



# National Health Service and Community Care Act 1990

## 1990 CHAPTER 19

### PART II

#### THE NATIONAL HEALTH SERVICE: SCOTLAND

##### *Miscellaneous*

#### **37 Relationship of Health Boards and medical practitioners.**

After subsection (7) of section 19 of the 1978 Act (arrangements and regulations for general medical services) there shall be inserted the following subsection—

“(8) In relation to a medical practitioner, any reference in this Act to the relevant Health Board shall be construed as follows—

- (a) if he practises in partnership with other medical practitioners, the relevant Health Board is the Board on whose medical list the members of the practice are included and, if some are included on one Board’s medical list and some on another’s or if any of the members is included on the medical lists of two or more Boards, the relevant Health Board is the Board in whose area resides the largest number of individuals who are on the lists of patients of members of the practice; and
- (b) in any other case, the relevant Health Board is the Board on whose medical list he is included and, if there is more than one, the Board in whose area resides the largest number of individuals who are on his list of patients.”

#### **38 Scottish Medical Practices Committee.**

(1) In section 3 of the 1978 Act (the Scottish Medical Practices Committee), after subsection (1) there shall be inserted the following subsection—

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“(1A) After consulting the Medical Practices Committee, the Secretary of State may give the Committee directions with respect to the exercise of its functions; and it shall be the duty of the Committee to comply with any such directions.”

(2) In Schedule 2 to the 1978 Act (constitution etc of Scottish Medical Practices Committee), after paragraph 2 there shall be inserted—

“2A The Secretary of State may by order make such modifications as he considers appropriate of paragraphs 1 and 2.”

#### Commencement Information

**II** S. 38 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1991/607, art.2

### 39 Distribution of general medical services.

(1) In section 23 of the 1978 Act (distribution of general medical services), after subsection (1) there shall be inserted the following subsections—

“(1A) The Secretary of State may by order specify the maximum number of medical practitioners with whom, in any year, all Health Boards taken as a whole may enter into arrangements under section 19 for the provision of general medical services.

(1B) An order under subsection (1A) may contain such incidental and consequential provisions (including provisions amending this Part of this Act) as appear to the Secretary of State to be appropriate including, in particular, provisions as to the basis on which the Medical Practices Committee are to refuse applications under section 20 in order to secure that any maximum number specified in the order is not exceeded.”

(2) At the beginning of subsection (2) of that section (the Medical Practices Committee to select the person whose applications are to be granted) there shall be inserted “Subject to subsection (2A)” and after that subsection there shall be inserted the following subsection—

“(2A) If, in the opinion of the Medical Practices Committee, a medical practitioner is required for a particular part of the area of a Health Board, then, in such circumstances as may be prescribed,—

- (a) the Board shall, in accordance with regulations, select the medical practitioner whose application they wish to be considered by the Committee; and
- (b) the Committee shall not consider any application from a medical practitioner who is not so selected; and
- (c) any medical practitioner who has made an application but is not so selected may appeal to the Secretary of State on a point of law;

and if the Secretary of State allows an appeal under paragraph (c) he shall remit the application to the Board for reconsideration.”

(3) In subsection (4) of that section (applications under section 20 may be granted subject to certain conditions), after the word “but” there shall be inserted—

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- “(a) in granting an application shall specify, by reference to one or more prescribed conditions relating to hours or the sharing of work, the provision of general medical services for which the applicant will be entitled to be remunerated; and  
(b)”;

and at the end of the subsection there shall be inserted the words “and an order under subsection (1A) may 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 imposed under paragraph (a)”.

- (4) In subsection (5) of that section (appeals to the Secretary of State) for the words “such conditions” there shall be substituted “conditions under paragraph (a) or (b) of subsection (4)” and for the words following “Secretary of State”, in the first place where those words occur, there shall be substituted “on a point of law; and, if the Secretary of State allows such an appeal, he shall remit the application to the Medical Practices Committee for reconsideration”.
- (5) Subsection (7) of that section (directions on a successful appeal) shall be omitted.
- (6) In subsection (8) of that section (matters to be taken into account) for the words from the beginning to “in any such case” there shall be substituted “In any case where medical practitioners have to be selected from a number of applicants, the Medical Practices Committee or, where subsection (2A) applies, the Health Board shall”.
- (7) <sup>F1</sup>.....
- (8) In the case of a medical practitioner who, on the day appointed for the coming into force of this section, is providing general medical services in accordance with arrangements under section 19 of the 1978 Act, regulations may make transitional provisions by virtue of which those services shall be treated for the purposes of that Act as provided subject to such of the prescribed conditions referred to in section 23(4) (a) of that Act as are determined under the regulations and, accordingly, for enabling any such condition to be varied in accordance with regulations under section 24(2) of that Act.

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**Textual Amendments**

- F1** S. 39(7) repealed (1.4.2004) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (asp 4), ss. 17, 21(2), [Sch. 4 para. 11\(a\)](#); S.S.I. 2004/148, [art. 2\(c\)](#)

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**Commencement Information**

- I2** S. 39 partly in force; s. 39 (except 39(4)) in force for certain purposes at 1.4.1991, see [s. 67\(2\)](#) and [S.I. 1991/607](#), [art. 2](#), (art. 3(1) of [S.I. 1991/607](#) contains transitional provisions relating to s. 39(2))

**40 Limitations on right to be included on list of dental practitioners.**

<sup>F2</sup> .....

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**Textual Amendments**

- F2** S. 40 repealed (2.7.2010) by [Smoking, Health and Social Care \(Scotland\) Act 2005](#) (asp 13), ss. 42(2), 43(3), [sch. 3](#); S.S.I. 2010/185, [art. 3\(b\)](#), [Sch. 2](#)

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#### 41 Schemes for meeting losses and liabilities etc. of certain health service bodies.

After section 85A of the 1978 Act there shall be inserted the following section—

**“85B Schemes for meeting losses and liabilities etc. of certain health service bodies.**

- (1) The Secretary of State may by regulations made with the consent of the Treasury establish a scheme whereby any of the bodies mentioned in subsection (2) may make provision to meet—
  - (a) expenses arising from any loss of or damage to their property; and
  - (b) liabilities to third parties for loss, damage (including solatium) or injury arising out of the carrying out of the functions of the bodies concerned.
- (2) The bodies referred to in subsection (1) are—
  - (a) Health Boards;
  - (b) the Agency;
  - (c) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984; and
  - (d) NHS trusts,

but a scheme under this section may limit the class or description of bodies which are eligible to participate in it.
- (3) Without prejudice to the generality of the power conferred by subsection (1), a scheme under this section may—
  - (a) provide for the scheme to be administered by the Secretary of State, the Agency, or a Health Board or NHS trust specified in the scheme;
  - (b) require any body which participates in the scheme to make payments in accordance with the scheme; and
  - (c) provide for the making of payments for the purposes of the scheme by the Secretary of State.
- (4) Without prejudice to any other power of direction conferred on the Secretary of State,—
  - (a) if the Secretary of State so directs, any body which is eligible to participate in a scheme shall do so; and
  - (b) where a scheme provides for it to be administered by the Secretary of State, the Agency or a Health Board or NHS trust shall carry out such functions in connection with the administration of the scheme as the Secretary of State may direct.
- (5) Neither the Secretary of State nor any body administering a scheme under this section shall, by virtue of their activities under the scheme, be regarded as carrying on insurance business for the purposes of the Insurance Companies Act 1982.”

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4A(1)(c) and word added by [S.I. 2006/1056 Sch. para. 5\(a\)\(ii\)](#) (This amendment comes into force on the day on which 2005 asp 13, s. 20 comes into force, see art. 1(2)(b))