

**Changes to legislation:** National Health Service (Scotland) Act 1978, SCHEDULE 9 is up to date with all changes known to be in force on or before 28 April 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) View outstanding changes

## SCHEDULES

### SCHEDULE 9

Section 35.

#### ADDITIONAL PROVISIONS AS TO PROHIBITION OF SALE OF MEDICAL PRACTICES

##### *Prohibition, and certificate of Practices Committee*

- 1 (1) Any person who sells or buys the goodwill <sup>F1</sup>. . . of a medical practice which it is unlawful to sell by virtue of section 35(1) is guilty of an offence and liable on conviction on indictment to a fine <sup>F2</sup> or to imprisonment for a term not exceeding 3 months, or to both such fine and such imprisonment.
- <sup>F3</sup>(2) Any person proposing to be a party to a transaction or series of transactions which he thinks might amount to a sale of the goodwill of a medical practice in contravention of section 35(1) may ask the [<sup>F4</sup>Health Board which has arrangements with the [<sup>F5</sup>person, under which, or in accordance with which, services as specified in section 35(1) are provided or performed,]] for a certificate under this paragraph.
- (3) [<sup>F6</sup>That Health Board] shall consider any such application, and, if they are satisfied that the transaction or series of transactions does not involve the giving of valuable consideration in respect of the goodwill, or any part of the goodwill <sup>F7</sup>. . . of such a medical practice, they shall issue to the applicant a certificate to that effect, which shall be in the prescribed form and shall set out all material circumstances disclosed to [<sup>F8</sup>the Board].
- (4) Where any person is charged with an offence under this paragraph in respect of any transaction or series of transactions, it shall be a defence to the charge to prove that the transaction or series of transactions was certified by the [<sup>F9</sup>Health Board] under sub-paragraph (3).
- (5) Any document purporting to be such a certificate shall be admissible in evidence and shall be deemed to be such a certificate unless the contrary is proved.
- (6) If it appears to the court that the applicant for any such certificate failed to disclose to the [<sup>F10</sup>Board] all the material circumstances, or made any misrepresentation with respect thereto, the court may disregard the certificate, and sub-paragraph (4) shall not apply thereto.
- (7) [<sup>F11</sup>A Health Board] shall, at the request of the Lord Advocate, furnish him with a copy of any certificate issued by them under sub-paragraph (3), and with copies of any documents produced to them in connection with the application for that certificate.
- <sup>F12</sup>(8) . . . . .

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### Textual Amendments

- F1** Words in Sch. 9 para. 1(1) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 59(2), **Sch. 3 Pt. I**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)
- F2** Sch. 9 para. 1(1)(a)(b) and words repealed by Criminal Justice Act 1982 (c. 48, SIF 39:1), **Sch. 16**
- F3** Sch. 9 para. 1(2) substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(3)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)
- F4** Words in Sch. 9 para. 1(2) substituted (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(18)(a)**; S.S.I. 2004/148, **art. 2(c)**
- F5** Words in Sch. 9 para. 1(2) substituted (1.2.2006) by The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(6)(a)}
- F6** Words in Sch. 9 para. 1(3) substituted (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(18)(b)(i)**; S.S.I. 2004/148, **art. 2(c)**
- F7** Words in Sch. 9 para. 1(3) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 59(2), **Sch. 3 Pt. I**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)
- F8** Words in Sch. 9 para. 1(3) substituted (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(18)(b)(ii)**; S.S.I. 2004/148, **art. 2(c)**
- F9** Words in Sch. 9 para. 1(4) substituted (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(18)(c)**; S.S.I. 2004/148, **art. 2(c)**
- F10** Words in Sch. 9 para. 1(6) substituted (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(18)(d)**; S.S.I. 2004/148, **art. 2(c)**
- F11** Words in Sch. 9 para. 1(7) substituted (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(18)(e)**; S.S.I. 2004/148, **art. 2(c)**
- F12** Sch. 9 para. 1(8) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 59(4), **Sch. 3 Pt. I**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

### Modifications etc. (not altering text)

- C1** Sch. 9 para. 1(3) modified (31.3.1995) by S.I. 1995/416, reg. 18, **Sch. 8**

### *Certain transactions deemed sale of goodwill*

- 2<sup>F13F13</sup>(1) For the purposes of section 35(1) and paragraph 1, a disposal of premises previously used for the purposes of a medical practice shall be deemed to be a sale of the goodwill of a medical practice if—
- (a) the person disposing of the premises did so knowing that another person (“A”) intended to use them for the purposes of A’s medical practice; and
  - (b) the consideration for the disposal substantially exceeded the consideration that might reasonably have been expected if the premises had not previously been used for the purposes of a medical practice.
- <sup>F13</sup>(1A) If a person disposes of any premises together with any other property, the court shall, for the purposes of sub-paragraph (1), make such apportionment of the consideration as it thinks just.
- <sup>F13</sup>(1B) For the purposes of sub-paragraphs (1) and (1A)—
- (a) “disposal” means any sale, letting or other form of disposal (whether by a single transaction or a series of transactions) and “disposes” and “disposing” are to be read accordingly; and
  - (b) a person who procures the disposal of any premises is to be treated as having disposed of them.]

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- (2) Where in pursuance of any partnership agreement<sup>F14</sup> . . . —
- (a) any valuable consideration, other than the performance of services in the partnership business, is given by a partner or proposed partner as consideration for his being taken into partnership.
  - (b) any valuable consideration is given to a partner, on or in contemplation of his retirement or of his acceptance of a reduced share of the partnership profits, or to the personal representative of a partner on his death, not being a payment in respect of that partner's share in past earnings of the partnership or in any partnership assets or any other payment required to be made to him as the result of the final settlement of accounts, as between him and the other partners, in respect of past transactions of the partnership, or
  - (c) services are performed by any partner for a consideration substantially less than those services might reasonably have been expected to be worth having regard to the circumstances at the time when the agreement was made,

there shall be deemed for the purposes of section 35(1) and paragraph 1 to have been a sale of the goodwill<sup>F15</sup> . . . of the practice of any partner to whom, or to whose personal representative, the consideration or any part thereof is given or, as the case may be, for whose benefit the services are performed, to the partner or each of the partners by or on whose behalf the consideration or any part thereof was given or, as the case may be, the partner who performed the services, and the said sale shall be deemed for the purposes of section 35(1) and paragraph 1 to have been effected—

- (i) in a case to which paragraph (a) or paragraph (b) applies, at the time when the consideration was given, or, if the consideration was not all given at the same time, at the time when the first part thereof was given, or
- (ii) in a case to which paragraph (c) applies, at the time when the agreement was made.

[<sup>F16</sup>(3) Sub-paragraph (3A) applies if a person (“the assistant”)—

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

<sup>F16</sup>(3A) For the purposes of section 35 and paragraph 1, a sale of the goodwill of the practice is to be deemed to have taken place (at the time when the remuneration was fixed), unless it is proved that the remuneration was not fixed in contemplation of the assistant's succeeding to the practice.]

[<sup>F17</sup>(4) For the purposes of section 35(1) and paragraph 1, the goodwill of a medical practice shall be deemed to have been sold if—

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

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- (i) gives valuable consideration to a person carrying on the practice (or employing a practitioner who carries on a medical practice); and
- (ii) succeeds, or has previously succeeded, to the practice.

<sup>F17</sup>(5) Sub-paragraph (4) does not apply—

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

(6) In determining for the purposes of section 35(1) and this Schedule the consideration given in respect of any transaction, the court shall have regard to any other transaction appearing to the court to be associated with the first transaction, and shall estimate the total consideration given in respect of both or all the transactions, and shall apportion it between those transactions in such manner as it thinks just.

<sup>F18</sup>(7) For the purposes of section 35 and this Schedule—

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

#### Textual Amendments

- F13** Sch. 9 para. 2(1)(1A)(1B) substituted for Sch. 9 para. 2(1) (1.4.1998) by 1997 c. 47, s. 41(10), **Sch. 2 Pt. I para. 59(5)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)
- F14** Words in Sch. 9 para. 2(2) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), **Sch. 2 Pt. I para. 59(6)a)**, Sch. 3 Pt. I; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)
- F15** Words in Sch. 9 para. 2(2) repealed (1.4.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 59(6)(b), **Sch. 3 Pt. I**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)
- F16** Sch. 9 para. 2(3)(3A) substituted for Sch. 9 para. 2(3) (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(7)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)
- F17** Sch. 9 para 2(4)(5) substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(8)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)
- F18** Sch. 9 para. 2(7) substituted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(9)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

#### <sup>F19</sup> Carried-over goodwill

#### Textual Amendments

- F19** Sch. 9 para 3 and crossheading inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(10)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

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<sup>F20</sup>3 The fact that a person's medical practice was previously carried on by another person who at any time provided [<sup>F21</sup>or performed services as specified in section 35(1)] does not, by itself, make it unlawful under section 35(1) for the goodwill of his practice to be sold.]

#### Textual Amendments

**F20** Sch. 3 and heading inserted (1.4.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 59(10); S.I. 1998/631, art. 2(1)(b), Sch. 2 (with arts. 3, 5)

**F21** Words in Sch. 9 para. 3 substituted (1.2.2006) by The Primary Medical Services (Scotland) Act 2004 (Modification of the National Health Service (Scotland) Act 1978) Order 2006 (S.S.I. 2006/30), {art. 2(6)(b)}

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

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

- s. 16A(5) added by [2002 asp 5 Sch. 2 para. 2\(2\)](#)
- s. 19A(2)(b) words repealed by [2003 asp 4 sch. 4 para. 5\(4\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(a) words substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(b) substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(c) words substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(e) word substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 70A inserted by [1997 c. 46 s. 26\(2\)](#)
- s. 70A(2) word substituted by [2005 asp 13 s. 14\(3\)](#)
- s. 85AB(7) inserted by [2005 asp 13 sch. 2 para. 2\(18\)\(b\)](#)
- Sch. 11 para. 2(1A) inserted by [2005 asp 13 s. 14\(6\)\(a\)](#)