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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 33**

**The National Health Service (Variation of the Areas of Greater Glasgow and Highland Health Boards) (Scotland) Order 2006**

**PART 1**

**GENERAL**

**Citation and commencement**

**1.**—(1) This Order may be cited as the National Health Service (Variation of the Areas of Greater Glasgow and Highland Health Boards) (Scotland) Order 2006.

(2) Subject to paragraph (3) this Order shall come into force on 1st March 2006.

(3) Articles 3, 10, 11, and 12 shall come into force on 1st April 2006.

**Interpretation**

**2.** In this Order—

“the Act” means the National Health Service (Scotland) Act 1978;

“the 1986 Regulations” means the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986(1);

“the 1995 Regulations” means the National Health Service (Pharmaceutical Services) (Scotland) Regulations(2);

“the Areas Order” means the National Health Service (Determination of Areas of Health Boards) (Scotland) Order 1974(3);

“dental list” has the meaning assigned to it in regulation 4 of the National Health Service (General Dental Services) (Scotland) Regulations 1996(4);

“endowment property” means property of any kind, corporeal or incorporeal, (but not including heritable property) which is held as endowment property, or in or on trust, by Argyll and Clyde Health Board, or by Argyll and Clyde Health Board endowment trustees, or is otherwise held by or on behalf of Argyll and Clyde Health Board as endowment property or in or on trust, together with any rights, liabilities and obligations related thereto;

“list” means any of—

- (a) a dental list;
- (b) an ophthalmic list;
- (c) a pharmaceutical list;
- (d) a provisional pharmaceutical list;

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(1) S.I.1986/965.

(2) S.I. 1995/414.

(3) S.I. 1974/266.

(4) S.S.I. 1996/177. Regulation 4 was amended by S.I. 1998/1663, S.S.I. 1999/51, S.I. 1999/724, S.S.I. 2000/188 and 2004/37.

“mobile practice” has the meaning assigned to it in regulation 2(1) of the 1986 Regulations<sup>(5)</sup>;  
 “ophthalmic list” in the case where the reference is to such a list prior to 1st April 2006, has the meaning assigned to it in regulation 6 of the 1986 Regulations<sup>(6)</sup> and, in any other case, means the first part of a list published in accordance with the regulations made under section 26(2) (a) of the Act<sup>(7)</sup> and in force on 1st April 2006;

“other rights and liabilities” means rights and liabilities of any kind whatsoever, not in connection with a contract of employment or related to any property;

“pharmaceutical list” has the meaning assigned to it in regulation 5 of the 1995 Regulations<sup>(8)</sup>;

“primary medical services performers list” has the meaning assigned to it in regulation 2 of the National Health Service (Primary Medical Performers Lists) (Scotland) Regulations 2004<sup>(9)</sup>;

“property” means the property of any kind, corporeal or incorporeal, including endowment property, (but not including heritable property) of Argyll and Clyde Health Board, together with any rights, liabilities and obligations related thereto;

“provisional pharmaceutical list” has the meaning assigned to it in regulation 6 of the 1995 Regulations.

## PART 2

### VARIATION OF HEALTH BOARD AREAS

#### **Variation of the areas of Greater Glasgow and Highland Health Boards, and termination of functions of Argyll and Clyde Health Board.**

3.—(1) The area for which—

- (a) Highland Health Board is constituted<sup>(10)</sup> is varied to include such of the area for which Argyll and Clyde Health Board is constituted as is by reference to the local government areas described in Schedule 1 to the Local Government etc. (Scotland) Act 1994 (“the 1994 Act”)<sup>(11)</sup>, situated in the area of Argyll and Bute Council; and
- (b) Greater Glasgow Health Board is constituted is varied to include such of the area for which Argyll and Clyde Health Board is constituted as is not by reference to the local government areas described in Schedule 1 to the 1994 Act situated in the area of Argyll and Bute Council,

and the functions of Argyll and Clyde Health Board are terminated for the area for which it is constituted; and accordingly the Areas Order is amended as provided in paragraph (2).

(2) In the Schedule to the Areas Order—

- (a) the entry for Argyll and Clyde is omitted;
- (b) in the entry for Greater Glasgow in Column 2 after “Eastwood” insert—  
 “, Inverclyde, Renfrew and (excluding so much of that district as is by reference to the local government areas described in Schedule 1 to the Local Government

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(5) S.I. 1986/965. The definition of “mobile practice” was inserted by S.S.I. 2001/62.

(6) S.I. 1986/965. Regulation 6 was amended by S.I. 1988/543, 1996/843, 1999/725, S.S.I. 1999/55, 2001/62, 2004/36 and 2004/169.

(7) Section 19 of the [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#) (“the 2005 Act”) substitutes a new section 26(2) of the Act, which will come into force on 1st April 2006.

(8) S.I. 1995/414. Regulation 5 was amended by S.I. 1997/696 and S.S.I. 1999/57.

(9) S.S.I. 2004/114.

(10) Argyll and Clyde, Greater Glasgow and Highland Health Boards are constituted by S.I. 1974/267.

(11) 1994 c. 39.

etc. (Scotland) Act 1994, situated in the area of Argyll and Bute Council) Dumbarton”; and

(c) in the entry for Highland in Column 2 after “Region” insert–

“, the district of Argyll and so much of the district of Dumbarton as is, by reference to the local government areas described in Schedule 1 to the Local Government etc. (Scotland) Act 1994, situated in the area of Argyll and Bute Council”.

(3) References to an area in this article, or in the Areas Order as amended by this article, by reference to a local government area described in an enactment are by reference to that enactment as enacted and not by reference to that enactment as subsequently amended or repealed.

## PART 3

### TRANSFER OF EMPLOYEES

#### **Scheme for the transfer of employees**

4.—(1) Argyll and Clyde, Greater Glasgow and Highland Health Boards shall, in accordance with the provisions of this Part, use their best endeavours to agree and make a scheme for the transfer of the employment of all persons employed by Argyll and Clyde Health Board to Greater Glasgow or Highland Health Board with effect from 1st April 2006.

(2) The scheme shall, in respect of each employee (whether identified individually or by reference to membership of a class or description of employee) of Argyll and Clyde Health Board, designate to which of Greater Glasgow or Highland Health Boards each such employee’s employment shall transfer.

(3) The scheme shall have effect to transfer the employment of persons to whom the scheme applies to the Health Board designated in respect of that person with effect from 1st April 2006.

(4) The scheme shall not have effect to transfer the employment of any person–

(a) whose contract of employment provides for the termination of that contract on 31st March 2006;

(b) who is dismissed with effect from 31st March 2006 (unless that person is later reinstated with effect from that date); or

(c) who terminates their contract of employment as at 31st March 2006.

#### **Duties in relation to the making of the scheme regarding employees and criteria to be considered**

5.—(1) It shall be the duty of Argyll and Clyde, Greater Glasgow and Highland Health Boards in agreeing and making the scheme under article 4(1) to designate that the employment of an employee employed as respects part of the area of Argyll and Clyde Health Board will transfer to the Health Board which, following the variation in accordance with article 3, is constituted for that area.

(2) Where it appears to Argyll and Clyde, Greater Glasgow and Highland Health Board that the criterion in paragraph (1) is not adequate to designate to which of Greater Glasgow or Highland Health Boards the employment of an employee should transfer, they may apply other criteria in respect of that employee as they think appropriate.

(3) In the absence of agreement between Argyll and Clyde, Greater Glasgow and Highland Health Boards as to which of Greater Glasgow or Highland Health Boards the employment of any employee (whether identified individually or by reference to membership of a class or description of employee)

should transfer, the employment of that employee shall transfer to Greater Glasgow Health Board with effect from 1st April 2006.

(4) It shall be the duty of Argyll and Clyde Health Board to provide Greater Glasgow and Highland Health Boards with all information held by it, or on its behalf which Greater Glasgow and Highland Health Boards require to prepare and implement such scheme.

### **Provision in relation to employees transferred**

6.—(1) Upon the transfer of the employment of an employee in accordance with article 4(3) or article 5(3)–

- (a) a contract of employment shall not be terminated by the transfer but shall have effect as if originally made between the employee transferred and the Health Board to which the employment of the employee is transferred;
- (b) all of the rights, powers, duties and liabilities of Argyll and Clyde Health Board under or in connection with a contract of employment shall transfer to the Health Board to which the employment of the employee is transferred; and
- (c) anything done before the transfer by or in relation to Argyll and Clyde Health Board in respect of any contract of employment or an employee shall be deemed to have been done by or in relation to the Health Board to which the employment of the employee is transferred.

(2) The provisions of this Part are without prejudice to any right of any employee whose employment is transferred in accordance with article 4(3) or article 5(3) to terminate that employee’s contract of employment if a substantial change is made to that employee’s detriment in that employee’s terms and conditions; but no such right shall arise by reason only of the change in employer effected by article 4(3) or article 5(3).

(3) Where at the time of transfer in accordance with article 4(3) or article 5(3) there exists–

- (a) a collective agreement made by or on behalf of Argyll and Clyde Health Board with a trade union recognised by Argyll and Clyde Health Board in respect of an employee whose contract is transferred; or
- (b) a workforce agreement between Argyll and Clyde Health Board and workers employed by Argyll and Clyde Health Board in respect of an employee whose contract is transferred,

then, without prejudice to any rule of law as to the enforceability of such agreements, that agreement in its application to that employee shall, after the transfer, have effect as if made by or on behalf of the Health Board to which the employment of the employee is transferred, and anything done under or in connection with it by or in relation to Argyll and Clyde Health Board before the transfer, shall, after the transfer, be deemed to have been done by or in relation to the Health Board to which the employment of the employee is transferred.

(4) In this article–

“collective agreement” has the meaning given to it in section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992(12); and

“workforce agreement” has the meaning given to it in regulation 2 of the Working Time Regulations 1998(13).

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(12) 1992 c. 52.

(13) S.I. 1998/1833.

## PART 4

### TRANSFER OF PROPERTY AND OTHER RIGHTS AND LIABILITIES

#### **Scheme as to the transfer of property and other rights and liabilities**

7.—(1) Greater Glasgow and Highland Health Boards shall use their best endeavours to agree and make a scheme, on such terms and subject to such conditions (if any) as may be so agreed as to which of Greater Glasgow or Highland Health Boards—

- (a) the property (whether designated by item or by category) ; and
- (b) all other rights and liabilities (whether designated individually or by category),

of Argyll and Clyde Health Board shall transfer and vest in on 1st April 2006.

(2) The scheme shall have effect to transfer the property to, and vest such property in, Greater Glasgow or Highland Health Board (as the case may be), and to transfer the other rights and liabilities of Argyll and Clyde Health Board to Greater Glasgow or Highland Health Board (as the case may be), in whom such rights and liabilities shall vest in accordance with the scheme's terms with effect from 1st April 2006.

(3) In the absence of agreement between Greater Glasgow and Highland Health Boards as to which of them any property or any other rights or liabilities of Argyll and Clyde Health Board shall transfer, or as to the terms and conditions of such transfer, such property shall transfer to, and vest in, and such other rights and liabilities (as the case may be) shall transfer to and vest in Greater Glasgow Health Board with effect from 1st April 2006, on (so far as is applicable and legally possible) the same terms and conditions as they were held by Argyll and Clyde Health Board immediately prior to that date.

(4) Greater Glasgow Health Board and Highland Health Board shall hold any endowment property transferred to them in terms of Article 7(2) or (in the case of Greater Glasgow Health Board) Article 7(3)), on trust as endowment funds.

#### **Duties in relation to the making of the scheme as to the transfer of property and criteria to be considered**

8.—(1) It shall be the duty of Greater Glasgow and Highland Health Boards in agreeing and making the scheme under article 7(1) to ensure that property situated in, or other rights and liabilities as respects, a place which will (following the variation of area in accordance with article (3)) be within the area of Greater Glasgow or Highland Health Board respectively, transfers to which of those Health Boards as will be the Health Board for that place.

(2) Where it appears to Greater Glasgow and Highland Health Board that the criterion in paragraph (1) is not adequate to designate to which of Greater Glasgow or Highland Health Boards any property or any other rights and liabilities are to transfer to and vest in, they may apply other criteria in respect of such property or other rights and liabilities as they think appropriate.

(3) It shall be the duty of Argyll and Clyde Health Board to co-operate with Greater Glasgow and Highland Health Boards in the preparation of the scheme under article 7(1), and to provide Greater Glasgow and Highland Health Boards with all information held by it, or on its behalf which Greater Glasgow and Highland Health Boards require to prepare and implement such scheme.

#### **Publication of Schemes**

9.—(1) It shall be the duty of Argyll and Clyde, Greater Glasgow and Highland Health Boards to publish a summary of the scheme made under article 4(1) (which summary shall not include the names of individual employees) no later than 31st March 2006 on the web-sites of each of these

Health Boards, in at least one national newspaper circulating throughout Scotland, and in at least one local newspaper circulating in each of the Health Board areas.

(2) It shall be the duty of Argyll and Clyde, Greater Glasgow and Highland Health Boards to publish the scheme made under article 7(1) no later than 31st March 2006 on the web-sites of each of these Health Boards, in at least one national newspaper circulating throughout Scotland, and in at least one local newspaper circulating in each of the Health Board areas.

## PART 5

### PROVISIONS IN RESPECT OF LISTS OF ARGYLL AND CLYDE HEALTH BOARDS

#### **Provisions in respect of the dental, ophthalmic, pharmaceutical and provisional pharmaceutical lists of Argyll and Clyde Health Board**

**10.**—(1) Each list of Greater Glasgow Health Board and Highland Health Board respectively as at 1st April 2006 shall be deemed to include the entries on the list of that description of Argyll and Clyde Health Board as at 31st March 2006, in so far as those entries relate to places or premises which are situated in the area of Greater Glasgow Health Board or the area of Highland Health Board respectively on 1st April 2006.

(2) Any action taken by or on behalf of Argyll and Clyde Health Board prior to 1st April 2006 in relation to any of its lists (or in relation to the entries thereon) which relates to that list as it affects places or premises which are situated in the area of Greater Glasgow Health Board or the area of Highland Health Board respectively on 1st April 2006, shall have effect on and after 1st April 2006 as if such action had been taken by Greater Glasgow Health Board or Highland Health Board respectively in relation to the list of that description of Greater Glasgow Health Board or Highland Health Board, as the case may be.

(3) Any action taken by or on behalf of any other person prior to 1st April 2006 in relation to any list of Argyll and Clyde Health Board (or in relation to the entries thereon) which relates to that list as it affects places or premises which are situated in the area of Greater Glasgow Health Board or the area of Highland Health Board respectively on 1st April 2006, shall have effect on and after 1st April 2006 as if such action had been taken in relation to the list of that description of Greater Glasgow Health Board or Highland Health Board, as the case may be.

#### **Provisions regarding the ophthalmic list of Argyll and Clyde Health Board in relation to mobile practices**

**11.**—(1) The ophthalmic lists of both Greater Glasgow Health Board and Highland Health Board respectively as at 1st April 2006 shall be deemed to include the entries relating to mobile practices on the ophthalmic list of Argyll and Clyde Health Board as at 31st March 2006.

(2) Any action taken by or on behalf of Argyll and Clyde Health Board prior to 1st April 2006 in relation to its ophthalmic list as it relates to mobile practices, or in relation to the entries relating to mobile practices on its ophthalmic list, shall have effect on and after 1st April 2006 as if such action had been taken by Greater Glasgow Health Board and Highland Health Board in relation to their ophthalmic lists.

(3) Any action taken by or on behalf of any other person prior to 1st April 2006 in relation to the ophthalmic list of Argyll and Clyde Health Board as it relates to mobile practices, or in relation to the entries relating to mobile practices on that ophthalmic list, shall have effect on and after 1st April 2006 as if such action had been taken in relation to the ophthalmic lists of Greater Glasgow Health Board and Highland Health Board.

### **Provisions regarding the primary medical services performers list of Argyll and Clyde Health Board**

12.—(1) The primary medical services performers' lists of both Greater Glasgow Health Board and Highland Health Board respectively as at 1st April 2006 shall be deemed to include the entries on the primary medical services performers list of Argyll and Clyde Health Board as at 31st March 2006.

(2) Any action taken by or on behalf of Argyll and Clyde Health Board prior to 1st April 2006 in relation to its primary medical services list (or in relation to the entries thereon), shall have effect on and after 1st April 2006 as if such action had been taken by Greater Glasgow Health Board and Highland Health Board in relation to the primary medical services lists of Greater Glasgow Health Board or Highland Health Board.

(3) Any action taken by or on behalf of any other person prior to 1st April 2006 in relation to the primary medical services list of Argyll and Clyde Health Board (or in relation to the entries thereon) shall have effect on and after 1st April 2006 as if such action had been taken in relation to the primary medical services lists of Greater Glasgow Health Board and Highland Health Board.

St Andrew's House,  
Edinburgh  
26th January 2006

*ANDREW P KERR*  
A member of the Scottish Executive