



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART II

#### PROVISION OF SERVICES

##### *Pharmaceutical services*

#### 27 Arrangements for provision of pharmaceutical services.

- (1) It shall be the duty of every Health Board to make, in accordance with regulations, arrangements as respects its area for the <sup>[F1]</sup>provision] to persons who are in that area of—
- (a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the health service for England and Wales, the Northern Ireland health service or the armed forces of the Crown (excluding forces of a Commonwealth country and forces raised in a colony), and
  - <sup>[F2]</sup>(b) proper and sufficient drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of the provision by that Board <sup>[F3]</sup>or by an NHS trust] of dental services; and
  - (c) listed drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of the provision by him of general dental services; <sup>F4</sup>
- <sup>[F5]</sup>(cc) <sup>[F6]</sup>such drugs and medicines and such listed appliances as may be determined by the Scottish Ministers for the purposes of this paragraph] which are ordered for those persons by a prescribed description of <sup>[F6]</sup>person in accordance with such conditions, if any, as may be prescribed,] in pursuance of functions in the health service, the health service for England and Wales, the Northern Ireland health service or the armed forces of the Crown (excluding forces of a Commonwealth country and forces raised in a colony); and]

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[ such services as may be prescribed,]]  
<sup>F7</sup>(d)

and the [<sup>F8</sup>provision of drugs, medicines, appliances and services in accordance with the arrangements is][<sup>F9</sup>together with additional pharmaceutical services provided in accordance with a direction under section 27A, referred to in this Act] as “pharmaceutical services”.

In this subsection—

“listed” means included in a list for the time being approved by the Secretary of State for the purposes of this subsection;

“the health service for England and Wales” and “the Northern Ireland health service” mean respectively the health service established in pursuance of section 1 of the <sup>M1</sup>National Health Service Act 1946 or any service provided in pursuance of Article 4(a) of the <sup>M2</sup>Health and Personal Social Services (Northern Ireland) Order 1972.

<sup>F10</sup>(1A) The descriptions of persons which may be prescribed for the purposes of subsection (1) (cc) are the following, or any sub-category of such a description—

- <sup>F11</sup>(a) persons who are registered in the register maintained under article 5 of the Health Professions Order 2001;
- (b) persons who are registered pharmacists;
- <sup>F12</sup>(c) persons who are registered in the dental care professionals register established under section 36B of the Dentists Act 1984;
- (d) persons who are ophthalmic opticians;
- (e) persons who are registered osteopaths within the meaning of the Osteopaths Act 1993 (c. 21);
- (f) persons who are registered chiropractors within the meaning of the Chiropractors Act 1994 (c. 17);
- <sup>F13</sup>(g) persons who are registered nurses or registered midwives;
- (h) persons [<sup>F14</sup>not mentioned above] who are registered in any register established, continued or maintained under an Order in Council under section 60(1) of the Health Act 1999 (c. 8);
- (i) any other description of persons which appears to the Scottish Ministers to be a description of persons whose profession is regulated by or under a provision of, or made under, Northern Ireland legislation and which the Scottish Ministers consider it appropriate to specify.

(1B) A determination under subsection (1)(cc) may—

- (a) make different provision for different cases;
- (b) provide for the circumstances or cases in which a drug, medicine or appliance may be ordered;
- (c) provide that persons falling within a description specified in the determination may exercise discretion in accordance with any provision made by the determination in ordering drugs, medicines and listed appliances.]

<sup>F15</sup>(2) Regulations shall provide for securing that arrangements made by a Health Board under subsection (1) will enable persons in the Board’s area for whom drugs, medicines or appliances mentioned in that subsection are ordered as there mentioned [<sup>F16</sup>, or to whom services mentioned in subsection (1)(d) are to be provided,] to receive them from persons with whom such arrangements have been made.

(3) The regulations shall include provision—

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- (a) for the preparation and publication by a Health Board of one or more lists of persons, other than medical practitioners and dental practitioners, who undertake to provide pharmaceutical services from premises in the Board's area;
- (b) that an application to a Health Board for inclusion in such a list shall be made in the prescribed manner and shall state—
  - (i) the [<sup>F17</sup>pharmaceutical] services which the applicant will undertake to provide and, if they consist of or include the supply of appliances, which appliances he will undertake to supply; and
  - (ii) the premises from which he will undertake to provide those services;
- (c) that, except in prescribed cases—
  - (i) an application for inclusion in such a list by a person not already included; and
  - (ii) an application by a person already included in such a list for inclusion also in respect of [<sup>F17</sup>pharmaceutical] services or premises other than those already listed in relation to him,shall be granted only if the Health Board is satisfied, in accordance with the regulations, that it is necessary or desirable to grant it in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included in the list of the services, or some of the services, specified in the application; and
- (d) for the removal of an entry in respect of premises from a list if it has been determined in the prescribed manner that the person to whom the entry relates—
  - (i) has never provided from those premises; or
  - (ii) has ceased to provide from them, the [<sup>F17</sup>pharmaceutical] services, or any of the services, which he is listed as undertaking to provide from them.

(4) The regulations may include provision—

- (a) that an application to a Health Board may be granted in respect of some only of the [<sup>F17</sup>pharmaceutical] services specified in it;
- (b) that an application to a Health Board relating to [<sup>F17</sup>pharmaceutical] services of a prescribed description shall be granted only if it appears to the Board that the applicant has satisfied such conditions with regard to the provision of those [<sup>F17</sup>pharmaceutical] services as may be prescribed;
- <sup>F18</sup>(ba) [ that an application to a Health Board by a person who qualified to have his name registered under the Pharmacy Act 1954 by virtue of section 4A of that Act (qualification by European diploma) shall not be granted unless the applicant satisfies the Board that he has the knowledge of English which, in the interests of himself and the persons making use of the services to which the application relates, is necessary for the provision of pharmaceutical services in the Board's area.]
- (c) that the inclusion of a person in a list in pursuance of such an application may be for a fixed period;
- (d) that, where the premises from which an application states that the applicant will undertake to provide [<sup>F17</sup>pharmaceutical] services are in an area of a prescribed description, the applicant shall not be included in the list unless his inclusion is approved by a prescribed body and by reference to [<sup>F19</sup>prescribed criteria]; and

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- (e) that the prescribed body may give its approval subject to conditions.
- (5) The regulations shall include provision conferring on such persons as may be prescribed rights of appeal from decisions made by virtue of subsection (3) or (4).
- (6) The regulations shall be so framed as to preclude—
- (a) a person included in a list published under subsection (3)(a) above; and
  - (b) an employee of such a person;
- from taking part in the decision whether an application such as is mentioned in subsection (3)(c) above should be granted or an appeal against such a decision brought by virtue of subsection (5) above should be allowed.]

#### Subordinate Legislation Made

- P1** S. 27: s. 19 (with ss. 23, 24, 27, 28, 105(7) and 108(1)) power exercised by S.I. 1991/572  
S. 27: s. 19 (with ss. 27, 69, 75(a), 105(7), 108(1) and Sch. 11 para. 1) power exercised by S. I. 1991/574  
S. 27: for previous exercises of power see Index to Governmental Orders
- P2** S. 27: s. 19 (with ss. 27 and 108(1)) power exercised by S.I. 1991/2241
- P3** S. 27(2): s. 19 (with ss. 25(2), 26(2), 27(2), 105(7) and 108(1)) power exercised by S.I. 1991/1188.

#### Textual Amendments

- F1** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(7)(a)(i)**
- F2** S. 27(1)(b)(c) substituted for s. 27(1)(b) by Health Services Act 1980 (c. 53), **s. 20(2)**
- F3** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(7)(a)(ii)**
- F4** Word “and” at end of s. 27(1)(c) omitted (1.7.1996) by virtue of Medicinal Products: Prescription by Nurses etc. Act 1992 (c. 28), **s. 3**; S.I. 1996/1505, **art. 2**
- F5** S. 27(1)(cc) inserted (1.7.1996) by Medicinal Products; Prescription by Nurses etc. Act 1992 (c. 28), **s. 3**; S.I. 1996/1505, **art. 2**
- F6** Words in s. 27(1)(cc) substituted (11.5.2001 for conferring power to make any order or regulations, otherwise 1.4.2002) by 2001 c. 15, **s. 44(2)** (with ss. 64(9), 65(4)); S.S.I. 2002/75, **art. 2**
- F7** S. 27(1)(d) and “; and” preceding it inserted by National Health Service and Community Care Act 1990 (c.19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(7)(a)(iii)**
- F8** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(7)(a)(iv)**
- F9** Words in s. 27(1) substituted (15.8.1997) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 44**; S.I. 1997/1780, **art. 2(1)**, **Sch.**
- F10** S. 27(1A)(1B) inserted (11.5.2001 for conferring power to make any order or regulations, otherwise 1.4.2002) by 2001 c. 15, **s. 44(3)** (with ss. 64(9), 65(4)); S.S.I. 2002/75, **art. 2**
- F11** S. 27(1A)(a) substituted (9.7.2003) by The Health Professions Order 2001 (Consequential Amendments) Order 2003 (S.I. 2003/1590), **art. 3**, **Sch. para. 2**
- F12** Words in s. 27(1A)(c) substituted (coming into force in accordance with art. 1 of the amending S.I.) by The Dentists Act 1984 (Amendment) Order 2005 (S.I. 2005/2011), **art. 49**, **Sch. 6 para. 2(3)** (with transitional provisions in Sch. 7 and S.I. 2006/1671)
- F13** S. 27(1A)(g) substituted (1.8.2004) by The Health Act 1999 (Consequential Amendments) (Nursing and Midwifery) Order 2004 (S.I. 2004/1771), **art. 3**, **Sch. para. 6(a)**
- F14** Words in s. 27(1A)(h) inserted (1.8.2004) by The Health Act 1999 (Consequential Amendments) (Nursing and Midwifery) Order 2004 (S.I. 2004/1771), **art. 3**, **Sch. para. 6(b)**
- F15** S. 27(2)–(6) substituted for (2) by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), **s. 3(3)**

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- F16** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(7)(b)**
- F17** Word inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(7)(c)**
- F18** S. 27(4)(ba) inserted by S.I. 1987/2202, **art. 5**
- F19** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(7)(d)**

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

- C1** Words in s. 27 modified (4.3.2004) by The National Health Service (Tribunal) (Scotland) Regulations 2004 (S.S.I. 2004/38), **reg. 26(2)(d)** (with regs. 32-34)
- C2** S. 27(2) extended by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 17(1)**

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**Marginal Citations**

- M1** 1946 c. 81.
- M2** S.I. 1972/1265.

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