

2004 No. 957 (S. 2)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

NATIONAL HEALTH SERVICE, SCOTLAND

**The Primary Medical Services (Scotland) Act 2004
(Consequential Modifications) Order 2004**

Made

25th March 2004

Coming into force

1st April 2004

Whereas a draft of this Order has been laid before and approved by a resolution of each House of Parliament in accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998^(a);

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by sections 104, 112 (1) and 113 of that Act and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Primary Medical Services (Scotland) Act 2004 (Consequential Modifications) Order 2004 and shall come into force on 1st April 2004.

^(a) 1998 c.46.

Modifications

2. The modifications in the Schedule to this Order have effect.

Dover House,
London
25th March 2004

ANNE C McGUIRE
Parliamentary Under Secretary of State,
Scotland Office,
Department for Constitutional Affairs

MODIFICATION OF PUBLIC GENERAL ACTS

Health Services and Public Health Act 1968 (c.46)

1.—(1) The Health Services and Public Health Act 1968 is amended as follows.

(2) In section 59 (extension of power of user by Crown of patented invention to user for certain health purposes)(a)–

(a) in subsection (2), after “1978” insert “(in the case of pharmaceutical services or general dental services)”; and

(b) in subsection (2A)–

(i) omit “respective”; and

(ii) after “1978 Act” insert “(in the case of personal dental services)”; and

(c) in subsection (2C), for the words from “the” where it first occurs to “and” where it second occurs substitute “reference to primary medical services is a reference to primary medical services provided under Part 1 of the 1977 Act, Part 1 of the 1978 Act or any corresponding provisions of the law in force in Northern Ireland or the Isle of Man and the reference to primary dental services is a reference to”.

(3) In section 63(2)(aa) (provision of instruction for officers of hospital authorities and other persons)(b), after “Act” insert “or the provision or performance of a primary medical service under Part 1 of the National Health Service (Scotland) Act 1978”.

(4) In section 64(4) (financial assistance to certain voluntary organisations)(c), after “make arrangements” insert “or any service which a Health Board is under a duty to provide under section 2C of that Act”.

Patents Act 1977 (c.37)

2. In section 56(4)(a) of the Patents Act 1977 (interpretation, etc., of provisions about Crown use)(d)–

(a) in sub-paragraph (ai), after “services” where it first occurs insert “under Part 1 of the National Health Service Act 1977, Part 1 of the National Health Service (Scotland) Act 1978 or any corresponding provisions of the law in force in Northern Ireland or the Isle of Man”; and

(b) in sub-paragraph (i), after “1978” insert “(in the case of pharmaceutical services or general dental services)”; and

(a) Relevant amendments to section 59 were made by the National Health Service (Primary Care) Act 1997 (c.46) (“the 1997 Act”), Schedule 2, paragraph 1(2), by the Health and Social Care Act 2001 (c.15), Schedule 5, paragraph 1(2)(b), and by the Health and Social Care (Community Health and Standards) Act 2003 (c.43) (“the 2003 Act”), Schedule 11, paragraph 3(3), (4) and (5).

(b) Section 63(2)(aa) was inserted by the 2003 Act, Schedule 11, paragraph 4(a).

(c) Relevant amendments to section 64(4) were made by the National Health Service (Scotland) Act 1972 (c.58), Schedule 6, paragraph 136(b), and by the National Health Service (Scotland) Act 1978 (c.29), Schedule 16, paragraph 27(b).

(d) Relevant amendments to section 56(4)(a) were made by the 1997 Act, Schedule 2, paragraph 2, and by the 2003 Act, Schedule 11, paragraph 6.

- (c) in sub-paragraph (ii), after “Act” insert “(in the case of personal dental services)”.

National Health Service Act 1977 (c.49)

3. In sub-paragraph (iii) of section 28D(1)(bc) of the National Health Service Act 1977 (persons with whom agreements may be made)(a), for “section 19” substitute “section 17J”.

Medical Act 1983 (c.54)

4.—(1) The Medical Act 1983 is amended as follows.

(2) In the definition of “medical practice” in section 11(4) (provisions supplementary to section 10, etc.)(b)—

- (a) in paragraph (za), after “1977” insert “or Part 1 of the National Health Service (Scotland) Act 1978”;
- (b) in paragraph (a), omit “Part II of the National Health Service (Scotland) Act 1978 or”; and
- (c) in paragraph (b)—
 - (i) for “section 17C of the 1978 Act or the corresponding” substitute “the”; and
 - (ii) at the end insert “corresponding to section 17C of the 1978 Act immediately before the commencement of section 2 of the Primary Medical Services (Scotland) Act 2004”(c).

(3) In section 12(2)(a) (special provisions as to employment in health centres)(d)—

- (a) after “1977” insert “or Part 1 of the National Health Service (Scotland) Act 1978,”; and
- (b) omit “Part II of the National Health Service (Scotland) Act 1978 or”.

Copyright, Designs and Patents Act 1988 (c.48)

5. In section 240(4) of the Copyright, Designs and Patents Act 1988 (Crown use of designs)(e)—

- (a) in paragraph (za), after “1977” insert “or primary medical services under Part 1 of the National Health Service (Scotland) Act 1978”;
- (b) in paragraph (a)(ii), after “1978” insert “(in the case of pharmaceutical services or general dental services)”;
- (c) in paragraph (b)(ii), after “Act” insert “(in the case of personal dental services)”.

(a) Section 28D was inserted by the 1997 Act, section 21(1), and relevant amendments were made by the 2003 Act, section 177(2).

(b) The definition of “medical practice” in section 11(4) was inserted by the 1997 Act, section 35(4)(a). That definition was amended by the 2003 Act, Schedule 11, paragraph 48.

(c) 2004 asp 1.

(d) Section 12(2)(a) was amended by the 2003 Act, Schedule 11, paragraph 49.

(e) Section 240(4)(a) and (b) were substituted by the 1997 Act, Schedule 2, paragraph 63, and section 240(4) was amended by the 2003 Act, Schedule 11, paragraph 52.

Health and Medicines Act 1988 (c.49)

6.—(1) The Health and Medicines Act 1988 is amended as follows.

(2) Omit section 2 (powers of Secretary of State)(a).

(3) In section 8(1) (retirement or practitioners)(b), omit paragraph (a).

Trade Union and Labour Relations (Consolidation) Act 1992 (c.52)

7. In section 279 of the Trade Union and Labour Relations (Consolidation) Act 1992 (health service practitioners)(c)—

(a) in subsection (1)—

(i) omit “personal medical services or” and “general medical services,”; and

(ii) in paragraph (b), omit “19,”; and

(b) after subsection (2) add—

“(3) In this Act “worker” also includes an individual regarded in his capacity as one who works or normally works or seeks to work as a person performing primary medical services—

(a) in accordance with arrangements made by a Health Board under section 17C of the National Health Service (Scotland) Act 1978; or

(b) under a contract under section 17J of that Act entered into by him with a Health Board,

and “employer” in relation to such an individual, regarded in that capacity, means that Health Board.”.

Employment Rights Act 1996 (c.18)

8. In section 43K of the Employment Rights Act 1996 (extension of meaning of “worker” etc. for Part IVA)(d)—

(a) in subsection (1)—

(i) after paragraph (ba) insert—

“(bb) works or worked as a person performing services under a contract entered into by him with a Health Board under section 17J of the National Health Service (Scotland) Act 1978,”;

(ii) in paragraph (c), omit “general medical services,”; and

(iii) in paragraph (c)(ii), omit “19,”; and

(b) in subsection (2), after paragraph (aa) insert—

“(ab) in relation to a worker falling within paragraph (bb) of that subsection, the Health Board referred to in that paragraph.”.

(a) Section 2 was amended by the 1997 Act, Schedule 2, paragraph 64(2), and is repealed in part by the 2003 Act, Schedule 14, Part 4.

(b) Section 8(1) is repealed in part by the 2003 Act, Schedule 14, Part 4.

(c) Relevant amendments to section 279 were made by the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 122, by the 1997 Act, Schedule 2, paragraph 67, by the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 2, paragraph 60, and Schedule 3, paragraph 13, and by the 2003 Act, Schedule 11, paragraph 59.

(d) Section 43K was inserted by the Public Interest Disclosure Act 1998 (c.23), section 1 and is amended by the 2003 Act, Schedule 11, paragraph 65.

Health Act 1999 (c.8)

9. In Schedule 4 to the Health Act 1999 (amendment of enactments)(**a**), omit paragraph 2.

(**a**) Paragraph 2 of Schedule 4 is repealed in part by the 2003 Act, Schedule 14, Part 4.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision consequential on the Primary Medical Services (Scotland) Act 2004 (“the 2004 Act”).

The 2004 Act amends the National Health Service (Scotland) Act 1978 to provide for primary medical services. Article 2 of the Order provides for the modifications of the enactments specified in the Schedule to the Order in consequence of the 2004 Act.

The effect of the modifications is to provide for references to the new Scottish primary medical services regime and to remove references to the previous regime.

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