), Sch. 3; S.S.I. 2006/121, [art. 3\(a\)](#), Sch. 1
- F24** 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](#)
- F25** Words in s. 71(2) inserted (7.3.2006 for certain purposes, otherwise 1.4.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), [ss. 12\(2\)\(b\)\(ii\)](#), 43(3); S.S.I. 2005/492, [art. 3\(e\)](#), Sch. 3; S.S.I. 2006/121, [art. 3\(a\)](#), Sch. 1

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

[^{F26}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.

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- (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—
 - (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

F26 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 [^{F27}personal dental services in accordance with section 17C arrangements or] general dental services ^{F28} in respect of the supply, as part of those services, of any dental ^{F28} 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.

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- [^{F29}(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.]

Textual Amendments

- F27** 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
- F28** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, Sch. 8 Pt. I
- F29** 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 [^{F30}personal dental services in accordance with section 17C arrangements or]general dental services ^{F31} in respect of the replacement or repair of any dental ^{F31} appliance supplied as part of those services, [^{F32}or]
- [^{F32}(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

- F30** 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
- F31** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, Sch. 8 Pt. I
- F32** 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;
- ^{F33}[(b) for the purposes of section 70(1A) in relation to appliances provided as part of—
- (i) general dental services, or

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

Textual Amendments

F33 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

[^{F34}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) [^{F35}or, (1A)] above [^{F36}section 70A(1) above] or section 71 above [^{F37}or section 20 of the National Health Service (Primary Care) Act 1997];
 - [^{F38}(b) for the payment by the Scottish Ministers, 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 obtaining—
 - (i) any services provided under this Act,
 - (ii) any services in respect of which the costs are reimbursable under section 75B,
 - (iii) any services authorised to be received in another [^{F39}EEA State] or Switzerland under Article 20(2) or (3) or Article 27(3) of Regulation (EC) 883/2004 .]
 - (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 [^{F40}and]
 - [^{F40}(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) [^{F41}, (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

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- (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 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

- F34** S. 75A inserted by [Social Security Act 1988 \(c. 7, SIF 113:1\), s. 14\(2\)](#)
- F35** Words inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\), s. 25\(1\), Sch. 2 para. 13](#)
- F36** Words in s. 75A(1)(a) inserted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. 1 paras. 32, **51**; S.I. 1998/1998, art. 2(2)(b), **Sch. 2**
- F37** Words in s. 75A(1)(a) inserted (29.9.1998) by S.I. 1998/2385, **art. 3**
- F38** S. 75A(1)(b) substituted (7.7.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/283\), reg. 4](#)
- F39** Words in Act substituted (1.7.2013) by [The European Union \(Amendments in respect of the Accession of Croatia\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/177\), sch. para. 2\(a\)](#)
- F40** 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\(13\)\(a\)](#)
- F41** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 19\(13\)\(b\)](#)

[^{F42}75B Reimbursement of the cost of services provided in another [^{F39}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.

[But the duty in subsection (1) does not apply where section 75BA applies.]
^{F43}(1A)

- (2) Eligible services are services provided by an authorised provider in an [^{F39}EEA State] other than the UK , which are necessary to treat or diagnose a medical condition of the eligible person and are—

Status: Point in time view as at 07/08/2017.

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- (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.
- (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 ^{F39}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;

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- (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

- F39** Words in Act substituted (1.7.2013) by [The European Union \(Amendments in respect of the Accession of Croatia\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/177\)](#), **sch. para. 2(a)**
- F42** 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)**
- F43** S. 75B(1A) inserted (25.10.2013) by [The National Health Service \(Cross-Border Health Care\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/292\)](#), regs. 1(1), **8(3)**

1 **Reimbursement of the cost of services provided in another EEA State where** **F44 75BA expenditure is incurred on or after 25 October 2013.**

- (1) This section applies where qualifying EEA expenditure is incurred by a person on or after 25 October 2013 (but see subsections (9) and (14)).
- (2) A Health Board must, on an application made by the person, reimburse to that person the amount of the qualifying EEA expenditure incurred by that person, but this is subject to subsections (8) and (9), to any limit applicable under subsection (11) and to any deduction applicable under section 75D.
- (3) For the purpose of this section, “qualifying EEA expenditure” is expenditure incurred on the provision by an authorised provider, in an EEA State other than the United Kingdom, to a person ordinarily resident in Scotland (“the patient”) of services as respects which condition A or condition B is met.
- (4) Condition A is that the services—
 - (a) are necessary to treat or diagnose a medical condition of the patient, and
 - (b) are the same as or equivalent to services that a Health Board in whose area a patient resides would make or have made available to a patient under this Act in the circumstances of the patient’s case.
- (5) But in the case of services which, although meeting the requirements in paragraphs (a) and (b) of subsection (4), fall within subsection (6), condition A is only met if, before the services were provided, the Health Board had given authorisation under section 75BB for the provision of the services to the patient.
- (6) Services fall within this subsection if—
 - (a) they are subject to planning requirements relating to the objective of ensuring sufficient and permanent access to a balanced range of high quality treatment or to the wish to control costs and avoid, as far as possible, any waste of financial, technical and human resources, and—
 - (i) involve a stay in hospital accommodation for at least one night, or
 - (ii) require the use of highly specialised and cost-intensive medical infrastructure or medical equipment,
 - (b) they involve treatments presenting a particular risk for the patient or the population, or

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- (c) they are provided by a healthcare provider in circumstances that, on a case-by-case basis, could give rise to serious and specific concerns relating to the quality or safety of the care, with the exception of healthcare services which are subject to European Union legislation ensuring a minimum level of safety and quality throughout the European Union.
- (7) Condition B is that before the services were provided the Health Board had given authorisation under section 75BB(4)(b) for the provision of the services to the patient.
- (8) The duty in subsection (2) does not apply where the applicant for reimbursement incurred the qualifying EEA expenditure in connection with an arrangement which was entered into by or on behalf of the applicant in the course of business and under which the applicant has gained or might be expected to gain any financial benefit.
- (9) This section does not apply in circumstances where Article 20 or 27(3) of Regulation (EC) No. 883/2004 apply.
- (10) Subsection (11) applies where the services are the same as or equivalent to services that the Health Board in whose area a patient resides would have made available to that patient under this Act in the circumstances of the patient’s case.
- (11) The Health Board may limit the amount of any reimbursement under this section to the cost that the Board would have incurred if the same or an equivalent service had been made available by the Board to a patient resident in the Board’s area.
- (12) A Health Board may, on an application made by a person who receives reimbursement of qualifying expenditure under paragraph (2), reimburse to that person travelling expenses (including the travelling expenses of companions) incurred or to be incurred for the purpose of their obtaining any services reimbursed under this section.
- (13) The Scottish Ministers may determine—
- (a) the form in which an application under this section must be made, and
 - (b) the information to be provided in support of the application.
- (14) This section does not apply where expenditure is incurred in Iceland, Liechtenstein or Norway before Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients’ rights in cross-border healthcare applies to that state in accordance with the EEA Agreement.
- (15) In this section and section 75BB, “authorised provider”, and “services” have the meaning given in section 75B.

Textual Amendments

- F42** 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)**
- F44** S. 75BA - 75BB inserted (25.10.2013) by [The National Health Service \(Cross-Border Health Care\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/292\)](#), regs. 1(1), **8(4)**

75BB Prior authorisation for the purposes of section 75BA

- (1) A person may apply to a Health Board under this section for prior authorisation for the purposes of section 75BA in relation to the provision of services (“the requested services”) to a person ordinarily resident in Scotland (“the patient”).

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- (2) The requested services must be—
 - (a) services which fall within section 75BA(6) and meet the requirements in paragraphs (a) and (b) of section 75BA(4), or
 - (b) services that are neither the same as nor equivalent to services that a Health Board in whose area the patient resides would make available to the patient under this Act in the circumstances of the patient’s case.
- (3) The Scottish Ministers may determine—
 - (a) the form in which an application under this section must be made, and
 - (b) the information to be provided in support of the application.
- (4) A Health Board—
 - (a) must authorise the provision of the requested services if they are services mentioned in subsection (2)(a) (but see subsection (5)), and
 - (b) may authorise the provision of the requested services in any case where—
 - (i) the requested services are necessary to treat or diagnose a medical condition of the patient, and
 - (ii) the duty in paragraph (a) does not apply.
- (5) The duty in subsection (4)(a) does not apply if at least one of the following conditions is met—
 - (a) by receiving the requested services the patient would, according to a clinical evaluation, be exposed with reasonable certainty to a patient-safety risk that cannot be regarded as acceptable, taking into account the potential benefit for the patient of the requested service,
 - (b) the general public will be exposed with reasonable certainty to a substantial safety hazard as a result of the requested service,
 - (c) the requested service is to be provided by a healthcare provider that raises serious and specific concerns relating to the respect of standards and guidelines on quality of care and patient safety, including provisions on supervision, whether these standards and guidelines are laid down by laws or regulations or through accreditation systems established by the state in which the requested services will be provided,
 - (d) the Health Board can provide to the patient services that are the same as or equivalent to the requested services within a period of time that is medically justifiable, taking into account the patient’s state of health at the time the decision under this section is made and the probable course of the medical condition to which the requested services relate.
- (6) The matters to which a Health Board is to have regard in determining for the purpose of subsection (5)(d) whether the length of any delay is medically justifiable include—
 - (a) the patient’s medical history,
 - (b) the extent of any pain, disability, discomfort or other suffering that is attributable to the medical condition to which the requested 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 provision of the requested services would be likely to alleviate, or enable the alleviation of, the pain, disability, discomfort or suffering.

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- (7) In section 75D (deduction of NHS charges)—
- (a) in subsection (1) after “75B(1)” insert “or 75BA”;
 - (b) in subsection (2) after “75C” insert “or 75BA and 75BB”.
- (8) Any authorisation or refusal of authorisation in part or full under this section must be in writing.
- (9) In this section and section 75C “writing” includes an electronic communication as defined in section 15 of the Electronic Communications Act 2000 which has been recorded and is capable of being reproduced.]

Textual Amendments

- F42** 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)**
- F44** S. 75BA - 75BB inserted (25.10.2013) by [The National Health Service \(Cross-Border Health Care\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/292\)](#), regs. 1(1), **8(4)**

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.

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Textual Amendments

- F42** 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)**

75D Deduction of NHS charges

- (1) A Health Board may deduct from any amount to be reimbursed under section 75B(1) [^{F45}or 75BA], 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.
- (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 [^{F46}or 75BA and 75BB], 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

- F42** 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)**
- F45** Words in s. 75D(1) inserted by 1978 c. 29, s. 75BB(7)(a) (as inserted (25.10.2013) by [The National Health Service \(Cross-Border Health Care\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/292\)](#), regs. 1(1), **8(4)**)
- F46** Words in s. 75D(2) inserted by 1978 c. 29, s. 75BB(7)(b) (as inserted (25.10.2013) by [The National Health Service \(Cross-Border Health Care\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/292\)](#), regs. 1(1), **8(4)**)

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.

Modifications etc. (not altering text)

- C3** S. 76 modified (1.4.2012) by [Patient Rights \(Scotland\) Act 2011 \(asp 5\)](#), **ss. 21(1), 26(3)** (with ss. 18(3), 20); [S.S.I. 2012/35](#), art. 2(a)

77 Default powers.

- (1) Where the Secretary of State is of the opinion, on representations made to him or otherwise, that—

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- (a) any Health Board; ^{F47} ...
- ^{F48}(aa) an NHS trust]
- (b) ^{F49}
- (c) the Dental Estimates Board ^{F50}; or
- (d) HIS,]

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 [^{F51}or, as the case may be, election], 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 [^{F52}or, as the case may be, election] 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.

Textual Amendments

- F47** Word in s. 77(1) repealed (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010](#) (asp 8), s. 134(7), **Sch. 17 para. 9(a)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F48** 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)**
- F49** S. 77(1)(b) repealed (1.4.2004) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(11)**; S.S.I. 2004/148, **art. 2(c)**
- F50** S. 77(1)(d) and word inserted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010](#) (asp 8), s. 134(7), **Sch. 17 para. 9(b)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F51** Words in s. 77(2)(a) inserted (temp. from 24.6.2009 for certain purposes, otherwise prosp.) by [Health Boards \(Membership and Elections\) \(Scotland\) Act 2009](#) (asp 5), **ss. 3(a)**, 4, 6(2)(3), 7, 11(1); S.S.I. 2009/242, **art. 2**
- F52** Words in s. 77(2)(b) inserted (temp. from 24.6.2009 for certain purposes, otherwise prosp.) by [Health Boards \(Membership and Elections\) \(Scotland\) Act 2009](#) (asp 5), **ss. 3(b)**, 4, 6(2)(3), 7, 11(1); S.S.I. 2009/242, **art. 2**

Modifications etc. (not altering text)

- C4** S. 77 extended by [Mental Health \(Scotland\) Act 1984](#) (c. 36, SIF 85), ss. 17(2), 91(2), **Sch. 1 para. 8(a)**
- C5** S. 77 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C6** 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))

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- C7 S. 77 applied (1.4.2012) by Patient Rights (Scotland) Act 2011 (asp 5), **ss. 21(2)**, 26(3) (with ss. 18(3), 20); S.S.I. 2012/35, art. 2(a)
- C8 S. 77 modified (1.4.2012) by Patient Rights (Scotland) Act 2011 (asp 5), **ss. 21(1)**, 26(3) (with ss. 18(3), 20); S.S.I. 2012/35, art. 2(a)
- C9 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)

- C10 S. 78 extended by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), ss. 17(2), 91(2), **Sch. 1 para. 8(b)**
- C11 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**
- C12 S. 78 modified (1.4.2012) by Patient Rights (Scotland) Act 2011 (asp 5), **ss. 21(1)**, 26(3) (with ss. 18(3), 20); S.S.I. 2012/35, art. 2(a)

[^{F53}78A Powers in case of service failure

- (1) This section applies where—
 - (a) 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
 - (b) the Scottish Ministers consider that the body or person has failed, is failing or is likely to fail—
 - (i) to provide the service, or
 - (ii) 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 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, ^{F54} . . .
 - (c) the Agency [^{F55}, or
 - (d) HIS.]
- (5) A person falls within this subsection if the person is—

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- (a) an employee of a Health Board, a Special Health Board [F56], the Agency or HIS.],
 - (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

- F53** 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)**
- F54** Word in s. 78A(4) repealed (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), **Sch. 17 para. 10(a)(i)**; [S.S.I. 2010/321](#), art. 3, Sch.; [S.S.I. 2011/122](#), art. 2, Sch.
- F55** S. 78A(4)(d) and word inserted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), **Sch. 17 para. 10(a)(ii)**; [S.S.I. 2010/321](#), art. 3, Sch.; [S.S.I. 2011/122](#), art. 2, Sch.
- F56** Words in s. 78A(5)(a) substituted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), **Sch. 17 para. 10(b)**; [S.S.I. 2010/321](#), art. 3, Sch.; [S.S.I. 2011/122](#), art. 2, Sch.

Modifications etc. (not altering text)

- C13** [S. 78A](#) modified (1.4.2012) by [Patient Rights \(Scotland\) Act 2011 \(asp 5\)](#), **ss. 21(1), 26(3)** (with [ss. 18\(3\), 20](#)); [S.S.I. 2012/35](#), art. 2(a)

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

F53 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\(b\)\(i\)](#)

Status:

Point in time view as at 07/08/2017.

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 04 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.