



# National Health Service (Scotland) Act 1978

1978 CHAPTER 29

## PART I

### ORGANISATION

#### *Secretary of State*

#### **1 General duty of Secretary of State**

- (1) It shall continue to be the duty of the Secretary of State to promote in Scotland a comprehensive and integrated health service designed to secure—
  - (a) improvement in the physical and mental health of the people of Scotland, and
  - (b) the prevention, diagnosis and treatment of illness,and for that purpose to provide or secure the effective provision of services in accordance with the provisions of this Act.
- (2) The services so provided shall be free of charge, except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed.

#### *Administrative bodies*

#### **2 Health Boards**

- (1) The Secretary of State shall by order constitute in accordance with Part I of Schedule 1 boards for such areas as he may by order determine, for the purpose of exercising functions with respect to the administration of such health services provided by him as he may so determine, and for the purpose of making arrangements on his behalf for the provision of the services mentioned in Part II; and those boards shall be called Health Boards.

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- (2) The order or orders made under subsection (1) determining the areas for which the Health Boards are to be constituted shall be separate from the order or orders constituting those Boards; and, before making any order determining such an area, the Secretary of State shall consult with such bodies and organisations as appear to him to be concerned.
- (3) The Secretary of State may by order vary the area of any Health Board, whether or not the variation involves the constitution of a new Board, or the termination of the functions of an existing Board; and, before making such an order, the Secretary of State shall consult with such bodies and organisations as appear to him to be concerned.
- (4) Any order under subsection (3) may make provision for any supplementary and incidental matters for which it appears to the Secretary of State to be necessary or expedient to provide, in particular for the transfer of officers and of property and liabilities.
- (5) In carrying out the purposes mentioned in subsection (1) each Health Board shall act subject to, and in accordance with, such regulations as may be made, and such directions as may be given, by the Secretary of State; and such regulations and directions may be made or given generally or to meet the circumstances of a particular area or matter.
- (6) Regulations under subsection (5) shall make provision requiring each Health Board to submit to the Secretary of State a scheme for the exercise of their functions, and enabling the Secretary of State to approve any such scheme with or without modifications, and to make such a scheme in the event of the failure of any Health Board to do so.
- (7) A Health Board may at any time, and if directed by the Secretary of State shall, within such period as he may specify, submit a new scheme for the exercise of their functions, and regulations making the provision mentioned in subsection (6) shall, with any necessary modifications, apply to any such scheme.
- (8) A Health Board shall, notwithstanding that it is exercising functions on behalf of the Secretary of State, be entitled to enforce any rights acquired, and shall be liable in respect of any liabilities incurred (including liability in damages for wrongful or negligent acts or omissions), in the exercise of those functions in all respects as if the Health Board were acting as a principal; and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the Health Board in its own name.
- (9) A Health Board shall not be entitled to claim in any proceedings any privilege of the Crown in respect of the recovery or production of documents; but this subsection shall be without prejudice to any right of the Crown to withhold, or procure the withholding from production of, any document on the ground that its disclosure would be contrary to the public interest.
- (10) Schedule 1 shall have effect in relation to the Boards constituted under this section.
- (11) Where it appears to the Secretary of State to be expedient in the interests of efficiency that a joint committee should be established for the areas of two or more Health Boards for the purpose of exercising some but not all of their functions, the Secretary of State may by order constitute such a joint committee and provide for the exercise by that committee of such of those functions as may be specified in the order, and for the application, with such modifications as may be so specified, to that committee of any

provisions of this Act relating to those functions, and for any of the matters for which, in relation to a Health Board, provision is or may be made by or under Part II of Schedule 1.

### **3 Scottish Medical Practices Committee**

- (1) With a view to securing that the number of medical practitioners undertaking to provide general medical services in the areas of different Health Boards, or in different parts of those areas, is adequate, the Secretary of State shall constitute a committee to be called the Scottish Medical Practices Committee (hereafter in this Act referred to as "the Medical Practices Committee"), for the purpose of considering and determining applications made for inclusion in any list kept by a Health Board of medical practitioners undertaking to provide such services for persons in the Board's area.
- (2) Schedule 2 shall have effect in relation to the Medical Practices Committee.

### **4 Scottish Dental Estimates Board**

- (1) For the purpose of carrying out such duties as may be prescribed with respect to the approval of estimates of dental treatment and appliances, regulations shall make provision for constituting a board, to be called the Scottish Dental Estimates Board, (hereafter in this Act referred to as "the Dental Estimates Board"), of whom the chairman and a majority of members shall be dental practitioners.
- (2) Regulations made in pursuance of this section shall include provision, in relation to the Dental Estimates Board, for any of the matters for which, in relation to a Health Board, provision is or may be made by or under Part II of Schedule 1.

#### *National advisory bodies*

### **5 Scottish Health Service Planning Council**

- (1) There shall be constituted a Council, to be called the Scottish Health Service Planning Council (hereafter in this Act referred to as "the Planning Council"), and it shall be the duty of the Planning Council to advise the Secretary of State on the exercise of his functions under this Act, whether at his request or on their own initiative.
- (2) Schedule 3 shall have effect in relation to the Planning Council.
- (3) For the purpose of performing their duty under this section the Planning Council shall keep under review the development of the health service in Scotland as a whole and in the various parts of Scotland.
- (4) The Planning Council shall make an annual report to the Secretary of State on their proceedings and on the proceedings of any committee appointed by them, and the Secretary of State shall lay that report before Parliament with such comments (if any) as he thinks fit.

### **6 National Consultative Committees**

- (1) Where the Secretary of State is satisfied that a committee has been formed which is representative of any, some or all of the professions engaged in the provision of

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care or treatment under this Act, and that it is in the interests of the health service to recognise the committee for the purposes of this Act, he shall so recognise it, and any such committee shall be known as a national consultative committee.

- (2) The professional teaching interests in relation to any such profession shall be represented on the national consultative committee by such number of members, appointed in such manner, as may be prescribed.
- (3) Where the Secretary of State considers it necessary, he may, with the agreement of a national consultative committee, appoint additional persons to be members of that committee.
- (4) It shall be the general function of a national consultative committee to advise the Planning Council on the provision of services under this Act, being services with which that committee is concerned; but, except in so far as regulations otherwise provide, such a committee shall not concern itself with the remuneration and conditions of service of practitioners or other persons of whom it is representative.
- (5) In addition to any other functions which a national consultative committee may exercise, they shall exercise such functions as may be prescribed.
- (6) The Planning Council shall consult with the national consultative committees on such occasions and to such extent as may be prescribed, and may ask any such committee to undertake, on behalf of the Planning Council, such investigation as the Planning Council think fit.
- (7) A national consultative committee shall have power to appoint sub-committees, whether jointly with another national consultative committee or otherwise, and to appoint to any such sub-committee persons who are not members of the national consultative committee or committees concerned.
- (8) The Secretary of State shall defray the reasonable expenses of national consultative committees, and shall pay to members of such committees and sub-committees thereof such travelling and other allowances, including compensation for loss of remunerative time, as he may, with the approval of the Minister for the Civil Service, from time to time determine.

#### *Local advisory bodies*

### **7 Local health councils**

- (1) Every Health Board shall, within such period as the Secretary of State may specify, submit to him a scheme for the establishment of a local health council or councils for their area or for such districts covering their whole area as the Board thinks fit; and it shall be the general function of any such council to represent the interests of the public in the health service in the area or district for which they have been established.
- (2) A scheme under subsection (1) shall provide for the appointment by local authorities in or for the area or district concerned of such number of members of the local health council as may be prescribed, and for the appointment by the Health Board, after consultation with such other organisations as may be specified in the scheme, of such number of members as may be so specified.
- (3) The Secretary of State may approve, with or without modifications, any scheme submitted to him under subsection (1), or may refuse to approve it.

- (4) A Health Board may at any time, and if directed by the Secretary of State shall, within such period as he may specify, submit a new scheme under this section, and subsection (3) shall apply to any such new scheme.
- (5) The members of a local health council may appoint one of their own number as the chairman of the council.
- (6) The Secretary of State shall pay to the members of a local health council, and of the committees and sub-committees thereof, such travelling and other allowances, including compensation for loss of remunerative time, as he may with the approval of the Minister for the Civil Service, from time to time determine.
- (7) Allowances shall not be paid under subsection (6) except in connection with the performance of such powers or duties, in such circumstances, as the Secretary of State may determine.
- (8) Health Boards shall consult with local health councils on such occasions and to such extent as may be prescribed.
- (9) Regulations may make provision—
  - (a) enabling local health councils to consider questions relating to the health service in their area or district, whether at the request of their Health Board or otherwise, and to advise the Health Board thereon;
  - (b) enabling or requiring local health councils to submit reports to their Health Board on the operation of the health service in their area or district;
  - (c) requiring local health councils to submit annual reports on their activities to their Health Board and requiring Health Boards to transmit a copy of any such report to the Secretary of State;
  - (d) enabling local health councils to obtain information from their Health Board on such subjects and subject to such conditions as may be prescribed ;
  - (e) enabling or requiring members of a local health council to visit establishments administered by their Health Board, subject to such conditions as may be prescribed ;
  - (f) relating to the submission of schemes under subsection (1) and to the functions, procedures, staffing and expenses of local health councils.

## **8 University Liaison Committees**

- (1) The Secretary of State may by order constitute, in accordance with Schedule 4, for the area of a Health Board or for the combined areas of two or more Health Boards, a University Liaison Committee for the purpose of advising that Board or those Boards on the administration of the health service in the area or combined areas so far as relating to the provision of facilities for undergraduate or post-graduate clinical teaching or for research, and for the purpose of advising that Board or those Boards and the university or universities concerned on any matter of common interest to them.
- (2) Paragraphs 11 to 15 of Schedule 1 (other than sub-paragraph (d) of paragraph 11) shall have effect in relation to the Committees constituted under this section.

## **9 Local consultative committees**

- (1) Where, after consultation with the Health Board concerned, the Secretary of State is satisfied that a committee formed for the area of the Board is representative—

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- (a) of the medical practitioners of that area, or
  - (b) of the dental practitioners of that area, or
  - (c) of the nurses and midwives of that area, or
  - (d) of the pharmacists of that area, or
  - (e) of the ophthalmic and dispensing opticians of that area,
- the Secretary of State shall recognise that committee.
- (2) Any committee so recognised shall be called—
- (a) the area medical committee,
  - (b) the area dental committee,
  - (c) the area nursing and midwifery committee,
  - (d) the area pharmaceutical committee, or
  - (e) the area optical committee,
- as the case may be, for the area concerned.
- (3) Where, after consultation with the Health Board concerned, the Secretary of State is satisfied that a committee formed for the area of any Health Board is representative of any other profession engaged in the provision of care or treatment under this Act, and that it is in the interests of the health service to recognise that committee for the purposes of this Act, he may so recognise it.
- (4) Where, after consultation with the Health Board concerned, the Secretary of State is satisfied that a committee formed for the area of any Health Board is representative of two or more of the professions mentioned in subsection (1) or (3), and that it is in the interests of the health service to recognise that committee for the purposes of this Act, he may so recognise it.
- (5) It shall be the general function of a committee recognised under this section to advise the Health Board for its area on the provision of services under this Act, being services with which that committee is concerned in that area, but, except in so far as regulations otherwise provide, in exercising functions conferred by or under this section, such a committee shall not concern itself with the remuneration and conditions of service of practitioners or other persons of whom it is representative.
- (6) In addition to any other functions which committees recognised under this section may exercise, they shall exercise such functions as may be prescribed.
- (7) In exercising their functions under this Act, Health Boards shall consult with committees recognised under this section on such occasions and to such extent as may be prescribed.
- (8) Any committee recognised under this section may, with the approval of the Health Board for its area, delegate any of its functions, with or without restrictions or conditions, to sub-committees and may appoint to any sub-committee persons who are not members of the committee.
- (9) Health Boards shall defray the reasonable expenses of committees recognised under this section and shall pay to members of such committees and sub-committees thereof such travelling and other allowances, including compensation for loss of remunerative time, as the Secretary of State may, with the approval of the Minister for the Civil Service, from time to time determine; but payments under this subsection may only be made as respects the exercise of functions conferred by or under this section.

*Agency for Secretary of State and other bodies***10 Common Services Agency**

- (1) There shall be constituted a body, to be called the Common Services Agency for the health service (hereafter in this Act referred to as " the Agency "), which shall have the functions conferred on it by this section.
- (2) Schedule 5 shall have effect in relation to the Agency.
- (3) The Secretary of State may by order delegate to the Agency such of his functions under this Act as he considers appropriate.
- (4) After consultation with the Planning Council, the Health Boards and any other interests which appear to the Secretary of State to be concerned, the Secretary of State, where he considers it expedient for the efficient discharge of the functions of the Health Boards, may by order provide that the performance of such functions as he may determine shall stand referred to the Agency and be discharged by it on behalf of any or all of the Health Boards.
- (5) The Secretary of State may by order withdraw from the Agency any function delegated or referred to it under this section.
- (6) The Agency shall provide such services and carry out such tasks for bodies associated with the health service as the Secretary of State and those bodies may agree, and on such terms and conditions as may be agreed.
- (7) In carrying out its functions the Agency shall act subject to, and in accordance with, such directions as may be given by the Secretary of State.
- (8) The Agency shall, notwithstanding that it is exercising functions on behalf of the Secretary of State or any other body associated with the health service, be entitled to enforce any rights acquired, and shall be liable in respect of any liabilities incurred (including liability in damages for wrongful or negligent acts or omissions), in the exercise of those functions, in all respects as if the Agency were acting as a principal; and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the Agency in its own name.
- (9) The Agency shall not be entitled to claim in any proceedings any privilege of the Crown in respect of the recovery or production of documents; but this subsection shall be without prejudice to any right of the Crown to withhold, or procure the withholding from production of, any document on the ground that its disclosure would be contrary to the public interest.

*Trusts***11 Scottish Hospital Trust**

- (1) The Secretary of State shall constitute a Scottish Hospital Trust (hereafter in this Act referred to as " the Hospital Trust").
- (2) Schedule 6 shall have effect in relation to the Hospital Trust.

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- (3) It shall be the duty of the Hospital Trust to hold and administer endowments which were transferred to the Hospital Trust under section 2 of the Hospital Endowments (Scotland) Act 1971.
- (4) References in this Act to a "relevant endowment" are references to an endowment such as is referred to in subsection (3).
- (5) The Hospital Trust shall cause proper accounts to be kept of the capital, income and expenditure vested in, received by, and expended by them, and shall cause an abstract thereof to be published in such manner as the Secretary of State may approve.
- (6) The Hospital Trust shall give to Health Boards reasonable access to the accounts above mentioned.
- (7) The Hospital Trust shall make an annual report of their proceedings to the Secretary of State, which report shall include an abstract of the accounts; and the Secretary of State shall lay any such report annually before each House of Parliament.

## **12 Scottish Hospital Endowments Research Trust**

- (1) The Secretary of State shall constitute a Scottish Hospital Endowments Research Trust (hereafter in this Act referred to as "the Research Trust").
- (2) Schedule 7 shall have effect in relation to the Research Trust.
- (3) It shall be the duty of the Research Trust to hold and administer funds on trust for the purpose of assisting the conduct of research into any matters relating to the causation, prevention, diagnosis or treatment of illness or to the development of medical or surgical appliances, including hearing aids.
- (4) The Research Trust shall have power to accept, hold and administer, in accordance with Schedule 7, any property on trust for the purpose aforesaid.
- (5) Before deciding to give assistance in any particular case the Research Trust shall consult with any advisory committee on medical research which the Secretary of State may from time to time direct them to consult.
- (6) The Research Trust shall cause proper accounts to be kept of the capital, income and expenditure vested in, received by, and expended by them, and shall cause such accounts to be audited and an abstract thereof to be published in such manner as the Secretary of State may approve.
- (7) The Research Trust shall make an annual report of their proceedings to the Secretary of State, which report shall include an abstract of the accounts; and the Secretary of State shall lay any such report annually before each House of Parliament.

### *Co-operation and assistance*

## **13 Co-operation between Health Boards and other authorities**

In exercising their respective functions, Health Boards, local authorities and education authorities shall co-operate with one another in order to secure and advance the health of the people of Scotland.



## 14 Designated medical officers

- (1) Every Health Board shall, in accordance with regulations, designate a medical officer or officers of the Board for the purpose of exercising such functions on behalf of local authorities as may be assigned to him by or under any enactment and such other functions as local authorities may, with the agreement of the Health Board, assign to him.
- (2) Any such medical officer shall, in any enactment, be known as " the designated medical officer ".
- (3) A designated medical officer may exercise any powers conferred by any enactment on an authorised officer of a local authority if the local authority authorises him in writing to do so.
- (4) A designated medical officer may appoint one or more persons approved by the Board to act as his depute or deputies, and all things required or authorised by law to be done by or to the designated medical officer may be done by or to any depute so appointed by him; and any reference in any enactment or instrument made under any enactment to the designated medical officer shall, where the depute is acting for the officer, include a reference to the depute.

## 15 Supply of goods and services to local authorities, etc.

- (1) The Secretary of State, a Health Board or the Agency may—
  - (a) purchase and store and, on such terms and conditions as may be agreed, supply to persons providing general medical, general dental or general ophthalmic services, or pharmaceutical services under Part II such equipment, goods or materials as may be prescribed;
  - (b) purchase and store and, on such terms and conditions as may be agreed, supply to local authorities, education authorities, government departments and such public bodies or classes of public bodies as may be determined by the Secretary of State, any equipment, goods or materials of a kind used in the health service ;
  - (c) provide local authorities and education authorities, on such terms and conditions as may be agreed, with any administrative, professional or other services of persons employed by the Secretary of State, a Health Board or the Agency;
  - (d) permit local authorities and education authorities, on such terms and conditions as may be agreed, to use premises occupied for the purposes of the health service;
  - (e) permit local authorities and education authorities, on such terms and conditions as may be agreed, to use any vehicle, plant or apparatus belonging to a Health Board or the Agency ;
  - (f) permit education authorities, on such terms and conditions as may be agreed, and for the purpose of providing special education within the meaning of section 5 of the Education (Scotland) Act 1962, to use any premises or facilities provided under section 36;
  - (g) carry out, on such terms and conditions as may be agreed, maintenance work in connection with land or buildings for the maintenance of which a local authority or education authority is responsible.

- (2) In paragraphs (a) and (b) of subsection (1), the power to supply equipment, goods and materials includes a power to make arrangements with third parties for the supply by them of those things.
- (3) The Secretary of State may by order provide that, in relation to a vehicle which is made available by him in pursuance of this section and is used in accordance with the terms on which it is so available, the Vehicles (Excise) Act 1971 and Part VI of the Road Traffic Act 1972 shall have effect with such modifications as are specified in the order.

## **16 Assistance to voluntary organisations**

- (1) The Secretary of State may assist any voluntary organisation whose activities include the provision of a service similar or related to a service provided under this Act by permitting them to use premises belonging to him on such terms as may be agreed, and by making available goods, materials, vehicles or equipment (whether by way of gift, loan or otherwise) and the services of any staff who are employed in connection with the premises or other things which he permits the organisation to use.
- (2) The Secretary of State may by order provide that, in relation to a vehicle which is made available by him in pursuance of this section and is used in accordance with the terms on which it is so available, the Vehicles (Excise) Act 1971 and Part VI of the Road Traffic Act 1972 shall have effect with such modifications as are specified in the order.
- (3) In this section, " 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.

## **17 Furnishing of overseas aid by Health Boards and the Agency**

- (1) Any Health Board and the Agency shall each have power—
  - (a) with the consent of the Secretary of State, to enter into, and carry out, agreements with the appropriate Minister under which they act, at the expense of that Minister, as the instrument by means of which technical assistance is furnished by him in exercise of the power conferred on him by section 1 (1) of the Overseas Aid Act 1966; and
  - (b) with the consent of the Secretary of State and the appropriate Minister, to enter into and carry out agreements under which they furnish to any authority or person outside the United Kingdom, on such terms as to payment as may be agreed, technical or any other assistance, other than financial, for any purpose mentioned in the said section 1(1).
- (2) In this section " appropriate Minister " means the Minister for the time being discharging the functions expressed by the said Act of 1966 to be conferred on the Minister of Overseas Development.

## PART II

### PROVISION OF SERVICES

#### *General services*

#### **18 Duty of Secretary of State**

It shall be the duty of the Secretary of State to secure the provision of general medical, general dental and general ophthalmic services, and of pharmaceutical services, in accordance with the provisions of this Part.

#### *General medical services*

#### **19 Arrangements and regulations for general medical services**

- (1) It shall be the duty of every Health Board, in accordance with regulations, to make as respects their area arrangements with medical practitioners for the provision by them of personal medical services for all persons in the area who wish to take advantage of the arrangements; and the services provided in accordance with the arrangements are in this Act referred to as " general medical services ".
- (2) Regulations may make provision for defining the personal medical services to be provided and for securing that the arrangements will be such that all persons availing themselves of those services will receive adequate personal care and attendance; and the regulations shall include provision—
  - (a) for the preparation and publication of lists of medical practitioners who undertake to provide general medical services;
  - (b) for securing a right to any person to choose or to change, in accordance with the prescribed procedure, the medical practitioner by whom he is to be attended, subject to the consent of the practitioner who is to give the attendance and to any prescribed limit on the number of patients to be accepted by any practitioner;
  - (c) for the distribution, among medical practitioners whose names are on the aforesaid lists, of any persons who have indicated a wish to obtain general medical services but who have not made any choice of medical practitioner or have been refused by the practitioner chosen;
  - (d) for the issue to patients or their personal representatives by medical practitioners providing such services as aforesaid of such certificates as may be prescribed, being certificates reasonably required by them under or for the purposes of any enactment;
  - (e) for the removal from the list of medical practitioners undertaking to provide general medical services for persons in any area of the name of a medical practitioner in whose case it has been determined in such manner as may be prescribed that he has never provided or has ceased to provide general medical services for persons in that area.
- (3) The remuneration to be paid under arrangements under this Part to a practitioner who provides general medical services shall not, except in special circumstances, consist wholly or mainly of a fixed salary which has no reference to the number of patients for whom the practitioner has undertaken to provide such services.

## **20 Applications to provide general medical services**

- (1) All applications made in the prescribed manner to a Health Board for inclusion in a list kept by that Board of the names of medical practitioners undertaking to provide general medical services for persons in the Board's area shall be referred by the Board to the Medical Practices Committee and (except as mentioned in subsection (2)) any medical practitioner whose application is granted by that Committee shall be entitled to the inclusion of his name in the list.
- (2) That entitlement is subject to—
  - (a) section 21 (requirement of suitable experience);
  - (b) section 23 (distribution of general medical services);
  - (c) section 29 (disqualification of practitioners).

## **21 Requirement of suitable experience**

- (1) Where the Secretary of State has made regulations for the purposes of this section, and after a day prescribed as the appointed day for those purposes—
  - (a) the Medical Practices Committee shall refuse any application under section 20 made after that day if the medical practitioner is not suitably experienced; and
  - (b) a Health Board shall not arrange under section 19 with a medical practitioner for him to provide general medical services for persons in its area unless the Medical Practices Committee have granted an application by him for the inclusion of his name in the list kept by the Board of medical practitioners undertaking to provide general medical services for persons in that area.
- (2) For the purposes of this section a medical practitioner is " suitably experienced " if, but only if, he either—
  - (a) has acquired the prescribed medical experience, or
  - (b) is by virtue of regulations made under section 22 exempt from the need to have acquired that experience,and " medical experience " includes hospital experience in any specialty.

## **22 Regulations as to section 21**

- (1) Regulations may for the purposes of section 21 provide—
  - (a) for prescribing the medical experience needed to satisfy paragraph (a) of section 21(2);
  - (b) as to the documents which an applicant may or must produce as evidence that he is suitably experienced or has acquired medical experience of any particular kind;
  - (c) for requiring an applicant who claims to have acquired the prescribed experience to submit particulars of his experience to a prescribed body, and for requiring that body, if satisfied that he has acquired the prescribed experience, to issue him a certificate (a " certificate of prescribed experience ") to that effect;
  - (d) for enabling an applicant without the prescribed experience who considers that the medical experience which he has acquired is, or ought to be regarded as, equivalent to the prescribed experience to submit particulars of that experience to a prescribed body, and for requiring or enabling that body, if

- satisfied that the applicant's medical experience is so equivalent, to issue him a certificate (a "certificate of equivalent experience") to that effect;
- (e) for treating an applicant who holds a certificate of equivalent experience as satisfying paragraph (a) of section 21(2);
  - (f) as to the circumstances or conditions in or subject to which a medical practitioner is exempt from the need to have acquired the prescribed experience;
  - (g) for conferring on an applicant who is refused a certificate of prescribed experience or a certificate of equivalent experience a right of appeal to a body constituted by the Secretary of State, and for any matter for which it appears to the Secretary of State to be requisite or expedient to provide in consequence of the conferring of that right;
  - (h) for anything authorised or required by section 21 to be prescribed or otherwise provided for by regulations.

In this section—

"applicant" means a medical practitioner who has made or proposes to make an application to which paragraph (a) of section 21(1) applies;

"the prescribed experience" means the medical experience for the time being prescribed for the purposes of paragraph (a) of section 21(2).

- (2) Regulations under this section shall be framed so as to allow the prescribed experience to be acquired without undertaking whole-time employment.
- (3) Any power under this section to make regulations—
  - (a) may be exercised so as to make different provision for different areas or different periods of time or in relation to different cases or different circumstances;
  - (b) includes power to make such incidental or supplemental provision in the regulations as the Secretary of State considers appropriate.

## **23 Distribution of general medical services**

- (1) The Medical Practices Committee may refuse any application under section 20 on the ground that the number of medical practitioners undertaking to provide general medical services in the area of the Health Board concerned or in part of that area is already adequate.
- (2) If in the opinion of the Medical Practices Committee additional practitioners are required for any area or part, but the number of applications exceeds the number required, the Committee shall select the persons whose applications are to be granted and shall refuse the other applications.
- (3) Before selecting any persons under subsection (2) the Medical Practices Committee shall consult the Health Board concerned, and that Board shall consult the area medical committee (if any) for their area before expressing their views on the persons to be selected.
- (4) Except as provided in subsections (1) to (3), or as required by section 21, the Medical Practices Committee shall not refuse any application under section 20, but the Committee may grant an application subject to conditions excluding the provision of general medical services by the applicant in such part or parts of the area of the Health Board as the Committee may specify.

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- (5) A medical practitioner who has made an application under section 20 which has been refused or has been granted subject to such conditions may appeal to the Secretary of State; and the Secretary of State may, on any such appeal, direct the Medical Practices Committee to grant the application either unconditionally or subject to such conditions as the Secretary of State may specify.

This subsection does not apply where an application has been refused under paragraph (a) of section 21(1).

- (6) Where the Medical Practices Committee select persons from a number of applicants, the persons selected shall not be included in the list in question during the period for bringing an appeal to the Secretary of State or pending the determination of any such appeal.
- (7) If the Secretary of State grants an appeal to which subsection (6) above relates, he may direct either that the application—
- (a) shall be granted in addition to those already granted; or
  - (b) shall be granted instead of such one of those applications as he may specify.

In the latter case, he shall make the other applicant a party to the appeal, and no further appeal shall be brought by that applicant in respect of the application in question.

- (8) The Medical Practices Committee shall, in a case where persons have to be selected from a number of applicants, and the Secretary of State shall on an appeal in any such case—
- (a) have regard to any desire expressed by any applicant to practise with other medical practitioners already providing general medical services in the area or part of an area concerned and to any desire expressed by such other practitioners to take any applicant into practice with them;
  - (b) have special regard to such matters in cases where an applicant is related to any other such practitioner.

## **24 Regulations for Medical Practices Committee**

Regulations may make provision for conferring or imposing on the Medical Practices Committee such additional functions in relation to arrangements for the provision of general medical services as may be prescribed; and regulations shall provide—

- (a) for requiring Health Boards to make to the Medical Practices Committee, at such times and in such manner as may be prescribed, reports as to—
  - (i) the number of medical practitioners required to meet the reasonable needs of their areas and the different parts of those areas;
  - (ii) the occurrence of any vacancies in the lists of medical practitioners kept by them under this Part; and
  - (iii) the need for filling such vacancies ;
- (b) for prescribing the procedure for—
  - (i) the determination of applications by the Medical Practices Committee;
  - (ii) the making and determination of appeals to the Secretary of State under section 23 ; and
  - (iii) requiring Health Boards and applicants to be informed of the decisions of the Committee and the Secretary of State.

### *General dental services*

## **25 Arrangements for provision of general dental services**

- (1) It shall be the duty of every Health Board, in accordance with regulations, to make as respects their area arrangements with dental practitioners under which any person for whom a dental practitioner undertakes in accordance with the arrangements to provide dental treatment and appliances shall receive such treatment and appliances; and the services provided in accordance with those arrangements are in this Act referred to as " general dental services ".
- (2) Regulations may make provision as to the arrangements to be made under subsection (1), and shall include provision—
  - (a) for the preparation and publication of lists of dental practitioners who undertake to provide general dental services;
  - (b) for conferring a right, subject to the provisions of this Part relating to the disqualification of persons providing services, on any dental practitioner who wishes to be included in any such list to be so included ;
  - (c) for conferring a right on any person to choose in accordance with the prescribed procedure the dental practitioner from whom he is to receive general dental services, subject to the consent of the practitioner so chosen;
  - (d) for the removal from the list of dental practitioners undertaking to provide general dental services for persons in any area of the name of a dental practitioner in whose case it has been determined in such manner as may be prescribed that he has never provided, or has ceased to provide, general dental services for persons in that area.
- (3) The remuneration to be paid under arrangements made under this section to a dental practitioner who provides general dental services elsewhere than at a health centre shall not, except in special circumstances, consist wholly or mainly of a fixed salary.

### *General ophthalmic services*

## **26 Arrangements for provision of general ophthalmic services**

- (1) It shall be the duty of every Health Board to make as respects their area, in accordance with regulations, arrangements with medical practitioners having the prescribed qualifications, with ophthalmic opticians and with dispensing opticians, for securing—
  - (a) the testing of sight by such medical practitioners and ophthalmic opticians, and
  - (b) the supply by ophthalmic opticians and dispensing opticians of optical appliances;and the services provided in accordance with the arrangements are in this Act referred to as " general ophthalmic services ".
- (2) Regulations may make provision as to the arrangements to be made under subsection (1), and shall include provision—
  - (a) for the preparation and publication of lists of medical practitioners, ophthalmic opticians and dispensing opticians respectively who undertake to provide general ophthalmic services;

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- (b) for conferring a right, subject to the provisions of this Act relating to the disqualification of practitioners, on any medical practitioner having the prescribed qualifications, any ophthalmic optician or any dispensing optician, who wishes to be included in the appropriate list, to be so included ;
  - (c) for conferring on any person a right to choose in accordance with the prescribed procedure the medical practitioner or ophthalmic optician by whom his sight is to be tested or from whom any prescription for the supply of optical appliances is to be obtained and the ophthalmic or dispensing optician who is to supply the appliances;
  - (d) for the removal from the list of medical practitioners, ophthalmic opticians or dispensing opticians undertaking to provide general ophthalmic services for persons in any area of the name of a medical practitioner, ophthalmic optician or dispensing optician, as the case may be, in whose case it has been determined, in such manner as may be prescribed, that he has never provided or has ceased to provide general ophthalmic services for persons in that area.
- (3) The power conferred by this section to prescribe the qualifications to be possessed by any medical practitioner includes—
- (a) power to prescribe a requirement that the practitioner shall show, to the satisfaction of a committee recognised by the Secretary of State for the purpose, that he possesses such qualifications (including qualifications as to experience) as may be mentioned in the regulations, and
  - (b) power to confer on a person who is dissatisfied with the determination of such a committee, a right of appeal to a committee appointed by the Secretary of State, and to make provision for any matter for which it appears to the Secretary of State to be requisite or expedient to make provision in consequence of the conferring of that right.

### *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 supply 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
  - (b) listed drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of such functions;

and the services provided in accordance with the arrangements are in this Act referred to 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 National Health Service Act 1946 or any service provided in



pursuance of Article 4(a) of the Health and Personal Social Services (Northern Ireland) Order 1972.

- (2) Regulations may make provision for securing that arrangements made under this section will be such as to enable any person for whom they are ordered as mentioned in subsection (1) to receive the drugs, medicines and appliances there mentioned from any persons with whom such arrangements have been made; and the regulations shall include provision—
- (a) for the preparation and publication of lists of persons who undertake to provide pharmaceutical services ;
  - (b) for conferring a right, subject to the provisions of this Part relating to the disqualification of practitioners, on any person who wishes to be included in any such list, to be included for the purpose of supplying such drugs, medicines and appliances as that person is entitled by law to sell; and
  - (c) for the removal from the list of persons undertaking to provide pharmaceutical services for persons in any area of the name of any person in whose case it has been determined in such manner as may be prescribed that he has never provided or has ceased to provide such pharmaceutical services for persons in that area.

## **28 Persons authorised to provide pharmaceutical services**

- (1) Except as may be provided by regulations, no arrangements shall be made by a Health Board with a medical practitioner or dental practitioner under which he is required or agrees to provide pharmaceutical services to any person to whom he is rendering general medical services or general dental services.
- (2) Except as may be provided by regulations, no arrangements for the dispensing of medicines shall be made with persons other than persons who are registered pharmacists or are persons lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968, and who undertake that all medicines supplied by them under the arrangements made under this Part shall be dispensed either by, or under the direct supervision of, a registered pharmacist.

### *Provisions as to disqualification of practitioners*

## **29 Disqualification of persons providing services**

- (1) There shall be constituted a tribunal (hereafter in this Act referred to as " the Tribunal ") for the purpose of inquiring into cases where representations are made in the prescribed manner to the Tribunal by a Health Board or any other person that the continued inclusion of any person in any list prepared under this Part—
- (a) of medical practitioners undertaking to provide general medical services;
  - (b) of medical practitioners undertaking to provide general ophthalmic services;
  - (c) of dental practitioners undertaking to provide general dental services;
  - (d) of ophthalmic opticians undertaking to provide general ophthalmic services;
  - (e) of dispensing opticians undertaking to provide general ophthalmic services; or
  - (f) of persons undertaking to provide pharmaceutical services,
- would be prejudicial to the efficiency of the services in question.
- (2) Schedule 8 shall have effect in relation to the Tribunal.

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- (3) The Tribunal, on receiving representations from a Health Board, shall, and in any other case may, inquire into the case and, if they are of the opinion that the continued inclusion of the said person in any list to which the representations relate would be prejudicial to the efficiency of the said services, shall direct that his name be removed from that list, and may also, if they think fit, direct that his name be removed from, or not be included in, any corresponding list kept by any other Health Board under this Part.
- (4) An appeal shall lie to the Secretary of State from any direction of the Tribunal under subsection (3), and the Secretary of State may confirm or revoke that direction in whole or in part.
- (5) Where the Tribunal direct that the name of any person be removed from, or not included in, any list or lists, the Health Board or Boards concerned shall—
  - (a) if no appeal is brought, at the end of the period for bringing an appeal, or
  - (b) if an appeal is brought and the direction of the Tribunal as regards any such list or lists is confirmed by the Secretary of State, on receiving notice of the Secretary of State's decision,
 remove the name of the person concerned from the list or lists in question.
- (6) The references in subsections (1), (3) and (5) to a Health Board shall include a reference to such committee or joint committee as may be prescribed.

### **30 Removal of disqualification**

- (1) Any person whose name has been removed by a direction under section 29 from any list or lists shall be disqualified for inclusion in any list to which that direction relates until the Tribunal or the Secretary of State direct under this section to the contrary.
- (2) For the purpose of deciding whether or not to issue a direction under this section (or under paragraph 6 of Schedule 15) the Tribunal or the Secretary of State, as the case may be, may hold an inquiry.

### **31 Disqualification provisions in England or Wales or Northern Ireland**

If—

- (a) under any provisions in force in England or Wales or Northern Ireland corresponding to the provisions of this Part, a person is for the time being disqualified for inclusion in all lists prepared under those provisions of persons undertaking to provide services of one or more of the kinds specified in section 29(1), then
- (b) that person shall, so long as that disqualification is in force, be disqualified for inclusion in a list prepared under this Part of persons undertaking to provide services of that kind or those kinds, and the name of that person shall be removed from any such list in which his name is included.

### **32 Regulations as to sections 29 to 31**

Regulations shall make provision—

- (a) with regard to the procedure for the holding of inquiries by the Tribunal or the Secretary of State under sections 29 to 31 and for the making and determining of appeals to the Secretary of State under that procedure, and, in particular,

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for securing that any person who is the subject of such an inquiry shall be informed, as soon as may be, of the substance of any charge or complaint to which the inquiry relates and shall have an opportunity—

- (i) of appearing, either in person or by counsel or solicitor or such other representative as may be prescribed, before the Tribunal and, in the case of an inquiry by, or appeal to, the Secretary of State, before a person appointed by the Secretary of State, and
  - (ii) of being heard by the Tribunal or the person so appointed, and of calling witnesses and producing other evidence on his behalf,
- and that the hearing, whether by the Tribunal or the person so appointed, shall be in public if the person who is the subject of the inquiry so requests;
- (b) for conferring on the Tribunal and on any person so appointed such powers as the Secretary of State considers necessary for the purpose of holding such inquiries, including power to require the attendance of witnesses and the production of documents and to administer oaths; and
  - (c) for the publication of decisions of the Tribunal and the Secretary of State under this section and of the imposition and removal of any disqualification imposed by virtue of this section, and for the intimation to any person who is the subject of such an inquiry of the grounds upon which any disqualification has been imposed in his case.

#### *Supplementary provisions relating to Part II*

### **33 Powers of Secretary of State where services are inadequate**

If the Secretary of State is satisfied, after such inquiry as he may think fit, as respects the area of any Health Board or part of any such area that the persons included in any list prepared under this Part—

- (a) of medical practitioners undertaking to provide general medical services,
- (b) of dental practitioners undertaking to provide general dental services,
- (c) of persons undertaking to provide general ophthalmic services, or
- (d) of persons undertaking to provide pharmaceutical services,

are not such as to secure the adequate provision of the services in question in that area or part, or that for any other reason any considerable number of persons in any such area or part are not receiving satisfactory services under the arrangements in force under this Part, he may authorise the Health Board to make such other arrangements as he may approve, or may himself make other arrangements, and may dispense with any of the requirements of regulations made under this Part so far as appears to him to be necessary to meet exceptional circumstances and enable such arrangements to be made.

### **34 Exercise of choice of medical practitioner, etc., in certain cases**

Regulations may provide that where a right to choose the person by whom services are to be provided under this Part is conferred by or under any provision of this Part, that right shall, in the case of such persons as may be specified in the regulations, be exercisable on their behalf by other persons so specified.

### **35 Prohibition of sale of medical practices**

- (1) Where the name of any medical practitioner is or has been at any time on or after 5th July 1948 entered in any list of medical practitioners undertaking to provide general medical services, it shall be unlawful subsequently to sell the goodwill or any part of the goodwill of the medical practice of that medical practitioner.

This subsection is subject to subsections (2) and (3); and the additional provisions contained in Schedule 9 have effect for the purposes of this section.

- (2) Where a medical practitioner, whose name has ceased to be entered in any list of medical practitioners undertaking to provide general medical services, practises in an area for which he has never been on any such list, subsection (1) does not render unlawful the sale of the goodwill or any part of the goodwill of his practice in that area.
- (3) Subsection (1) does not prevent the sale of the goodwill or any part of the goodwill of a medical practice carried on in any area, being a sale by a medical practitioner whose name has never been entered in a list of a Health Board (or of an Executive Council) for that area of medical practitioners undertaking to provide general medical services, notwithstanding that any part of the goodwill to be sold is attributable to a practice previously carried on by a person whose name was entered in such a list.

## **PART III**

### **OTHER SERVICES AND FACILITIES**

### **36 Accommodation and services**

- (1) It shall be the duty of the Secretary of State to provide throughout Scotland, to such extent as he considers necessary to meet all reasonable requirements, accommodation and services of the following descriptions—
- (a) hospital accommodation, including accommodation at state hospitals;
  - (b) premises other than hospitals at which facilities are available for any of the services provided under this Act;
  - (c) medical, nursing and other services, whether in such accommodation or premises, in the home of the patient or elsewhere.
- (2) Where accommodation or premises provided under this section afford facilities for the provision of general medical, general dental or general ophthalmic services, or of pharmaceutical services, they shall be made available for those services on such terms and conditions as the Secretary of State may determine.

### **37 Prevention of illness, care and after-care**

The Secretary of State shall make arrangements, to such extent as he considers necessary to meet all reasonable requirements, for the purposes of the prevention of illness, the care of persons suffering from illness or the after-care of such persons.

### **38 Care of mothers and young children**

It shall be the duty of the Secretary of State to make arrangements, to such extent as he considers necessary, for the care, including in particular medical and dental care, of expectant mothers and nursing mothers and of young children.

### **39 Medical and dental inspection, supervision and treatment of pupils and young persons**

- (1) It shall be the duty of the Secretary of State to provide for the medical and dental inspection, at appropriate intervals, and for the medical and dental supervision, of all pupils in attendance at any school under the management of an education authority, and of all young persons in attendance at any junior college or other educational establishment under such management.
- (2) It shall be the duty of the Secretary of State to make such arrangements as are necessary for securing that there are available for such pupils and young persons as aforesaid comprehensive facilities for free medical and dental treatment.
- (3) It shall be the duty of every education authority to make arrangements for encouraging and assisting pupils and young persons to take advantage of facilities for medical and dental treatment made available under subsection (2); but where, in the case of any pupil or young person, his parent gives notice to the authority that he objects to the pupil or young person availing himself of the said facilities, the pupil or young person shall not be encouraged or assisted to do so.
- (4) It shall be the duty of every education authority to afford sufficient and suitable facilities for the medical and dental inspection, supervision and treatment, described in subsections (1) and (2).
- (5) Expressions used in this section and in the Education (Scotland) Act 1962 have in this section the same meanings as in that Act.

### **40 Vaccination and immunisation**

- (1) The Secretary of State shall have power to make arrangements with medical practitioners for the vaccination or immunisation of persons against any disease, either by medical practitioners or by persons acting under their direction and control.
- (2) In making arrangements under this section, the Secretary of State shall, in so far as is reasonably practicable, give every medical practitioner providing general medical services under Part II an opportunity to provide services under this section.
- (3) The Secretary of State may, either directly or by another person, supply free of charge to medical practitioners providing services under this section, vaccines, sera or other preparations for vaccinating or immunising persons against any disease.

### **41 Family planning**

It shall be the duty of the Secretary of State to make arrangements, to such extent as he considers necessary, for the giving of advice on contraception, the medical examination of persons seeking advice on contraception, the treatment of such persons and the supply of contraceptive substances or appliances.

**42 Health education**

The Secretary of State shall have power to disseminate, by whatever means, information relating to the promotion and maintenance of health and the prevention of illness.

**43 Control of spread of infectious disease**

The Secretary of State may provide or secure the provision of a service, which may include the provision of laboratories, for the control of the spread of infectious disease; and he may allow persons to make use of services provided at such laboratories on such terms (including terms as to the payment of charges) and on such conditions as he may determine.

**44 Supplies of blood and other substances**

- (1) Where the Secretary of State has acquired supplies of human blood for the purpose of carrying out blood transfusion, or supplies of any other substances or preparations not readily obtainable or has acquired any part of a human body for the purpose of, or in the course of providing, any service under this Act, he may make arrangements for making such supplies available to medical practitioners and other persons who require them or for supplying that part to any person on such terms (including terms as to the payment of charges) and on such conditions as he may determine.
- (2) Subsection (1) is subject to section 54 (restriction of powers).

**45 Ambulances**

It shall be the duty of the Secretary of State to make such provision as he thinks necessary for securing that ambulances and other means of transport are available for the conveyance of persons suffering from illness or of expectant or nursing mothers or of other persons for whom such transport is reasonably required in order to avail themselves of any service under this Act.

**46 Provision of vehicles for persons suffering from physical defect or disability**

- (1) The Secretary of State may provide invalid carriages for persons appearing to him to be suffering from severe physical defect or disability, and, at the request of such a person, may provide for him a vehicle other than an invalid carriage.
- (2) The Secretary of State shall have power, in the case of an invalid carriage or other vehicle provided by him for, or belonging to, any such person as is mentioned in subsection (1), on such terms and subject to such conditions as he may determine—
  - (a) to adapt the vehicle for the purpose of making it suitable for the circumstances of that person;
  - (b) to maintain and repair the vehicle;
  - (c) to take out insurance policies relating to the vehicle and pay the duty, if any, with which the vehicle is chargeable under the Vehicles (Excise) Act 1971;
  - (d) to provide a structure for the keeping of the vehicle therein and provide all material and execute all works necessary for the erection of the structure.
- (3) The Secretary of State may, on such terms and subject to such conditions as he may determine, make payments by way of grant towards costs incurred by any such person

as is mentioned in subsection (1) in respect of all or any of the following matters in relation to an invalid carriage or other vehicle provided by the Secretary of State for, or belonging to, that person, that is to say—

- (a) the taking of any such action as is referred to in subsection (2);
  - (b) the purchase of fuel for the purposes of the vehicle, so far as the cost of the purchase is attributable to duties of excise payable in respect of fuel; and
  - (c) the taking of instruction in the driving of the vehicle.
- (4) Regulations made by the Secretary of State may provide for any incidental or supplementary matter for which it appears to him necessary or expedient to make provision in connection with the taking of any action under subsection (2) or the making of any payment under subsection (3).
- (5) In this section " invalid carriage " means a mechanically propelled vehicle specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability, and used solely by such a person.

#### **47 Educational and research facilities**

- (1) It shall be the duty of the Secretary of State to make available such facilities, in any premises provided by him under this Act, as appear to him to be reasonably required for undergraduate and post-graduate clinical teaching and research, and for the education and training of persons providing or intending to provide services under this Act.
- (2) Without prejudice to the general powers and duties conferred or imposed on the Secretary of State under the Scottish Board of Health Act 1919, the Secretary of State may conduct, or assist by grants or otherwise any person to conduct, research into any matters relating to the causation, prevention, diagnosis or treatment of illness, or into such other matters relating to the health service as he thinks fit.

#### **48 Residential and practice accommodation**

- (1) The Secretary of State may provide, on such terms and conditions as may be agreed, residential accommodation for officers employed for the purposes of any of his functions under this Act, or for officers employed by a voluntary organisation for the purposes of any service provided under this Part.
- (2) The Secretary of State may, in any case, in view of the special circumstances thereof, provide, on such terms and conditions as may be agreed—
  - (a) residential accommodation for medical and dental practitioners providing services under Part II;
  - (b) practice accommodation for such medical and dental practitioners and for such other persons providing services under this Act as he thinks fit.
- (3) In subsection (2) " practice accommodation ", in relation to a person providing services of any kind, means accommodation suitable for the provision of services of that kind.

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## PART IV

### POWERS OF THE SECRETARY OF STATE

#### *Control of maximum prices for medical supplies*

#### **49 Maximum prices of medical supplies may be controlled**

- (1) The Secretary of State may by order provide for controlling maximum prices to be charged for any medical supplies required for the purposes of this Act.
- (2) The Secretary of State may by direction given with respect to any undertaking, or by order made with respect to any class or description of undertakings, being an undertaking or class or description of undertakings concerned with medical supplies required for the purposes of this Act, require persons carrying on the undertaking or undertakings of that class or description—
  - (a) to keep such books, accounts and records relating to the undertaking as may be prescribed by the direction or, as the case may be, by the order or a notice served under the order;
  - (b) to furnish at such times, in such manner and in such form as may be so prescribed such estimates, returns or information relating to the undertaking as may be so prescribed.
- (3) The additional provisions set out in Schedule 10 have effect in relation to this section; and
  - " medical supplies " in this section includes surgical, dental and optical materials and equipment; and
  - " undertaking " in this section and that Schedule means any public utility undertaking or any undertaking by way of trade or business.

*Additional powers as to services and supplies; and the use of those services and supplies for private patients*

#### **50 Additional powers as to accommodation and services**

- (1) The Secretary of State may allow persons to make use on such terms (including terms as to the payment of charges) as he thinks fit, of any accommodation or services provided under this Act and may provide the accommodation or services in question to an extent greater than that necessary apart from this section if he thinks it expedient to do so in order to allow persons to make use of them.
- (2) This section is subject to sections 51, 52 and 54.

#### **51 Section 50 power in relation to private patients**

- (1) In this section and section 52 " the section 50 power " means the Secretary of State's power under section 50 to afford persons (subject to section 54) admission or access to accommodation or services as resident or non-resident private patients at health service hospitals.
- (2) The Secretary of State shall not in the exercise of his section 50 power afford a person admission or access to accommodation or services at such a hospital as a private patient



unless satisfied that the accommodation or services are required for the purposes of investigation, diagnosis or treatment which—

- (a) is of a specialised nature or involves the use of specialised equipment or skills ;  
and
- (b) is not privately available in Great Britain or, if it is so available, either—
  - (i) is not privately available there at a place which is reasonably accessible to the patient; or
  - (ii) is such that it is in the interests of the Scottish health service or of the health service in England and Wales or of both for it to be carried out on that occasion at that hospital.

In this subsection " privately available " means available at a satisfactory standard otherwise than at a health service hospital.

- (3) The Secretary of State shall not exercise his section 50 power in such a way as to afford persons admission or access to accommodation or services at health service hospitals as private patients otherwise than in accordance with the following arrangements.

Those arrangements are such as in his opinion are best suited for securing that all persons admitted or afforded access to accommodation or services at health service hospitals as resident or non-resident patients for the purposes of investigation, diagnosis or treatment of a specialised nature, or involving the use of specialised equipment or skills, are, so far as practicable, admitted or afforded such access on the basis of medical priority alone, whether they come as private patients or not.

- (4) The Secretary of State shall not exercise his section 50 power in such a way as to allow any particular accommodation or facilities at a health service hospital to be reserved or set aside for regular or repeated use in connection with the treatment of persons as private patients.

This subsection is without prejudice to his power to allow such use in connection with the treatment of any particular person afforded admission or access to that accommodation or those facilities.

## **52 Additional provision as to charges under section 50**

- (1) There shall be made in respect of any exercise of the section 50 power such charges as the Secretary of State may in accordance with subsections (2) and (3) determine. '
- (2) Without prejudice to the generality of the Secretary of State's section 50 power to make and recover charges for any use which he may under that section allow to be made of any accommodation or services provided under this Act, the Secretary of State may in pursuance of subsection (1) determine different rates or scales of charges—
  - (a) for different accommodation or services at different health service hospitals or different classes of such hospitals;
  - (b) for different forms or classes of treatment;
  - (c) in relation to patients who are, and patients who are not, ordinarily resident in Great Britain ;
  - (d) generally for different accommodation and for different services and in relation to different circumstances.
- (3) The charges determined in pursuance of subsection (1)—

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- (a) shall be such as will ensure, so far as is practicable, that no increase in the expenses incurred by the Secretary of State under this Act results from any exercise of the section 50 power ;
  - (b) shall include such amounts as appear to the Secretary of State proper and reasonable in respect of costs appearing to him to be properly attributable to capital account; and
  - (c) in the case of charges for services provided to a private patient at a health service hospital by a whole-time consultant, shall be not less than would be charged by a part-time consultant for providing similar services in similar circumstances to a private patient of his.
- (4) Where a Health Board receives any sum charged under section 50 for services provided to a private patient by a whole-time consultant—
- (a) the Board shall retain that sum and use it for the purposes of research and development in medicine or dentistry, but
  - (b) if the services in question were provided by a consultant employed by a medical or dental school or university, the Board shall, if so directed by the Secretary of State, pay the sum to that school or university to use for those purposes.
- (5) Nothing in this section or in section 51 prevents the Secretary of State from allowing any medical or dental practitioner employed by a Health Board to make use of any accommodation or services provided by virtue of this Act to the extent to which the practitioner would be entitled to make such use under the terms of that employment if those terms were as they were or would have been at the passing of the Health Services Act 1976.
- (6) In this section—
- " whole-time consultant" and " part-time consultant" mean respectively a consultant employed whole-time or part-time by a Health Board, medical or dental school or university.

### **53 Additional powers as to disposal and production of goods**

- (1) The Secretary of State may sell or give away, or otherwise dispose of, goods the production or manufacture of which by him is involved in the provision of services under this Act.
- (2) He may, in the case of goods referred to in subsection (1) which are prescribed for the purposes of this section, produce or manufacture them to an extent greater than that necessitated by the provision of such services in order that they may be supplied to persons other than those to whom they are supplied by way of the provision of such services whether or not the first-mentioned persons are engaged in the provision of other services provided under this Act.
- (3) This section is subject to section 54.

### **54 Restriction of powers under sections 44, 50 and 53**

The Secretary of State shall exercise the powers conferred on him by the provisions of section 44 (supplies of blood and other substances) and sections 50 and 53 only if and to the extent that he is satisfied that anything which he proposes to do or allow under those powers—

- (a) will not to a significant extent interfere with the performance by him of any duty imposed on him by this Act to provide accommodation or services of any kind; and
- (b) will not to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to accommodation or services at health service hospitals (whether as resident or non-resident patients) otherwise than as private patients.

*Further provisions as to payments by patients for health service accommodation and services*

### **55 Hospital accommodation on part payment**

- (1) The Secretary of State may authorise the accommodation described in this section to be made available, to such extent as he may determine, for patients who give an undertaking (or for whom one is given) to pay such charges for part of the cost as the Secretary of State may determine, and he may recover those charges.

The accommodation mentioned above is—

- (a) in single rooms or small wards which are not for the time being needed by any patient on medical grounds;
  - (b) at any hospital.
- (2) The Secretary of State may allow such deductions as he thinks fit from the amount of a charge due by virtue of an undertaking given under this section to be paid for accommodation in respect of any period during which the accommodation is temporarily vacated by the person for whom it is made available.

### **56 Expenses payable by remuneratively employed resident patients**

The Secretary of State may require any person—

- (a) who is a resident patient for whom the Secretary of State provides services under this Act; and
- (b) who is absent during the day for the purpose of engaging in remunerative employment from the hospital where he is a patient,

to pay such part of the cost of his maintenance in the hospital and any costs incidental thereto as may seem reasonable to the Secretary of State having regard to the amount of that person's remuneration, and the Secretary of State may recover the payment so required.

### **57 Accommodation and services for private resident patients**

- (1) Subject to section 63 and to this section, if the Secretary of State is satisfied in the case of a health service hospital that it is reasonable to do so, he may—
- (a) authorise accommodation and services at the hospital in question to be made available for resident patients to such extent as he may determine ;
  - (b) determine the charges payable in respect of such patients in accordance with the following provisions of this section, and recover those charges,
- and, on an undertaking being given by or on behalf of such patients to pay such charges, that accommodation and those services shall be available for them.

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*Status: This is the original version (as it was originally enacted).*

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- (2) The Secretary of State may allow accommodation and services to which an authorisation under subsection (1) relates to be made available in connection with the treatment, in pursuance of arrangements made by a medical practitioner or dental practitioner serving whether in a honorary or paid capacity on the staff of a health service hospital, of private patients of that practitioner as resident patients.
- (3) The Secretary of State, for the purpose of determining charges to be paid under subsection (1)—
- (a) may classify the health service hospitals, and may, in the case of each class, determine in respect of each period of 12 months beginning with 1st April first falling after the date on which the determination is made the charges to be paid under that subsection in respect of accommodation and services provided during that period, at a hospital falling within that class;
  - (b) in determining such charges in respect of a period the Secretary of State shall have regard, so far as is reasonably practicable, to the total cost (exclusive of costs appearing to him to be properly attributable to capital account) which, by reference to facts known to him at the time of the determination, it is estimated will be incurred during that period in the provision for resident patients of services at hospitals falling within that class; and
  - (c) may include in any such charges, in such cases as appear to him fit, such amounts as appear to him proper and reasonable to be included by way of contribution to expenditure appearing to him to be properly attributable to capital account.
- (4) The Secretary of State may under subsection (3) determine different charges for different accommodation and for different services and in relation to different circumstances.
- (5) The Secretary of State may allow such deduction as he thinks proper from the amount of a charge due by virtue of an undertaking given under this section by, or in respect of, any patient—
- (a) in respect of treatment given to the patient under subsection (2); and
  - (b) in respect of any period during which the accommodation to which the undertaking relates is temporarily vacated by the patient.
- (6) Nothing in this section prevents accommodation from being made available for a patient other than one mentioned in subsection (1) if the use of that accommodation is needed more urgently for him on medical grounds than for a patient so mentioned, and no other suitable accommodation is available.

## **58 Accommodation and services for private non-resident patients**

- (1) If the Secretary of State is satisfied, in the case of a health service hospital that it is reasonable to do so—
- (a) he may, subject to section 63, authorise accommodation and services at the hospital in question to be made available to such extent as he may determine, and
  - (b) that accommodation and those services shall be available in connection with the treatment, in pursuance of arrangements made by a medical practitioner or dental practitioner serving (whether in an honorary or paid capacity) on the staff of any such hospital, of private patients of that practitioner otherwise than as resident patients.

Those patients shall be patients who give an undertaking (or for whom one is given) to pay, in respect of the accommodation and services, such charges as the Secretary of State may determine, and he may recover those charges.

- (2) The Secretary of State may under subsection (1) determine different charges for different accommodation and for different services, and in relation to different circumstances.
- (3) No accommodation and no services shall be so made available under subsection (1) as to prejudice persons availing themselves of services at the hospital otherwise than as private patients.

*Withdrawal of health service pay beds and services from private patients*

**59 Withdrawal of facilities available for private patients**

- (1) Sections 60 to 63 have effect for the purpose of—
  - (a) securing the separation of the facilities available in Scotland for the prevention, diagnosis and treatment of illness under private arrangements from the facilities available for those purposes at premises vested in the Secretary of State; and
  - (b) to that end securing the progressive withdrawal of accommodation and services at health service hospitals from use in connection with the treatment of persons at such hospitals as resident or non-resident private patients.
- (2) Nothing in this Part prejudices the operation of paragraph 8 of Schedule 1 (by virtue of which regulations governing the terms of employment of officers employed by a Health Board must not contain a requirement that all consultants so employed shall be so employed whole-time).

**60 Revocation of authorisations under section 57 or section 58**

- (1) It shall continue to be the duty of the Health Services Board to submit to the Secretary of State from time to time in accordance with this section proposals for the progressive revocation of—
  - (a) the authorisations under section 57(1) or those granted by virtue of section 63(3), and
  - (b) the authorisations under section 58(1) or those which have been granted by virtue of section 63(3),and it shall be the Secretary of State's duty to give effect to all proposals so submitted.
- (2) The Health Services Board shall in the 6 months beginning with the date on which its first proposals were submitted under section 4(2) of the Health Services Act 1976, and in each successive period of 6 months thereafter, submit further proposals under this section or, if in all the circumstances it decides that the submission of further proposals in any particular period of 6 months is unnecessary, shall instead prepare and submit to the Secretary of State a report explaining the Board's reasons for that decision.
- (3) In formulating proposals under this section the Board shall—
  - (a) have regard to the principles set out in section 62 ; and
  - (b) consider any representations made to the Board by—
    - (i) the Secretary of State ;

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- (ii) any body which is representative of medical practitioners or dental practitioners or of persons employed in the health service or concerned with the interests of patients at health service hospitals ;
- (iii) any other person having a substantial interest in the proposals.

In deciding what advice to give the Board in connection with the formulation of any such proposals the Board's Scottish Committee shall likewise have regard to the principles set out in section 62 and shall consider any representations made to the Committee by any of the persons or bodies mentioned in this subsection.

- (4) Each set of proposals under this section shall specify—
- (a) the accommodation and services authorisation of which under section 57(1) or section 58(1) should be revoked and
  - (b) the date before which the necessary revocations should take effect,
- and may specify different dates for different accommodation or services so specified.

## **61 Further provisions as to revocation of section 58 authorisations**

- (1) Without prejudice to subsection (3) of section 60, the Health Services Board, in formulating proposals under that section for the revocation of authorisations given under section 58(1) in respect of accommodation or services at any particular health service hospital or hospitals, and the Scottish Committee in deciding what advice to give the Board in connection with the formulation of any such proposals—
- (a) shall have regard to the purposes and specialties for which the accommodation or services in question are available for use in connection with the treatment of non-resident private patients, and
  - (b) shall apply the principles set out in section 62 separately in respect of different purposes and specialties,
- and the Board may formulate separate proposals in respect of different purposes or specialties accordingly.
- (2) As regards the revocation of authorisations under section 58(1), any proposals under section 60 relating to—
- (a) accommodation available to consultants for the purpose of affording consultations to their private patients, or
  - (b) accommodation and services available for the following specialties, namely, radiotherapy, diagnostic pathology and diagnostic radiology (including scanning, ultrasonics and methods involving the use of radio-isotopes),
- shall be formulated by the Board as separate proposals.
- (3) Without prejudice to section 60 and the preceding provisions of this section, the Health Services Board shall, as regards the revocation of authorisations under section 58(1), submit separate proposals under section 60 relating to—
- (a) accommodation and services available for the specialties other than radiotherapy mentioned in subsection (2)(b), and
  - (b) other accommodation and services available for diagnostic purposes,
- and shall do so not later than the end of the 12 months following the initial period defined by the Health Services Act 1976 (that is the period of 6 months beginning with the date on which that Act was passed), or, if a period longer than the initial period has been allowed under that Act for the submission of the Board's first proposals under this section, the 12 months following that longer period.

## **62 Principles as to proposals under section 60 or section 61**

The principles referred to in sections 60 and 61 are—

- (a) that accommodation or services at any particular health service hospital or hospitals should remain authorised under section 57 or section 58 for use in connection with the treatment of resident or non-resident private patients only while there is a reasonable demand for accommodation and facilities for the private practice of medicine and dentistry in the area or areas served by the hospital or hospitals in question;
- (b) that the authorisation of any such accommodation or services under those provisions for use in that connection should be revoked only if sufficient accommodation and facilities for the private practice of medicine and dentistry are otherwise reasonably available (whether privately or at health service hospitals) to meet the reasonable demand for them in the area or areas served by the hospital or hospitals in question;
- (c) that the continued authorisation of any such accommodation or services under those provisions for use in that connection should depend on there having been or being taken all reasonable steps to provide, otherwise than at health service hospitals, sufficient reasonable accommodation and facilities for the private practice of medicine and dentistry to meet the reasonable demand for them in the area or areas served by the hospital or hospitals in question;
- (d) that failure, in the circumstances mentioned in paragraph (c), to take all reasonable steps that could be taken to provide as mentioned in that paragraph would itself be grounds for the Health Services Board, after giving due warning to persons likely to be affected thereby of the likely consequences of such failure, to propose the revocation of the authorisations under those provisions relating to accommodation or services at the hospital or hospitals in question.

## **63 Restrictions on authorisations under section 57 or section 58**

- (1) No authorisation under section 57(1) or section 58(1)—
  - (a) shall be granted, except by virtue of subsection (2) or subsection (4); and
  - (b) shall be, other than one granted on a temporary basis as mentioned in subsection (4), to any extent revoked otherwise than in accordance with proposals submitted to the Secretary of State by the Health Services Board under section 60.
- (2) The Health Services Board may submit to the Secretary of State proposals for securing that in any case where one or more beds authorised under section 57(1) cease to be available to resident private patients, or any accommodation or services authorised under section 58(1) cease to be available to non-resident private patients, in consequence of the permanent closure of any health service hospital accommodation in Scotland independently of any proposals submitted by the Board under section 60, the total number of effective beds, or the total amount of effective accommodation or services, as the case may be, so authorised in Scotland is not thereby reduced below what it would be if—
  - (a) the closed accommodation had remained in use, but
  - (b) effect had been given by the Secretary of State to all proposals under section 60 which were received by him before the submission of the proposals in question under this subsection.

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- (3) It shall be the Secretary of State's duty to grant such authorisations under section 57(1) or section 58(1), as the case may be, as are needed to give effect to any proposals submitted to him under subsection (2).
- (4) Where any health service hospital accommodation in Scotland is temporarily closed (whether at the instance of the Secretary of State or not) for physical or other reasons outside his control, the Secretary of State shall, without the need for any proposals by the Board, grant on a temporary basis such authorisations under section 57(1) or section 58(1) as he would have been able to grant by virtue of subsections (2) and (3) if—
  - (a) the closure had been permanent; and
  - (b) the Board had submitted to him any proposals which it could in that case have submitted to him under subsection (2).
- (5) Subject to the restrictions imposed by this section, section 57 or, as the case may be, section 58 shall continue to have effect in relation to any accommodation or services to which an authorisation under section 57(1) or section 58(1) relates.

*Use by practitioners of health service accommodation and facilities for private practice*

#### **64 Permission for use of facilities in private practice**

- (1) A person to whom this section applies who wishes to use any relevant health service accommodation or facilities for the purpose of providing medical, dental, pharmaceutical, ophthalmic or chiropody services to non-resident private patients may apply in writing to the Secretary of State for permission under this section.
- (2) Any application for permission under this section must specify—
  - (a) which of the relevant health service accommodation or facilities the applicant wishes to use for the purpose of providing services to such patients; and
  - (b) which of the kinds of services mentioned in subsection (1) he wishes the permission to cover.
- (3) On receiving an application under this section the Secretary of State—
  - (a) shall consider whether anything for which permission is sought would interfere with the giving of full and proper attention to persons seeking or afforded access otherwise than as private patients to any services provided under this Act; and
  - (b) shall grant the permission applied for unless in his opinion anything for which permission is sought would so interfere.
- (4) Any grant of permission under this section shall be on such terms (including terms as to the payment of charges for the use of the relevant health service accommodation or facilities pursuant to the permission) as the Secretary of State may from time to time determine.
- (5) The persons to whom this section applies are—
  - (a) persons of any of the following descriptions who provide services under Part II, namely, medical practitioners, dental practitioners, registered pharmacists, and ophthalmic or dispensing opticians ; and
  - (b) other persons who provide pharmaceutical or ophthalmic services under Part II; and



- (c) chiroprodists who provide services under this Act at premises where services are provided under Part II.
- (6) In this section—
- (a) "relevant health service accommodation or facilities", in relation to a person to whom this section applies, means any accommodation or facilities available at premises provided by the Secretary of State by virtue of this Act, being accommodation or facilities which that person is for the time being authorised to use for the purposes of Part II; or
  - (b) in the case of a person to whom this section applies by virtue of paragraph (c) of subsection (5), accommodation or facilities which that person is for the time being authorised to use for purposes of this Act at premises where services are provided under Part II.

### *Information and reports*

#### **65 Information for Health Services Board**

It shall continue to be the Secretary of State's duty to furnish the Health Services Board with such information as they may reasonably require for the proper discharge of their functions under sections 60 to 63.

#### **66 Publication of matters under sections 60 and 63**

The Secretary of State shall cause every set of proposals submitted to him under sections 60 and 63, and every report submitted to him under section 60(2), to be published as soon as practicable after its submission, and shall lay a copy of every such set of proposals or report before each House of Parliament.

#### **67 Reports on extent of facilities for private patients**

- (1) There shall be prepared by the Secretary of State on the matters mentioned in subsection (2), an annual report relating to Scotland, and he shall lay a copy of every report under this section before each House of Parliament.
- (2) The matters referred to under subsection (1) are—
  - (a) the accommodation and services at health service hospitals which in the period covered by the report were available for use in connection with the treatment of private patients by virtue of authorisations under sections 57(1) and 58(1);
  - (b) the extent to which " the section 50 power " (as defined in section 51(1)) was exercised in that period;
  - (c) the extent to which the powers to which section 54 applies were exercised in that period otherwise than by way of affording persons admission or access to accommodation or services at health service hospitals as resident or non-resident private patients; and
  - (d) the extent to which progress has been made in implementing the common waiting-lists referred to in section 6 of the Health Services Act 1976, and in section 68.

**68 " Common waiting lists "**

- (1) The reference in paragraph (d) of section 67(2) to common waiting-lists is to the recommendations made to the Secretary of State by the Health Services Board under section 6(1) of the Health Services Act 1976.
- (2) Those recommendations—
  - (a) related to arrangements for affording persons admission or access as resident patients (authorised under section 57) or non-resident patients (authorised under section 58) to accommodation and services; and
  - (b) were in the Board's opinion the ones best suited for securing that all persons admitted or afforded access to accommodation or services at health service hospitals as resident or non-resident patients are, so far as is practicable, admitted or afforded access thereto on the basis of medical priority alone, whether coming as private patients or not.

*Regulations as to certain charges***69 Charges for drugs, medicines or appliances or pharmaceutical services**

- (1) Regulations may provide for the making and recovery in such manner as may be prescribed of such charges as may be prescribed in respect of—
  - (a) the supply under this Act (otherwise than under Part II) of drugs, medicines or appliances (including the replacement and repair of those appliances),
  - (b) such of the pharmaceutical services referred to in Part II as may be prescribed.
- (2) Regulations under subsection (1) may provide for the grant, on payment of such sums as may be prescribed by those regulations, of certificates conferring on the persons to whom the certificates are granted exemption from charges otherwise exigible under the regulations in respect of drugs, medicines and appliances supplied during such period as may be prescribed, and different sums may be so prescribed in relation to different periods.
- (3) The additional provisions of paragraphs 1 and 4 of Schedule 11 have effect in relation to this section.

**70 Charges for dental or optical appliances**

- (1) Regulations may provide for the making and recovery in such manner as may be prescribed of charges of such amounts as are mentioned in sub-paragraph (1) of paragraph 2 of Schedule 11, in respect of the supply under this Act of such dental or optical appliances as are mentioned in that sub-paragraph.
- (2) If the Secretary of State, after consultation with the university associated with any hospital providing facilities for clinical dental teaching, is satisfied that it is expedient in the interests of dental training or education that the charges imposed by subsection (1) should be remitted in the case of dental services provided at that hospital, either generally or subject to limitations or conditions, he may by order provide for that purpose.

Any order made under this subsection may be revoked or varied by a subsequent order made by the Secretary of State after such consultation as is mentioned above.

- (3) The additional provisions of paragraphs 2 and 5 of Schedule 11 have effect in relation to this section.

## **71 Charges for dental treatment**

- (1) A charge of the amount authorised by this section may be made and recovered, in such manner as may be prescribed, in respect of any services provided as part of the general dental services under Part II, not being—
- (a) the supply or replacement of appliances mentioned in paragraph 2(1) of Schedule 11;
  - (b) the repair of appliances other than prescribed appliances;
  - (c) the arrest of bleeding; or
  - (d) the clinical examination of a patient and any report on that examination.

The additional provisions of paragraphs 3 and 5 of Schedule 11 have effect in relation to this subsection.

- (2) Regulations may provide that, in the case of such special dental treatment as may be prescribed, being treatment provided as part of the general dental services, such charges as may be prescribed may be made and recovered by the person providing the services.

## **72 Charges in respect of services etc. provided under sections 37, 38 and 41**

Regulations may provide for the recovery of such charges as may be prescribed—

- (a) in respect of such services provided under section 37 (prevention of illness, care and after-care) as may be prescribed, not being services provided in a hospital;
- (b) in respect of such articles or services provided under section 38 (care of mothers and young children) as may be prescribed, not being articles or services provided in a hospital, and not being a drug, a medicine or an appliance of a type normally supplied;
- (c) from persons availing themselves of any service under section 41 (except advice on contraception),

and may provide for the remission of any such charge, in whole or in part, in such circumstances as may be prescribed.

## **73 Charges for more expensive supplies**

Regulations may provide for the making and recovery of such charges as may be prescribed—

- (a) by the Secretary of State in respect of the supply by him of any appliance or vehicle which is, at the request of the person supplied, of a more expensive type than the prescribed type, or in respect of the replacement or repair of any such appliance, or the replacement of any such vehicle, or the taking of any such action in relation to the vehicle as is mentioned in section 46(2).
- (b) by persons providing general dental services or general ophthalmic services in respect of the supply, as part of those services, of any dental or optical appliance which is, at the request of the person supplied, of a more expensive type than the prescribed type or in respect of replacement or repair of any such appliance.

**74 Charges for repairs and replacements in certain cases**

Regulations may provide for the making and recovery of such charges as may be prescribed—

- (a) by the Secretary of State in respect of the replacement or repair of any appliance or vehicle supplied by him, or
- (b) by persons providing general dental services or general ophthalmic services in respect of the replacement or repair of any dental or optical appliance supplied as part of those services,

if it is determined in the prescribed manner that the replacement or repair is necessitated by an act or omission of the person supplied or (if the act or omission occurred when the person supplied was under 16 years of age) of the person supplied or of the person having charge of him when the act or omission occurred.

**75 Sums otherwise payable to those providing services**

Regulations made—

- (a) under sections 69 to 71 and under sections 73 and 74 providing for the making and recovery of charges in respect of any services, 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 the regulations in respect of those services;
- (b) for the purposes of section 70(1) in relation to appliances provided as part of the general dental services or the general ophthalmic services under Part II, 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(1) in respect of those appliances.

*Inquiries, and default and emergency powers***76 Inquiries**

- (1) The Secretary of State may cause an inquiry to be held in any case where he deems it advisable to do so in connection with any matter arising under this Act.
- (2) The provisions of Schedule 12 shall have effect with regard to any inquiry which the Secretary of State is, under this Act, required or authorised to hold.

**77 Default powers**

- (1) Where the Secretary of State is of the opinion, on representations made to him or otherwise, that—
  - (a) any Health Board;
  - (b) the Medical Practices Committee; or
  - (c) the Dental Estimates Board ;

have failed to carry out any functions conferred or imposed on them by or under this Act, or have in carrying out those functions failed to comply with any regulations, schemes, proposals or directions relating to those functions, he may after holding an inquiry make an order declaring them to be in default.

- (2) When such an order is made, the members of the body shall forthwith vacate their office, and the order—
  - (a) shall provide for the appointment, in accordance with the provisions of this Act, of new members of the body; and
  - (b) may contain such provisions as seem to the Secretary of State expedient for authorising any person to act in the place of the body in question pending the appointment of new members.
- (3) An order made under this section may contain such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient.

## **78 Emergency powers**

If the Secretary of State is of the opinion that an emergency exists, and thinks it necessary in order to secure the effective continuance of any service under this Act, he shall have power to direct that any function conferred by or under this Act on any body or person shall, during the period of the emergency, be performed by such other body or person as he may specify in the direction.

## **PART V**

### **PROPERTY AND FINANCE**

#### *Land and other property*

## **79 Purchase of land and moveable property**

- (1) The Secretary of State may purchase by agreement any moveable property and, by agreement or compulsorily, any land which he considers is required for the purposes of any service under this Act, and may use for those purposes any property, heritable or moveable, acquired by him or on his behalf under this Act.
- (2) Where the Secretary of State acquires premises under subsection (1) he may acquire compulsorily, in accordance with Schedule 13, any equipment, furniture or other moveable property used in or in connection with the premises.
- (3) Any Health Board or the Agency may acquire on behalf of the Secretary of State any moveable property which may be required for the purposes aforesaid.
- (4) For the purpose of the purchase of land by agreement by the Secretary of State—
  - (a) the Lands Clauses Acts (except so much thereof as relates to the acquisition of land otherwise than by agreement, and the provisions relating to access to the special Act, and except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845), and
  - (b) section 6 and sections 70 to 78 of the Railways Clauses Consolidation (Scotland) Act 1845 (as originally enacted and not as amended by section 15 of the Mines (Working Facilities and Support) Act 1923),are hereby incorporated with this section; and in construing those Acts for the purposes of this section, this section shall be deemed to be the special Act and the Secretary of State shall be deemed to be the promoter of the undertaking.

**80 Transferred property free of trusts**

- (1) All property vested in the Secretary of State by virtue of section 6 of the National Health Service (Scotland) Act 1947 is so vested free of any trust existing immediately before 5th July 1948; and the Secretary of State may use any such property for the purpose of any of the functions exercisable by him under this Act, but shall so far as practicable secure that the objects for which any such property was used immediately before the said 5th July are not prejudiced by the exercise of the power hereby conferred.
- (2) Where the character and associations of any voluntary hospital transferred to the Secretary of State by virtue of the said Act of 1947 are such as to link it with a particular religious denomination, regard shall be had in the general administration of the hospital to the preservation of the character and associations of the hospital.

**81 Power of voluntary organisations to transfer property to Secretary of State**

Notwithstanding anything contained in the constitution or rules of any voluntary organisation formed for the purpose of providing a service of nurses for attendance on the sick in their own home or of midwives, or in any trust deed or other instrument relating to any such organisation or service, any property vested in the organisation or held by any persons on trust for the organisation or service or for any specific purposes connected with the organisation or service may be transferred to the Secretary of State on such terms as may be agreed between the Secretary of State and the organisation or trustees, with a view to the property being used or held by the Secretary of State for purposes similar to the purposes for which it was previously used or held.

*Trust property***82 Use and administration of certain endowments and other property held by Health Boards**

- (1) All endowments vested in a Health Board by virtue of section 37 of the National Health Service (Scotland) Act 1972 are so vested free of any trust existing immediately before 1st April 1974 (hereafter in this section referred to in relation to any such endowment as "the original trust"); but all such endowments shall be held by the Health Board on trust for such purposes relating to services provided under this Act in or in relation to hospitals, or to the functions of the Board with respect to research, as the Board may think fit.
- (2) All property vested in a Health Board by virtue of section 39 of the said Act of 1972 is so vested free of any trust existing immediately before the said 1st April (hereafter in this section referred to in relation to any such property as "the original trust"); but all such property shall be held by the Health Board on trust for such purposes relating to services provided by them under this Act, or to the functions of the Board with respect to research, as the Board may think fit.
- (3) In exercising the power conferred on them by this section in relation to any endowment or property a Health Board shall secure, so far as is reasonably practicable, that the objects of the original trust (including, in the case of an endowment, the objects of the endowment) and the observance of any conditions attaching thereto, including, in particular, conditions intended to preserve the memory of any person or class of persons, are not prejudiced by the exercise of the power.

- (4) Any reference in this section to an endowment or to any property includes a reference to the accumulated income thereof.

### **83 Power of Health Boards and local health councils to hold property on trust**

- (1) A Health Board shall have power to accept, hold and administer any property on trust for purposes relating to any service which it is their function to make arrangements for, administer or provide, or to their functions with respect to research.
- (2) A local health council shall have power to accept, hold and administer any property on trust for purposes relating to any function conferred upon them by or under any enactment.

### **84 Power of trustees to make payments to Health Boards**

- (1) Where property (other than property transferred to the Secretary of State under Part V of the National Health Service (Scotland) Act 1972 or to a Health Board under Part VI of that Act) was immediately before 1st April 1974, and is at any time after the commencement of this Act, held on trust under a trust instrument the terms of which authorise or require the trustees (whether immediately or in the future) to apply any part of the capital or income of the property for the purposes of any hospital or service which is administered by a Health Board, the trust instrument shall be construed as authorising, or, as the case may be, requiring, the trustees to pay that capital or income to the Health Board concerned.
- (2) Where property so held on trust is, under the trust instrument, to be applied for the purposes of hospitals which are administered by more than one Health Board, the trustees shall distribute the property between the Boards concerned, in such manner, having regard to the purposes of the trust, as the trustees may determine.
- (3) Any sums paid to a Health Board under this section shall, so far as practicable, be applied by them for the purposes specified in the trust instrument.

### *Finance and accounts*

### **85 Expenses of certain bodies and travelling expenses and receipts**

- (1) There shall be paid by the Secretary of State such sums as may be necessary to defray the expenditure of the following bodies, being expenditure approved by him in the prescribed manner—
- (a) the Planning Council;
  - (b) every Health Board ;
  - (c) the Agency;
  - (d) the Medical Practices Committee ;
  - (e) the Dental Estimates Board;
  - (f) the Tribunal.
- (2) The expenditure of a local health council shall, for the purposes of this section, be deemed to be the expenditure of the Health Board within whose area it has been established.

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- (3) The expenditure of a University Liaison Committee shall, for the purposes of this section, be deemed to be the expenditure of the Health Board for whose area it is constituted, and, where a University Liaison Committee is constituted for the areas of more than one Health Board, its expenditure shall be apportioned between the Boards concerned in such manner as may be determined by the Secretary of State.
- (4) Payments under subsection (1) shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may determine.
- (5) Regulations may provide for the payment by the Secretary of State in such cases as may be prescribed, of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred by persons for the purpose of availing themselves of any service under this Act.
- (6) Any sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund, but this section is without prejudice to section 52(4).

## **86 Accounts of Health Boards and the Agency**

- (1) Every Health Board and the Agency shall keep, in such form as the Secretary of State may, with the approval of the Treasury, direct, accounts of all moneys received or paid out by them, and those accounts shall be audited by auditors appointed by the Secretary of State; and the Comptroller and Auditor General may examine all such accounts and any records relating thereto and any report of the auditor thereof.
- (2) Regulations may make provision generally with respect to the audit of accounts under subsection (1) and, in particular, for conferring on the auditor of any of those accounts such rights of access to, and production of, books, accounts, vouchers or other documents as may be specified in the regulations, and such right in such conditions as may be so specified to require from any member or officer, or former member or officer, of a Health Board or the Agency such information relating to the affairs of the Board or the Agency as the Secretary of State may think necessary for the proper performance of the duty of the auditor.
- (3) Every Health Board and the Agency shall prepare and transmit to the Secretary of State in respect of each financial year accounts in such form as the Secretary of State may, with the approval of the Treasury, direct.
- (4) The Secretary of State shall prepare in respect of each financial year, in such form as the Treasury may direct, summarised accounts of the Health Boards and the Agency, and shall transmit them on or before 30th November in each year to the Comptroller and Auditor General, who shall examine and certify them and lay a copy of them, together with his report thereon, before each House of Parliament.

## **87 Regulation of financial arrangements of Health Boards, the Agency and the Dental Estimates Board**

- (1) Regulations may provide, in the case of all or any of the following bodies, that is to say, Health Boards, the Agency, and the Dental Estimates Board, for restricting the making of payments by or on behalf of the body otherwise than on such authorisation and subject to such conditions as may be specified in the regulations; but such provision may be made subject to such exceptions as may be so specified.



- (2) Regulations made under this section may contain such other provisions as to the making and carrying out by all or any of those bodies of such arrangements with respect to financial matters as the Secretary of State thinks necessary for the purpose of securing that the affairs of such bodies are conducted, so far as reasonably practicable, in such manner as to prevent financial loss and to ensure and maintain efficiency.
- (3) Without prejudice to the operation of the provisions of any such regulations, the Secretary of State may give to any of the said bodies such directions (which may be specific in character) as to any matter with respect to which regulations may be made under this section as it appears to him is requisite for the purpose of securing that the affairs of the body are conducted, so far as reasonably practicable, in such manner as is mentioned in subsection (2); and a body to whom any such directions are given shall comply therewith.

*Remuneration, allowances and superannuation*

**88 Payment of allowances and remuneration to members of certain bodies connected with the health services**

- (1) The Secretary of State may pay to members of—
  - (a) the Medical Practices Committee,
  - (b) the Dental Estimates Board,
  - (c) the Tribunal,
  - (d) any body on which functions are conferred by regulations under section 22, and
  - (e) any body specified in an order made by the Secretary of State as being a body recognised by him to have been formed for the purpose of performing a function connected with the provision of services under this Act,such travelling and other allowances, including compensation for loss of remunerative time, as he may, with the approval of the Minister for the Civil Service, from time to time determine.
- (2) The Secretary of State may pay to members of—
  - (a) the Medical Practices Committee,
  - (b) the Dental Estimates Board,
  - (c) the Tribunal,
  - (d) any other body constituted under or by virtue of Part II, being a body specified in an order made for the purposes of this section by the Secretary of State with the approval of the Minister for the Civil Service, and
  - (e) any body on which functions are conferred by regulations under section 22,such remuneration as the Secretary of State may, with such approval, from time to time determine.
- (3) Allowances shall not be paid under subsection (1) except in connection with the performance of such powers or duties, in such circumstances, as may, with the approval of the Minister for the Civil Service, be determined by the Secretary of State.
- (4) Any payments made under this section shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may, with the approval of the Minister for the Civil Service, determine.

## **89 Superannuation of officers of certain hospitals**

- (1) The Secretary of State may enter into an agreement with the governing body of any hospital to which this section applies for admitting, on such terms and conditions as may be provided in the agreement, officers of the hospital of such classes as may be so provided to participate in the superannuation benefits provided under regulations made under section 10 of the Superannuation Act 1972, in like manner as officers of Health Boards ; and the said regulations shall apply accordingly in relation to the officers so admitted, subject to such modifications as may be provided in the agreement.
- (2) The governing body of any hospital to which this section applies shall have all such powers as may be necessary for the purpose of giving effect to any terms and conditions on which their officers are admitted to participate in those superannuation benefits.
- (3) This section applies to any hospital (not vested in the Secretary of State) which is used, in pursuance of arrangements made by the governing body of the hospital with a Health Board, for the provision of services under this Act.

## **PART VI**

### **THE HEALTH SERVICE COMMISSIONER FOR SCOTLAND**

## **90 Appointment of Commissioner and tenure of office**

- (1) For the purpose of conducting investigations in accordance with the following provisions of this Part, there shall be appointed a Commissioner, to be known as the Health Service Commissioner for Scotland.
- (2) Her Majesty may, by Letters Patent, from time to time appoint a person to be the Commissioner, and any person so appointed shall, subject to subsection (3), hold office during good behaviour.
- (3) A person appointed to be the Commissioner may be relieved of office by Her Majesty at his own request, or may be removed from office by Her Majesty in consequence of Addresses from both Houses of Parliament, and shall in any case vacate office on completing the year of service in which he attains the age of 65 years.
- (4) The Commissioner shall not be a member of the House of Commons, or of the Senate or House of Commons of Northern Ireland, and accordingly the House of Commons Disqualification Act 1975 shall continue to have effect with the following amendments—
  - (a) in Part III of Schedule 1 there shall be inserted, at the appropriate point in alphabetical order, the entry " The Health Service Commissioner for Scotland "; and
  - (b) the like amendment shall be made in the Part substituted for the said Part III by Schedule 3 to the said Act in its application to the Senate and House of Commons of Northern Ireland.
- (5) The Commissioner shall not be a member of a body subject to investigation or any management committee thereof.

## 91 Salary and pension of Commissioner

- (1) Subject to the provisions of this section, there shall be paid to the holder of the office of Commissioner the same salary as if he were employed in the civil service of the State in such appointment as the House of Commons may, by resolution, from time to time determine, and any such resolution may take effect from the date on which it is passed or such other date as may be specified therein.
- (2) Subject to the provisions of this section and subsections (5) to (7) of section 107 of the National Health Service Act 1977, Schedule 1 to the Parliamentary Commissioner Act 1967 (pensions and other benefits) shall have effect with respect to persons who have held office as Commissioner as it has effect with respect to persons who have held office as Commissioner under that Act of 1967.
- (3) The salary payable to a holder of the office of a Commissioner shall be abated by the amount of any pension payable to him in respect of any public office in the United Kingdom or elsewhere to which he has previously been appointed or elected.
- (4) In computing the salary of a former holder of the office of Commissioner for the purposes of Schedule 1 to that Act of 1967 there shall be disregarded—
  - (a) any abatement of that salary under subsection (3);
  - (b) any temporary abatement of that salary in the national interest; and
  - (c) any voluntary surrender of that salary in whole or in part.
- (5) Where—
  - (a) a person holds the office of Parliamentary Commissioner for Administration and one or more of the offices of Health Service Commissioner for England, Health Service Commissioner for Scotland and Health Service Commissioner for Wales he shall, so long as he does so, be entitled only to the salary pertaining to the first-mentioned office; and
  - (b) a person holds two or more of those offices other than that of Parliamentary Commissioner for Administration he shall, so long as he does so, be entitled only to the salary pertaining to such one of those offices as he selects.
- (6) A person—
  - (a) shall not be entitled to make simultaneously different elections in pursuance of paragraph 1 of Schedule 1 to that Act of 1967 in respect of different offices mentioned in subsection (5), and
  - (b) shall, if he has made or is treated as having made an election in pursuance of that paragraph in respect of such an office, be deemed to have made the same election in respect of all other offices to which he is, or is subsequently, appointed,and no account shall be taken for the purposes of that Schedule of a period of service in such an office if salary in respect of the office was not paid for that period.
- (7) The Minister for the Civil Service may—
  - (a) by regulations provide that Schedule 1 to that Act of 1967 shall have effect in relation to persons who have held more than one of the offices mentioned in subsection (5), and
  - (b) by those regulations modify that Schedule as he considers necessary in consequence of those persons having held more than one of those offices,and different regulations may be made in pursuance of paragraph 4 of that Schedule in relation to different offices so mentioned.

This subsection is subject to subsection (6).

- (8) Any salary, pension or other benefit payable by virtue of this section shall be charged on and issued out of the Consolidated Fund.

## **92 Administrative provisions**

- (1) The Commissioner may appoint such officers as he may determine with the approval of the Minister for the Civil Service as to numbers and conditions of service.
- (2) Any function of the Commissioner under this Part may be performed by any officer of the Commissioner authorised for that purpose by him or by any officer so authorised of another Commissioner mentioned in subsection (5) of section 107 of the National Health Service Act 1977.
- (3) To assist him in any investigation, the Commissioner may obtain advice from any person who in his opinion is qualified to give it, and such fees or allowances may be paid to such person by the Commissioner as he may, with the approval of the Minister for the Civil Service, determine.
- (4) The expenses of the Commissioner under this Part, to such amount as may be sanctioned by the Minister for the Civil Service, shall be defrayed out of moneys provided by Parliament.

## **93 Bodies and action subject to investigation**

- (1) In this Part a " body subject to investigation any of the following bodies—
- (a) Health Boards;
  - (b) the Agency;
  - (c) the Scottish Committee of the Health Services Board.
- (2) Subject to the provisions of this section, the Commissioner may investigate—
- (a) an alleged failure in a service provided by a body subject to investigation, or
  - (b) an alleged failure of a body subject to investigation to provide a service which it was the function of the body to provide, or
  - (c) any other action taken by or on behalf of a body subject to investigation,
- in a case where a complaint is duly made by or on behalf of any person that he has sustained injustice or hardship in consequence of the failure or in consequence of maladministration connected with the other action.
- (3) Except as hereafter provided, the Commissioner shall not conduct an investigation under this Part in respect of any of the following matters—
- (a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative;
  - (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law;
- but the Commissioner may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy, if he is satisfied that in the particular circumstances it is not reasonable to expect that person to resort or have resorted to it.

- (4) Without prejudice to subsection (3), the Commissioner shall not conduct an investigation under this Part in respect of any such action as is described in Schedule 14.
- (5) Her Majesty may, by Order in Council, amend the said Schedule 14 so as to exclude from the provisions of that Schedule action described in paragraph 4 or 5 of that Schedule.
- (6) In determining whether to initiate, continue or discontinue an investigation under this Part, the Commissioner shall, subject to the foregoing provisions of this section, act in accordance with his own discretion; and any question whether a complaint is duly made under this Part shall be determined by the Commissioner.

#### **94 Provisions relating to complaints**

- (1) A complaint under this Part may be made by any individual or by any body of persons, whether incorporated or not, not being—
  - (a) a local authority or other authority or body constituted for purposes of the public service or of local government or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking ;
  - (b) any other authority or body whose members are appointed by Her Majesty or any Minister of the Crown or government department, or whose revenues consist wholly or mainly of moneys provided by Parliament.
- (2) Where the person by whom a complaint might have been made under the foregoing provisions of this Part has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or by some body or individual suitable to represent him; but except as aforesaid a complaint shall not be entertained under this Part unless made by the person aggrieved himself.
- (3) A complaint shall not be entertained under this Part unless it is made in writing to the Commissioner by or on behalf of the person aggrieved not later than 12 months from the day on which the matters alleged in the complaint first came to the notice of the person aggrieved; but the Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers it proper to do so.
- (4) Before proceeding to investigate a complaint the Commissioner shall satisfy himself that the complaint has been brought by or on behalf of the person aggrieved to the notice of the body subject to investigation and that that body has been afforded a reasonable opportunity to investigate and reply to the complaint; but the Commissioner may disregard the preceding provisions of this subsection in relation to a complaint made by an officer of the body subject to investigation on behalf of the person aggrieved if the officer is authorised by virtue of subsection (2) to make the complaint and the Commissioner is satisfied that in the particular circumstances those provisions ought to be disregarded.
- (5) Notwithstanding the foregoing provisions of this section, a body subject to investigation may itself refer to the Commissioner a complaint made against it by or on behalf of a person aggrieved, and the provisions of subsection (3) regarding time limits shall apply to such a reference as it applies to a complaint.

## 95 Application of certain provisions of the Parliamentary Commissioner Act 1967

The following provisions of the Parliamentary Commissioner Act 1967 shall, with any necessary modifications, apply to the Commissioner, to his officers and to a body subject to investigation as they apply to the Commissioner under that Act, to his officers and to a department or authority concerned:—

- section 7 (procedure in respect of investigations);
- section 8 (evidence);
- section 9 (obstruction and contempt);
- section 11 (secrecy of information), except subsection (4);

and in sections 7(1) and 8(1) of the said Act of 1967 as applied by this section the words "the principal officer of" and " Minister " shall be omitted.

## 96 Reports by Commissioner

- (1) In any case where the Commissioner conducts an investigation under this Part, he shall send a report of the results of his investigation to—
  - (a) the person who made the complaint;
  - (b) the body subject to investigation;
  - (c) any person who is alleged in the complaint to have taken or authorised the action complained of;
  - (d) subject to subsection (2), the Secretary of State.
- (2) Where the investigation is in respect of the Scottish Committee of the Health Services Board, paragraph (d) of subsection (1) shall not apply, but the Commissioner may, if he thinks fit, publish his report.
- (3) In any case where the Commissioner decides not to conduct an investigation under this Part, he shall send a statement of his reasons for doing so to the persons and bodies described in paragraphs (a) and (b) of subsection (1).
- (4) If, after an investigation under this Part has been conducted by the Commissioner or an officer authorised by him, it appears to the Commissioner that injustice or hardship has been caused to the person aggrieved in the circumstances described in section 93(2), and that the injustice or hardship has not been or will not be remedied, he may, if he thinks fit—
  - (a) in relation to an investigation conducted in respect of the Scottish Committee, lay before each House of Parliament a special report;
  - (b) in relation to any other investigation, make a special report to the Secretary of State who shall, as soon as is reasonably practicable, lay a copy of the report before each House of Parliament
- (5) The Commissioner shall annually make to the Secretary of State a general report on the performance of his functions under this Part (other than his functions thereunder in respect of the Scottish Committee), and may from time to time make to the Secretary of State such other reports with respect to those functions as the Commissioner thinks fit; and the Secretary of State shall lay a copy of any such report before each House of Parliament.
- (6) The Commissioner shall annually lay before each House of Parliament a general report on the performance of his functions under this Part in respect of the Scottish Committee, and may from time to time lay before each House of Parliament such other reports with respect to his said functions under this Part as he thinks fit.

- (7) For the purpose of the law of defamation, any report or statement made, sent or laid in pursuance of this section, shall be absolutely privileged.

## **97 Interpretation of Part VI**

- (1) In this Part and in Schedule 14

" action " includes failure to act, and other expressions connoting action shall be construed accordingly;

" body subject to investigation " has the meaning assigned to it by section 93(1);

" the Commissioner " means the Health Service Commissioner for Scotland;

" person aggrieved" means a person who claims or is alleged to have sustained such injustice or hardship as is mentioned in section 93(2).

- (2) It is hereby declared that nothing in this Part authorises or requires the Commissioner to question the merits of a decision taken without maladministration by a body subject to investigation in the exercise of a discretion vested in that body.

## **PART VII**

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Miscellaneous*

## **98 Charges in respect of non-residents**

Regulations may provide for the making and recovery in such manner as may be prescribed of such charges as may be prescribed in respect of the provision of such services under this Act as may be prescribed for such persons not ordinarily resident in Great Britain as may be prescribed ; and the regulations may provide that the charges are only to be made in such cases as may be determined in accordance with the regulations.

## **99 Evasion of charges**

If any person, for the purpose of evading the payment of any charge under this Act, or of reducing the amount of any such charge—

- (a) knowingly makes any false statement or false representation, or
- (b) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,

the charge, or as the case may be the balance of the charge, may be recovered from him as a simple contract debt by the person by whom the cost of the service in question was defrayed.

**100 Accommodation for persons displaced in course of development**

(1) Where the carrying out of a scheme for the provision by the Secretary of State in pursuance of this Act or the Mental Health (Scotland) Act 1960 of accommodation or other facilities will involve the displacement from any premises of persons residing in them, the Secretary of State may make arrangements with one or more of the following bodies—

- (a) an authority who are a local authority for the purposes of the Housing (Scotland) Act 1966,
- (b) a housing association within the meaning of that Act (including the Scottish Special Housing Association),
- (c) a development corporation established under the New Towns (Scotland) Act 1968,

for securing, in so far as it appears to him that there is no other residential accommodation suitable for the reasonable requirements of those persons available on reasonable terms, the provision of residential accommodation in advance of the displacements from time to time becoming necessary as the carrying out of the scheme proceeds.

(2) Arrangements made under subsection (1) may include provision for the making by the Secretary of State to the body with whom the arrangements are made of payments of such amounts, and for such purposes, as may be approved by the Treasury.

**101 Protection of Health Boards and Common Services Agency**

Section 166 of the Public Health (Scotland) Act 1897 (which relates to the protection of local authorities and their officers) shall apply in relation to a Health Board and the Agency in like manner as the said section applies in relation to a local authority, but with the substitution for any reference to that Act of a reference to this Act.

**102 State hospitals**

(1) The Secretary of State may provide for the management of a state hospital either by a committee constituted under section 90(2) of the Mental Health (Scotland) Act 1960 or by a Health Board or the Agency to the extent that power to do so is delegated to the Board or Agency by the Secretary of State.

(2) The Secretary of State shall have power by order to dissolve any such committee and any such order may contain such provision as he considers necessary or expedient in connection with the dissolution of the committee and the winding up of their affairs.

**103 Arbitration**

Any question which is required by this Act or by any regulation thereunder to be determined by arbitration shall be determined by a single arbiter agreed upon by the parties, or, failing such agreement, appointed by the Court of Session on the application of any of the parties to the question; and at any stage in the proceedings in any such arbitration the arbiter may, and shall if so directed by the Court of Session, state a case for the opinion of that Court on any question of law arising in the arbitration.



#### **104 Exemption from stamp duty**

- (1) Stamp duty shall not be payable on any conveyance, agreement or assignment made, or instrument executed, solely for the purpose of giving effect to any transfer of property, rights or liabilities by, or by an order made under, sections 2 or 82 or paragraph 7 of Schedule 6.
- (2) Section 12 of the Finance Act 1895 (which requires Acts to be stamped as conveyances on sale in certain cases) shall not apply to the transfer of property, rights or liabilities by, or by an order made under, section 2, and stamp duty shall not be payable on any such order.

#### *Supplementary*

#### **105 Orders, regulations and directions**

- (1) Any power to make orders and regulations conferred by this Act shall be exercisable by statutory instrument.
- (2) A statutory instrument made by virtue of this Act shall, subject to subsections (3) and (4), be subject to annulment in pursuance of a resolution by either House of 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) 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;
  - (b) orders made under sections 2(11), 8, 10(3) to (5), 70(2) and 102(2);
- (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 to make regulations or orders under sections 2, 6, 7(8), 8(1), 9, 10(3), 10(5), 14, 15(3), 16(2), 49, 72, 86, 102, 107(2), 107(3), paragraph 6, 11 and 19 of Schedule 1, paragraph 3 of Schedule 3, and paragraphs 8 and 12 of Schedule 5, 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 particular case or cases, and
  - (b) subject to such other exceptions or conditions as the Secretary of State thinks fit,
- and shall include power to make such incidental or supplementary provision as appears to the Secretary of State to be expedient.

## 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);
  - " certified midwife " means a person who is for the time being certified under the Midwives (Scotland) Act 1951 ;
  - "the Dental Estimates Board " has the meaning indicated in section 4;

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*Status: This is the original version (as it was originally enacted).*

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" dental practitioner" means a person registered in the dentists register under the Dentists Act 1957;

" designated medical officer " means an officer designated under section 14;

" dispensing optician " means a person who is registered in the register kept under section 2 of the 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 1962 ;

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

" full-time education in a school " means full-time instruction in a school within the meaning of the Education (Scotland) Act 1962 or the Education Act 1944 ;

" functions " includes powers and duties ;

" 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 board constituted under section 2;

" the health service " means the health service established in pursuance of section 1 of the National Health Service (Scotland) Act 1947;

" health service hospital " means a hospital vested in the Secretary of State under this Act;

" Health Services Board " means the body established by section 1 of the Health Services Act 1976;

" 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

" illness " includes mental disorder within the meaning of the Mental Health (Scotland) Act 1960 and any injury or disability requiring medical or dental treatment or nursing ;

" local authority " means a regional, islands or district council ;

"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;

" the Medical Practices Committee " has the meaning indicated in section 3 ;

" medical practitioner " means a fully registered person within the meaning of the Medical Act 1956;

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*Status: This is the original version (as it was originally enacted).*

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" 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 ;

" national consultative committees " has the meaning indicated in section 6 ;

" officer " includes servant;

" ophthalmic optician " means a person registered in either of the registers kept under section 2 of the Opticians Act 1958 of ophthalmic opticians or a body corporate enrolled in the list kept under section 4 of that Act of such bodies carrying on business as ophthalmic opticians;

" patient " includes an expectant or nursing mother and a lying-in woman;

" the Planning Council " has the meaning indicated in section 5;

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

" property " includes rights ;

" registered nurse " means a nurse registered in the register of nurses kept under the Nurses (Scotland) Act 1951 ;

" registered pharmacist " means a pharmacist registered in the register of pharmaceutical chemists ;

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

" relevant endowment " has the meaning indicated in section 11;

" the Research Trust " has the meaning indicated in section 12;

" Scottish Committee " means the committee constituted under section 1(3) of the Health Services Act 1976.

" state hospital " has the same meaning as in the Mental Health (Scotland) Act 1960 ;

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

" 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 ;

" voluntary " means not carried on for profit and not provided by a local or public 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.

#### **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 section 38 of the Interpretation Act 1889 (which relates to the operation of repeals).

#### **110 Citation, extent and commencement**

- (1) This Act may be cited as the National Health Service (Scotland) Act 1978.
- (2) Subject to subsection (3), this Act extends only to Scotland.
- (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.