



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART VII

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *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>F1</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>F2</sup>(2A) to] (4), be subject to annulment in pursuance of a resolution by either House of Parliament.

[<sup>F3</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 sub-paragraphs (1) or (2) of paragraph 6 of Schedule 6 (capital value of and borrowings from relevant endowments [<sup>F4</sup> or orders under 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;

*Status: Point in time view as at 01/10/2009.*

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- (b) orders made under sections 2(11), 8, 10(3) to (5) [<sup>F5</sup>12A(1), 12A(8), 12E(1), 12G(2),], 70(2) <sup>F6</sup>. . . [<sup>F7</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>F8</sup>conferred by this Act] to make regulations [<sup>F9</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>F10</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>F11</sup>supplementary, incidental, consequential, transitory, transitional or saving] provision as appears to the Secretary of State to be expedient.

[<sup>F12</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).]

#### Textual Amendments

- F1** 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)**
- F2** 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**
- F3** 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**
- F4** Words in s. 105(3) inserted (14.10.1999) by 1999 c. 8, **s. 59(2)**; S.S.I. 1999/115, **art. 2**
- F5** 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)**

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- F6** Words in s. 105(4)(b) repealed (1.4.1995) by 1994 c. 16, s. 2(1); S.I. 1995/576, art. 2
- F7** 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)**
- F8** Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 5(1)(a)**
- F9** 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**
- F10** Words substituted by Health Services Act 1980 (c. 53), **Sch. 6 para. 5(1)(c)**
- F11** 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**
- F12** Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 5(1)(d)**

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

- C1** 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 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);

F13

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“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>F14</sup>1984];

<sup>F15</sup>

“dispensing optician” means a person who is registered in the register kept under section 2 of the <sup>M1</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>F16M2</sup>1980];

“equipment” includes any machinery, apparatus or appliance, whether fixed or not, and any vehicle;

<sup>F17</sup>

“functions” includes powers and duties;

[<sup>F18</sup>“general medical services contract” has the meaning given in section 17J(2);

[<sup>F19</sup>“general ophthalmic services” is to be construed in accordance with section 26(1F);]

[<sup>F20</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>F21</sup>Health Board] constituted under section 2;

“the health service” means the health service established in pursuance of section 1 of the <sup>M3</sup>National Health Service (Scotland) Act 1947;

“health service hospital” means a hospital vested in the Secretary of State [<sup>F22</sup>for the purposes of his functions] under this Act [<sup>F23</sup>or vested in an NHS trust];

“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 [<sup>F24</sup>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 [<sup>F25</sup>council constituted under section 2 of the Local Government etc. (Scotland ) Act 1994];

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“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;

F26 .....

F27 .....

[<sup>F28</sup>“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;

[<sup>F29</sup>“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)]

F30 .....

“officer” includes servant;

[<sup>F31</sup>“operational date”, in relation to an NHS trust, shall be construed in accordance with paragraph 3(1)(e) of Schedule 7A;]

[<sup>F32</sup>“ophthalmic optician” means a person registered in the register of optometrists maintained under section 7 of the Opticians Act 1989 [<sup>F33</sup>, 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;

F26 .....

[<sup>F34</sup>“pilot scheme” has the meaning given by section 1 of the National Health Service (Primary Care) Act 1997 (c.46);]

F35 .....

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

[<sup>F36</sup>“primary medical services” is to be construed in accordance with section 2C(5);]

“property” includes rights;

[<sup>F37</sup>“provide” includes manage]

F13 .....

[<sup>F38</sup>“registered pharmacist” means a pharmacist registered in Part 1 [<sup>F39</sup>or 3] of the Register of Pharmacists maintained under article 10(1) of the Pharmacists and Pharmacy Technicians Order 2007;]

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

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

[<sup>F40</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>F41</sup>“section 17C arrangements” has the same meaning as in section 17E(9);]

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F42

[<sup>F43</sup>“Special Health Board” means a Special Health Board constituted under section 2;]

[<sup>F44</sup>“state hospital” has the meaning indicated in section 102(2)]

F45

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

F42

“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>F46</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.]

- (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.
- (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

- F13** Definition repealed by [Nurses, Midwives and Health Visitors Act 1979 \(c. 36\)](#), s. 24(2), [Sch. 7 para. 29](#), [Sch. 8](#)
- F14** “1984” substituted for “1957” by [Dentists Act 1984 \(c. 24, SIF 83:1\)](#), s. 54(1), [Sch. 5 para. 13](#)
- F15** 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](#)
- F16** Words substituted by [Education \(Scotland\) Act 1980 \(c. 44\)](#), [Sch. 4 para. 18](#)
- F17** Definitions repealed by [Health Services Act 1980 \(c. 53\)](#), [Sch. 7](#)
- F18** 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\(3\)](#)}
- F19** 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](#)
- F20** 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](#)

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- F21** 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)**
- F22** Words inserted by Health Services Act 1980 (c. 53), **Sch. 6 para. 6(a)**
- F23** 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)**
- F24** 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)**
- F25** 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)
- F26** 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)**
- F27** 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)**
- F28** Definition substituted by Medical Act 1983 (c. 54, SIF 83:1), ss. 54, 56(1), **Sch. 5 para. 17(b)**
- F29** 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)**
- F30** Definition repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**
- F31** 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)**
- F32** 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)
- F33** 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, **99**
- F34** 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)**
- F35** Definition repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**
- F36** 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)**}
- F37** 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**
- F38** S. 108: definition of "registered pharmacist" substituted (coming into force in accordance with art. 1 of the amending S.I.) by The Pharmacists and Pharmacy Technicians Order 2007 (S.I. 2007/289), art. 67, **Sch. 1 para. 4(4)**
- F39** S. 108: words in the definition of "registered pharmacist" inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1, **99**
- F40** 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
- F41** S. 108: definition of "section 17C arrangements" inserted (1.4.1998) by 1997 c. 46, s. 41(3)(10), **Sch. 2 Pt. I para. 57**; S.I. 1998/631, art. 2(1)(b), **Sch. 2**
- F42** 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)**}
- F43** 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)**
- F44** 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**
- F45** Definition repealed by Health Services Act 1980 (c. 53), **Sch. 7**
- F46** Definition substituted by Health Services Act 1980 (c. 53), **Sch. 6 para. 6(b)**

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#### Marginal Citations

- M1** 1958 c. 32.  
**M2** 1980 c. 44.  
**M3** 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;

but nothing in this Act shall be taken as prejudicing the operation of [F47]sections 16(1) and 17(2)(a) of the M4 Interpretation Act 1978] (which relates to the operation of repeals).

#### Textual Amendments

- F47** Words substituted by virtue of Interpretation Act 1978 (c. 30), s. 25(2)

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

- C2** 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

- M4** 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 [F48]subsection (3)][F48]subsections (2A) and (3)], this Act extends only to Scotland.

[F49](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

- F48** 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)  
**F49** 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)



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