



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART II

#### PROVISION OF SERVICES

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

- C1** Pt II (ss. 18-35) restricted (1.4.1998) by 1997 c. 46, s. 12(1); S.I. 1998/631, art. 2(2)(b), **Sch. 2**  
Pt. II (ss. 18-35) power to modify conferred (1.4.1998) by 1997 c. 46, s. 15(2)(a); S.I. 1998/631, art. 2(2)(b), **Sch. 2**  
Pt. II (ss. 18-35) power to apply conferred (1.4.1998) by 1997 c. 46, s. 15(2)(b); S.I. 1998/631, art. 2(2)(b), **Sch. 2**

#### *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

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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;

<sup>F1</sup>(b) .....

<sup>F1</sup>(c) .....

(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.

[<sup>F2</sup>(f) for the making of arrangements for the temporary provision of general medical services in an area;

(g) for the circumstances in which a name added to the list by virtue of subsection (5) below may be removed from it.]

(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.

[<sup>F3</sup>(4) Regulations shall —

(a) include provision for the making to a medical practitioner providing general medical services of payments in respect of qualifying services provided by a spouse or other relative of his; and

(b) provide that the rates and conditions of payment and the qualifying services in respect of which the payments may be made shall be such as may be determined by the Secretary of State after consultation with such bodies as he may recognise as representing such medical practitioners.]

[<sup>F4</sup>(5) The persons with whom arrangements for the temporary provision of general medical services in an area may be made by virtue of regulations under subsection (2) include medical practitioners who are not on the list of medical practitioners providing such services in the area, and the power to prepare and publish lists of medical practitioners conferred by paragraph (a) of that subsection accordingly includes power to add the names of medical practitioners with whom such arrangements are made to the lists.

(6) Regulations may provide that this Act and any regulations made under it shall apply in relation—

(a) to the making of arrangements for the temporary provision of general medical services; and

(b) to the provision of general medical services in pursuance of any such arrangements,

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subject to such modifications as may be specified in the regulations.

(7) Where the registration of a medical practitioner in the register of medical practitioners is suspended—

- (a) by a direction of the Health Committee of the General Medical Council under [F<sup>5</sup>section 37(1) or (2) of the Medical Act 1983] (unfitness to practise by reason of physical or mental condition);
- (b) by an Order of that Committee under [F<sup>5</sup>section 38(1)] of that Act (order for immediate suspension); or
- (c) by an interim order [F<sup>6</sup>under section 42] of that Act,

the suspension shall not terminate any arrangements made with him for the provision of general medical services; but he shall not provide such services in person during that period of suspension.]

[F<sup>7</sup>(7A) Where the registration of a medical practitioner in the register of medical practitioners is suspended by a direction of the Committee on Professional Performance of the General Medical Council—

- (a) under section 36A of the Medical Act 1983 (professional performance),
- (b) under section 38(1) of that Act (order for immediate suspension), or
- (c) under rules made by virtue of paragraph 5A(3) of Schedule 4 to that Act (procedure of committees),

the suspension shall not, except in so far as is provided by or determined in accordance with regulations under subsection (2) above, terminate any arrangements made with him for the provision of general medical services; but he shall not provide such services in person during the suspension.]

[F<sup>8</sup>(8) In relation to a Part II medical practitioner—

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

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

[F<sup>8</sup>(9) In relation to a medical practitioner who is not within subsection (8), any reference in this Act to the relevant Health Board is to be construed as a reference to the Board in whose area most of the practice patients live.

[F<sup>8</sup>(10) In this section—

“Part II medical practitioner” means a medical practitioner who provides general medical services under Part II and does not perform personal medical services under section 17C arrangements; and

“practice patient” means—

- (a) in relation to a medical practitioner who practises otherwise than in partnership, an individual who is on that practitioner's list of patients (or, if that practitioner and one or more other medical practitioners together have a single list of patients in connection with section 17C arrangements, an individual who is on that single list);
- (b) in relation to a medical practitioner who is one of two or more practitioners who practise in partnership with each other, an individual who is on the list of patients of any of those practitioners (or, if any of

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those practitioners together have a single list of patients in connection with section 17C arrangements, an individual who is on that single list.)]

#### Subordinate Legislation Made

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

#### Textual Amendments

- F1** S. 19(2)(b)(c) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 39(2), **Sch. 3 Pt. I**; [S.I. 1998/631](#), art. 2(b), **Sch. 2**
- F2** S. 19(2)(f)(g) inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 14(2), **Sch. 7 para. 2(a)**
- F3** S. 19(4) added by Health Services Act 1980 (c. 53, SIF 113:2), s. 7
- F4** S. 19(5)–(7) inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 14(2), **Sch. 7 para. 2(b)**
- F5** Words substituted by Medical Act 1983 (c. 54, SIF 83:1), ss. 54, 56(1), **Sch. 5 para. 17(a)**
- F6** Words in s. 19(7)(c) substituted (1.5.1996) by 1995 c. 51, s. 4, **Sch. para. 29(a)**; [S.I. 1996/271](#), art. 2, **Sch.**
- F7** S. 19(7A) added (1.7.1997) by 1995 c. 51, s. 4, **Sch. para. 29(b)**; [S.I. 1997/1315](#), art. 2
- F8** S. 19(8)(9)(10) substituted s. 19(8) (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 39(3)**; [S.I. 1998/631](#), art. 2(b), **Sch. 2**

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

- C2** S. 19 extended by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 17(1)
- C3** S. 19 restricted (28.11.1997) by 1997 c. 46, s. 1(5)(a); [S.I. 1997/2620](#), art. 2(a)

VALID FROM 01/04/2004

#### 19A Medical lists.

**F9** .....

#### Textual Amendments

- F9** Ss. 19-23 repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(7)**; [S.S.I. 2004/58](#), art. 2(3)

VALID FROM 01/04/2004

#### 19B Vacancies for medical practitioners.

**F10** .....

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### Textual Amendments

- F10** Ss. 19-23 repealed (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), ss. 8, 9(1), [Sch. para. 1\(7\)](#); S.S.I. 2004/58, [art. 2\(3\)](#)

## 20 Applications to provide general medical services.

- (1) [<sup>F11</sup>Subject to subsection (1A) below] 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 <sup>F12</sup> any medical practitioner whose application is granted by that Committee shall [<sup>F13</sup>subject to the provisions of this Part of this Act relating to the disqualification of practitioners] be entitled to the inclusion of his name in the list.

[<sup>F14</sup>(1A) No medical practitioner who is a national of a member State and is registered by virtue of a qualification granted in a member State shall be entitled to have his application for the inclusion of his name in the list kept by any Health Board referred to the Medical Practices Committee unless he satisfies the Board that he has that knowledge of English which, in the interests of himself and his patients, is necessary for the provision of general medical services in the Board's area; and where a Board is not so satisfied with respect to any applicant the Board shall not refer his application to the Committee.]

(2<sup>F15</sup>

### Textual Amendments

- F11** Words inserted by [S.I. 1981/432, art. 4\(1\)\(a\)](#)  
**F12** Words repealed by [Health Services Act 1980 \(c. 53\), Sch. 7](#)  
**F13** Words inserted by [Health Services Act 1980 \(c. 53\), Sch. 6 para. 3](#)  
**F14** [S. 20\(1A\)](#) inserted by [S.I. 1981/432, art. 4\(1\)\(b\)](#)  
**F15** Ss. 16(3), 20(2), 51, 52, 59–63, 65–68, 96(2), [Sch. 16 paras. 25, 43](#) repealed by [Health Services Act 1980 \(c. 53\), Sch. 7](#)

### Modifications etc. (not altering text)

- C4** [S. 20\(1\)](#) excluded (31.3.1995) by [S.I. 1995/416, reg. 24\(22\)](#)  
**C5** [S. 20\(1A\)](#) modified (31.3.1995) by [S.I. 1995/416, reg. 24\(21\)](#)

## 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.

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- (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 speciality.

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

- C6** S. 21 excluded (31.3.1995) by S.I. 1995/416, reg. 24(22)  
S. 21 applied (28.11.1997) by 1997 c. 46, s. 2(4); S.I. 1997/2620, art. 2(2)
- C7** 15.2.1981 appointed under s. 21(1) by S.I. 1980/30, reg. 3
- C8** S. 21(2) applied (with modifications) (1.4.1998) by 1997 c. 46, s. 11(5)(6); S.I. 1998/631, art. 2(1)(a), Sch. 1

**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—

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“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.

#### Subordinate Legislation Made

**P3** S. 22: s. 105(7) (with ss. 22 and 108(1)) power exercised by [S.I. 1991/576](#)

**P4** S. 22: for previous exercises of this power see Index to Government Orders.

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

**C9** S. 22 applied (with modification) (1.4.1998) by [1997 c. 46, s. 11\(5\)\(6\)](#); [S.I. 1998/631, art. 2\(1\)\(a\)](#), [Sch. 1](#)

## 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.

[<sup>F16</sup>(1A) The Secretary of State may by order specify the maximum number of medical practitioners with whom, in any year, all Health Boards taken as a whole may enter into arrangements under section 19 for the provision of general medical services.

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

- (2) [<sup>F17</sup>Subject to subsection (2A)] 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.

[<sup>F18</sup>(2A) If, in the opinion of the Medical Practices Committee, a medical practitioner is required for a particular part of the area of a Health Board, then, in such circumstances as may be prescribed,—

- (a) the Board shall, in accordance with regulations, select the medical practitioner whose application they wish to be considered by the Committee; and
- (b) the Committee shall not consider any application from a medical practitioner who is not so selected; and

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(c) any medical practitioner who has made an application but is not so selected may appeal to the Secretary of State on a point of law; and if the Secretary of State allows an appeal under paragraph (c) he shall remit the application to the Board for reconsideration.]

(3) 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

[<sup>F19</sup>(a) in granting an application shall specify, by reference to one or more prescribed conditions relating to hours or the sharing of work, the provision of general medical services for which the applicant will be entitled to be remunerated; and

(b) the Committee may grant an application subject to conditions excluding the provision of general medical services by the applicant in such part of parts of the area of the Health Board as the Committee may specify.[<sup>F20</sup>and an order under subsection (1A) may make provision as to the extent to which account is to be taken under the order of medical practitioners whose ability to carry out remunerated work is limited by virtue of conditions imposed under paragraph (a)]

(5) A medical practitioner who has made an application under section 20 which has been refused [<sup>F21</sup>by the Medical Practices Committee] or has been granted [<sup>F21</sup>by that Committee] subject to [<sup>F22</sup>conditions under paragraph (a) or (b) of subsection (4)] may appeal to the Secretary of State [<sup>F23</sup>on a point of law; and, if the Secretary of State allows such an appeal, he shall remit the application to the Medical Practices Committee for reconsideration].

[<sup>F23</sup>This subsection does not apply where an application has been refused under paragraph (a) of section 21(1) [<sup>F24</sup>or under section 8 of the Health and Medicines Act 1988 (persons over retiring age) and regulations under that section].]

(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.

<sup>F25</sup>(7) .....

(8) [<sup>F26</sup>In any case where medical practitioners have to be selected from a number of applicants, the Medical Practices Committee or, where subsection (2A) applies, the Health Board shall]—

(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.



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### Subordinate Legislation Made

**P5** S. 23: s. 19 (with ss. 23, 24, 27, 28, 105(7) and 108(1)) power exercised (8.3.1991) by [S.I.1991/572](#)

### Textual Amendments

- F16** S. 23(1A)(1B) inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 39\(1\)](#); [S.I. 1991/607](#), [art.2\(b\)](#)
- F17** Words in s. 23(2) inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 39\(2\)](#); [S.I. 1991/607](#), [art.2\(b\)](#)(subject to a saving in art. 3)
- F18** S. 23(2A) inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 39\(2\)](#); [S.I. 1991/607](#), [art.2\(b\)](#)(subject to a saving in art. 3)
- F19** S. 23(4)(a) and “(b)” following it inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 39\(3\)](#); [S.I. 1991/607](#), [art.2\(b\)](#)
- F20** Words in s. 23(4) inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 39\(3\)](#); [S.I. 1991/607](#), [art.2\(b\)](#)
- F21** Words inserted by [S.I. 1981/432](#), [art. 4\(2\)](#)
- F22** Words in s. 23(5) “conditions under paragraph (a) or (b) of subsection (4)” substituted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s.39\(4\)](#); [S.I. 1991/607](#), [art.2\(b\)](#)(subject to a saving in art. 3)
- F23** Words in s. 23(5) commencing “on a point of law” substituted (1.4.1991 subject as mentioned below) for the words following “Secretary of State” by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s.39\(4\)](#), (the substitution being expressed to be in force by [S.I. 1991/607](#), [art.2\(b\)](#) except insofar as s. 39(4) has effect to repeal the second paragraph of s. 23(5) and is subject to a saving in art. 3 of that S.I.)
- F24** Words added by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), [Sch. 2 para. 10](#)
- F25** S. 23(7) omitted (1.4.1991) by virtue of [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s.39\(5\)](#) (and expressed to be repealed (*prosp.*) by ss. 66(2), 67(2), Sch. 10 of that Act); [S.I. 1991/607](#), [art.2\(b\)](#)(subject to a saving in art. 3)
- F26** Words in s. 23(8) substituted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s.39\(6\)](#); [S.I. 1991/607](#), [art.2\(b\)](#)(subject to a saving in art. 3)

### Modifications etc. (not altering text)

- C10** S. 23(2A)(c) modified (31.3.1995) by [S.I. 1995/416](#), [reg. 17\(1\)\(a\)\(2\)-\(10\)](#)
- C11** S. 23(5) modified (31.3.1995) by [S.I. 1995/416](#), [reg. 17\(1\)\(b\)\(2\)-\(10\)](#)

## 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;

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- (ii) the making and determination of appeals to the Secretary of State under section 23 [<sup>F27</sup>and, where such an appeal is allowed, the reconsideration of any application]; and
- (iii) requiring Health Boards and applicants to be informed of the decisions of the Committee and the Secretary of State.

[<sup>F28</sup>(2) Regulations under this section may make provision for, and in connection with, the variation of any condition imposed under subsection (4) or (5) of section 23 including provision for appeals to the Secretary of State on a point of law.]

#### Subordinate Legislation Made

**P6** S. 24: s. 19 (with ss. 23, 24, 27, 28, 105(7) and 108(1)) power exercised (8.3.1991) by [S.I. 1991/572](#)

#### Textual Amendments

**F27** Words in s. 24(b)(ii) inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 39\(7\)\(a\)](#); [S.I. 1991/607](#), [art.2\(b\)](#) (subject to a saving in [art. 3](#))

**F28** S. 24(2) added (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 39\(7\)\(b\)](#); [S.I. 1991/607](#), [art.2\(b\)](#) (subject to a saving in [art. 3](#))

VALID FROM 05/03/2001

#### [<sup>F29</sup>24A Liabilities and obligations in relation to deputies.

- (1) Regulations may make provision with respect to the liabilities and obligations of—
  - (a) a Part II practitioner who, in connection with any obligation of his to provide general medical services, enters into arrangements under which a Part I practitioner deputises, or is engaged to deputise, for him; or
  - (b) a Part II practitioner who enters into arrangements under which he deputises, or is engaged to deputise, for a Part I practitioner, in connection with that practitioner's obligation to perform personal medical services in accordance with section 17C arrangements.
- (2) The regulations may, in particular—
  - (a) modify any liabilities or obligations which would otherwise be applicable by virtue of this Part;
  - (b) apply (with or without modifications) any provision made by or under this Part (including any provision so made by virtue of section 17 of the <sup>M1</sup>Health and Medicines Act 1988).
- (3) In subsection (1)—
 

“Part I practitioner” means a medical practitioner who performs personal medical services in accordance with section 17C arrangements; and

“Part II practitioner” means a medical practitioner who provides general medical services.]

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**Changes to legislation:** National Health Service (Scotland) Act 1978, Part II is up to date with all changes known to be in force on or before 04 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

#### Textual Amendments

**F29** S. 24A inserted (5.3.2001 for certain purposes only and otherwise *prosp.*) by 1997 c. 46, ss. 25(2), 41(3); S.S.I. 2001/58, art. 2

#### Marginal Citations

**M1** 1988 c. 49.

VALID FROM 28/02/2003

#### [<sup>F30</sup>24B Supplementary lists

- (1) Regulations may make provision for the preparation and publication by each Health Board of one or more lists of medical practitioners approved by the Board to assist in the provision of general medical services.
- (2) Such a list is in this Act referred to as a “supplementary list”.
- (3) A medical practitioner whose name is not included in the Board’s medical list or services list may not assist in the provision of general medical services in the Board’s area unless his name is included in the Board’s supplementary list.
- (4) The regulations may (either or both)—
  - (a) make provision for the application (with such modifications as the Scottish Ministers think fit) to supplementary lists or to persons who are, have been or seek to be included in a supplementary list, of;
  - (b) in relation to such lists and persons, make provision analogous to any provision made by,any regulations made under this Act in relation to medical lists or to persons who are, have been or seek to be included in a medical list.]

#### Textual Amendments

**F30** S. 24B inserted (28.2.2003 in regard to s. 24B(1)(2)(4) and 31.5.2003 in regard to s. 24B(3)) by 2002 asp 5, ss. 18(2), 27(2); S.S.I. 2003/62, art. 2(1)(b)(2) (with savings for effects of 2003 asp 5, s. 18(2) by S.S.I. 2003/63, art. 2)

VALID FROM 28/02/2003

#### [<sup>F31</sup>24C Application for inclusion in supplementary list

- (1) No medical practitioner—
  - (a) who is a national of a member State and is registered by virtue of a qualification granted in a member State shall be entitled to have his name included in a Health Board’s supplementary list unless he satisfies the Board that he has that knowledge of English which, in the interests of himself and his patients, is necessary for him to assist in the provision of general medical services in the Board’s area; or

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(b) shall be so entitled unless he is suitably experienced.

(2) For the purposes of subsection (1)(b) a medical practitioner is “suitably experienced” if, but only if, he either—

(a) has acquired such medical experience as may be prescribed; or

(b) is by virtue of regulations made under this subsection, being regulations analogous to those made under section 22, exempt from the need to have acquired that experience,

and “medical experience” includes hospital experience in any speciality.

(3) Subsections (2) and (3) of section 22 apply in relation to regulations under subsection (2) above as they apply in relation to regulations under that section except that, for that purpose, the reference in subsection (2) of that section to the “prescribed experience” shall be construed as a reference to the medical experience prescribed by virtue of paragraph (a) of subsection (2) above.]

#### Textual Amendments

**F31** S. 24C inserted (28.2.2003) by 2002 asp 5, ss. 18(2), 27(2); S.S.I. 2003/62, art. 2(1)(b) (with savings for effects of 2003 asp 5, s. 18(2) by S.S.I. 2003/63, art. 2)

### 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;

[<sup>F32</sup>(b) for conferring a right, subject to—

(i) [<sup>F33</sup>subsections (2A) and (2B)]

(ii) the provisions of this Part relating to the disqualification of persons providing services; and

(iii) section 8 (persons over retiring age) of the Health and Medicines Act 1988 and regulations made under that section,

on any dental practitioner who wishes to be included in any such list to be so included;]

<sup>F34</sup>(c) .....

(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.

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- [<sup>F35</sup>(2A) No dental practitioner who is a national of a member State and is registered by virtue of a qualification granted in a member State shall be entitled to have his name included in the list kept by a Health Board unless he satisfies the Board that he has that knowledge of English which, in the interests of himself and his patients, is necessary for the provisions of general dental services in the Board's area.]
- [<sup>F36</sup>(2B) Regulations may make the exercise of the right conferred by virtue of paragraph (b) of subsection (2) subject to any provision made by or under the regulations, and, in such cases as may be prescribed, may confer a right of appeal to a prescribed body in respect of a refusal to include a dental practitioner on such a list as is referred to in paragraph (a) of that subsection.]
- (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, <sup>F37</sup>, consist wholly or mainly of a fixed salary [<sup>F38</sup>unless either—
- (a) the remuneration is paid in pursuance of arrangements made under section 33, or
  - (b) the services are provided in prescribed circumstances and the practitioner consents,
- and it shall be the Secretary of State's duty, before he prescribes any circumstances for the purposes of paragraph (b), to consult such organisations as appear to him to be representative of the dental profession.]
- [<sup>F39</sup>(4) Where the registration of a dental practitioner in the dentists register is suspended—
- (a) by an order under [<sup>F40</sup>section 32 of the Dentists Act 1984] (interim suspension); or
  - (b) by a direction or [<sup>F41</sup>an order of the Health Committee under] that Act (health cases),
- the suspension shall not terminate any arrangements made with him for the provision of general dental services, but he shall not provide such services in person during the suspension.
- (5) Regulations may provide for the making of payments in consequence of suspension to a dental practitioner whose registration is so suspended.]

#### Subordinate Legislation Made

**P7** S. 25: for previous exercises fo this power see Index to Government Orders.

**P8** S. 25(1)(2): s. 25(1)(2) (with ss. 105(7) and 108(1)) power exercised by [S.I. 1991/1349](#)

**P9** S. 25(1)(2)(2B): s. 25(1)(2)(2B) (with ss. 70(1A), 71(1), 71A, 75, 105(7), 108(1) and Sch. 11 paras. 2(6) and 3(3)(5)) power exercised by [S.I. 1991/569](#)

S. 25(2): s. 19 (with ss. 25(2), 26(2), 27(2), 105(7) and 108(1)) power exercised by [S.I. 1991/1188](#)

#### Textual Amendments

**F32** S. 25(2)(b) substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(6\)](#)

**F33** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 40(2)

**F34** S. 25(2)(c) repealed (1.10.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 43, [Sch. 3 Pt. I](#); 1998/1998, art. 2(2)(b), Sch. 2

**F35** S. 25(2A) inserted by [S.I. 1981/432](#), [art. 4\(3\)\(b\)](#)

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**F36** S. 25(2B) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 40(3)

**F37** Words repealed by Health Services Act 1980 (c. 53), Sch. 7

**F38** Words inserted by Health Services Act 1980 (c. 53), Sch. 6 para. 4

**F39** S. 25(4)(5) added by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 16(a)

**F40** Words substituted by Dentists Act 1984 (c. 24, SIF 83:1), s. 54(1), Sch. 5 para. 12(a)

**F41** Words substituted by Dentists Act 1984 (c. 24, SIF 83:1), s. 54(1), Sch. 5 para. 12(b)

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

**C12** S. 25 restricted (28.11.1997) by 1997 c. 46, s. 1(5)(b); S.I. 1997/2620, art. 2(2)

**C13** S. 25(2) extended by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 17(1)

**C14** S. 25(2)(b) modified (4.3.2004) by The National Health Service (Tribunal) (Scotland) Regulations 2004 (S.S.I. 2004/38), reg. 26(2)(b) (with regs. 32-34)

### 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, [<sup>F42</sup>and with ophthalmic opticians], for securing [<sup>F43</sup>the testing by such practitioners and opticians of the sight—

- (a) of a child;
- (b) of a person whose resources fall to be treated under the regulations as being less than his requirements or as being equal to his requirements; or
- (c) of a person of such other description as may be prescribed.

(1A) In this section—

“child” means—

- (a) a person who is under the age of 16 years; or
- (b) a person who is under the age of 19 years and receiving qualifying full-time education; and

“qualifying full time education” means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State, and for the purposes of this definition—

- (i) “recognised educational establishment” means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university; and
- (ii) regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.

(1B) Regulations under this section may direct how a person’s resources and requirements are to be calculated and, without pre-judice to the generality of this subsection, may direct that they shall be calculated—

- (a) by a method set out in the regulations;
- (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;

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- (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
  - (d) by reference to the person's being, or having been, entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.
- (1C) Descriptions of persons may be prescribed for the purposes of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria—
- (a) their age;
  - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
  - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
  - (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit; and
  - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits.
- (1D) Regulations which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—
- (a) as it has effect at the time when the regulations are made; or
  - (b) both as it has effect at that time and as amended subsequently.
- (1E) Regulations may provide that a person—
- (a) whose sight is tested by a person who provides general ophthalmic services; and
  - (b) who is shown during the testing or within a prescribed time after it to fall within subsection (1) above,
- shall be taken for the purposes of the testing to have so fallen immediately before his sight was tested; and the testing shall be treated—
- (i) for the purposes of any arrangements under this section;
  - (ii) for the purposes of remuneration in respect of the testing; and
  - (iii) for any such other purpose as may be prescribed, as a testing of sight under this Act.
- (1F) Regulations shall define the services for the provision of which arrangements under this section are to be made and the services so defined 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, [F<sup>44</sup>and ophthalmic opticians] respectively who undertake to provide general ophthalmic services;
  - (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, [F<sup>45</sup>or any ophthalmic optician], who wishes to be included in the appropriate list, to be so included;



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- (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 <sup>F46</sup>;
  - (d) for the removal from the list of medical practitioners, [<sup>F47</sup>or ophthalmic opticians] undertaking to provide general ophthalmic services for persons in any area of the name of a medical practitioner, [<sup>F48</sup>or ophthalmic 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.

#### Subordinate Legislation Made

- P10** S. 26(2): s. 19 (with ss. 25(2), 26(2), 27(2), 105(7) and 108(1)) power exercised by [S.I. 1991/1188](#)  
S. 26: for previous exercises of this power see Index to Government Orders
- P11** S. 26(1)(1C)(1E)(2)(with ss. 70(1), 73(a)(c), 74(a)(c), 105(7), 108(1) and Sch. 11 paras. 2, 2A) power exercised by [S.I. 1991/534](#)

#### Textual Amendments

- F42** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(7), [Sch. 1 Pt. II para. 1](#)
- F43** Words commencing “the testing by such practitioners” to s. 26(1F) substituted for words commencing “—(a) the” by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 13\(4\)](#)
- F44** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(7), [Sch. 1 Pt. II para. 2](#)
- F45** Words substituted by [Health and Social Security Act 1984 \(c.48, SIF 113:1\)](#), s. 1(7), [Sch. 1 Pt. II para. 3](#)
- F46** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), [ss. 1\(5\)\(b\)](#), 24, Sch. 8 Pt. I
- F47** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(7), [Sch. 1 Pt. II para. 4\(a\)](#)
- F48** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(7), [Sch. 1 Pt. II para. 4\(b\)](#)

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

- C15** S. 26(2) extended by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 17\(1\)](#)
- C16** S. 26(2)(b) modified (4.3.2004) by [The National Health Service \(Tribunal\) \(Scotland\) Regulations 2004 \(S.S.I. 2004/38\)](#), [reg. 26\(2\)\(c\)](#) (with regs. 32-34)



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### Pharmaceutical services

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

(1) It shall be the duty of every Health Board to make, in accordance with regulations, arrangements as respects its area for the [<sup>F49</sup>provision] to persons who are in that area of—

- (a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the health service for England and Wales, the Northern Ireland health service or the armed forces of the Crown (excluding forces of a Commonwealth country and forces raised in a colony), and
- [<sup>F50</sup>(b) proper and sufficient drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of the provision by that Board [<sup>F51</sup>or by an NHS trust] of dental services; and
- (c) listed drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of the provision by him of general dental services; [<sup>F52</sup> . . .
- [<sup>F53</sup>(cc) listed drugs and medicines and listed appliances which are ordered for those persons by a prescribed description of registered nurse, midwife or health visitor in pursuance of functions in the health service, the health service for England and Wales, the Northern Ireland health service or the armed forces of the Crown (excluding forces of a Commonwealth country and forces raised in a colony); and]
- [<sup>F54</sup>(d) such services as may be prescribed,]]

and the [<sup>F55</sup>provision of drugs, medicines, appliances and services in accordance with the arrangements is][<sup>F56</sup>together with additional pharmaceutical services provided in accordance with a direction under section 27A, referred to in this Act] as “pharmaceutical services”.

In this subsection—

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

“the health service for England and Wales” and “the Northern Ireland health service” mean respectively the health service established in pursuance of section 1 of the <sup>M2</sup>National Health Service Act 1946 or any service provided in pursuance of Article 4(a) of the <sup>M3</sup>Health and Personal Social Services (Northern Ireland) Order 1972.

[<sup>F57</sup>(2) Regulations shall provide for securing that arrangements made by a Health Board under subsection (1) will enable persons in the Board’s area for whom drugs, medicines or appliances mentioned in that subsection are ordered as there mentioned [<sup>F58</sup>, or to whom services mentioned in subsection (1)(d) are to be provided,] to receive them from persons with whom such arrangements have been made.

(3) The regulations shall include provision—

- (a) for the preparation and publication by a Health Board of one or more lists of persons, other than medical practitioners and dental practitioners, who undertake to provide pharmaceutical services from premises in the Board’s area;

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- (b) that an application to a Health Board for inclusion in such a list shall be made in the prescribed manner and shall state—
    - (i) the [<sup>F59</sup>pharmaceutical] services which the applicant will undertake to provide and, if they consist of or include the supply of appliances, which appliances he will undertake to supply; and
    - (ii) the premises from which he will undertake to provide those services;
  - (c) that, except in prescribed cases—
    - (i) an application for inclusion in such a list by a person not already included; and
    - (ii) an application by a person already included in such a list for inclusion also in respect of [<sup>F59</sup>pharmaceutical] services or premises other than those already listed in relation to him,

shall be granted only if the Health Board is satisfied, in accordance with the regulations, that it is necessary or desirable to grant it in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included in the list of the services, or some of the services, specified in the application; and
  - (d) for the removal of an entry in respect of premises from a list if it has been determined in the prescribed manner that the person to whom the entry relates—
    - (i) has never provided from those premises; or
    - (ii) has ceased to provide from them, the [<sup>F59</sup>pharmaceutical] services, or any of the services, which he is listed as undertaking to provide from them.
- (4) The regulations may include provision—
- (a) that an application to a Health Board may be granted in respect of some only of the [<sup>F59</sup>pharmaceutical] services specified in it;
  - (b) that an application to a Health Board relating to [<sup>F59</sup>pharmaceutical] services of a prescribed description shall be granted only if it appears to the Board that the applicant has satisfied such conditions with regard to the provision of those [<sup>F59</sup>pharmaceutical] services as may be prescribed;
  - <sup>F60</sup>(ba) [ that an application to a Health Board by a person who qualified to have his name registered under the Pharmacy Act 1954 by virtue of section 4A of that Act (qualification by European diploma) shall not be granted unless the applicant satisfies the Board that he has the knowledge of English which, in the interests of himself and the persons making use of the services to which the application relates, is necessary for the provision of pharmaceutical services in the Board's area.]
  - (c) that the inclusion of a person in a list in pursuance of such an application may be for a fixed period;
  - (d) that, where the premises from which an application states that the applicant will undertake to provide [<sup>F59</sup>pharmaceutical] services are in an area of a prescribed description, the applicant shall not be included in the list unless his inclusion is approved by a prescribed body and by reference to [<sup>F61</sup>prescribed criteria]; and
  - (e) that the prescribed body may give its approval subject to conditions.
- (5) The regulations shall include provision conferring on such persons as may be prescribed rights of appeal from decisions made by virtue of subsection (3) or (4).

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- (6) The regulations shall be so framed as to preclude—
- (a) a person included in a list published under subsection (3)(a) above; and
  - (b) an employee of such a person;
- from taking part in the decision whether an application such as is mentioned in subsection (3)(c) above should be granted or an appeal against such a decision brought by virtue of subsection (5) above should be allowed.]

#### Subordinate Legislation Made

- P12** S. 27: s. 19 (with ss. 23, 24, 27, 28, 105(7) and 108(1)) power exercised by [S.I. 1991/572](#)  
S. 27: s. 19 (with ss. 27, 69, 75(a), 105(7), 108(1) and Sch. 11 para. 1) power exercised by [S. I. 1991/574](#)  
S. 27: for previous exercises of power see Index to Governmental Orders
- P13** S. 27: s. 19 (with ss. 27 and 108(1)) power exercised by [S.I. 1991/2241](#)
- P14** S. 27(2): s. 19 (with ss. 25(2), 26(2), 27(2), 105(7) and 108(1)) power exercised by [S.I. 1991/1188](#).

#### Textual Amendments

- F49** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(7\)\(a\)\(i\)](#)
- F50** S. 27(1)(b)(c) substituted for s. 27(1)(b) by [Health Services Act 1980 \(c. 53\)](#), [s. 20\(2\)](#)
- F51** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(7\)\(a\)\(ii\)](#)
- F52** Word “and” at end of s. 27(1)(c) omitted (1.7.1996) by virtue of [Medicinal Products: Prescription by Nurses etc. Act 1992 \(c. 28\)](#), [s. 3](#); [S.I. 1996/1505](#), [art. 2](#)
- F53** S. 27(1)(cc) inserted (1.7.1996) by [Medicinal Products; Prescription by Nurses etc. Act 1992 \(c. 28\)](#), [s. 3](#); [S.I. 1996/1505](#), [art. 2](#)
- F54** S. 27(1)(d) and “; and” preceding it inserted by [National Health Service and Community Care Act 1990 \(c.19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(7\)\(a\)\(iii\)](#)
- F55** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(7\)\(a\)\(iv\)](#)
- F56** Words in s. 27(1) substituted (15.8.1997) by 1997 c. 46, s. 41(10), [Sch. 2 Pt. I para. 44](#); [S.I. 1997/1780](#), [art. 2\(1\)](#), [Sch.](#)
- F57** S. 27(2)–(6) substituted for (2) by [National Health Service \(Amendment\) Act 1986 \(c. 66, SIF 113:2\)](#), [s. 3\(3\)](#)
- F58** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(7\)\(b\)](#)
- F59** Word inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(7\)\(c\)](#)
- F60** S. 27(4)(ba) inserted by [S.I. 1987/2202](#), [art. 5](#)
- F61** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(7\)\(d\)](#)

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

- C17** S. 27(2) extended by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 17\(1\)](#)

#### Marginal Citations

- M2** 1946 c. 81.  
**M3** [S.I. 1972/1265](#).

*Status: Point in time view as at 01/03/2000. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: National Health Service (Scotland) Act 1978, Part II is up to date with all changes known to be in force on or before 04 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## [<sup>F62</sup>27A Arrangements for providing additional pharmaceutical services.

- (1) The Secretary of State may—
  - (a) give directions to a Health Board requiring them to arrange for the provision to persons in their area of additional pharmaceutical services; or
  - (b) by giving directions to a Health Board authorise them to arrange for such provision if they wish to do so.
- (2) Directions under this section may make different provision in relation to different services specified in the directions.
- (3) The Secretary of State must publish any directions under this section in the Drug Tariff or in such other manner as he thinks appropriate.
- (4) In this section—
 

“additional pharmaceutical services”, in relation to directions, means such services (of a kind that do not fall within section 27) as may be specified in the directions; and

“Drug Tariff” means the Drug Tariff published under regulation 9 of the <sup>M4</sup>National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995 or under any corresponding provision replacing, or otherwise derived from, that regulation.]

### Textual Amendments

**F62** S. 27A inserted (15.8.1997) by 1997 c. 46, s. 27(2); S.I. 1997/1780, art. 2(1), Sch.

### Marginal Citations

**M4** S.I. 1995/414.

## [<sup>F63</sup>27B Terms and conditions etc.

- (1) Directions under section 27A may require the Health Authority to whom they apply, when making arrangements—
  - (a) to include, in the terms on which the arrangements are made, such terms as may be specified in the directions;
  - (b) to impose, on any person providing a service in accordance with the arrangements, such conditions as may be so specified.
- (2) The arrangements must secure that any service to which they apply is provided only by a person whose name is included in a pharmaceutical list.
- (3) Different arrangements may be made with respect to—
  - (a) the provision of the same service by the same person but in different circumstances; or
  - (b) the provision of the same service by different persons.
- (4) A Health Authority must provide details of proposed arrangements (including the remuneration to be offered for the provision of services) to any person who asks for them.
- (5) After making any arrangements, a Health Authority must publish, in such manner as the Secretary of State may direct, such details of the arrangements as he may direct.

**Status:** Point in time view as at 01/03/2000. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** National Health Service (Scotland) Act 1978, Part II is up to date with all changes known to be in force on or before 04 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) In this section, “pharmaceutical list” means, subject to any provision of the directions in question, a list—
- (a) published by the Health Authority concerned, or by any other Health Authority, in accordance with regulations made under section 27(2)(a) of this Act; or
  - (b) published by any body in accordance with regulations made under section 42(2)(a) of the <sup>M5</sup>National Health Service Act 1977 or Article 63(2A) (a) of the <sup>M6</sup>Health and Personal Social Services (Northern Ireland) Order 1972.]

#### Textual Amendments

**F63** S. 27B inserted (15.8.1997) by 1997 c. 46, s. 28(2); S.I. 1997/1780, art. 2(1), Sch.

#### Marginal Citations

**M5** 1978 c. 29.

**M6** S.I. 1972/1265 (N.I.14).

## 28 Persons authorised to provide pharmaceutical services.

- (1) Except as may be provided by [<sup>F64</sup>or under] 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 [<sup>F65</sup>or under] regulations, no arrangements for the dispensing of medicines [<sup>F66</sup>or the provision of pharmaceutical services] 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 <sup>M7</sup>Medicines Act 1968, and who undertake
- [<sup>F67</sup>(a)] that all medicines [<sup>F68</sup>provided] by them under the arrangements made under this Part shall be dispensed [<sup>F69</sup>, and
- (b) that
- [ all services mentioned in section 27(1)(d) provided by them under <sup>F70</sup>(i)] those arrangements
  - [ all additional pharmaceutical services provided in accordance with a <sup>F71</sup>(ii) direction under section 27A,]
- shall be provided] either by, or under the direct supervision of, a registered pharmacist.
- [<sup>F72</sup>(2A) Regulations shall provide for the preparation and publication by a Health Board of one or more lists of medical practitioners who undertake to supply drugs and appliances in the Board’s area.
- (2B) The regulations shall include provision for the removal of an entry from a list in prescribed circumstances.]

#### Textual Amendments

**F64** Words inserted by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), s. 3(4)

**F65** Words inserted by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), s. 3(4)

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- F66** Words inserted by National Health Service and Community Care Act 1990 (c.19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(8)(a)**
- F67** “(a)” inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(8)(b)**
- F68** Word substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(8)(c)**
- F69** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(8)(d)**
- F70** S. 28(2)(b) “(i)” inserted (15.8.1997) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 45**; S.I. 1997/1780, art 2(1), **Sch.**
- F71** S. 28(2)(b)(ii) inserted (15.8.1997) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 45**; S.I. 1997/1780, art. 2(1), **Sch.**
- F72** S. 28(2A)(2B) inserted (1.4.1998) by National Health Service (Primary Care) Act 1997 (c. 46), **ss. 29(2), 41(3)**; S.I. 1998/631, art. 2(a), Sch. 1 (with arts. 3-5)

#### Marginal Citations

- M7** 1968 c. 67.(84).

[<sup>F73</sup> Remuneration for services]

#### Textual Amendments

- F73** S. 28A inserted (*prosp.*) by Health and Social Security Act 1984 (c. 48, SIF 113:1), **ss. 7(2), 27(1)**

#### [<sup>F74</sup> 28A Remuneration for Part II services.

- (1) The remuneration to be paid to persons who provide general medical services, general dental services, general ophthalmic services or pharmaceutical services under this Part of this Act shall be determined by determining authorities (and they may also determine the remuneration to be paid to persons providing those services in respect of the instruction of any person in matters relating to those services).
- (2) For the purposes of this section and section 28B, determining authorities are—
  - (a) the Secretary of State; and
  - (b) so far as authorised by him to exercise the functions of determining authorities, any Health Board or other person appointed by him in an instrument (referred to in this section and section 28B as an instrument of appointment).
- (3) An instrument of appointment—
  - (a) may contain requirements with which a determining authority appointed by that instrument must comply in making determinations; and
  - (b) may be contained in regulations.
- (4) Subject to this section and section 28B, regulations may make provision about determining remuneration under subsection (1) and may in particular impose requirements with which determining authorities must comply in making, or in connection with, determinations (including requirements as to consultation and publication).
- (5) Regulations may provide—
  - (a) that determinations may be made by reference to any of the following—

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- (i) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or to be fixed or determined, otherwise than by way of a determination under subsection (1);
    - (ii) scales, indices or other data of any description specified in the regulations;
  - (b) that any determination which in accordance with regulations made by virtue of paragraph (a)(ii) falls to be made by reference to a scale or an index or to any other data may be made not only by reference to that scale or index or those data in the form current at the time of the determination but also by reference to the scale, index or data in any subsequent form attributable to amendment or revision taking effect after that time or to any other cause.
- (6) Regulations may—
- (a) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates;
  - (b) provide that any such determination which does not specify such a date shall have effect in relation to remuneration in respect of a period beginning—
    - (i) if it is required to be published, on the date of publication;
    - (ii) if it is not so required, on the date on which it is made.
- (7) A reference in this section or section 28B to a determination is a reference to a determination of remuneration under subsection (1) of this section.]

#### Textual Amendments

**F74** S. 28A and side-note substituted (1.10.1999) by 1999 c. 8, s. 57(1)(2); S.S.I. 1999/90, art. 2(a), Sch. 1

#### [<sup>F75</sup> 28B Part II remuneration: supplementary.

- (1) Before a determination is made by the Secretary of State which relates to all persons who provide services of, or of a category falling within, one of the descriptions of services mentioned in section 28A(1), he—
  - (a) shall consult a body appearing to him to be representative of persons to whose remuneration the determination would relate, and
  - (b) may consult such other persons as he considers appropriate.
- (2) Determinations may make different provision for different cases including different provision for any particular case, class of case or area.
- (3) Determinations may—
  - (a) be made in more than one stage;
  - (b) be made by more than one determining authority;
  - (c) be varied or revoked by subsequent determinations.
- (4) A determination may be varied—
  - (a) to correct an error; or

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- (b) where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact.
- (5) Determinations may, in particular, provide that the whole or any part of the remuneration—
  - (a) is payable only if the determining authority is satisfied as to certain conditions; or
  - (b) is to be applied for certain purposes or is otherwise subject to certain conditions.
- (6) Subject to sections 19(3) and 25(3), remuneration under section 28A may consist of payments by way of—
  - (a) salary;
  - (b) fees;
  - (c) allowances;
  - (d) reimbursement (in full or in part) of expenses incurred or expected to be incurred in connection with the provision of the services or instruction,and may be determined from time to time.
- (7) At the time a determination is made or varied, certain matters which require determining may be reserved to be decided at a later date.
- (8) The matters which may be reserved include in particular—
  - (a) the amount of remuneration to be paid in particular cases;
  - (b) whether any remuneration is to be paid in particular cases.
- (9) Any determination shall be made after taking into account all the matters which are considered to be relevant by the determining authority and such matters may include in particular—
  - (a) the amount or estimated amount of expenses (taking into account any discounts) incurred in the past or likely to be incurred in the future (whether or not by persons to whose remuneration the determination will relate) in connection with the provision of services of the description in section 28A(1) to which the determination will relate or of any category falling within that description;
  - (b) the amount or estimated amount of any remuneration paid or likely to be paid to persons providing such services;
  - (c) the amount or estimated amount of any other payments or repayments or other benefits received or likely to be received by any such persons;
  - (d) the extent to which it is desirable to encourage the provision, either generally or in particular places, of the description or category of services to which the determination will relate;
  - (e) the desirability of promoting services which are—
    - (i) economic and efficient; and
    - (ii) of an appropriate standard.
- (10) If the determination is of remuneration for a category of services falling within one of the descriptions of services mentioned in section 28A(1), the reference in subsection (9)(a) to a category of services is a reference to the same category of services or to any other category of services falling within the same description.]



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### Textual Amendments

**F75** S. 28B and sidenote substituted (1.10.1999) by 1999 c. 8, s. 57(1)(2); S.S.I. 1999/90, art. 2(a), Sch. 1

### Modifications etc. (not altering text)

**C18** S. 28B modified (1.10.1999) by 1999 c. 8, s. 57(2); S.S.I. 1999/90, art. 2(a), Sch. 1

## [<sup>F76</sup>28C Indemnity cover.

(1) Regulations may make provision for the purpose of securing that, in prescribed circumstances, prescribed Part II practitioners hold approved indemnity cover.

(2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—

- (a) for securing that a person is not be added to any list unless he holds approved indemnity cover;
- (b) for the removal from a list prepared by a Health Board of a Part II practitioner who does not within a prescribed period after the making of a request by the Health Board in the prescribed manner satisfy the Health Board that he holds approved indemnity cover.

(3) For the purposes of this section—

“approved body” means a person or persons approved in relation to indemnity cover of any description, after such consultation as may be prescribed, by the Secretary of State or by such other person as may be prescribed;

“approved indemnity cover” means indemnity cover made—

- (a) on prescribed terms; and
- (b) with an approved body;

“indemnity cover”, in relation to a Part II practitioner (or person who proposes to provide Part II services), means a contract of insurance or other arrangement made for the purpose of indemnifying him and any person prescribed in relation to him to any prescribed extent against any liability which—

- (a) arises out of the provision of Part II services in accordance with arrangements made by him with a Health Board under this Part of this Act; and
- (b) is incurred by him or any such person in respect of the death or personal injury of a person;

“list” has the same meaning as in section 29;

“Part II practitioner” means a person whose name is on a list;

“Part II services” means general medical services, general dental services, general ophthalmic services or pharmaceutical services;

“personal injury” means any disease or impairment of a person’s physical or mental condition and includes the prolongation of any disease or such impairment;

and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover.

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- (4) The regulations may provide that a person of any description who has entered into a contract or arrangement which is—
- (a) in a form identified in accordance with the regulations in relation to persons of that description; and
  - (b) made with a person or persons so identified,
- is to be treated as holding approved indemnity cover for the purposes of the regulations.]

#### Textual Amendments

**F76** S. 28C and sidenote inserted (1.3.2000) by 1999 c. 8, s. 56(1); S.S.I. 2000/38, art. 2

VALID FROM 17/10/2005

#### *[<sup>F77</sup> Assistance and support: general dental services*

#### Textual Amendments

**F77** S. 28D and preceding cross-heading inserted (17.10.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 16, 43(3); S.S.I. 2005/492, art. 3(a), Sch. 1

#### **28D Assistance and support: general dental services**

- (1) A Health Board may provide assistance and support to any person providing, or proposing to provide, general dental services.
- (2) Assistance and support provided by a Health Board under subsection (1) is to be provided on such terms, including terms as to payment, as the Board think fit.
- (3) In this section, “assistance” includes financial assistance.]

#### *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)
  - <sup>F78</sup>(f) of persons undertaking to provide pharmaceutical services,
 would be prejudicial to the efficiency of the services in question.

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- (2) Schedule 8 shall have effect in relation to the Tribunal.
- (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,
- [<sup>F79</sup>(a) shall direct that his name be removed from that list]
  - [<sup>F79</sup>(b) 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][<sup>F80</sup>,and
  - (c) where they make a direction under paragraph (b) above, may also, if they think fit, declare that he is not fit to be engaged in any capacity in the provision of those services.]
- <sup>F81</sup>(4) . . . . .
- [<sup>F82</sup>(5) Subject to subsection (5A) below, 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 Health Boards concerned shall remove the name of the person concerned from the list or lists in question.
- <sup>F82</sup>(5A) Subsection (5) above shall not apply—
- (a) where no appeal is brought against the decision to make the direction, until the end of the period for bringing an appeal, and
  - (b) where an appeal is brought against that decision, until the appeal process has been exhausted.]
- (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.

**Textual Amendments**

- F78** S. 29(1)(e) repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**
- F79** S. 29(3) “(a)”  
“(b)” inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 7(a)(b); S.I. 1995/3214, art. 2, **Sch.** (with art. 3); S.I. 1996/552, **art. 2**
- F80** S. 29(3)(C) and preceding word “and” inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 7(c); S.I. 1995/3214, art. 2, **Sch.** (with art. 3); S.I. 1996/552, **art. 2**
- F81** S. 29(4) repealed (1.1.1996) by 1995 c. 31, ss. 9, 14(2), **Sch.**; S.I. 1995/3214, art. 2, **Sch.** (with art. 3)
- F82** S. 29(5)(5A) substituted for s. 5 (1.1.1996) by 1995 c. 31, s. 9(2); S.I. 1995/3214, art. 2, **Sch.** (with art. 3)

VALID FROM 31/01/2004

[<sup>F83</sup>**29A The NHS Tribunal: supplementary.**

- (1) Where an ophthalmic optician is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).

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- (2) Where a body corporate carries on a retail pharmacy business, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any one of the body of persons controlling the body corporate meets that condition (whether or not he first met that condition when he was one of them).
- (3) A person who is included in any list (“the practitioner”) is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if—
  - (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 29(8) on the practitioner’s behalf, meets that condition; and
  - (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 29(7)(a) occurring in the course of the provision of those services on his behalf.
- (4) The Tribunal is not required to inquire into a fraud case if they have previously inquired into representations in respect of the person concerned and the same acts or omissions.
- (5) In a fraud case, regulations may make provision (including provision modifying the effect of this Part) for the purpose of securing that the person subject to the inquiry is not added to any list until proceedings in that case are finally concluded.
- (6) For the purposes of this group of sections, in a fraud or efficiency case proceedings are finally concluded—
  - (a) if the Tribunal determine not to disqualify or conditionally disqualify him when they make that determination;
  - (b) if they determine to disqualify or conditionally disqualify him and no appeal is brought against the determination, at the end of the period for bringing an appeal;
  - (c) if they determine to disqualify or conditionally disqualify him and an appeal is brought against the determination, when the appeal process is exhausted.
- (7) An inquiry under section 29 is not affected by the person subject to the inquiry withdrawing from, withdrawing any application to be included in or being removed from the list to which the case relates.]

#### Textual Amendments

**F83** Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, art. 2(1)(2) (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

VALID FROM 31/01/2004

#### [<sup>F84</sup>29B Powers of NHS Tribunal.

- (1) Subsection (2) applies where the Tribunal are of the opinion—

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- (a) on inquiring into an efficiency case, that the person meets the first condition for disqualification;
  - (b) on inquiring into a fraud case, that the person meets the second condition for disqualification.
- (2) The Tribunal—
- (a) shall make a local disqualification, that is disqualify him for inclusion in the list to which the case relates; and
  - (b) may also make a national disqualification, that is disqualify him for inclusion in all lists within the same paragraph of section 29(8) as that list.
- (3) If the Tribunal make a national disqualification they may also declare that the person is not fit to be engaged in any capacity in the provision of the services to which the lists in question relate (referred to in this group of sections as a declaration of unfitness).
- (4) The Tribunal shall not make any disqualification or declaration under this section if they are of the opinion that it would be unjust to do so.
- (5) A disqualification under this section shall have effect when the case is finally concluded.
- (6) If a person is disqualified for inclusion in any list prepared by a Health Board, the Board must not enter him in the list and (if he is already included in the list) must remove him from the list.]

#### Textual Amendments

**F84** Ss. 29, 29A-29C and sidenotes substituted for s. 29 and sidenote (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, art. 2(1)(2) (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

VALID FROM 31/01/2004

#### [<sup>F85</sup>29C Conditional disqualification etc.

- (1) The functions of making disqualifications under section 29B include making a conditional disqualification, that is, a disqualification which is to come into effect only if the Tribunal determine (on a review under section 30) that the person subject to the inquiry has failed to comply with any conditions imposed by them.
- (2) Conditions may be imposed by virtue of subsection (1) with a view to—
  - (a) removing any prejudice to the efficiency of the services in question; or
  - (b) preventing any acts or omissions within section 29(7)(a),
 (as the case may be).
- (3) Conditions so imposed shall have effect when proceedings in the case are finally concluded.
- (4) Section 29B(4) applies to a conditional disqualification as it applies to a disqualification.

*Status: Point in time view as at 01/03/2000. This version of this part contains provisions that are not valid for this point in time.*

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(5) The Tribunal may by directions—

- (a) vary the terms of service of the person subject to the inquiry (including terms imposed by regulations under this Part);
- (b) confer functions on any Health Board, for the purpose of or in connection with the imposition of any conditions by virtue of this section.

(6) References in any enactment to a disqualification by the Tribunal do not include a conditional disqualification.]

#### Textual Amendments

**F85** Ss. 29, 29A-29C and sidenotes substituted for s. 29 and sidenote (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, art. 2(1)(2) (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

### 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<sup>F86</sup> . . . 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<sup>F87</sup> . . . , may hold an inquiry.

#### Textual Amendments

**F86** Words in s. 30(1) repealed (1.1.1996) by 1995 c. 31, ss. 10(1), 14(2), Sch.; S.I. 1995/3214, art. 2, Sch.(with art. 3)

**F87** Words in s. 30(2) repealed (1.1.1996) by 1995 c. 31, s. 14(2), Sch.; S.I. 1995/3214, art. 2, Sch. (with art. 3)

### 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—

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- (a) [<sup>F88</sup>for inquiries]. . . under sections 29 to 31 [<sup>F89</sup>to be held in accordance with such procedure as may be prescribed by or determined under the regulations]. . . and, in particular, for <sup>F90</sup>. . . any person who is the subject of such an inquiry [<sup>F91</sup>to be] informed, as soon as may be, of the substance of any charge or complaint to which the inquiry relates and [<sup>F92</sup>to 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 <sup>F93</sup>. . . , and
  - (ii) of being heard by the Tribunal <sup>F93</sup>. . . , and of calling witnesses and producing other evidence on his behalf,
- and [<sup>F94</sup>for the hearing], <sup>F93</sup>. . . [<sup>F91</sup>to be] in public if the person who is the subject of the inquiry so requests;
- (b) for conferring on the Tribunal <sup>F93</sup>. . . 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 <sup>F93</sup>. . . 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.

#### Textual Amendments

- F88** Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, s. 11(2)(a); S.I. 1995/3214, art. 2, Sch.(with art. 3)
- F89** Words in s. 32(a) inserted (1.1.1996) by 1995 c. 31, s. 11(2)(b); S.I. 1995/3214, art. 2, Sch. (with art. 3)
- F90** Words in s. 32(a) repealed (1.1.1996) by 1995 c. 31, ss. 11(2)(c), 14(2), Sch.; S.I. 1995/3214, art. 2, Sch.(with art. 3)
- F91** Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, s. 11(2)(d); S.I. 1995/3214, art. 2, Sch. (with art. 3)
- F92** Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, s. 11(2)(e); S.I. 1995/3214, art. 2, Sch. (with art. 3)
- F93** Words in s. 32(a)(i)(ii)(b)(c) repealed (1.1.1996) by 1995 c. 31, s. 14(2), Sch.; S.I. 1995/3214, art. 2, Sch. (with art. 3)
- F94** Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, s. 11(2)(f); S.I. 1995/3214, art. 2, Sch. (with art. 3)

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

- C19** S. 32(a) extended (1.1.1996) by 1995 c. 31, s. 11(1); S.I. 1995/3214, art. 2 Sch.(with art. 3)

### [32A] <sup>F95</sup> Applications for interim suspension.

- (1) A Health Board who have made representations under section 29 may, at any time before the case is disposed of by the Tribunal, apply to the Tribunal for a direction to be made under subsection (2) below in relation to the person to whom the case relates.
- (2) If, on an application under this section, the Tribunal are satisfied that it is necessary to do so in order to protect patients, they shall direct that subsection (3) below shall



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apply to the person concerned as respects services of the kind to which the case in question relates.

- (3) A person to whom this subsection applies shall—
- (a) be deemed to have been removed from any relevant list in which his name is included,
  - (b) be disqualified for inclusion in any relevant list in which his name is not included, and
  - (c) be deemed to be a person in relation to whom there is in force a declaration under section 29(3)(c) concerning his fitness to be engaged in the provision of services of the relevant kind.
- (4) A direction under subsection (2) above shall cease to have effect on the Tribunal's disposing of the case in connection with which it is made.
- (5) In subsection (2) above, the reference to patients is to persons to whom services of the kind to which the case in question relates are, or may be, provided under this Part of this Act.
- (6) In the application of subsection (3) above to any person—
- (a) “relevant list” means a list prepared under this Part of this Act of persons undertaking to provide services of the kind to which the direction applying the subsection to him relates, and
  - (b) “services of the relevant kind” means services of the kind to which that direction relates.]

#### Textual Amendments

**F95** S. 32A inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 8; S.I. 1995/3214, art. 2, Sch.(with art. 3); S.I. 1996/552, art. 2

#### <sup>F96</sup>32B Continuation of suspension pending appeal.

- (1) Where—
- (a) on disposing of a case under section 29, the Tribunal make a direction under subsection (3)(b) of that section, and
  - (b) the person to whom the direction relates is a person to whom section 32A(3) above would, apart from this section, cease to apply on the disposal of the case, the Tribunal may, if they consider it necessary to do so in order to protect patients, direct that that provision shall continue to apply to him as respects services of the kind to which the direction under section 29(3)(b) relates.
- (2) A direction under subsection (1) above shall cease to have effect—
- (a) where no appeal against the direction under section 29(3)(b) is brought, at the end of the period for bringing an appeal, and
  - (b) where an appeal against that direction is brought, when the appeal process has been exhausted.
- (3) Where the power conferred by subsection (1) above is exercisable by virtue of a direction which is not coupled with a declaration under section 29(3)(c), section 32(A) (3) shall have effect, in relation to the exercise of that power, with the omission of paragraph (c).



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- (4) In subsection (1) above, the reference to patients is to persons to whom services of the kind to which the direction under section 29(3)(b) relates are, or may be, provided under this Part of this Act.

#### Textual Amendments

**F96** S. 32B inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 8; S.I. 1995/3214, art. 2, Sch. (with art. 3); S.I. 1996/552, art. 2

#### [<sup>F97F98</sup>32(Sections 32A and 32B: procedure etc.

- (1) Before making a direction under section 32A(2) or 32B(1) in relation to any person, the Tribunal shall give him an opportunity—
- (a) to appear before them, either—
    - (i) in person; or
    - (ii) by counsel or solicitor or such other representative as may be prescribed; and
  - (b) to be heard and to call witnesses and produce other evidence.
- (2) Regulations may—
- (a) make provision for, or for the determination of, procedure in relation to determining applications under section 32A or the exercise of the power conferred by section 32B(1), and
  - (b) provide for the functions of the Tribunal under section 32A or 32B to be carried out, or to be carried out in prescribed circumstances, by the chairman or a deputy chairman of the Tribunal.]

#### Textual Amendments

**F97** Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, art. 2(1)(2) (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

**F98** S. 32C inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 8; S.I. 1995/3214, art. 2, Sch.(with art. 3); S.I. 1996/552, art. 2

#### <sup>F99</sup>32D Suspension provisions in England and Wales or in Northern Ireland.

- (1) This section applies where, under any provisions in force in England and Wales or in Northern Ireland corresponding to section 32A or 32B, a person (“the practitioner”) is disqualified for inclusion in all lists prepared under the provisions in force there corresponding to the provisions of this Part of this Act of persons undertaking to provide services of one or more of the kinds specified in section 29(1), other than those in which his name is included.
- (2) The practitioner shall, while he is so disqualified—
- (a) be disqualified for inclusion in any list prepared under this Part of this Act of persons undertaking to provide services of the same kinds (“relevant list”) in which his name is not included, and

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- (b) be deemed to have been removed from any relevant list in which his name is included.

#### Textual Amendments

**F99** S. 32D inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 8; S.I. 1995/3214, art. 2, Sch. (with art. 3); S.I. 1996/552, art. 2

#### <sup>F100</sup>32E Payments in consequence of suspension.

- (1) Regulations may provide for the making to persons to whom section 32A(3) or 32D(2) applies of payments in consequence of the application of that provision.
- (2) Regulations under subsection (1) above may provide for the determination by the Secretary of State in a prescribed manner of anything for which provision may be made by regulations under that subsection.

#### Textual Amendments

**F100** S. 32E inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 8; S.I. 1995/3214, art. 2, Sch. (with art. 3); S.I. 1996/552, art. 2

### *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.

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### [<sup>F101</sup>35 Sale of medical practices.

(1) It is unlawful to sell the goodwill of the medical practice of a person who has at any time—

- (a) provided general medical services under arrangements made with any Executive Council or Health Board under the <sup>M8</sup>National Health Service (Scotland) Act 1947, the <sup>M9</sup>National Health Service (Scotland) Act 1972 or this Act, or
- (b) provided or performed personal medical services in accordance with section 17C arrangements,

unless that person no longer provides or performs such services and has never carried on the practice in a relevant area.

(2) In this section—

“goodwill” includes any part of goodwill and, in relation to a person practising in partnership, means his share of the goodwill of the partnership practice;

“medical practice” includes any part of a medical practice; and

“relevant area”, in relation to any Executive Council or Health Board by arrangement with whom a person has at any time—

- (a) provided general medical services, or
- (b) provided or performed personal medical services in accordance with section 17C arrangements,

means the area of that Council or Board (at that time).

(3) Schedule 9 supplements the provisions of this section.]

#### Textual Amendments

**F101** S. 35 substituted (1.4.1998) by 1997 c. 47, s. 34(2); S.I. 1998/631, art. 2(a), Sch. 1

#### Marginal Citations

**M8** 1947 c. 27.

**M9** 1972 c. 58.

### [<sup>F102</sup>35A Interpretation of Part II.

Where, under a direction by the Secretary of State, a Health Board has delegated any of its functions to an NHS trust, any reference in this Part to a Health Board in relation to such a delegated function shall, unless the context otherwise requires, include a reference to an NHS trust.]

#### Textual Amendments

**F102** S. 35A inserted (1.10.1999) by 1999 c. 8, s. 65(1), Sch. 4 para. 55; S.S.I. 1999/90, art. 2(a)(b)

**Status:**

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**Changes to legislation:**

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