

# **COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002**

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## **EXPLANATORY NOTES**

### ***Schedule 2 – Minor and consequential amendments and repeals***

#### ***Paragraph 2 – National Health Service (Scotland) Act 1978 (c.29)***

121. Paragraph 2(2) of schedule 2 amends section 16A of the 1978 Act, which allows Health Boards to make payments to certain organisations for certain purposes. The amendment makes it clear that section 16A is without prejudice to section 13 of the Act, which allows Health Boards to make payments to local authorities.
122. The amendments to the 1978 Act which are set out in paragraph 2(3) to (8) of schedule 2 are to that Act as amended by the Health Act 1999 (section 58 and Schedule 4 paragraph 49). These amendments will bring GMS non-principals and GPs performing personal medical services (PMS) within the jurisdiction of the NHS Tribunal which may direct the disqualification or conditional disqualification (either local or national) of a practitioner on grounds of fraud and efficiency and may direct his or her interim suspension on similar grounds. The Tribunal may additionally declare that the practitioner is not fit to be engaged in any capacity in the provision of the relevant services. The amendments will also enable interim suspension, disqualification and conditional disqualification provisions imposed by a Health Authority in England and Wales or an equivalent body in Northern Ireland to be applied to the same non-principal or PMS practitioner in Scotland. They also provide for a Health Authority in England and Wales or an equivalent body in Northern Ireland to seek review by the Scottish Tribunal of a conditional disqualification. Referrals to the Tribunal are made by the Health Board or Boards holding the list(s) on which is included the name of the practitioner who is the subject of the referral.
123. Section 29(6) of the 1978 Act is amended to extend to a GMS non-principal or GP performing personal medical services (PMS) the first condition for disqualification by the NHS Tribunal from inclusion on a list held by a Health Board. The condition is that the continued inclusion of the person on the relevant list(s) would be prejudicial to the efficiency of the services in question.
124. Section 29(8)(a) of the 1978 Act is amended to include supplementary lists in the lists held by a Health Board from which practitioners may be disqualified by direction of the NHS Tribunal.
125. A new paragraph (aa) is inserted into section 29(8) to include a services list of performers in pilot and permanent PMS schemes in the lists held by a Health Board from which practitioners may be disqualified by direction of the NHS Tribunal. Under section 29(8), as prospectively amended, the lists from which a GP may be disqualified now include those prepared under or by virtue of Part I of the 1978 Act.

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Act 2002 (asp 5) which received Royal Assent on 12 March 2002*

126. Section 29A(3) of the 1978 Act is amended to extend liability to PMS performers where a lack of diligence by the performer has resulted in a fraud being perpetrated by another member of staff.
127. A new subsection (3A) is inserted into section 29A to extend liability as described in section 29A(3), as amended, to GMS non-principals also.
128. Section 29B is amended to enable the NHS Tribunal to continue to direct local disqualification and national disqualification. Two new sub-paragraphs are inserted into sections 29B(2)(a) and 29B(2)(b).
129. Sub-paragraph (i) of section 29B(2)(a) provides for the Tribunal to direct the local disqualification of a medical practitioner, other than an ophthalmic medical practitioner, from the medical, supplementary and services list of the referring Health Board even where the case against the practitioner relates to medical activity within the Board's area associated with just one of those lists. Sub-paragraph (ii) of section 29B(2)(a) retains the existing power of the Tribunal to direct the local disqualification of a practitioner who is not a medical practitioner from the list to which the case referred to the Tribunal relates.
130. Sub-paragraph (i) of section 29B(2)(b) provides for the Tribunal to direct the national disqualification of a medical practitioner, other than an ophthalmic medical practitioner, from all medical, supplementary and services lists. Sub-paragraph (ii) of section 29B(2)(b) provides for the Tribunal to continue to direct the national disqualification of dental practitioners from dental lists, pharmacy contractors from pharmaceutical lists and optometrists and ophthalmic medical practitioners from ophthalmic lists.
131. Additionally, section 29B(3), as amended, provides for PMS performers to be included in the categories of person about whom the NHS Tribunal may make a declaration of unfitness when making a national disqualification. As amended, the NHS Tribunal may now declare that the person subject to national disqualification is unfit to be engaged in any capacity in the provision or performance of the services associated with the lists from which he or she has been disqualified.
132. Section 30(4) of the 1978 Act is amended to include performers of PMS in the categories of persons whose conditional disqualification a Health Authority in England and Wales or an equivalent body in Northern Ireland may request the NHS Tribunal in Scotland to review. The amended wording removes ambiguity as to the meaning of the reference to "provisions in force in England and Wales corresponding to this Part".
133. Section 31 of the 1978 Act relates to equivalent disqualification provisions in England and Wales or Northern Ireland. It provides that a person disqualified in England and Wales or Northern Ireland is disqualified for inclusion in lists in Scotland.
134. Subsection (1)(a) of section 31 is amended to extend to lists of GMS non-principals and PMS performers those lists in Scotland to which a disqualification from equivalent lists in England and Wales or Northern Ireland may relate.
135. Subsection (2) of section 31 is amended to enable Scottish Ministers to impose conditions on provision or performance of services by non-principals and PMS performers equivalent to those already imposed on practitioners who are conditionally disqualified under provisions in England and Wales or Northern Ireland.
136. Section 32A(6)(a) is amended to extend to lists of PMS performers and GMS non-principals those lists from which a person shall be deemed to be disqualified where a Health Board has applied for interim suspension of that person.
137. Section 32B is amended to correct two inaccurate cross references to other sections of the 1978 Act. The first cross reference – section 29(3)(b) - appeared in amendments to the 1978 Act by paragraph 52(b) of Schedule 4 to the Health Act 1999. The reference should have been to section 29(2)(b) and the amended wording reflects this fact. The

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second cross reference is to section 32(A)(3) which does not exist. This has been substituted by the correct cross reference which is to section 32A(3).

138. Section 32D of the 1978 Act is amended to extend to GMS non-principals and performers of PMS the provisions that suspend and disqualify a person who, under corresponding provisions in England and Wales or Northern Ireland, has been suspended and disqualified for inclusion in a list in England and Wales or Northern Ireland.
139. Section 108(1) of the 1978 Act is amended to insert appropriate definitions required as a result of the amendments made by this Act.