



# Public Appointments and Public Bodies etc. (Scotland) Act 2003

## 2003 asp 4

### PART 2

#### PROVISION AS TO CERTAIN PUBLIC BODIES ETC.

##### *Health Service bodies*

## 5 Property of the Scottish Hospital Trust

### (1) Any—

- (a) endowment (and accumulated income thereof) held by the Scottish Hospital Trust by virtue of subsection (3) of section 11 (Scottish Hospital Trust) of the National Health Service (Scotland) Act 1978 (c. 29) (in this Act referred to as the “1978 Act”);
- (b) endowment and other property (and accumulated income thereof) held by it by virtue of paragraph 4(e) to (f) of Schedule 6 (the Hospital Trust) to that Act; and
- (c) other property and rights of or held by the Scottish Hospital Trust (of whatever kind),

(in this section and section 6 referred to as the “Trust property”) is transferred to, and vested in, the Health Boards.

### (2) The Scottish Ministers may by regulations make provision for the purposes of or in connection with the transfer and vesting of the Trust property by virtue of subsection (1) and may, in particular, make provision as to how the Trust property is to be divided among different Health Boards, including—

- (a) prescribing the method of calculating the capital value of the property and the share of each Health Board in it;
- (b) providing for any of the Trust property to be realised for value and for the value to be transferred to and vested in the appropriate Health Board in lieu of the property.

- (3) Before making regulations under subsection (2), the Scottish Ministers must consult the Scottish Hospital Trust and all Health Boards and NHS trusts on the proposed regulations.
- (4) Any Trust property (including any value in lieu of the property) which has been transferred to a Health Board by virtue of subsections (1) and (2), may be transferred by the Board to, and vested in, another Health Board, subject to such conditions (including conditions as to the extent of any transfer or of the transfer of any class of property) as the Scottish Ministers may by regulations provide for.
- (5) Where Trust property has been transferred by a Health Board to another Health Board under subsection (4), the other Health Board is (except where, by virtue of a subsequent transfer, the property is held by an NHS trust) to transfer it back to the Health Board which made the transfer within a reasonable time of any requirement for such a transfer as that Health Board may make; and any property so transferred vests in that Health Board.
- (6) In this section and sections 6 to 9, the expression “NHS trust” is to be construed in accordance with section 108(1) (interpretation) of the 1978 Act.

## **6 Transfer of certain property between Health Boards and NHS trusts**

- (1) Any Trust property (including any value in lieu of the property) which—
  - (a) has been transferred to a Health Board by virtue of section 5; and
  - (b) relates to any service which it is the function of an NHS trust situated in the area of the Health Board to make arrangements for, administer or provide,
 may, without prejudice to section 12D (transfer of property, rights and liabilities to NHS trusts) of the 1978 Act, be transferred by the Board to, and vested in, the NHS trust following any request for such a transfer as the trust may make.
- (2) Any endowment held by an NHS trust may be transferred by the trust to, and vested in, any Health Board to such extent as the trust may determine.
- (3) Where an endowment has been transferred by an NHS trust to a Health Board under subsection (2), the Health Board is to transfer it back to the trust within a reasonable time of any requirement for such a transfer as the trust may make; and any endowment so transferred vests in the NHS trust.

## **7 Investment and borrowing**

- (1) A Health Board has the following powers—
  - (a) the like powers in relation to its funds as trustees have, in relation to their trust estate, under section 4(1) of the Trusts (Scotland) Act 1921 (c. 58); and
  - (b) power to purchase and lease land and to invest in any security in which trustees are authorised to invest under or in pursuance of the Trusts (Scotland) Act 1921 and the Trustee Investments Act 1961 (c. 62) and—
    - (i) to retain any investment which it from time to time receives;
    - (ii) to make a narrower-range investment falling within Part II of Schedule 1 to the Trustee Investments Act 1961 without first obtaining advice as required by section 6 of that Act; and
    - (iii) to invest in the units of a unit trust scheme or in participation certificates or in any form of participation under any trust or scheme

having the effect of enabling persons to participate in the profits and income arising from the acquisition, holding, management or disposal of securities or of land.

- (2) A Health Board must obtain advice on any investment under subsection (1) from a person whom the Board considers to be qualified to give such advice by the person's ability in, and practical experience of, financial matters; and, where the person is not an officer or employee of the Board, the advice may be given on such terms as the Board and the person may agree to.
- (3) A Health Board may borrow from any endowment held by it provided that the endowment does not relate to—
  - (a) the services provided by another Health Board; or
  - (b) any service which it is the function of an NHS trust to make arrangements for, administer or provide.
- (4) A Health Board may make loans to another Health Board from any endowment held by the Board provided that the endowment relates to the services provided by that other Board; and that other Health Board may borrow accordingly.
- (5) A Health Board may make loans to any NHS trust from any endowment held by the Board provided that the endowment relates to any service which it is the function of the trust to make arrangements for, administer or provide; and the NHS trust may borrow accordingly.
- (6) An NHS trust may borrow from any endowment held by the trust.
- (7) Any loans or borrowing under subsections (3) to (6) require the consent of the Scottish Ministers.
- (8) The Scottish Ministers may by regulations make provision as to the terms and conditions to apply to any such loans or borrowing.

## **8 Endowment schemes**

- (1) The Scottish Ministers are by regulations to make a scheme for the distribution of the income from endowments held by Health Boards and NHS trusts.
- (2) In devising the scheme, the Scottish Ministers must consult all Health Boards and NHS trusts.
- (3) The scheme must provide for the income from such endowments—
  - (a) in so far as it is distributed among Health Boards, to be used by Boards for purposes relating to services provided under the 1978 Act in or in relation to hospitals, or to research into any such matters as are mentioned in section 47(2) of that Act, or for purposes intended to preserve the memory of any person or category of person; and
  - (b) in so far as it is distributed among NHS trusts, to be used by trusts for purposes relating to services which it is their function to make arrangements for, administer or provide.

## **9 Directions in relation to endowments**

The Scottish Ministers may, without prejudice to section 2(5) of, and paragraph 6(1) of Schedule 7A to, the 1978 Act (which confer powers as to directions), give directions

to Health Boards and NHS trusts (either generally or to any particular Board or trust or in any particular case) for the purpose of or in connection with the exercise of their functions as to endowments; and a Board or trust must comply with any such directions given to it.

## **10 Holding of certain property by NHS trusts and Health Boards**

- (1) In section 12G (trust property of NHS trusts) of the 1978 Act, in subsection (3)(b), after the words “12D” there is inserted “or a request under section 6(1) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)”.
- (2) In section 82 (use and administration of certain endowments and other property held by Health Boards) of that Act, after subsection (2) there is inserted—

“(2A) All endowments and other property (including value in lieu of the property) vested in a Health Board by virtue of section 5 or 6(2) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4) is so vested free of any trust existing immediately before it is so vested (hereafter in this section referred to in relation to any such endowment or property as “the original trust”); but all such endowments and other property shall be held by the Health Board on trust for such purposes relating to services provided under this Act or in relation to hospitals, or to the functions of the Board with respect to research, as the Board may think fit.”.
- (3) In section 83 (power of Health Boards to hold property on trust) of that Act, after subsection (1) there is inserted—

“(1A) A Health Board shall have power to accept, hold and administer any property on trust for purposes relating to any service which it is the function of any NHS trust in the area of the Health Board to make arrangements for, administer or provide.”.