

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

SCHEDULES

SCHEDULE 2

AMENDMENTS

PART I

MINOR AND CONSEQUENTIAL AMENDMENTS

The Health Services and Public Health Act 1968 (c. 46)

- 1 (1) The Health Services and Public Health Act 1968 is amended as follows.
- (2) In section 59(1), for “general medical services or general dental services” substitute “general medical services, personal medical services, general dental services or personal dental services”.
- (3) After section 59(2) insert—
- “(2A) In subsection (1), references to personal medical services and personal dental services are to be construed as references to services of those respective kinds under section 28C of the 1977 Act, section 17C of the 1978 Act or the corresponding provisions of the law in force in Northern Ireland or the Isle of Man.”
- (4) After section 63(2)(b) insert—
- “(ba) the provision or performance of a service in accordance with arrangements made under section 28C of the 1977 Act or section 17C of the ^{M1}National Health Service (Scotland) Act 1978 and an activity involved in or connected with the provision or performance of such a service;”.

Commencement Information

- II** Sch. 2 para. 1 partly in force; Sch. 2 para. 1 not in force at Royal Assent see s. 41; Sch. 2 para. 1 in force for certain purposes at 1.4.1998 by [S.I. 1998/631](#), arts. 2(b), 3, [Sch. 2](#)

Marginal Citations

- M1** 1978 c. 29.

The Patents Act 1977 (c. 37)

- 2 In section 56(4)(a) of the Patents Act 1977, for the words from “provision of” to “Isle of Man” substitute “provision of—
- (i) pharmaceutical services, general medical services or general dental services under Part II of the ^{M2}National

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

Health Service Act 1977, Part II of the National Health Service (Scotland) Act 1978, or the corresponding provisions of the law in force in Northern Ireland or the Isle of Man, or

- (ii) personal medical services or personal dental services provided in accordance with arrangements made under section 28C of the 1977 Act, section 17C of the 1978 Act, or the corresponding provisions of the law in force in Northern Ireland or the Isle of Man”.

Commencement Information

I2 Sch. 2 para. 2 partly in force; Sch. 2 para. 2 not in force at Royal Assent see s. 41; Sch. 2 para. 2 in force for certain purposes at 1.4.1998 by [S.I. 1998/631](#), arts. 2(b), 3, [Sch. 2](#)

Marginal Citations

M2 1977 c. 49.

The National Health Service Act 1977 (c. 49)

- 3 The 1977 Act is amended in accordance with paragraphs 4 to 31.

Commencement Information

I3 Sch. 2 para. 3 partly in force; Sch. 2 para. 3 not in force at Royal Assent see s. 41; Sch. 2 para. 3 in force for certain purposes at 1.4.1998 by [S.I. 1998/631](#), art. 2(b), [Sch. 2](#); Sch. 2 para. 3 in force for further certain purposes by [S.I. 1998/1998](#), art. 2(2)(b), [Sch. 2](#); Sch. 2 para. 3 in force for further certain purposes at 10.12.1998 by [S.I. 1998/2840](#), art. 2, [Sch.](#)

- 4 (1) Section 15 is amended as follows.

- (2) After subsection (1) insert—

“(1ZA) It is the duty of each Health Authority, in accordance with regulations, to perform such functions in relation to section 28C arrangements as may be prescribed.

(1ZB) Regulations under subsection (1ZA) may, in particular—

- (a) prescribe functions in relation to training;
- (b) provide for appeals to the Secretary of State or a prescribed body in relation to functions prescribed by the regulations.”

- ^{F1}(3) For subsection (1B) substitute—

“(1B) In relation to a Part II medical practitioner—

- (a) whose name is included in the medical list of only one Health Authority, and
- (b) who practises on his own or in partnership with others all of whom are Part II medical practitioners whose names are included only in that Authority’s medical list,

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

any reference in this Act or the ^{M3}National Health Service and Community Care Act 1990 to the relevant Health Authority is to be construed as a reference to that Authority.

(1BA) In relation to a medical practitioner who is not within subsection (1B), any reference in this Act or the National Health Service and Community Care Act 1990 to the relevant Health Authority is to be construed as a reference to the Authority in whose area most of the practice patients live.”]

^{F1}[(4) After subsection (1C) insert—

“(1D) In this section—

“Part II medical practitioner” means a medical practitioner who provides general medical services under Part II and does not perform personal medical services under section 28C arrangements; and

“practice patient” means—

- (a) in relation to a medical practitioner who practises otherwise than in partnership, an individual who is on that practitioner’s list of patients (or, if that practitioner and one or more other medical practitioners together have a single list of patients in connection with section 28C arrangements, an individual who is on that single list);
- (b) in relation to a medical practitioner who is one of two or more practitioners who practise in partnership with each other, an individual who is on the list of patients of any of those practitioners (or, if any of those practitioners together have a single list of patients in connection with section 28C arrangements, an individual who is on that single list).”]

Textual Amendments

F1 Sch. 2 para. 4(3)(4) repealed (1.10.1999 for specified purposes for E., 1.4.2000 for specified purposes for W.) by 1999 c. 8, ss. 65(2), 67(1), **Sch. 5**; S.I. 1999/2540, art. 2(1)(a), **Sch. 1**; S.I. 2000/1041, art. 2(d), **Sch.**

Marginal Citations

M3 1990 c. 19.

5 (1) Section 26 is amended as follows.

(2) For subsection (2) substitute—

“(2) The Secretary of State may supply or make available to persons—

- (a) providing general medical services, general dental services, general ophthalmic services or pharmaceutical services, or
- (b) providing, in accordance with section 28C arrangements, personal medical services, personal dental services or other services of a kind that may be provided under this Part,

such goods, materials or other facilities as may be prescribed.”

(3) In subsection (4), after the words “pharmaceutical services” at the end of paragraph (a) insert—

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

“(aa) persons performing, in accordance with section 28C arrangements, personal medical services, personal dental services or other services of a kind that may be provided under this Part.”.

Commencement Information

I4 Sch. 2 para. 5 partly in force; Sch. 2 para. 5 not in force at Royal Assent see s. 41; Sch. 2 para. 5 in force for certain purposes at 1.4.1998 by [S.I. 1998/631](#), arts. 2(b), 3, [Sch. 2](#)

^{F2}6

Textual Amendments

F2 Sch. 2 para. 6 repealed (E.W.) (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), s. 199(1)(4), [Sch. 14 Pt. 4](#) Note; [S.I. 2004/288](#), art. 6(2)(p) (with art. 8) (as amended by [S.I. 2004/866](#) and [S.I. 2005/2925](#)); [S.I. 2004/480](#), art. 5(2)(p) (with arts. 6, 7) (as amended by [S.I. 2004/1019](#) and [S.I. 2006/345](#))

7 After section 28H insert—

“28I Use of accommodation.

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of personal medical services or personal dental services in accordance with section 28C arrangements, he may make the accommodation available on such terms as he thinks fit to persons providing those services.”

8 [^{F3}In section 29(2), omit paragraphs (b) and (c).]

Textual Amendments

F3 Sch. 2 paras. 8-12 repealed (E.W.) (1.4.2004 for the repeal of Sch. 2 paras. 8-11) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), s. 199(1)(4), [Sch. 14 Pt. 4](#) Note; [S.I. 2004/288](#), art. 6(2)(p) (with art. 8) (as amended by [S.I. 2004/866](#) and [S.I. 2005/2925](#)); [S.I. 2004/480](#), art. 5(2)(p) (with arts. 6, 7) (as amended by [S.I. 2004/1019](#) and [S.I. 2006/345](#))

9 [^{F3}In section 32(1), for the definition of “applicant” substitute—

““applicant” means a medical practitioner who is seeking to be nominated or approved by a Health Authority in accordance with regulations under section 29B for appointment to fill a vacancy;”.]

Textual Amendments

F3 Sch. 2 paras. 8-12 repealed (E.W.) (1.4.2004 for the repeal of Sch. 2 paras. 8-11) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), s. 199(1)(4), [Sch. 14 Pt. 4](#) Note; [S.I. 2004/288](#), art. 6(2)(p) (with art. 8) (as amended by [S.I. 2004/866](#) and [S.I. 2005/2925](#)); [S.I. 2004/480](#), art. 5(2)(p) (with arts. 6, 7) (as amended by [S.I. 2004/1019](#) and [S.I. 2006/345](#))

10 [^{F3}(1) Section 33 is amended as follows.

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

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- (2) Omit subsection (1).
- (3) In subsection (1B)—
- (a) after “Act” insert “ or any regulations made under this Part of this Act ”; and
 - (b) for “the Medical Practices Committee are to refuse applications under section 30 above” substitute “ references under regulations made under section 29B are to be determined ”.
- (4) After subsection (1B) insert—
- “(1C) An order under subsection (1A) may, in particular, make provision as to the extent to which account is to be taken under the order of medical practitioners whose ability to carry out remunerated work is limited by virtue of conditions of practice which relate to remuneration and are determined under regulations made under section 29B.”
- (5) Omit subsections (2) to (6) and (8).]

Textual Amendments

- F3** Sch. 2 paras. 8-12 repealed (E.W.) (1.4.2004 for the repeal of Sch. 2 paras. 8-11) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), s. 199(1)(4), [Sch. 14 Pt. 4](#) Note; S.I. 2004/288, art. 6(2)(p) (with art. 8) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, art. 5(2)(p) (with arts. 6, 7) (as amended by S.I. 2004/1019 and S.I. 2006/345)

[^{F4}11 [^{F3} In section 34(1)(a), omit from “(ii) the occurrence” to the end of the section.]]

Textual Amendments

- F3** Sch. 2 paras. 8-12 repealed (E.W.) (1.4.2004 for the repeal of Sch. 2 paras. 8-11) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), s. 199(1)(4), [Sch. 14 Pt. 4](#) Note; S.I. 2004/288, art. 6(2)(p) (with art. 8) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, art. 5(2)(p) (with arts. 6, 7) (as amended by S.I. 2004/1019 and S.I. 2006/345)
- F4** Sch. 2 para. 11 repealed (*prosp.*) by [2001 c. 15](#), [ss. 67, 70\(2\)](#) Sch. 6 Pt. I (with ss. 64(9), 65(4))

12 [^{F3}Omit section 36(1)(c).]

Textual Amendments

- F3** Sch. 2 paras. 8-12 repealed (E.W.) (1.4.2004 for the repeal of Sch. 2 paras. 8-11) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), s. 199(1)(4), [Sch. 14 Pt. 4](#) Note; S.I. 2004/288, art. 6(2)(p) (with art. 8) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, art. 5(2)(p) (with arts. 6, 7) (as amended by S.I. 2004/1019 and S.I. 2006/345)

[^{F5}13 In section 41, for “in this Act referred to” substitute “ , together with additional pharmaceutical services provided in accordance with a direction under section 41A, referred to in this Act ”.]

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

Textual Amendments

F5 Sch. 2 para. 13 repealed (1.7.2002 for W. and otherwise *prosp.*) by 2001 c. 15, ss. 67, 70(2), **Sch. 6 Pt. II** (with ss. 64(9), 65(4)); S.I. 2002/1475, art. 2, **Sch. Pt. 1**

- 14 In section 43(3), after “41(d)” insert “, or additional pharmaceutical services provided in accordance with a direction under section 41A, ”.
- 15 In section 50, after “whom” insert “ general ophthalmic ”.
- 16 In section 81(b), after “providing” insert “ personal dental services in accordance with section 28C arrangements or ”.
- 17 In section 82(b), after “providing” insert “ personal dental services in accordance with section 28C arrangements or ”.
- 18 In section 83, for paragraph (b) substitute—
 - “(b) for the purposes of section 78(1A) in relation to appliances provided as part of—
 - (i) general dental services, or
 - (ii) personal dental services provided in accordance with section 28C arrangements,
 may provide for the reduction of the sums which would otherwise be payable by a Health Authority to the persons by whom those services are provided by the amount of the charges authorised by section 78(1A) in respect of those appliances.”

PROSPECTIVE

F⁶19

Textual Amendments

F6 Sch. 2 paras. 16-19 repealed (1.4.2006 for E., 1.4.2006 for W. for specified purposes, 1.3.2007 in so far as not already in force, immediately before the National Health Service Act 2006 comes into force) by **Health and Social Care (Community Health and Standards) Act 2003 (c. 43)**, s. 199(1)(4), **Sch. 14 Pt. 4** Note; S.I. 2005/2925, art. 11; S.I. 2006/345, art. 7(2)(i); S.I. 2006/1407, art. 1(1), Sch. 1 para. 13 (with art. 4)

- 20 In section 85(1), references to functions conferred or imposed by or under the 1977 Act are to be construed as including references to functions conferred or imposed in relation to pilot schemes by or under this Act; and references to regulations and directions are accordingly to be construed as including regulations or directions under this Act.
- 21 In section 86, the reference to a function conferred by virtue of the 1977 Act is to be construed as including a reference to a function conferred in relation to pilot schemes by virtue of this Act.

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Commencement Information

I5 Sch. 2 para. 21 partly in force; Sch. 2 para. 21 not in force at Royal Assent see s. 41; Sch. 2 para. 21 in force for certain purposes at 1.4.1998 by S.I. 1998/631, art. 2(b), Sch. 2; Sch. 2 para. 21 in force at 1.10.1998 in so far as not already in force by S.I. 1998/1998, art. 2(2)(b), Sch. 2

22 In section 97(6)(a), for “subsections (1) to (3), or subsection (4), above” substitute “this section”.

23 In section 97A—

(a) in subsection (1)(a), for “amounts allotted to them for that year under subsections (2) and (3)” substitute “amount allotted to them for that year under subsection (3)”; and

(b) in subsection (9)(c)(i), omit “subsections (1) to (3) of”.

24 In section 102(1)(a)(iii) and (2)(b), after “section 32 above” insert “or by regulations which make provision in relation to section 28C arrangements of a kind that may be made by regulations under section 32 above”.

25 In section 103(1)(a) after “Act” insert “or in accordance with section 28C arrangements”.

26 In section 105(2)(a) after “examined” insert “or as part of his duty to perform personal medical services for that person in accordance with section 28C arrangements”.

27 In section 126(3), after “under” insert “or by virtue of”.

28 In section 128, insert at the appropriate places—

““health service body” has the same meaning as in section 4 of the^{M4}National Health Service and Community Care Act 1990;”;

““medical list” has the meaning given by section 29A(6);”;

““personal dental services” has the meaning given in section 28C(7);”;

““personal medical services” (except in section 29) has the meaning given in section 28C(7);”;

““section 28C arrangements” means arrangements made under section 28C”.

Commencement Information

I6 Sch. 2 para. 28 partly in force; Sch. 2 para. 28 not in force at Royal Assent see s. 41; Sch. 2 para. 28 in force for certain purposes at 1.4.1998 by S.I. 1998/631, art. 2(b), Sch. 2; Sch. 2 para. 28 in force for further certain purposes at 10.12.1998 by S.I. 1998/2840, art. 2, Sch.; Sch. 2 para. 28 in force (E.) for certain purposes at 24.6.2002 by S.I. 2002/1616, art. 2

I7 Sch. 2 para. 28 in force at 1.4.2004 for specified purposes for W. by S.I. 2004/287, art. 3

Marginal Citations

M4 1990 c. 19.

29 (1) In Schedule 9, paragraph 5A is amended as follows.

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

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- (2) In sub-paragraph (2), after “sub-paragraph (1)(c) above” insert “ as it has effect in relation to the functions mentioned below ”.
- (3) After sub-paragraph (2) insert—
- “(2A) In sub-paragraph (1)(c) above as it has effect in relation to functions of the Tribunal conferred by or under any enactment relating to the preferential treatment of medical practitioners on transferring to medical lists, the reference to the person concerned is a reference to the medical practitioner to whom the matter before the Tribunal relates.”
- 30 (1) Schedule 10 is amended as follows.
- (2) In paragraph 1(1) and (3), omit “, or any part of the goodwill,”.
- (3) In paragraph 1, for sub-paragraph (2) substitute—
- “(2) Any person proposing to be a party to a transaction or series of transactions which he thinks might amount to a sale of the goodwill of a medical practice in contravention of section 54(1) may ask the Medical Practices Committee for a certificate under this paragraph.”
- (4) In paragraph 1, omit sub-paragraph (8).
- (5) In paragraph 2, for sub-paragraph (1) substitute—
- “(1) For the purposes of section 54(1) and paragraph 1, a disposal of premises previously used for the purposes of a medical practice shall be deemed to be a sale of the goodwill of a medical practice if—
- (a) the person disposing of the premises did so knowing that another person (“A”) intended to use them for the purposes of A’s medical practice, and
- (b) the consideration for the disposal substantially exceeded the consideration that might reasonably have been expected if the premises had not previously been used for the purposes of a medical practice.
- (1A) If a person disposes of any premises together with any other property, the court shall, for the purposes of sub-paragraph (1), make such apportionment of the consideration as it thinks just.
- (1B) For the purposes of sub-paragraphs (1) and (1A)—
- (a) “disposal” means any sale, letting or other form of disposal (whether by a single transaction or a series of transactions) and “disposes” and “disposing” are to be read accordingly; and
- (b) a person who procures the disposal of any premises is to be treated as having disposed of them.”
- (6) In paragraph 2(2)—
- (a) omit “between medical practitioners”; and
- (b) omit “, or part of the goodwill,”.
- (7) In paragraph 2, for sub-paragraph (3) substitute—
- “(3) Sub-paragraph (3A) applies if a person (“the assistant”)—

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part 1. (See end of Document for details)

- (a) performs services on behalf of a person who carries on a medical practice (or as an employee of a person employing a practitioner who carries on a medical practice);
- (b) receives substantially less remuneration for performing those services than might reasonably have been expected, having regard to the circumstances at the time when the remuneration was fixed; and
- (c) subsequently succeeds, whether as a result of a partnership agreement or otherwise, to that practice.

(3A) For the purposes of section 54 and paragraph 1, a sale of the goodwill of the practice is to be deemed to have taken place (at the time when the remuneration was fixed), unless it is proved that the remuneration was not fixed in contemplation of the assistant's succeeding to the practice."

(8) In paragraph 2, for sub-paragraphs (4) and (5) substitute—

"(4) For the purposes of section 54(1) and paragraph 1, the goodwill of a medical practice shall be deemed to have been sold if—

- (a) a person carrying on the practice (or employing a practitioner who carries on a medical practice) agrees, for valuable consideration—
 - (i) to do or refrain from doing any act, for the purpose of facilitating the succession of another person to the practice; or
 - (ii) to allow any act to be done, for that purpose; or
- (b) a person—
 - (i) gives valuable consideration to a person carrying on the practice (or employing a practitioner who carries on a medical practice); and
 - (ii) succeeds, or has previously succeeded, to the practice.

(5) Sub-paragraph (4) does not apply—

- (a) if it is proved that no part of the consideration was given in respect of the goodwill; or
- (b) to anything done—
 - (i) in relation to the acquisition of premises for the purposes of a medical practice;
 - (ii) in pursuance of a partnership agreement; or
 - (iii) in the performance of medical services by one person as an assistant to another."

(9) In paragraph 2, for sub-paragraph (7) substitute—

"(7) For the purposes of section 54 and this Schedule—

- (a) consideration is deemed to be given to a person ("B") if—
 - (i) it is given to another person but with B's knowledge and consent; and
 - (ii) it appears to the court that B has derived, or will derive, a substantial benefit from the giving of the consideration; and
- (b) unless the context otherwise requires, references to a person include, in the case of an individual who has died, references to his personal representative."

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(10) At the end insert—

“ Carried-over goodwill

3 The fact that a person’s medical practice was previously carried on by another person who at any time provided general medical services or personal medical services does not, by itself, make it unlawful under section 54(1) for the goodwill of his practice to be sold.”

31 In Schedule 12, in paragraph 1(1)(b), after “drug or medicine” insert “ (otherwise than in accordance with section 28C arrangements) ”.

The National Health Service (Scotland) Act 1978 (c. 29)

32 The 1978 Act is amended in accordance with paragraphs 33 to 60.

Commencement Information

I8 Sch. 2 para. 32 partly in force; Sch. 2 para. 32 not in force at Royal Assent see s. 41; Sch. 2 para. 32 in force for certain purposes at 1.4.1998 by [S.I. 1998/631](#), [art. 2\(1\)\(b\)](#), [Sch. 2](#); Sch. 2 para. 32 in force for certain purposes at 1.10.1998 by [S.I. 1998/1998](#), [art. 2\(2\)\(b\)](#), [Sch. 2](#)

PROSPECTIVE

33 [^{F7}In section 3(1), omit from “, for the purpose of” to the end.]

Textual Amendments

F7 Sch. 2 para. 33 repealed (S.) (1.4.2004) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), [sch. 4 para. 14\(c\)\(i\)](#); [S.S.I. 2004/148](#), art. 2(c)

34 In section 12A, after subsection (4) insert—

“(4A) The functions of an NHS trust also include power to provide services in accordance with section 17C arrangements, and to do so as a member of a qualifying body (within the meaning of section 17D).”

35 In section 15(1)(a)—

(a) after “persons” insert “—

(i);

and

(b) after “Part II” insert “; or

(ii) providing, in accordance with section 17C arrangements, personal medical services, personal dental services or other services of a kind that may be provided under this Part or Part III.”.

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

Commencement Information

- I9** Sch. 2 para. 35 partly in force; Sch. 2 para. 35 not in force at Royal Assent see s. 41; Sch. 2 para. 35 in force for certain purposes at 1.4.1998 by [S.I. 1998/631](#), [arts. 2\(b\), 3](#), [Sch. 2](#)

36 In section 17A(2), at the end insert “ and in this Act “health service body” means any of those persons or bodies ”.

37 [^{F8}After section 17G insert—

“ Immunisation.

Where the Secretary of State arranges with medical practitioners for the vaccination or immunisation of persons against any disease, he shall so far as reasonably practicable give every person providing, and every medical practitioner performing, personal medical services in accordance with section 17C arrangements an opportunity to participate in the arrangements for vaccination or immunisation.”]

Textual Amendments

- F8** Sch. 2 para. 37 repealed (S.) (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), s. 9(1), [sch. para. 2\(10\)\(a\)](#); [S.S.I. 2004/58](#), art. 2(3)

38 After section 17H insert—

“17I Use of accommodation.

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of personal medical services or personal dental services in accordance with section 17C arrangements, he may make the accommodation available on such terms as he thinks fit to persons providing those services.”

Commencement Information

- I10** Sch. 2 para. 38 partly in force; Sch. 2 para. 38 not in force at Royal Assent see s. 41; Sch. 2 para. 38 in force for certain purposes at 1.4.1998 by [S.I. 1998/631](#), [arts. 2\(b\), 3](#), [Sch. 2](#)

39 [^{F9}(1) Section 19 is amended as follows.

(2) In subsection (2), omit paragraphs (b) and (c).

(3) For subsection (8) substitute—

“(8) In relation to a Part II medical practitioner—

- (a) whose name is included in the list of only one Health Board, and
- (b) who practises on his own or in partnership with others all of whom are Part II medical practitioners whose names are included only in that Board’s list,

any reference in this Act to the relevant Health Board is to be construed as a reference to that Board.

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

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- (9) In relation to a medical practitioner who is not within subsection (8), any reference in this Act to the relevant Health Board is to be construed as a reference to the Board in whose area most of the practice patients live.
- (10) In this section—
- “Part II medical practitioner” means a medical practitioner who provides general medical services under Part II and does not perform personal medical services under section 17C arrangements; and
- “practice patient” means—
- (a) in relation to a medical practitioner who practises otherwise than in partnership, an individual who is on that practitioner’s list of patients (or, if that practitioner and one or more other medical practitioners together have a single list of patients in connection with section 17C arrangements, an individual who is on that single list);
- (b) in relation to a medical practitioner who is one of two or more practitioners who practise in partnership with each other, an individual who is on the list of patients of any of those practitioners (or, if any of those practitioners together have a single list of patients in connection with section 17C arrangements, an individual who is on that single list).”]

Textual Amendments

- F9** Sch. 2 paras. 39-41 repealed (S.) (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), s. 9(1), [sch. para. 2\(10\)\(a\)](#); S.S.I. 2004/58, art. 2(3)

PROSPECTIVE

- 40 ^{F9}In section 22(1) for the definition of “applicant” substitute—
- ““applicant” means a medical practitioner who is seeking to be nominated or approved by a Health Board in accordance with regulations under section 19B for appointment to fill a vacancy;”.]

Textual Amendments

- F9** Sch. 2 paras. 39-41 repealed (S.) (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), s. 9(1), [sch. para. 2\(10\)\(a\)](#); S.S.I. 2004/58, art. 2(3)

PROSPECTIVE

- 41 ^{F9}(1) Section 23 is amended as follows.
- (2) Omit subsection (1).
- (3) In subsection (1B)—
- (a) after “Act” insert “ or any regulations made under this Part of this Act ”; and

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

(b) for “the Medical Practices Committee are to refuse applications under section 20” substitute “references under regulations made under section 19B are to be determined”.

(4) After subsection (1B) insert—

“(1C) An order under subsection (1A) may, in particular, make provision as to the extent to which account is to be taken under the order of medical practitioners whose ability to carry out remunerated work is limited by virtue of conditions of practice which relate to remuneration and are determined under regulations made under section 19B.”

(5) Omit subsections (2) to (6) and (8).]

Textual Amendments

F9 Sch. 2 paras. 39-41 repealed (S.) (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), s. 9(1), [sch. para. 2\(10\)\(a\)](#); S.S.I. 2004/58, art. 2(3)

PROSPECTIVE

42 [F10]In section 24(1)(a), omit from “(ii) the occurrence” to the end of the section.]

Textual Amendments

F10 Sch. 2 para. 42 repealed (S.) (1.4.2004) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), [sch. 4 para. 14\(c\)\(ii\)](#); S.S.I. 2004/148, art. 2(c)

43 Omit section 25(2)(c).

44 In section 27(1), for “in this Act referred to” substitute “, together with additional pharmaceutical services provided in accordance with a direction under section 27A, referred to in this Act”.

45 In section 28(2)(b), after “that” insert “ (i) ”, and after “arrangements” insert “, and (ii) all additional pharmaceutical services provided in accordance with a direction under section 27A,”.

PROSPECTIVE

46 In section 34, after “whom” insert “ general ophthalmic ”.

47 In section 73(b), after “providing” insert “ personal dental services in accordance with section 17C arrangements or ”.

48 In section 74(b), after “providing” insert “ personal dental services in accordance with section 17C arrangements or ”.

49 In section 75, for paragraph (b) substitute—

“(b) for the purposes of section 70(1A) in relation to appliances provided as part of—

(i) general dental services, or

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

(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.”

50 In section 75A(1)(a), after “section 70(1) or (1A) above” insert “, section 70A(1) above”.

51 In section 77(1), references to functions conferred or imposed by or under the 1978 Act are to be construed as including references to functions conferred or imposed in relation to pilot schemes by or under this Act; and references to regulations, schemes, proposals and directions are accordingly to be construed as including regulations, schemes, proposals or directions under this Act.

52 In section 78, the reference to a function conferred by or under the 1978 Act is to be construed as including a reference to a function conferred in relation to pilot schemes by or under this Act.

53 (1) Section 87A is amended as follows.

(2) In subsection (1), after “section 19”, insert “, or (in the case of practitioners who are not employed by another person) personal medical services in accordance with section 17C arrangements, ”.

(3) In subsection (4), for paragraph (g) substitute—

“(g) the operation of this section in a case where one or more of the medical practitioners wishing to make an application under subsection (1) is also—

(i) on the medical list of a Health Authority established under section 8 of the ^{M5}National Health Service Act 1977; or

(ii) providing personal medical services in accordance with arrangements made under section 28C of that Act;”.

Marginal Citations

M5 1977 c. 49.

54 (1) Section 87B is amended as follows.

(2) In subsection (3)(b), for “individuals on the lists of patients of any of the members of the practice” substitute “ practice patients ”.

(3) In subsection (5)(b)—

(a) after “general medical services” insert “ or personal medical services provided in accordance with section 17C arrangements ”; and

(b) for “individuals on the lists of patients of the members of the practice” substitute “ practice patients ”.

(4) After subsection (6) insert—

“(7) In this section “practice patient”, in relation to a recognised fund-holding practice, means an individual who is on the list of patients of any of the members of the practice (or, if any of those members together have a single

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part 1. (See end of Document for details)

list of patients in connection with section 17C arrangements, an individual who is on that single list.”

PROSPECTIVE

^{F11}[55 (1) Section 87D is amended as follows.

(2) In subsection (1), for “subsection (2)” substitute “ subsections (2) and (8) ”.

(3) In subsection (3)—

(a) in paragraph (a), after “who” insert “ is on the medical list of a Health Board and ”; and

(b) for paragraph (b) substitute—

“(b) in the case of two or more medical practitioners who practise in partnership with each other, each medical practitioner who is on the medical list of a Health Board;”.

(4) After subsection (7) insert—

“(8) This section does not apply in relation to the performance or provision of personal medical services in accordance with section 17C arrangements.”]

Textual Amendments

F11 Sch. 2 para. 55 repealed (*prosp.*) by 1999 c. 8, ss. 65(2), 67(1), **Sch. 5**

56 In section 88(1)(d) and (2)(e), after “section 22” insert “ or by regulations which make provision in relation to section 17C arrangements of a kind that may be made by regulations under section 22 ”.

57 [^{F12}In section 108, insert at the appropriate places—

““health service body” means a person or body specified in section 17A(2);”;

““medical list” has the meaning given by section 19A(6);”;

““personal dental services” has the meaning given in section 17C(6);”;

[^{F13}““personal medical services” (except in section 19) has the meaning given in section 17C(6);”];

““section 17C arrangements” has the same meaning as in section 17E(9);”.]

Textual Amendments

F12 Words in Sch. 2 para. 57 repealed (S.) (28.2.2003) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), s. 27(2), **sch. 2 para. 3**; S.S.I. 2003/62, art. 2(1)(c)

F13 Words in Sch. 2 para. 57 repealed (S.) (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), s. 9(1), **sch. para. 2(10)(b)**; S.S.I. 2004/58, art. 2(3)

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

Commencement Information

III Sch. 2 para. 57 partly in force; Sch. 2 para. 57 not in force at Royal Assent see s. 41; Sch. 2 para. 57 in force for certain purposes at 1.4.1998 by S.I. 1998/631, art. 2(1)(b), Sch. 2 and Sch. 2 para. 57 in force for certain further purposes at 5.3.2001 by S.S.I. 2001/58, art. 2

- 58 (1) In Schedule 8, paragraph 8 is amended as follows.
- (2) In sub-paragraph (2), after “sub-paragraph (1)(c) above” insert “ as it has effect in relation to the functions mentioned below ”.
- (3) After sub-paragraph (2) insert—
- “(2A) In sub-paragraph (1)(c) above as it has effect in relation to functions of the Tribunal conferred by or under any enactment relating to the preferential treatment of medical practitioners on transferring to medical lists, the reference to the person concerned is a reference to the medical practitioner to whom the matter before the Tribunal relates.”
- 59 (1) Schedule 9 is amended as follows.
- (2) In paragraph 1(1) and (3), omit “, or any part of the goodwill,”.
- (3) In paragraph 1, for sub-paragraph (2) substitute—
- “(2) Any person proposing to be a party to a transaction or series of transactions which he thinks might amount to a sale of the goodwill of a medical practice in contravention of section 35(1) may ask the Medical Practices Committee for a certificate under this paragraph.”
- (4) In paragraph 1, omit sub-paragraph (8).
- (5) In paragraph 2, for sub-paragraph (1) substitute—
- “(1) For the purposes of section 35(1) and paragraph 1, a disposal of premises previously used for the purposes of a medical practice shall be deemed to be a sale of the goodwill of a medical practice if—
- (a) the person disposing of the premises did so knowing that another person (“A”) intended to use them for the purposes of A’s medical practice; and
- (b) the consideration for the disposal substantially exceeded the consideration that might reasonably have been expected if the premises had not previously been used for the purposes of a medical practice.
- (1A) If a person disposes of any premises together with any other property, the court shall, for the purposes of sub-paragraph (1), make such apportionment of the consideration as it thinks just.
- (1B) For the purposes of sub-paragraphs (1) and (1A)—
- (a) “disposal” means any sale, letting or other form of disposal (whether by a single transaction or a series of transactions) and “disposes” and “disposing” are to be read accordingly; and
- (b) a person who procures the disposal of any premises is to be treated as having disposed of them.”
- (6) In paragraph 2(2)—

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

- (a) omit “between medical practitioners”; and
- (b) omit “, or part of the goodwill,”.

(7) In paragraph 2, for sub-paragraph (3) substitute—

“(3) Sub-paragraph (3A) applies if a person (“the assistant”)—

- (a) performs services on behalf of a person who carries on a medical practice (or as an employee of a person employing a practitioner who carries on a medical practice);
- (b) receives substantially less remuneration for performing those services than might reasonably have been expected, having regard to the circumstances at the time when the remuneration was fixed; and
- (c) subsequently succeeds, whether as a result of a partnership agreement or otherwise, to that practice.

(3A) For the purposes of section 35 and paragraph 1, a sale of the goodwill of the practice is to be deemed to have taken place (at the time when the remuneration was fixed), unless it is proved that the remuneration was not fixed in contemplation of the assistant’s succeeding to the practice.”

(8) In paragraph 2, for sub-paragraphs (4) and (5) substitute—

“(4) For the purposes of section 35(1) and paragraph 1, the goodwill of a medical practice shall be deemed to have been sold if—

- (a) a person carrying on the practice (or employing a practitioner who carries on a medical practice) agrees, for valuable consideration—
 - (i) to do or refrain from doing any act, for the purpose of facilitating the succession of another person to the practice; or
 - (ii) to allow any act to be done, for that purpose; or
- (b) a person—
 - (i) gives valuable consideration to a person carrying on the practice (or employing a practitioner who carries on a medical practice); and
 - (ii) succeeds, or has previously succeeded, to the practice.

(5) Sub-paragraph (4) does not apply—

- (a) if it is proved that no part of the consideration was given in respect of the goodwill; or
- (b) to anything done—
 - (i) in relation to the acquisition of premises for the purposes of a medical practice;
 - (ii) in pursuance of a partnership agreement; or
 - (iii) in the performance of medical services by one person as an assistant to another.”

(9) In paragraph 2, for sub-paragraph (7) substitute—

“(7) For the purposes of section 35 and this Schedule—

- (a) consideration is deemed to be given to a person (“B”) if—
 - (i) it is given to another person but with B’s knowledge and consent; and

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

- (ii) it appears to the court that B has derived, or will derive, a substantial benefit from the giving of the consideration; and
- (b) unless the context otherwise requires, references to a person include, in the case of an individual who has died, references to his personal representative.”

(10) At the end insert—

“ Carried-over goodwill

3 The fact that a person’s medical practice was previously carried on by another person who at any time provided general medical services or personal medical services does not, by itself, make it unlawful under section 35(1) for the goodwill of his practice to be sold.”

60 In Schedule 11, in paragraph 1(1)(b), after “drug or medicine” insert “ (otherwise than in accordance with section 17C arrangements) ”.

The Medical Act 1983 (c. 54)

61 (1) The Medical Act 1983 is amended as follows.

(2) In section 11(4), in the definition of “approved”, for “, in relation to a hospital or institution,” substitute “ (except in subsection (5))”.

(3) In section 13—

- (a) in subsection (1), for “approved hospital or approved institution” substitute “ approved hospital, approved institution or approved medical practice ”;
- (b) in subsection (2), for “hospital or institution” substitute “ hospital, institution or medical practice ”;
- (c) in subsection (3)(a), for “an approved hospital or an approved institution” substitute “ an approved hospital, an approved institution or an approved medical practice ”.

(4) In section 15(3), for “approved hospitals or approved institutions” substitute “ approved hospitals, approved institutions or approved medical practices ”.

(5) In section 21(3), for “approved hospitals or approved institutions” substitute “ approved hospitals, approved institutions or approved medical practices ”.

The Dentists Act 1984 (c. 24)

62 In section 53(3)(a) of the Dentists Act 1984, for the words from “services under” to “1978 or” substitute—

“(a) services under—

(i) section 2, 3, 5(1)(a) or 28C of, or Schedule 1 to, the ^{M6}National Health Service Act 1977;

(ii) section 17C, 36, 38 or 39 of the ^{M7}National Health Service (Scotland) Act 1978; or

(iii)”.

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

Marginal Citations

M6 1977 c. 49.

M7 1978 c. 29.

The Copyright, Designs and Patents Act 1988 (c. 48)

- 63 In section 240(4) of the Copyright, Designs and Patents Act 1988, for the words from “(a) pharmaceutical services” to the end of the subsection substitute—
- “(a) pharmaceutical services, general medical services or general dental services under—
 - (i) Part II of the National Health Service Act 1977,
 - (ii) Part II of the National Health Service (Scotland) Act 1978, or
 - (iii) the corresponding provisions of the law in force in Northern Ireland; or
 - (b) personal medical services or personal dental services in accordance with arrangements made under—
 - (i) section 28C of the 1977 Act,
 - (ii) section 17C of the 1978 Act, or
 - (iii) the corresponding provisions of the law in force in Northern Ireland.”

Commencement Information

I12 Sch. 2 para. 63 partly in force; Sch. 2 para. 63 not in force at Royal Assent see s. 41; Sch. 2 para. 63 in force for certain purposes at 1.4.1998 by [S.I. 1998/631](#), [arts. 2\(b\), 3](#), [Sch. 2](#)

The Health and Medicines Act 1988 (c. 49)

- 64 (1) The Health and Medicines Act 1988 is amended as follows.
- (2) In section 2(1)(a), for the words from “provision of general medical services” to “Act 1978” substitute “provision of—
- (i) general medical services under Part II of the National Health Service Act 1977 or Part II of the National Health Service (Scotland) Act 1978; or
 - (ii) personal medical services in accordance with arrangements made under section 28C of the 1977 Act or section 17C of the 1978 Act”.
- (3) In section 8(2) omit “(a) or”.
- (4) In section 17, at the end insert—
- “(3A) This section applies also in relation to additional pharmaceutical services provided under arrangements made in accordance with directions under section 41A of the National Health Service Act 1977 or section 27A of the National Health Service (Scotland) Act 1978.”

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

Commencement Information

I13 Sch. 2 para. 64 partly in force; Sch. 2 para. 64 not in force at Royal Assent see s. 41; Sch. 2 para. 64(1) in force for certain purposes and Sch. 2 para. 64(2)(4) in force at 1.4.1998 by [S.I. 1998/631](#), [art. 2\(b\)](#), [Sch. 2](#)

The National Health Service and Community Care Act 1990 (c. 19)

65 (1) The National Health Service and Community Care Act 1990 is amended as follows.

(2) In section 5, after subsection (6) insert—

“(6A) The functions of an NHS trust also include power to provide services in accordance with arrangements made under section 28C of the principal Act, and to do so as a member of a qualifying body (within the meaning of section 28D of that Act).”

[^{F14}(3) In section 14(1), after “principal Act” insert “, or (in the case of practitioners who are not employed by another person) personal medical services in accordance with arrangements made under section 28C of that Act, ”.]

[^{F14}(4) For section 14(6)(g) substitute—

“(g) the operation of this section in a case where one or more of the medical practitioners wishing to make an application under subsection (1) above is also—

(i) on the medical list of a Health Board; or

(ii) providing personal medical services in accordance with arrangements made under section 17C of the ^{M8}National Health Service (Scotland) Act 1978;”.]

[^{F14}(5) In section 15(4)(b), for “individuals on the list of patients of any of the members of the practice” substitute “ practice patients ”.]

[^{F14}(6) In section 15(7)(b)—

(a) after “general medical services” insert “ or personal medical services provided in accordance with arrangements made under section 28C of the principal Act ”;

(b) for “individuals on the lists of patients of the members of the practice” substitute “ practice patients ”.]

[^{F14}(7) In section 15, after subsection (9) insert—

“(10) In this section “practice patient”, in relation to a recognised fund-holding practice, means an individual who is on the list of patients of any of the members of the practice (or, if any of those members together have a single list of patients in connection with arrangements made under section 28C of the principal Act, an individual who is on that single list).”]

[^{F15}(8) In section 18(1) for “subsection (2)” substitute “ subsections (2) and (8) ”.]

[^{F15}(9) In section 18(3)—

(a) in paragraph (a), after “who” insert “ is on the medical list of a Health Authority and ”; and

(b) for paragraph (b) substitute—

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

“(b) in the case of two or more medical practitioners who practise in partnership with each other, each medical practitioner who is on the medical list of a Health Authority;”.]

[^{F15}(10) After section 18(7) insert—

“(8) This section does not apply in relation to the performance or provision of personal medical services in accordance with arrangements made under section 28C of the principal Act.”]

(11) In section 62(7), after paragraph (a)(i) in the definition of “services” insert—

“(ia) arrangements made under section 28C of that Act;”.

Textual Amendments

F14 Sch. 2 para. 65(3)-(7) repealed (1.10.1999 for E., 1.4.2000 for W.) by 1999 c. 8, ss. 65(2), 67(1), **Sch. 5**; S.I. 1999/2540, art. 2(1)(a), **Sch. 1**; S.I. 2000/1041, art. 2(d), **Sch.**

F15 Sch. 2 para. 65(8)-(10) repealed (*prosp.*) by 1999 c. 8, ss. 65(2), 67(1), **Sch. 5**

Commencement Information

I14 Sch. 2 para. 65(1)(4)-(11) in force at 1.4.1998 by S.I. 1998/631, art. 2(b), **Sch. 2**

I15 Sch. 2 para. 65(1)(2) in force at 1.4.2004 for specified purposes for E. by S.I. 2004/287, art. 2(2)(b)

I16 Sch. 2 para. 65(1)(2) in force at 1.12.2005 for specified purposes for W. by S.I. 2005/2926, art. 3(c)

I17 Sch. 2 para. 65(1)(2) in force at 1.12.2005 for E. in so far as not already in force by S.I. 2005/2926, art. 2(b)

Marginal Citations

M8 1978 c. 29.

The Access to Health Records Act 1990 (c. 23)

66 (1) The Access to Health Records Act 1990 is amended as follows.

(2) In section 1(2), for paragraph (a) substitute—

“(a) in the case of a record made by a general practitioner (other than an employed practitioner), or by a health professional employed by such a general practitioner—

(i) the general practitioner on whose list the patient is included (or, where the patient is included on the list of a medical practice consisting of two or more partners who are general practitioners, any such partner); or

(ii) where the patient is not on any such list, the Health Authority or Health Board by arrangement with whom a general practitioner last treated him;”.

(3) In section 11, in the definition of “general practitioner”, for the words from “providing” to “Act 1978” substitute “—

(a) providing general medical services in accordance with arrangements made under section 29 of the ^{M9}National Health Service Act 1977 or section 19 of the ^{M10}National Health Service (Scotland) Act 1978; or

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

- (b) performing personal medical services in accordance with arrangements made under section 28C of the 1977 Act or section 17C of the 1978 Act”.

Marginal Citations

M9 1977 c. 49.

M10 1978 c. 29.

The Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)

- 67 In section 279 of the Trade Union and Labour Relations (Consolidation) Act 1992—
- (a) after “as a person” insert “ performing personal medical services or personal dental services or ”;
 - (b) before “29” insert “ 28C, ”; and
 - (c) before “19” insert “ 17C, ”.

Commencement Information

I18 Sch. 2 para. 67 partly in force; Sch. 2 para. 67 not in force at Royal Assent see s. 41; Sch. 2 para. 67 in force for certain purposes at 1.4.1998 by [S.I. 1998/631](#), [arts. 2\(b\), 3](#), [Sch. 2](#)

The Health Service Commissioners Act 1993 (c. 46)

- 68 (1) The Health Service Commissioners Act 1993 is amended as follows.
- (2) In section 2A(1), for the words from “if they are” to “Act 1977” substitute “if they are—
- (a) individuals undertaking to provide in England general medical services or general dental services under Part II of the National Health Service Act 1977;
 - (b) persons (whether individuals or bodies) undertaking to provide in England general ophthalmic services or pharmaceutical services under Part II of that Act; or
 - (c) individuals performing in England personal medical services or personal dental services in accordance with arrangements made under section 28C of that Act (except as employees of, or otherwise on behalf of, a health service body or an independent provider)”.
- (3) In section 2A(2), for the words from “if they are” to “Act 1977” substitute “if they are—
- (a) individuals undertaking to provide in Wales general medical services or general dental services under Part II of the National Health Service Act 1977;
 - (b) persons (whether individuals or bodies) undertaking to provide in Wales general ophthalmic services or pharmaceutical services under Part II of that Act; or
 - (c) individuals performing in Wales personal medical services or personal dental services in accordance with arrangements made

Status: Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I. (See end of Document for details)

under section 28C of that Act (except as employees of, or otherwise on behalf of, a health service body or an independent provider)”.

(4) In section 2A(3), for the words from “if they are” to “Act 1978” substitute “if they are—

- (a) individuals undertaking to provide in Scotland general medical services or general dental services under Part II of the ^{M11}National Health Service (Scotland) Act 1978;
- (b) persons (whether individuals or bodies) undertaking to provide in Scotland general ophthalmic services or pharmaceutical services under Part II of that Act; or
- (c) individuals performing in Scotland personal medical services or personal dental services in accordance with arrangements made under section 17C of that Act (except as employees of, or otherwise on behalf of, a health service body or an independent provider)”.

(5) In section 3, after subsection (1) insert—

“(1ZA) Any failure or maladministration mentioned in subsection (1) may arise from action of—

- (a) the health service body,
- (b) a person employed by that body,
- (c) a person acting on behalf of that body, or
- (d) a person to whom that body has delegated any functions.”

Commencement Information

I19 Sch. 2 para. 68 partly in force; Sch. 2 para. 68 not in force at Royal Assent see s. 41; Sch. 2 para. 68 in force for certain purposes at 1.4.1998 by [S.I. 1998/631](#), arts. 2(b), 3, [Sch. 2](#)

Marginal Citations

M11 1978 c. 29.

Status:

Point in time view as at 07/03/2006. This version of this part contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the National Health Service (Primary Care) Act 1997, Part I.