



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART VII

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Miscellaneous*

#### 98 Charges in respect of non-residents.

Regulations may provide for the making and recovery in such manner as may be prescribed of such charges as [<sup>F1</sup>the Secretary of State may determine] in respect of the provision of such services under this Act as may be prescribed for such persons not ordinarily resident in Great Britain as may be prescribed; and the regulations may provide that the charges are only to be made in such cases as may be determined in accordance with the regulations. [<sup>F2</sup>The Secretary of State may calculate charges under this section on any basis that he considers to be the appropriate commercial basis.]

#### Textual Amendments

F1 Words substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 7\(13\)](#)

F2 Words added by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 7\(14\)](#)

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

C1 [S. 98](#) applied (1.4.1999) by [S.I. 1999/686](#), [art. 5\(1\)\(2\)](#), [Sch. 1](#)

#### 99 Evasion of charges.

If any person, for the purpose of evading the payment of any charge under this Act, or of reducing the amount of any such charge—

- (a) knowingly makes any false statement or false representation, or

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- (b) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,

the charge, or as the case may be the balance of the charge, may be recovered from him as a simple contract debt by the person by whom the cost of the service in question was defrayed.

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

C2 S. 99 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), Sch. 1

**[<sup>F3</sup>99ZA Recovery of charges and payments.**

- (1) Where goods or services to which this section applies are provided and either—
- (a) any charge payable by any person under this Act in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment; or
  - (b) any payment under this Act is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services but that person is not entitled to, or to the benefit of, the payment,
- the amount mentioned in subsection (2) is recoverable as a debt from the person in question by the responsible authority.
- (2) That amount—
- (a) in a case within subsection (1)(a), is the amount of the charge or (where it has been reduced) reduction;
  - (b) in a case within subsection (1)(b), is the amount of the payment.
- (3) Where two or more persons are liable under section 99 or this section to pay an amount in respect of the same charge or payment, those persons shall be jointly and severally liable.
- (4) For the purposes of this section, the circumstances in which a person is to be treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—
- (a) on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description;
  - (b) on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it;
  - (c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.
- (5) In this section and section 99ZB, “responsible authority” means—
- (a) in relation to the recovery of any charge under section 99 in respect of the provision of goods or services to which this section applies, the person by whom the charge is recoverable;
  - (b) in relation to the recovery by virtue of this section of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable;

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- (c) in a case within subsection (1)(b), the person who made the payment.
- (6) But the Secretary of State may by directions provide for—
  - (a) the functions of any responsible authority of recovering any charges under this Act in respect of the provision of goods or services to which this section applies;
  - (b) the functions of any responsible authority under this section and section 99ZB, to be exercised on behalf of the authority by another health service body.
- (7) This section applies to the following goods and services—
  - (a) dental treatment and appliances provided in pursuance of this Act;
  - (b) drugs and medicines provided in pursuance of this Act;
  - (c) the testing of sight;
  - (d) optical appliances;
  - (e) any other appliances provided in pursuance of this Act.]

#### Textual Amendments

**F3** Ss. 99ZA-ZB inserted (14.10.1999) by 1999 c. 8, s. 59(1); S.S.I. 1999/115, art. 2

#### [<sup>F4</sup>99ZB

- (1) Regulations may provide that, where a person fails to pay—
  - (a) any amount recoverable from him under section 99 in respect of the provision of goods or services to which section 99ZA applies; or
  - (b) any amount recoverable from him under section 99ZA,a notice (referred to in this section as a penalty notice) may be served on the person, by or on behalf of the responsible authority, requiring him to pay to the authority, within a prescribed period, that amount together with a charge (referred to in this section as a penalty charge) of an amount determined in accordance with the regulations.
- (2) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—
  - (a) £100;
  - (b) the amount referred to in subsection (1)(a) or (b) multiplied by 5.
- (3) The Secretary of State may by order provide for subsection (2) to have effect as if, for the sum specified in paragraph (a) or the multiplier specified in paragraph (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or (as the case may be) multiplier specified in the order.
- (4) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.
- (5) The further sum must not exceed 50 per cent. of the amount of the penalty charge.
- (6) Any sum payable under the regulations (including the amount referred to in subsection (1)(a) or (b)) may be recovered by the responsible authority as a debt.
- (7) But a person is not liable by virtue of a penalty notice—

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- (a) to pay at any time so much of any amount referred to in subsection (1)(a) or (b) for which he is jointly and severally liable with another as at that time has been paid, or ordered by a court to be paid, by that other; or
  - (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.
- (8) Section 99ZA and this section apply to charges which may be made and recovered under section 20 of the <sup>M1</sup>National Health Service (Primary Care) Act 1997 as they apply to charges under this Act which may be recovered under section 99; and the reference to this Act in section 99ZA(7)(a) includes a reference to a pilot scheme (within the meaning of the 1997 Act).]

#### Textual Amendments

**F4** S. 99ZA-ZB inserted (14.10.1999) by 1999 c. 8, s. 59(2); S.I. 1999/115, art. 2

#### Marginal Citations

**M1** 1997 c.46.

### [<sup>F5</sup>99A Holidays for patients etc.

The Secretary of State's functions may be performed outside Scotland, in so far as they relate—

- (a) to holidays for patients;
- (b) to the transfer of patients to or from England, Wales, Northern Ireland, the Isle of Man or the Channel Islands; or
- (c) to the return of patients who have received treatment in Scotland to countries or territories outside the British Islands.]

#### Textual Amendments

**F5** S. 99A added by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 9(2)

### 100 Accommodation for persons displaced in course of development.

- (1) Where the carrying out of a scheme for the provision by the Secretary of State in pursuance of this Act or the [<sup>F6</sup>Mental Health (Care and Treatment) (Scotland) Act 2003] of accommodation or other facilities will involve the displacement from any premises of persons residing in them, the Secretary of State may make arrangements with one or more of the following bodies—
- (a) an authority who are a local authority for the purposes of the Housing (Scotland) Act [<sup>F7</sup>1987],
  - [<sup>F8</sup>(b) the Scottish Special Housing Association;
  - (c) a Housing Association or Housing Trust within the meaning of the Housing Associations Act 1985.]
  - [<sup>F9</sup>(d)] a development corporation established under the <sup>M2</sup>New Towns (Scotland) Act 1968,

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for securing, in so far as it appears to him that there is no other residential accommodation suitable for the reasonable requirements of those persons available on reasonable terms, the provision of residential accommodation in advance of the displacements from time to time becoming necessary as the carrying out of the scheme proceeds.

- (2) Arrangements made under subsection (1) may include provision for the making by the Secretary of State to the body with whom the arrangements are made of payments of such amounts, and for such purposes, as may be approved by the Treasury.

#### Textual Amendments

- F6** Words in s. 100(1) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), arts. 1, 2, **Sch. 1 para. 7(2)**
- F7** “1987” substituted for “1966” by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 335, 339(2), **Sch. 23 para. 24(a)**
- F8** S. 100(1)(b)(c) substituted for paragraph (b) by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 335, 339(2), **Sch. 23 para. 24(b)**
- F9** “(d)” substituted for “(c)” by Housing (Scotland) Act 1987 (c. 26, SIF 61), ss. 335, 339(2), **Sch. 23 para. 24(c)**

#### Marginal Citations

- M2** 1968 c. 16.

### 101 Protection of Health Boards and Common Services Agency.

Section 166 of the <sup>M3</sup>Public Health (Scotland) Act 1897 (which relates to the protection of local authorities and their officers) shall apply in relation to a Health Board [<sup>F10</sup>, an NHS trust] and the Agency in like manner as the said section applies in relation to a local authority, but with the substitution for any reference to that Act of a reference to this Act.

#### Textual Amendments

- F10** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(19)**

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

- C3** S. 101 excluded by National Health Service (Amendment) Act 1986 (c.66, SIF 113:2), **ss. 1(6), 2(3)**
- C4** S. 101 applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C5** S. 101 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
S. 101 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
S. 101 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**  
S. 101 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**  
S. 101 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**  
S. 101 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**  
S. 101 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))  
S. 101 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

#### Marginal Citations

- M3** 1897 c. 38.

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## [<sup>F11</sup>102 State hospitals.

- (1) The Secretary of State shall provide such hospitals as appear to him to be necessary for persons subject to detention under [<sup>F12</sup>the Criminal Procedure (Scotland) Act 1995 (c. 46) or] the [<sup>F13</sup>Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)] who require treatment under conditions of special security on account of their dangerous, violent or criminal propensities.
- (2) Hospitals provided by the Secretary of State under subsection (1) are referred to in this Act as “state hospitals”.
- (3) Subject to subsection (4) and section 2, state hospitals shall be under the control and management of the Secretary of State.
- (4) The Secretary of State may provide for the management of a state hospital to be undertaken on his behalf by—
  - (a) <sup>F14</sup> . . . . .
  - [ A Health Board, a Special Health Board, the Agency or an NHS trust to the
  - <sup>F15</sup>(b) extent that power to do so is delegated to the Board, Agency or trust by the Secretary of State.
- (5) <sup>F16</sup> . . . . .]]

### Textual Amendments

- F11** S. 102 substituted (1.4.1995) by 1994 c. 16, s. 1; S.I. 1995/576, art. 2
- F12** Words in s. 102(1) inserted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(1), 333(2)-(4), Sch. 4 para. 3(a), S.S.I. 2005/161, art. 3
- F13** Words in s. 102(1) substituted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331(1), 333(2)-(4), Sch. 4 para. 3(b), S.S.I. 2005/161, art. 3
- F14** S. 102(4)(a) and word repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 280(a), 331(1)(2), 333(2)-(4), Sch. 5 Pt. 1; S.S.I. 2005/161, art. 3
- F15** S. 102(4)(b) substituted (1.10.1999) by 1999 c. 8, s. 65(1), Sch. 4 para. 59; S.S.I. 1999/90, art. 2(a)(b), Sch. 1
- F16** S. 102(5) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 280(b), 331(1)(2), 333(2)-(4), Sch. 5 Pt. 1; S.S.I. 2005/161, art. 3

### Modifications etc. (not altering text)

- C6** S. 102 restricted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 210(6), 215(8), 333(2)-(4); S.S.I. 2005/161, art. 3

## 103 Arbitration.

Any question which is required by this Act or by any regulation thereunder to be determined by arbitration shall be determined by a single arbiter agreed upon by the parties, or, failing such agreement, appointed by the Court of Session on the application of any of the parties to the question; and at any stage in the proceedings in any such arbitration the arbiter may, and shall if so directed by the Court of Session, state a case for the opinion of that Court on any question of law arising in the arbitration.

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## 104 Exemption from stamp duty.

- (1) Stamp duty shall not be payable on any conveyance, agreement or assignment made, or instrument executed, solely for the purpose of giving effect to any transfer of property, rights or liabilities by, or by an order made under, sections 2 or 82 or paragraph 7 of Schedule 6.
- (2) Section 12 of the <sup>M4</sup>Finance Act 1895 (which requires Acts to be stamped as conveyances on sale in certain cases) shall not apply to the transfer of property, rights or liabilities by, or by an order made under, section 2, and stamp duty shall not be payable on any such order.

### Marginal Citations

M4 1895 c. 16.

## [<sup>F17</sup>104A Exemption from stamp duty land tax

- (1) This section applies to a land transaction effected by a conveyance, agreement or assignment made, or an instrument executed, solely for the purpose of giving effect to any transfer of property, rights or liabilities held upon trust under section 82.
- (2) For the purposes of stamp duty land tax the land transaction is exempt from charge.
- (3) Relief under this section must be claimed in a land transaction return or an amendment of such a return.
- (4) In this section—
  - “land transaction” has the meaning given by section 43(1) of the Finance Act 2003;
  - “land transaction return” has the meaning given by section 76(1) of that Act.]

### Textual Amendments

F17 S. 104A inserted (1.12.2003) by The Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003 (S.I. 2003/2867), reg. 2, Sch. para. 9(3)

## Supplementary

## 105 Orders, regulations and directions.

- (1) Any power to make orders and regulations conferred by this Act shall be exercisable by statutory instrument.

[<sup>F18</sup>(1A) Subsection (1) does not apply to orders made under section 12D(1) or paragraph 26(1) of Schedule 7A.]

- (2) A statutory instrument made by virtue of this Act shall, subject to subsections [<sup>F19</sup>(2A) to] (4), be subject to annulment in pursuance of a resolution by either House of Parliament.

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[<sup>F20</sup>(2A) No regulations shall be made under paragraph 12(1) of Schedule 1A (Health Board elections) unless a draft has been laid before, and approved by resolution of, the Scottish Parliament.]

(3) No regulations shall be made under [<sup>F21</sup>section 17L(1)(b)] [<sup>F22</sup>section 10O, section 10Z7 or] sub-paragraphs (1) or (2) of paragraph 6 of Schedule 6 (capital value of and borrowings from relevant endowments [<sup>F23</sup>or orders under [<sup>F24</sup>section 10G, 10Z16(3) or] section 99ZB(3)]) unless a draft has been laid before Parliament and approved by a resolution of each House of Parliament.

(4) Subsection (2) does not apply to—

- (a) an order made under section 2(1) constituting a Health Board;
- (b) orders made under sections 2(11), 8, 10(3) to (5) [<sup>F25</sup>12A(1), 12A(8), 12E(1), 12G(2),], 70(2) <sup>F26</sup> . . . [<sup>F27</sup>paragraph 25(1) of Schedule 7A and paragraph 3 of Schedule 7B];

(5) Any power to make regulations conferred on the Secretary of State by this Act is, if the Treasury so direct, exercisable by the Treasury and the Secretary of State jointly except in the case of—

- (a) regulations made under section 22;
- (b) regulations made under section 69(1) in respect of charges for the drugs, medicines or appliances referred to in paragraph (a) of that subsection, or under paragraph 1(1) of Schedule 11 in respect of the remission or repayment of any charge payable under that section in the cases provided for in paragraph 1(1) of that Schedule;
- (c) regulations made under paragraph 2(2) of that Schedule;
- (d) regulations made under paragraph 2(6) of that Schedule;

(6) Where under any provision of this Act—

- (a) power to make an order may be exercisable, or
- (b) directions may be given, or
- (c) schemes may be made,

that provision includes power to vary or revoke the order or direction or scheme, as the case may be, by subsequent order or subsequent directions or subsequent scheme made in the like manner and subject to the same provisions.

(7) Any power [<sup>F28</sup>conferred by this Act] to make regulations [<sup>F29</sup>, orders or directions] may be exercised—

- (a) either in relation to all cases to which the power extends, or in those cases subject to exceptions, or in relation to any [<sup>F30</sup>specified cases or classes of case], and
- (b) subject to such other exceptions or conditions as the Secretary of State thinks fit,

and shall include power to make such [<sup>F31</sup>supplementary, incidental, consequential, transitory, transitional or saving] provision as appears to the Secretary of State to be expedient.

[<sup>F32</sup>This subsection does not apply to regulations made under section 22 (but without prejudice to subsection (3) of that section) or to an order made under section 49 (but without prejudice to paragraph 1(1) of Schedule 10).]



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### Textual Amendments

- F18** S. 105(1A) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(21)(a)**
- F19** Words in s. 105(2) substituted (temp. from 24.6.2009 for certain purposes, otherwise prosp.) by Health Boards (Membership and Elections) (Scotland) Act 2009 (asp 5), **ss. 2(2)(a)**, 4, 6(2)(3), 7, 11(1); S.S.I. 2009/242, **art. 2**
- F20** S. 105(2A) inserted (temp. from 24.6.2009 for certain purposes, otherwise prosp.) by Health Boards (Membership and Elections) (Scotland) Act 2009 (asp 5), **ss. 2(2)(b)**, 4, 6(2)(3), 7, 11(1); S.S.I. 2009/242, **art. 2**
- F21** Words in s. 105(3) inserted (8.11.2010 for certain purposes, otherwise 22.12.2010) by Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3), **ss. 39(2)**, 43(3); S.S.I. 2010/372, **art. 2**, Schs. 1, 2
- F22** Words in s. 105(3) 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. 21(b)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F23** Words in s. 105(3) inserted (14.10.1999) by 1999 c. 8, **s. 59(2)**; S.S.I. 1999/115, **art. 2**
- F24** Words in s. 105(3) 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. 21(a)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F25** Figures inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(21)(b)**
- F26** Words in s. 105(4)(b) repealed (1.4.1995) by 1994 c. 16, **s. 2(1)**; S.I. 1995/576, **art. 2**
- F27** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(21)(c)**
- F28** Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 5(1)(a)**
- F29** Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 29(1), **Sch. 9 Pt. I para. 24**
- F30** Words substituted by Health Services Act 1980 (c. 53), **Sch. 6 para. 5(1)(c)**
- F31** Words in s. 105(7) substituted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 60**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**
- F32** Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 5(1)(d)**

### Modifications etc. (not altering text)

- C7** S. 105 modified (1.4.2011) by The Public Services Reform (Scotland) Act 2010 (Health and Social Care) Savings and Transitional Provisions Order 2011 (S.S.I. 2011/121), arts. 1(1), **12**
- C8** S. 105(7) extended by Health and Social Security Act 1984 (c. 48, SIF 113:1), **s. 28(3)**

## 106 Supplementary regulatory powers.

Regulations may make provision for all or any of the following matters,—

- (a) for prescribing the forms of notices and other documents, and the manner of service of notices and other documents;
- (b) for prescribing the manner in which documents may be executed or proved;
- (c) for prescribing the manner in which resolutions of any bodies constituted under this Act are to be proved.

## 107 Local enactments.

- (1) Subject to subsection (2), where any local enactment provides for any matter which is also provided for by any provision of this Act or of any order or regulations made

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under this Act, the provisions of this Act, or as the case may be, of that order or those regulations, shall have effect in substitution for the local enactment, which shall cease to have effect.

- (2) The Secretary of State may by order except from the operation of subsection (1) such local enactments as may be specified in the order and direct that corresponding provisions of this Act or of any order or regulations made under this Act, shall not have effect in the areas in which the specified local enactments have effect.
- (3) If it appears to the Secretary of State that any local enactment not being an enactment which has ceased to have effect by virtue of subsection (1), is inconsistent with any provision of this Act or that any order or regulations made under this Act, or is no longer required, or regulations to be amended, having regard to any such provision, order or regulation, he may by order repeal or amend the local enactment as he may consider appropriate.

## 108 Interpretation and construction.

- (1) In this Act, unless the contrary intention appears—
- “the Agency” has the meaning indicated in section 10;
- “area medical committee”, “area dental committee”, “area nursing and midwifery committee”, “area pharmaceutical committee” and “area optical committee” have the meanings indicated in section 9(2);
- <sup>F33</sup> .....
- “the Dental Estimates Board” has the meaning indicated in section 4;
- “dental practitioner” means a person registered in the dentists register under the Dentists Act [<sup>F34</sup>1984];
- <sup>F35</sup> .....
- “dispensing optician” means a person who is registered in the register kept under section 2 of the <sup>M5</sup>Opticians Act 1958 of dispensing opticians or a body corporate enrolled in the list kept under section 4 of that Act or such bodies carrying on business as dispensing opticians;
- “education authority” has the same meaning as in the Education (Scotland) Act <sup>M6</sup>[<sup>F36</sup>1980];
- “equipment” includes any machinery, apparatus or appliance, whether fixed or not, and any vehicle;
- <sup>F37</sup> .....
- “functions” includes powers and duties;
- [<sup>F38</sup> “ general medical services contract ” has the meaning given in section 17J(2);
- [<sup>F39</sup> “ general ophthalmic services ” is to be construed in accordance with section 26(1F); ]]
- [<sup>F40</sup> “ goods ” includes accommodation ]
- “governing body”, in relation to any hospital to which section 89 applies, includes any body, whether corporate or unincorporate, having the control and management of the hospital or any part of it or otherwise carrying on the business of the hospital or any part of it;
- “Health Board” means a [<sup>F41</sup>Health Board] constituted under section 2;
- “the health service” means the health service established in pursuance of section 1 of the <sup>M7</sup>National Health Service (Scotland) Act 1947;

*Status: Point in time view as at 01/08/2012.*

**Changes to legislation:** National Health Service (Scotland) Act 1978, Part VII is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

“health service hospital” means a hospital vested in the Secretary of State [F42 for the purposes of his functions] under this Act [F43 or vested in an NHS trust];

[F44 “ HIS ” has the meaning indicated in section 10A; ]

“hospital” means—

- (a) any institution for the reception and treatment of persons suffering from illness,
- (b) any maternity home, and
- (c) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation, and any institution for providing dental treatment maintained in connection with a dental school,

and includes clinics, dispensaries, and out-patient departments maintained in connection with any such home or institution, and “hospital accommodation” shall be construed accordingly;

“the Hospital Trust” has the meaning indicated in section 11;

“illness” includes mental disorder within the meaning of [F45 section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003] and any injury or disability requiring medical or dental treatment or nursing;

“local authority” means a [F46 council constituted under section 2 of the Local Government etc. (Scotland ) Act 1994];

“local consultative committee” means a committee recognised by the Secretary of State under section 9(1);

“local health council” has the meaning indicated in section 7;

“medical” includes surgical;

F47 .....

F48 .....

[F49 “ medical practitioner ” means a registered medical practitioner within the meaning of Schedule 1 to the Interpretation Act 1978 ]

“medicine” includes such chemical re-agents as are included in a list for the time being approved by the Secretary of State for the purposes of section 27;

“modifications” includes additions, omissions and amendments;

[F50 “ National Health Service trust ” has the meaning indicated by section 12A and “ NHS trust ” shall be construed accordingly

“ NHS contract ” has the meaning indicated by section 17A(3) ]

F51 .....

“officer” includes servant;

[F52 “ operational date ”, in relation to an NHS trust, shall be construed in accordance with paragraph 3(1)(e) of Schedule 7A; ]

[F53 “ ophthalmic optician ” means a person registered in the register of optometrists maintained under section 7 of the Opticians Act 1989 [F54 , or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act, ] or a body corporate registered in the register of bodies corporate maintained under section 9 of that Act carrying on business as an optometrist. ]

“patient” includes an expectant or nursing mother and a lying-in woman;

F47 .....

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[<sup>F55</sup> “ pilot scheme ” has the meaning given by section 1 of the National Health Service (Primary Care) Act 1997 (c.46); ]

<sup>F56</sup>  
.....

“prescribed” means prescribed by regulations made by the Secretary of State under this Act;

[<sup>F57</sup> “ primary medical services ” is to be construed in accordance with section 2C(5); ]

“property” includes rights;

[<sup>F58</sup> “ provide ” includes manage ]

<sup>F33</sup>  
.....

[<sup>F59</sup> “ registered pharmacist ” means a person registered as a pharmacist in Part 1 or 4 of the register maintained under article 19 of the Pharmacy Order 2010;

[<sup>F60</sup> “ Regulation (EC) No. 883/2004 ” means Regulation ( EC ) No. 883/2004 of the European Parliament and of the Council of 29th April 2004 on the coordination of social security systems, ]

“ regulations ” means regulations made by the Secretary of State under this Act;

“ relevant endowment ” has the meaning indicated in section 11;

[<sup>F61</sup> “ the Research Trust ” means the Scottish Hospital Endowments Research Trust constituted under subsection (1) of section 12 of this Act (before the repeal of that subsection by section 38(2)(a) of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13); ]

[<sup>F62</sup> “ section 17C arrangements ” has the same meaning as in section 17E(9); ]

<sup>F63</sup>  
.....

[<sup>F64</sup> “ Special Health Board ” means a Special Health Board constituted under section 2; ]

[<sup>F65</sup> “ state hospital ” has the meaning indicated in section 102(2) ]

<sup>F66</sup>  
.....

“ superannuation benefits ” means annual superannuation allowances, gratuities and periodical payments payable on retirement, death or incapacity, and similar benefits;

<sup>F63</sup>  
.....

“ the Tribunal ” has the meaning indicated in section 29;

“ the Trust ” has the meaning indicated in section 11;

“ University Liaison Committee ” means a committee such as is referred to in section 8;

[<sup>F67</sup> “ voluntary organisation ” means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority. ]

[<sup>F68</sup>(1A) References in this Act to “carrying on the business of dentistry” are to be construed in accordance with section 40 of the Dentists Act 1984 (c. 24).]

- (2) References in this Act to the purposes of a hospital shall be construed as referring both to the general purposes of the hospital and to any specific purpose of the hospital.
- (3) Any reference in this Act to any enactment is a reference to it as amended or applied by or under any other enactment including this Act.

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- (4) In this Act, except where otherwise indicated,—
- (a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered;
  - (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered;
  - (c) a reference in a section, subsection or Schedule to a numbered or lettered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered or lettered; and
  - (d) a reference to any provision of an Act (including this Act) includes a reference to any Schedule incorporated in the Act by that provision.]

#### Textual Amendments

- F33** Definition repealed by Nurses, Midwives and Health Visitors Act 1979 (c. 36), s. 24(2), Sch. 7 para. 29, **Sch. 8**
- F34** “1984” substituted for “1957” by Dentists Act 1984 (c. 24, SIF 83:1), s. 54(1), **Sch. 5 para. 13**
- F35** S. 108(1): definition of “designated medical officer” repealed (1.10.2009) by Public Health etc. (Scotland) Act 2008 (asp 5), ss. 126(1), 128(2), **Sch. 3** (with s. 127); S.S.I. 2009/319, **art. 2(a)**, Sch. 1
- F36** Words substituted by Education (Scotland) Act 1980 (c. 44), **Sch. 4 para. 18**
- F37** Definitions repealed by Health Services Act 1980 (c. 53), **Sch. 7**
- F38** Words in s. 108 inserted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), {Sch. para. 1(17)(a); S.S.I. 2004/58, **art. 2(3)**}
- F39** Words in s. 108(1) inserted (1.4.2006) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(19)(a)(ii)**; S.S.I. 2005/492, **art. 3(e)**, Sch. 3
- F40** S. 108: definition of “goods” inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 61(a)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**
- F41** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(22)(a)**
- F42** Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 6(a)**
- F43** Words added by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(22)(b)**
- F44** Words in s. 108 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. 22**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F45** Words in s. 108(1) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), arts. 1, 2, **Sch. 1 para. 7(3)**
- F46** Words in s. 108: definition of “local authority” substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 112(3)**; S.I. 1996 323, art. 4(c)
- F47** S. 108: definitions repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(17)(b)**; S.S.I. 2004/58, **art. 2(3)**
- F48** S. 108(1): entry relating to the Medical Practices Committees repealed (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(14)**; S.S.I. 2004/148, **art. 2(c)**
- F49** Definition substituted by Medical Act 1983 (c. 54, SIF 83:1), ss. 54, 56(1), **Sch. 5 para. 17(b)**
- F50** Definitions inserted (the insertion not being in force until 1.4.1991 so far as it relates to the definition of “NHS contract”) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(22)(c)**
- F51** Definition repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

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- F52** Definition inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(22)(d)**
- F53** S. 108(1): definition of "ophthalmic optician" substituted (coming into force in accordance with art. 1(2)(3)(4) of the amending S.I.) by The Opticians Act 1989 (Amendment) Order 2005 (S.I. 2005/848), art. 28, **Sch. 1 para. 10** (with Sch. 2)
- F54** S. 108: words in the definition of "ophthalmic optician" inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1, **190**
- F55** S. 108: definition of "pilot scheme" inserted (28.2.2003) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(12); S.S.I. 2003/62, **art. 2(1)(c)**
- F56** Definition repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**
- F57** S. 108: definition inserted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), {Sch. para. 1(17)(c); S.S.I. 2004/58, **art. 2(3)**}
- F58** S. 108: definition of "provide" inserted (*retrospectively*) by 1999 c. 8, s. **46(2)(8)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**
- F59** S. 108(1): definition of "registered pharmacist" substituted (27.9.2010) by The Pharmacy Order 2010 (S.I. 2010/231), arts. 1, 68, **Sch. 4 para. 4(4)**; S.I. 2010/1621, **art. 2(1)**, Sch.
- F60** Words in s. 108(1) 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. 5**
- F61** Words in s. 108(1) inserted (1.11.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(19)(a)(iv)**; S.S.I. 2005/492, **art. 3(b)**, Sch. 2
- F62** S. 108: definition of "section 17C arrangements" inserted (1.4.1998) by 1997 c. 46, s. 41(3)(10), **Sch. 2 Pt. 1 para. 57**; S.I. 1998/631, art. 2(1)(b), **Sch. 2**
- F63** S. 108: definitions repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), {Sch. para. 1(17)(d); S.S.I. 2004/58, **art. 2(3)**}
- F64** Definition inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(22)(e)**
- F65** S. 108: definition of "state hospital" substituted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 61(b)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**
- F66** Definition repealed by Health Services Act 1980 (c. 53), **Sch. 7**
- F67** Definition substituted by Health Services Act 1980 (c. 53), **Sch. 6 para. 6(b)**
- F68** S. 108(1A) inserted (2.7.2010) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), {Sch. 2 para. 2(19)(b)}; S.S.I. 2010/185, **art. 3(b)**, Sch. 2

#### Marginal Citations

- M5** 1958 c. 32.  
**M6** 1980 c. 44.  
**M7** 1947 c. 27.

## 109 Transitional provisions and savings, consequential amendments and repeals.

Schedule 15 to this Act is hereby given effect, and subject to the transitional provisions and savings contained in that Schedule—

- (a) the enactments and the order specified in Schedule 16 have effect subject to the amendments (being amendments consequent on this Act) specified in that Schedule, and
- (b) the enactments specified in Schedule 17 (which include enactments which were spent before the passing of this Act) are hereby repealed to the extent specified in the third column of that Schedule;

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but nothing in this Act shall be taken as prejudicing the operation of <sup>F69</sup>sections 16(1) and 17(2)(a) of the <sup>M8</sup>Interpretation Act 1978] (which relates to the operation of repeals).

#### Textual Amendments

**F69** Words substituted by virtue of [Interpretation Act 1978 \(c. 30\), s. 25\(2\)](#)

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

**C9** The text of s. 109(a)(b) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

#### Marginal Citations

**M8** [1978 c. 30.](#)

### 110 Citation, extent and commencement.

- (1) This Act may be cited as the National Health Service (Scotland) Act 1978.
- (2) Subject to <sup>F70</sup>subsection (3)]<sup>F70</sup>subsections (2A) and (3)], this Act extends only to Scotland.

<sup>F71</sup>(2A) Section 87B(3) extends also to England and Wales.]

- (3) Paragraph 3 of Schedule 10 extends to other parts of the United Kingdom.
- (4) This Act shall come into force on 1st January 1979.

#### Textual Amendments

**F70** Words “subsections (2A) and (3)” substituted (1.4.1991) for “subsection (3)” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 19\(23\)\(a\)](#)

**F71** [S. 110\(2A\)](#) inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 19\(23\)\(b\)](#)

**Status:**

Point in time view as at 01/08/2012.

**Changes to legislation:**

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