

SCHEDULES

SCHEDULE 2

AMENDMENTS

PART I

MINOR AND CONSEQUENTIAL AMENDMENTS

The National Health Service Act 1977 (c. 49)

3 The 1977 Act is amended in accordance with paragraphs 4 to 31.

4 (1) Section 15 is amended as follows.

 (2) After subsection (1) insert—

 “(1ZA) It is the duty of each Health Authority, in accordance with regulations, to perform such functions in relation to section 28C arrangements as may be prescribed.

 (1ZB) Regulations under subsection (1ZA) may, in particular—

- (a) prescribe functions in relation to training;
- (b) provide for appeals to the Secretary of State or a prescribed body in relation to functions prescribed by the regulations.”

(3) For subsection (1B) substitute—

 “(1B) In relation to a Part II medical practitioner—

- (a) whose name is included in the medical list of only one Health Authority, 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 Authority’s medical list,

any reference in this Act or the National Health Service and Community Care Act 1990 to the relevant Health Authority is to be construed as a reference to that Authority.

(1BA) In relation to a medical practitioner who is not within subsection (1B), any reference in this Act or the National Health Service and Community Care Act 1990 to the relevant Health Authority is to be construed as a reference to the Authority in whose area most of the practice patients live.”

(4) After subsection (1C) insert—

 “(1D) In this section—

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“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 28C 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 28C 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 those practitioners together have a single list of patients in connection with section 28C arrangements, an individual who is on that single list).”

5 (1) Section 26 is amended as follows.

(2) For subsection (2) substitute—

“(2) The Secretary of State may supply or make available to persons—

- (a) providing general medical services, general dental services, general ophthalmic services or pharmaceutical services, or
- (b) providing, in accordance with section 28C arrangements, personal medical services, personal dental services or other services of a kind that may be provided under this Part,

such goods, materials or other facilities as may be prescribed.”

(3) In subsection (4), after the words “pharmaceutical services” at the end of paragraph (a) insert—

“(aa) persons performing, in accordance with section 28C arrangements, personal medical services, personal dental services or other services of a kind that may be provided under this Part.”.

6 After section 28G insert—

“28H Immunisation

Where the Secretary of State arranges with medical practitioners for the vaccination or immunisation of persons against disease, he shall so far as reasonably practicable give every person providing, and every medical practitioner performing, personal medical services in accordance with section 28C arrangements an opportunity to participate in the arrangements for vaccination or immunisation.”

7 After section 28H insert—

“28I Use of accommodation

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of personal medical services or personal dental services in accordance with

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section 28C arrangements, he may make the accommodation available on such terms as he thinks fit to persons providing those services.”

8 In section 29(2), omit paragraphs (b) and (c).

9 In section 32(1), for the definition of “applicant” substitute—

““applicant” means a medical practitioner who is seeking to be nominated or approved by a Health Authority in accordance with regulations under section 29B for appointment to fill a vacancy;”.

10 (1) Section 33 is amended as follows.

(2) Omit subsection (1).

(3) In subsection (1B)—

- (a) after “Act” insert “or any regulations made under this Part of this Act”; and
- (b) for “the Medical Practices Committee are to refuse applications under section 30 above” substitute “references under regulations made under section 29B are to be determined”.

(4) After subsection (1B) insert—

“(1C) An order under subsection (1A) may, in particular, 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 of practice which relate to remuneration and are determined under regulations made under section 29B.”

(5) Omit subsections (2) to (6) and (8).

11 In section 34(1)(a), omit from “(ii) the occurrence” to the end of the section.

12 Omit section 36(1)(c).

13 In section 41, for “in this Act referred to” substitute “, together with additional pharmaceutical services provided in accordance with a direction under section 41A, referred to in this Act”.

14 In section 43(3), after “41(d)” insert “, or additional pharmaceutical services provided in accordance with a direction under section 41A,”.

15 In section 50, after “whom” insert “general ophthalmic”.

16 In section 81(b), after “providing” insert “personal dental services in accordance with section 28C arrangements or”.

17 In section 82(b), after “providing” insert “personal dental services in accordance with section 28C arrangements or”.

18 In section 83, for paragraph (b) substitute—

“(b) for the purposes of section 78(1A) in relation to appliances provided as part of—

- (i) general dental services, or
- (ii) personal dental services provided in accordance with section 28C arrangements,

may provide for the reduction of the sums which would otherwise be payable by a Health Authority to the persons by whom those

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services are provided by the amount of the charges authorised by section 78(1A) in respect of those appliances.”

- 19 In section 83A(1)(a), after “section 78(1) or (1A) above” insert “, section 78A(1) above”.
- 20 In section 85(1), references to functions conferred or imposed by or under the 1977 Act are to be construed as including references to functions conferred or imposed in relation to pilot schemes by or under this Act; and references to regulations and directions are accordingly to be construed as including regulations or directions under this Act.
- 21 In section 86, the reference to a function conferred by virtue of the 1977 Act is to be construed as including a reference to a function conferred in relation to pilot schemes by virtue of this Act.
- 22 In section 97(6)(a), for “subsections (1) to (3), or subsection (4), above” substitute “this section”.
- 23 In section 97A—
- (a) in subsection (1)(a), for “amounts allotted to them for that year under subsections (2) and (3)” substitute “amount allotted to them for that year under subsection (3)”; and
 - (b) in subsection (9)(c)(i), omit “subsections (1) to (3) of”.
- 24 In section 102(1)(a)(iii) and (2)(b), after “section 32 above” insert “or by regulations which make provision in relation to section 28C arrangements of a kind that may be made by regulations under section 32 above”.
- 25 In section 103(1)(a) after “Act” insert “or in accordance with section 28C arrangements”.
- 26 In section 105(2)(a) after “examined” insert “or as part of his duty to perform personal medical services for that person in accordance with section 28C arrangements”.
- 27 In section 126(3), after “under” insert “or by virtue of”.
- 28 In section 128, insert at the appropriate places—
- ““health service body” has the same meaning as in section 4 of the National Health Service and Community Care Act 1990;”;
 - ““medical list” has the meaning given by section 29A(6);”;
 - ““personal dental services” has the meaning given in section 28C(7);”;
 - ““personal medical services” (except in section 29) has the meaning given in section 28C(7);”;
 - ““section 28C arrangements” means arrangements made under section 28C”.
- 29 (1) In Schedule 9, paragraph 5A is amended as follows.
- (2) In sub-paragraph (2), after “sub-paragraph (1)(c) above” insert “as it has effect in relation to the functions mentioned below”.
- (3) After sub-paragraph (2) insert—
- “(2A) In sub-paragraph (1)(c) above as it has effect in relation to functions of the Tribunal conferred by or under any enactment relating to the preferential

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treatment of medical practitioners on transferring to medical lists, the reference to the person concerned is a reference to the medical practitioner to whom the matter before the Tribunal relates.”

- 30 (1) Schedule 10 is amended as follows.
- (2) In paragraph 1(1) and (3), omit “, or any part of the goodwill,”.
- (3) In paragraph 1, for sub-paragraph (2) substitute—
- “(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 54(1) may ask the Medical Practices Committee for a certificate under this paragraph.”
- (4) In paragraph 1, omit sub-paragraph (8).
- (5) In paragraph 2, for sub-paragraph (1) substitute—
- “(1) For the purposes of section 54(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.
- (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.
- (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.”
- (6) In paragraph 2(2)—
- (a) omit “between medical practitioners”; and
- (b) omit “, or part of the goodwill,”.
- (7) In paragraph 2, for sub-paragraph (3) substitute—
- “(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

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(c) subsequently succeeds, whether as a result of a partnership agreement or otherwise, to that practice.

(3A) For the purposes of section 54 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."

(8) In paragraph 2, for sub-paragraphs (4) and (5) substitute—

“(4) For the purposes of section 54(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—

(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.

(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.”

(9) In paragraph 2, for sub-paragraph (7) substitute—

“(7) For the purposes of section 54 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.”

(10) At the end insert—

“Carried-over goodwill

- 3 The fact that a person’s medical practice was previously carried on by another person who at any time provided general medical services or personal medical services does not, by itself, make it unlawful under section 54(1) for the goodwill of his practice to be sold.”
- 31 In Schedule 12, in paragraph 1(1)(b), after “drug or medicine” insert “(otherwise than in accordance with section 28C arrangements)”.