National Health Service Reform (Scotland) Act 2004

2004 asp 7

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The Bill for this Act of the Scottish Parliament was passed by the Parliament on 6th May 2004 and received Royal Assent on 11th June 2004

An Act of the Scottish Parliament to make provision in relation to the organisation and operation of the National Health Service and the promotion of health improvement; and for connected purposes.

PART 1 S

ORGANISATION AND OPERATION OF NATIONAL HEALTH SERVICE

Organisation

1 Dissolution of National Health Service trusts: modification of enactments S

(1) In the National Health Service (Scotland) Act 1978 (c. 29) (referred to in this Act as "the 1978 Act"), section 12A and Schedule 7A (establishment, functions, dissolution etc. of National Health Service trusts) are repealed.

(2) In section 82 of the 1978 Act, after subsection (2A) insert—

"(2B) All endowments and property held in trust transferred to a Health Board by an order under paragraph 26 of Schedule 7A (whenever made) are held by the Health Board free of any trust existing immediately before the transfer (hereafter in this section referred to in relation to any such endowment or property as "the original trust"); but all such endowments and property shall be held by the Health Board on trust for such purposes relating to services provided under this Act, or to the functions of the Board with respect to research, as the Board may think fit."

(3) Until the coming into force of subsection (1) so far as repealing Schedule 7A to the 1978 Act, paragraph 26 of that Schedule has effect with the insertion after sub-paragraph (1) of the following sub-paragraph—

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the National Health Service Reform (Scotland) Act 2004. (See end of Document for details)*

"(1A) For the avoidance of doubt, the reference to "property, rights and liabilities" in sub-paragraph (1) includes endowments and property held in trust."

Commencement Information

I1 S. 1(1) in force for specified purposes at 1.9.2004 by S.S.I. 2004/361, **art. 2(a)(i)**

I2 S. 1(2)(3) in force at 30.9.2004 by S.S.I. 2004/361, **art. 2(b)(i)**

[F1]2 Community health partnerships S

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Textual Amendments

F1 S. 2 repealed (1.4.2015) by Public Bodies (Joint Working) (Scotland) Act 2014 (asp 9), **ss. 71(4)**, 72(2); S.S.I. 2014/231, art. 3

3 Duty in relation to governance of staff S

After section 12H of the 1978 Act insert—

"**12I Duty in relation to governance of staff**

It shall be the duty of every Health Board and Special Health Board and of the Agency to put and keep in place arrangements for the purposes of—

(a) improving the management of the officers employed by it;

(b) monitoring such management; and

(c) workforce planning."

Commencement Information

I3 S. 3 in force at 30.9.2004 by S.S.I. 2004/361, **art. 2(b)(i)**

Equal opportunities

4 Equal opportunities S

After section 2C of the 1978 Act insert—

"**2D Equal opportunities**

(1) Health Boards, Special Health Boards and the Agency must discharge their functions in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements.

(2) In this section "equal opportunities" and "equal opportunity requirements" have the same meaning as in Section L2 (equal opportunities) of Part II of Schedule 5 to the Scotland Act 1998 (c. 46)."

Commencement Information
I4 S. 4 in force at 30.9.2004 by S.S.I. 2004/361, **art. 2(b)(i)**

Co-operation

5 Health Boards: duty of co-operation S

Before section 13 of the 1978 Act insert—

"12J Health Boards: co-operation with other Health Boards, Special Health Boards and the Agency

(1) In exercising their functions in relation to the planning and provision of services which it is their function to provide, or secure the provision of, under or by virtue of this Act, Health Boards shall co-operate with one another, and with Special Health Boards and the Agency, with a view to securing and advancing the health of the people of Scotland.

(2) In pursuance of subsection (1) a Health Board may—

(a) undertake to provide, or secure the provision of, services as respects the area of another Health Board, and the other Health Board may enter into arrangements with the first Health Board for that purpose,

(b) undertake with one or more other Health Boards to provide, or secure the provision of, services jointly as respects their areas.

(3) A Health Board undertaking to provide, or secure the provision of, services under subsection (2) may—

(a) enter into arrangements with another Health Board, a Special Health Board or the Agency in relation to the provision of such services,

(b) do anything in relation to the provision of such services which they could do for the purpose of providing, or securing the provision of, such services as respects their area.

(4) This section is without prejudice to any other power which a Health Board may have."

Commencement Information
I5 S. 5 in force at 30.9.2004 by S.S.I. 2004/361, **art. 2(b)(i)**

Powers of intervention

6 Powers of intervention in case of service failure S

After section 78 of the 1978 Act insert—

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Changes to legislation: *There are currently no known outstanding effects for the National Health Service Reform (Scotland) Act 2004. (See end of Document for details)*

"78A Powers in case of service failure

(1) This section applies where—
- (a) it is a function of a body or person under or by virtue of this Act to provide, or secure the provision of, a service, and
- (b) the Scottish Ministers consider that the body or person has failed, is failing or is likely to fail—
  - (i) to provide the service, or
  - (ii) to provide it to a standard which they regard as acceptable.

(2) The Scottish Ministers may, where they consider it necessary for the purpose of ensuring the provision of the service in question to a standard which they regard as acceptable, direct that specified functions of the body or person under or by virtue of this Act be performed, for a specified period and to a specified extent, by—
- (a) a body falling within subsection (4), or
- (b) one or more persons falling within subsection (5).

(3) In subsection (2), "specified" means specified in the direction.

(4) A body falls within this subsection if it is—
- (a) a Health Board,
- (b) a Special Health Board, or
- (c) the Agency.

(5) A person falls within this subsection if the person is—
- (a) an employee of a Health Board, a Special Health Board or the Agency,
- (b) a member of the staff of the Scottish Administration, or
- (c) an employee of a local authority.

(6) A body or person appointed by a direction given under subsection (2) to perform functions of a body or person referred to in subsection (1) is referred to in this section as an "appointed person".

(7) An appointed person must comply with a direction given under subsection (2).

(8) The remuneration and expenses of, and any other costs reasonably incurred by, an appointed person in performing the functions specified in the direction shall, unless otherwise specified in the direction, be paid by the body or person referred to in subsection (1).

(9) Anything done or omitted by an appointed person in performing the functions specified in the direction is to be regarded as done or omitted by the body or person referred to in subsection (1).

(10) A person dealing with an appointed person in good faith and for value is not concerned to inquire whether the appointed person is acting within the powers conferred by virtue of the direction.

(11) The Scottish Ministers may vary or withdraw a direction given under subsection (2).

78B Relationship of sections 77, 78 and 78A

The powers conferred by each of sections 77, 78 and 78A are without prejudice to the powers conferred by the other two sections.”

Commencement Information
I6 S. 6 in force at 30.9.2004 by S.S.I. 2004/361, **art. 2(b)(i)**

Public involvement

7 Public involvement S

After section 2A of the 1978 Act (inserted by section 9(2)) insert—

“**2B Duty to encourage public involvement**

(1) It is the duty of every body to which this section applies to take action with a view to securing, as respects health services for which it is responsible, that persons to whom those services are being or may be provided are involved in, and consulted on—
  (a) the planning and development, and
  (b) decisions to be made by the body significantly affecting the operation,
of those services.

(2) This section applies to—
  (a) Health Boards,
  (b) Special Health Boards, and
  (c) the Agency.

(3) For the purposes of subsection (1) a body is responsible for health services if they are health services—
  (a) which it is the function of the body to provide, or secure the provision of, and
  (b) which are provided, or to be provided, to individuals by—
    (i) the body, or
    (ii) another person on the body's behalf, at the body's direction or in accordance with an agreement made by the body with that other person.”

Commencement Information
I7 S. 7 in force at 30.9.2004 by S.S.I. 2004/361, **art. 2(b)(i)**

8 Dissolution of local health councils S

(1) Local health councils established by virtue of section 7 of the 1978 Act are dissolved on such date as the Scottish Ministers may by order made by statutory instrument specify.

(2) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

Commencement Information

I8 S. 8 in force at 1.2.2005 by S.S.I. 2004/361, **art. 2(d)**

PART 2 S

PROMOTION OF HEALTH IMPROVEMENT

9 Duty to promote health improvement S

(1) After section 1 of the 1978 Act insert—

"**1A Duty of the Scottish Ministers to promote health improvement**

(1) It is the duty of the Scottish Ministers to promote the improvement of the physical and mental health of the people of Scotland.

(2) The Scottish Ministers may do anything which they consider is likely to assist in discharging that duty including, in particular—
  (a) giving financial assistance to any person,
  (b) entering into arrangements or agreements with any person,
  (c) co-operating with, or facilitating or co-ordinating the activities of, any person.

(3) Subsections (1) and (2) are without prejudice to section 1 and any other provision of this Act conferring or imposing functions on the Scottish Ministers."

(2) After section 2 of that Act insert—

"**2A Duty of Health Board, Special Health Board and the Agency to promote health improvement**

(1) It is the duty of every Health Board and Special Health Board and of the Agency to promote the improvement of the physical and mental health of the people of Scotland.

(2) A Health Board, a Special Health Board or the Agency may do anything which they consider is likely to assist in discharging that duty including, in particular—
  (a) giving financial assistance to any person,
  (b) entering into arrangements or agreements with any person,

(c) co-operating with, or facilitating or co-ordinating the activities of, any person.

(3) Subsections (1) and (2) are without prejudice to any other provision of this Act conferring or imposing functions on a Health Board, a Special Health Board or the Agency.

(4) Anything done by a Health Board or Special Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on—

(a) the Health Board by the order under section 2(1)(a) which constituted the Board, or

(b) the Special Health Board by the order under section 2(1)(b) which constituted the Board,

as the case may be."

Commencement Information

I9 S. 9 in force at 1.1.2005 by S.S.I. 2004/361, **art. 2(c)**

PART 3 S

SUPPLEMENTARY

10 Ancillary provision S

(1) The Scottish Ministers may by order made by statutory instrument make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act.

(2) An order under this section may—

(a) make different provision for different purposes,

(b) modify any enactment, instrument or document.

(3) A statutory instrument containing an order under this section (except where subsection (4) applies) is subject to annulment in pursuance of a resolution of the Parliament.

(4) No order under this section containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.

11 Modification of enactments S

(1) Schedule 1 contains minor amendments and amendments consequential on the provisions of this Act.

(2) The enactments specified in column 1 of schedule 2 are repealed to the extent specified in column 2.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the National Health Service Reform (Scotland) Act 2004. (See end of Document for details)*

Commencement Information

I10 S. 11(1) in force for specified purposes at 30.7.2004 by S.S.I. 2004/335, **art. 2(a)**

I11 S. 11(1) in force for specified purposes at 30.9.2004 by S.S.I. 2004/361, **art. 2(b)(iii)**

12 Commencement and short title S

(1) The provisions of this Act, except section 10 and this section, come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(2) Different days may be appointed under this section for different purposes.

(3) This Act may be cited as the National Health Service Reform (Scotland) Act 2004.

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SCHEDULE 1 S

(introduced by section 11)

MINOR AND CONSEQUENTIAL AMENDMENTS

National Health Service (Scotland) Act 1978 (c. 29)

1 (1) The 1978 Act is amended as follows.

(2) In section 2 (constitution of Health Boards and Special Health Boards)—

(a) in subsection (1)(a), after "shall", where it second occurs, insert " , without prejudice to subsection (1B), ",

(b) in subsection (1B), for "(1)(b)" substitute " (1) ".

(3) In section 2C(4) (co-operation in discharging of functions to provide primary medical services), for "section" substitute " sections 12J and ".

(4) In section 12H(1) (duty of quality), for ", Special Health Board and NHS trust" substitute " and Special Health Board ".

(5) In section 75A (remission and repayment of charges and payment of travelling expenses), in subsection (2), for ", (c) or (d)" substitute " or (c) ".

(6) In section 79 (acquisition, use and disposal of land and moveable property), after subsection (2) insert—

"(2A) For the avoidance of doubt, the power to use heritable property conferred by subsection (1), and the power to dispose of land conferred by subsection (1A), include power to let the property or, as the case may be, land."

(7) In section 86 (accounts), in each of subsections (3) and (4), for "to (c)" substitute " and (b) ".

(8) In section 102 (State hospitals), in subsection (4)(b), for ", the Agency or an NHS trust" substitute " or the Agency " and for ", Agency or trust" substitute " or Agency ".

(9) In section 105 (orders, regulations and directions), in subsection (4)(b), for the words from "12A(1)" to the end substitute " or 70(2) ".

(10) In Schedule 1 (Health Boards), in paragraph 8A, for ", the Agency or an NHS trust" substitute " or the Agency ".

(11) In Schedule 5 (Common Services Agency), in paragraph 8A, for ", a Health Board or an NHS trust" substitute " or a Health Board ".

Commencement Information

I12 Sch. 1 para. 1(1)(2)(3)(6) in force at 30.9.2004 by S.S.I. 2004/361, **art. 2(b)(iv)**

National Health Service (Private Finance) Act 1997 (c. 56)

2 In section 1 (power of NHS trusts to enter into agreements) of the National Health Service (Private Finance) Act 1997 (c. 56)—

(a) in subsection (1), for "National Health Service trust" substitute "Health Board, a Special Health Board and the Common Services Agency for the Scottish Health Service ("the Agency") to enter into contracts",

(b) in each of subsections (3)(a) and (5), for "trust" substitute " Board or, as the case may be, the Agency ",

(c) in each of subsections (4) and (6), for "National Health Service trust" substitute " Health Board, a Special Health Board or the Agency ".

Commencement Information

I13 Sch. 1 para. 2 in force at 30.7.2004 by S.S.I. 2004/335, **art. 2(b)**

PROSPECTIVE

Regulation of Care (Scotland) Act 2001 (asp 8)

3 In section 77(1) (interpretation) of the Regulation of Care (Scotland) Act 2001, for the definition of "health body" substitute—

""health body" means a Health Board or Special Health Board constituted by order under section 2 of the National Health Service (Scotland) Act 1978 (c. 29);"

PROSPECTIVE

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

4 (1) The Public Appointments and Public Bodies etc. (Scotland) Act 2003 is amended as follows.

(2) In section 7 (investment and borrowing), in subsection (7), for "to (6)" substitute " or (4) ".

(3) In section 9 (directions in relation to endowments), for the words ", and paragraph 6(1) of Schedule 7A to, the 1978 Act (which confer" substitute " the 1978 Act (which confers ".

PROSPECTIVE

SCHEDULE 2 S

(introduced by section 11)

REPEALS

Enactment	***Extent of repeal***

National Health Service (Scotland) Act 1978 (c. 29)	Section 7. In section 8(1), the words “and any NHS trusts in the area or combined areas” and “, any such NHS trust”. In section 9, in subsection (5), the words “and, where the Secretary of State so directs, an NHS trust”; and in subsection (7), the words “or, where the Secretary of State so directs, NHS trusts”. In section 10(4), the words “the NHS trusts”, “or of the NHS trusts” and “or NHS trusts”. Sections 12AA to 12C. Sections 12D to 12G. In section 13, the words “NHS trusts,”. Section 17A(2)(e). In section 17D, subsection (1)(a); and in subsection (2), paragraph (a) of the definition of “NHS employee”. In section 27(1)(b), the words “or by an NHS trust”. Section 35A. Section 73(c). Section 74(c) and the preceding “or”. Section 75A(1)(d) and the preceding “and”. Section 77(1)(aa). In section 82(2A), the words “or 6(2)”. Section 83(2). In section 84, in subsection (1), the words “or an NHS trust” and “or NHS trust”; in subsection (2), the words “or NHS trust” and “or NHS trusts”; and in subsection (3), the words “or an NHS trust”. In section 84A, in subsection (1), the words “or NHS trust”; subsection (2); and in subsections (3) to (7), the words “, NHS trust or local health council”, “NHS trust or council” and “NHS trust or the council” in each place where they occur. Section 85AA(7). Section 85(1)(f). In section 85A(4)(a), the words “or a local health council”. In section 85B, subsection (2)(d); and, in each of subsections (3)(a) and (4)(b), the words “or NHS trust”. In section 86, subsection (1)(c) and the preceding “and”; and subsection (1B). In section 101, the words “, an NHS trust”. Section 105(1A). In section 108, in the definition of “health service hospital”, the words “or vested in an NHS trust”; and the definitions of “local

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	health council", "National Health Service trust" and "operational date". Schedule 7B.
Health Services Act 1980 (c. 53)	In Schedule 6, paragraph 1.
National Health Service and Community Care Act 1990 (c. 19)	Section 29(3) and (4)(a) and (c). Sections 31 to 33. Schedule 6. In Schedule 9, in paragraph 19, sub-paragraphs (4), (7)(a)(ii), (11) to (14), (16), (17), (19), (21) and (22)(b) and (d).
Health Authorities Act 1995 (c. 17)	In Schedule 1, paragraph 102(7).
National Health Service (Residual Liabilities) Act 1996 (c. 15)	Section 2(2)(b).
National Health Service (Primary Care) Act 1997 (c. 46)	Section 1(7). In section 3, subsection (2)(a); and in subsection (3), paragraph (a) of the definition of "NHS employee".
Health Act 1999 (c. 8)	Sections 46 to 49. Sections 53 to 55. In Schedule 4, paragraphs 44, 45, 62 and 63.
Public Finance and Accountability (Scotland) Act 2000 (asp 1)	In schedule 1, paragraph 2.
Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)	In section 18C, in subsection (1), the words "a National Health Service trust or", "in either case" and "the trust or as the case may be"; and in subsection (3), the words "the trust or as the case may be" and "the trust or, as the case may be,".
Community Care and Health (Scotland) Act 2002 (asp 5)	In section 22(1), in the definition of "NHS body", paragraph (c).
Scottish Public Services Ombudsman Act 2002 (asp 11)	In schedule 2, paragraph 4(c).
Freedom of Information (Scotland) Act 2002 (asp 13)	In schedule 1, in Part 4, paragraphs 30 and 31.
Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)	In section 5, in subsection (3), the words "and NHS trusts"; in subsection (5), the words from "(except" to "trust)"; and subsection (6). Section 6. In section 7, subsection (3)(b) and the preceding "or"; and subsections (5) and (6). In section 8, in each of subsections (1) and (2), the words "and NHS trusts"; and subsection (3)(b) and the preceding "and". In section 9, the words "and NHS trusts" and the words "or trust" in both places where they occur.Section 10(1) and (3).

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	In schedule 2, the entry “any National Health Service trust”.
Title Conditions (Scotland) Act 2003 (asp 9)	In section 46, in subsection (1), the words “a National Health Service trust, or of”; in subsection (2), the words “the trust or” in both places where those words occur, and the words “its or”; and in subsection (3), the words “the trust or” and “as the case may be”.
Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)	Section 3(3)(d) and (e).

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