



National Health Service (Scotland) Act 1978

1978 CHAPTER 29

PART I

ORGANISATION

Secretary of State

1 General duty of Secretary of State

- (1) It shall continue to be the duty of the Secretary of State to promote in Scotland a comprehensive and integrated health service designed to secure—
 - (a) improvement in the physical and mental health of the people of Scotland, and
 - (b) the prevention, diagnosis and treatment of illness,and for that purpose to provide or secure the effective provision of services in accordance with the provisions of this Act.
- (2) The services so provided shall be free of charge, except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed.

Administrative bodies

2 Health Boards

- (1) The Secretary of State shall by order constitute in accordance with Part I of Schedule 1 boards for such areas as he may by order determine, for the purpose of exercising functions with respect to the administration of such health services provided by him as he may so determine, and for the purpose of making arrangements on his behalf for the provision of the services mentioned in Part II; and those boards shall be called Health Boards.

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- (2) The order or orders made under subsection (1) determining the areas for which the Health Boards are to be constituted shall be separate from the order or orders constituting those Boards; and, before making any order determining such an area, the Secretary of State shall consult with such bodies and organisations as appear to him to be concerned.
- (3) The Secretary of State may by order vary the area of any Health Board, whether or not the variation involves the constitution of a new Board, or the termination of the functions of an existing Board; and, before making such an order, the Secretary of State shall consult with such bodies and organisations as appear to him to be concerned.
- (4) Any order under subsection (3) may make provision for any supplementary and incidental matters for which it appears to the Secretary of State to be necessary or expedient to provide, in particular for the transfer of officers and of property and liabilities.
- (5) In carrying out the purposes mentioned in subsection (1) each Health Board shall act subject to, and in accordance with, such regulations as may be made, and such directions as may be given, by the Secretary of State; and such regulations and directions may be made or given generally or to meet the circumstances of a particular area or matter.
- (6) Regulations under subsection (5) shall make provision requiring each Health Board to submit to the Secretary of State a scheme for the exercise of their functions, and enabling the Secretary of State to approve any such scheme with or without modifications, and to make such a scheme in the event of the failure of any Health Board to do so.
- (7) A Health Board may at any time, and if directed by the Secretary of State shall, within such period as he may specify, submit a new scheme for the exercise of their functions, and regulations making the provision mentioned in subsection (6) shall, with any necessary modifications, apply to any such scheme.
- (8) A Health Board shall, notwithstanding that it is exercising functions on behalf of the Secretary of State, be entitled to enforce any rights acquired, and shall be liable in respect of any liabilities incurred (including liability in damages for wrongful or negligent acts or omissions), in the exercise of those functions in all respects as if the Health Board were acting as a principal; and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the Health Board in its own name.
- (9) A Health Board shall not be entitled to claim in any proceedings any privilege of the Crown in respect of the recovery or production of documents; but this subsection shall be without prejudice to any right of the Crown to withhold, or procure the withholding from production of, any document on the ground that its disclosure would be contrary to the public interest.
- (10) Schedule 1 shall have effect in relation to the Boards constituted under this section.
- (11) Where it appears to the Secretary of State to be expedient in the interests of efficiency that a joint committee should be established for the areas of two or more Health Boards for the purpose of exercising some but not all of their functions, the Secretary of State may by order constitute such a joint committee and provide for the exercise by that committee of such of those functions as may be specified in the order, and for the application, with such modifications as may be so specified, to that committee of any

provisions of this Act relating to those functions, and for any of the matters for which, in relation to a Health Board, provision is or may be made by or under Part II of Schedule 1.

3 Scottish Medical Practices Committee

- (1) With a view to securing that the number of medical practitioners undertaking to provide general medical services in the areas of different Health Boards, or in different parts of those areas, is adequate, the Secretary of State shall constitute a committee to be called the Scottish Medical Practices Committee (hereafter in this Act referred to as "the Medical Practices Committee"), for the purpose of considering and determining applications made for inclusion in any list kept by a Health Board of medical practitioners undertaking to provide such services for persons in the Board's area.
- (2) Schedule 2 shall have effect in relation to the Medical Practices Committee.

4 Scottish Dental Estimates Board

- (1) For the purpose of carrying out such duties as may be prescribed with respect to the approval of estimates of dental treatment and appliances, regulations shall make provision for constituting a board, to be called the Scottish Dental Estimates Board, (hereafter in this Act referred to as "the Dental Estimates Board"), of whom the chairman and a majority of members shall be dental practitioners.
- (2) Regulations made in pursuance of this section shall include provision, in relation to the Dental Estimates Board, for any of the matters for which, in relation to a Health Board, provision is or may be made by or under Part II of Schedule 1.

National advisory bodies

5 Scottish Health Service Planning Council

- (1) There shall be constituted a Council, to be called the Scottish Health Service Planning Council (hereafter in this Act referred to as "the Planning Council"), and it shall be the duty of the Planning Council to advise the Secretary of State on the exercise of his functions under this Act, whether at his request or on their own initiative.
- (2) Schedule 3 shall have effect in relation to the Planning Council.
- (3) For the purpose of performing their duty under this section the Planning Council shall keep under review the development of the health service in Scotland as a whole and in the various parts of Scotland.
- (4) The Planning Council shall make an annual report to the Secretary of State on their proceedings and on the proceedings of any committee appointed by them, and the Secretary of State shall lay that report before Parliament with such comments (if any) as he thinks fit.

6 National Consultative Committees

- (1) Where the Secretary of State is satisfied that a committee has been formed which is representative of any, some or all of the professions engaged in the provision of

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care or treatment under this Act, and that it is in the interests of the health service to recognise the committee for the purposes of this Act, he shall so recognise it, and any such committee shall be known as a national consultative committee.

- (2) The professional teaching interests in relation to any such profession shall be represented on the national consultative committee by such number of members, appointed in such manner, as may be prescribed.
- (3) Where the Secretary of State considers it necessary, he may, with the agreement of a national consultative committee, appoint additional persons to be members of that committee.
- (4) It shall be the general function of a national consultative committee to advise the Planning Council on the provision of services under this Act, being services with which that committee is concerned; but, except in so far as regulations otherwise provide, such a committee shall not concern itself with the remuneration and conditions of service of practitioners or other persons of whom it is representative.
- (5) In addition to any other functions which a national consultative committee may exercise, they shall exercise such functions as may be prescribed.
- (6) The Planning Council shall consult with the national consultative committees on such occasions and to such extent as may be prescribed, and may ask any such committee to undertake, on behalf of the Planning Council, such investigation as the Planning Council think fit.
- (7) A national consultative committee shall have power to appoint sub-committees, whether jointly with another national consultative committee or otherwise, and to appoint to any such sub-committee persons who are not members of the national consultative committee or committees concerned.
- (8) The Secretary of State shall defray the reasonable expenses of national consultative committees, and shall pay to members of such committees and sub-committees thereof such travelling and other allowances, including compensation for loss of remunerative time, as he may, with the approval of the Minister for the Civil Service, from time to time determine.

Local advisory bodies

7 Local health councils

- (1) Every Health Board shall, within such period as the Secretary of State may specify, submit to him a scheme for the establishment of a local health council or councils for their area or for such districts covering their whole area as the Board thinks fit; and it shall be the general function of any such council to represent the interests of the public in the health service in the area or district for which they have been established.
- (2) A scheme under subsection (1) shall provide for the appointment by local authorities in or for the area or district concerned of such number of members of the local health council as may be prescribed, and for the appointment by the Health Board, after consultation with such other organisations as may be specified in the scheme, of such number of members as may be so specified.
- (3) The Secretary of State may approve, with or without modifications, any scheme submitted to him under subsection (1), or may refuse to approve it.

- (4) A Health Board may at any time, and if directed by the Secretary of State shall, within such period as he may specify, submit a new scheme under this section, and subsection (3) shall apply to any such new scheme.
- (5) The members of a local health council may appoint one of their own number as the chairman of the council.
- (6) The Secretary of State shall pay to the members of a local health council, and of the committees and sub-committees thereof, such travelling and other allowances, including compensation for loss of remunerative time, as he may with the approval of the Minister for the Civil Service, from time to time determine.
- (7) Allowances shall not be paid under subsection (6) except in connection with the performance of such powers or duties, in such circumstances, as the Secretary of State may determine.
- (8) Health Boards shall consult with local health councils on such occasions and to such extent as may be prescribed.
- (9) Regulations may make provision—
 - (a) enabling local health councils to consider questions relating to the health service in their area or district, whether at the request of their Health Board or otherwise, and to advise the Health Board thereon;
 - (b) enabling or requiring local health councils to submit reports to their Health Board on the operation of the health service in their area or district;
 - (c) requiring local health councils to submit annual reports on their activities to their Health Board and requiring Health Boards to transmit a copy of any such report to the Secretary of State;
 - (d) enabling local health councils to obtain information from their Health Board on such subjects and subject to such conditions as may be prescribed ;
 - (e) enabling or requiring members of a local health council to visit establishments administered by their Health Board, subject to such conditions as may be prescribed ;
 - (f) relating to the submission of schemes under subsection (1) and to the functions, procedures, staffing and expenses of local health councils.

8 University Liaison Committees

- (1) The Secretary of State may by order constitute, in accordance with Schedule 4, for the area of a Health Board or for the combined areas of two or more Health Boards, a University Liaison Committee for the purpose of advising that Board or those Boards on the administration of the health service in the area or combined areas so far as relating to the provision of facilities for undergraduate or post-graduate clinical teaching or for research, and for the purpose of advising that Board or those Boards and the university or universities concerned on any matter of common interest to them.
- (2) Paragraphs 11 to 15 of Schedule 1 (other than sub-paragraph (d) of paragraph 11) shall have effect in relation to the Committees constituted under this section.

9 Local consultative committees

- (1) Where, after consultation with the Health Board concerned, the Secretary of State is satisfied that a committee formed for the area of the Board is representative—

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- (a) of the medical practitioners of that area, or
 - (b) of the dental practitioners of that area, or
 - (c) of the nurses and midwives of that area, or
 - (d) of the pharmacists of that area, or
 - (e) of the ophthalmic and dispensing opticians of that area,
- the Secretary of State shall recognise that committee.
- (2) Any committee so recognised shall be called—
- (a) the area medical committee,
 - (b) the area dental committee,
 - (c) the area nursing and midwifery committee,
 - (d) the area pharmaceutical committee, or
 - (e) the area optical committee,
- as the case may be, for the area concerned.
- (3) Where, after consultation with the Health Board concerned, the Secretary of State is satisfied that a committee formed for the area of any Health Board is representative of any other profession engaged in the provision of care or treatment under this Act, and that it is in the interests of the health service to recognise that committee for the purposes of this Act, he may so recognise it.
- (4) Where, after consultation with the Health Board concerned, the Secretary of State is satisfied that a committee formed for the area of any Health Board is representative of two or more of the professions mentioned in subsection (1) or (3), and that it is in the interests of the health service to recognise that committee for the purposes of this Act, he may so recognise it.
- (5) It shall be the general function of a committee recognised under this section to advise the Health Board for its area on the provision of services under this Act, being services with which that committee is concerned in that area, but, except in so far as regulations otherwise provide, in exercising functions conferred by or under this section, such a committee shall not concern itself with the remuneration and conditions of service of practitioners or other persons of whom it is representative.
- (6) In addition to any other functions which committees recognised under this section may exercise, they shall exercise such functions as may be prescribed.
- (7) In exercising their functions under this Act, Health Boards shall consult with committees recognised under this section on such occasions and to such extent as may be prescribed.
- (8) Any committee recognised under this section may, with the approval of the Health Board for its area, delegate any of its functions, with or without restrictions or conditions, to sub-committees and may appoint to any sub-committee persons who are not members of the committee.
- (9) Health Boards shall defray the reasonable expenses of committees recognised under this section and shall pay to members of such committees and sub-committees thereof such travelling and other allowances, including compensation for loss of remunerative time, as the Secretary of State may, with the approval of the Minister for the Civil Service, from time to time determine; but payments under this subsection may only be made as respects the exercise of functions conferred by or under this section.

*Agency for Secretary of State and other bodies***10 Common Services Agency**

- (1) There shall be constituted a body, to be called the Common Services Agency for the health service (hereafter in this Act referred to as " the Agency "), which shall have the functions conferred on it by this section.
- (2) Schedule 5 shall have effect in relation to the Agency.
- (3) The Secretary of State may by order delegate to the Agency such of his functions under this Act as he considers appropriate.
- (4) After consultation with the Planning Council, the Health Boards and any other interests which appear to the Secretary of State to be concerned, the Secretary of State, where he considers it expedient for the efficient discharge of the functions of the Health Boards, may by order provide that the performance of such functions as he may determine shall stand referred to the Agency and be discharged by it on behalf of any or all of the Health Boards.
- (5) The Secretary of State may by order withdraw from the Agency any function delegated or referred to it under this section.
- (6) The Agency shall provide such services and carry out such tasks for bodies associated with the health service as the Secretary of State and those bodies may agree, and on such terms and conditions as may be agreed.
- (7) In carrying out its functions the Agency shall act subject to, and in accordance with, such directions as may be given by the Secretary of State.
- (8) The Agency shall, notwithstanding that it is exercising functions on behalf of the Secretary of State or any other body associated with the health service, be entitled to enforce any rights acquired, and shall be liable in respect of any liabilities incurred (including liability in damages for wrongful or negligent acts or omissions), in the exercise of those functions, in all respects as if the Agency were acting as a principal; and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the Agency in its own name.
- (9) The Agency shall not be entitled to claim in any proceedings any privilege of the Crown in respect of the recovery or production of documents; but this subsection shall be without prejudice to any right of the Crown to withhold, or procure the withholding from production of, any document on the ground that its disclosure would be contrary to the public interest.

*Trusts***11 Scottish Hospital Trust**

- (1) The Secretary of State shall constitute a Scottish Hospital Trust (hereafter in this Act referred to as " the Hospital Trust").
- (2) Schedule 6 shall have effect in relation to the Hospital Trust.

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- (3) It shall be the duty of the Hospital Trust to hold and administer endowments which were transferred to the Hospital Trust under section 2 of the Hospital Endowments (Scotland) Act 1971.
- (4) References in this Act to a "relevant endowment" are references to an endowment such as is referred to in subsection (3).
- (5) The Hospital Trust shall cause proper accounts to be kept of the capital, income and expenditure vested in, received by, and expended by them, and shall cause an abstract thereof to be published in such manner as the Secretary of State may approve.
- (6) The Hospital Trust shall give to Health Boards reasonable access to the accounts above mentioned.
- (7) The Hospital Trust shall make an annual report of their proceedings to the Secretary of State, which report shall include an abstract of the accounts; and the Secretary of State shall lay any such report annually before each House of Parliament.

12 Scottish Hospital Endowments Research Trust

- (1) The Secretary of State shall constitute a Scottish Hospital Endowments Research Trust (hereafter in this Act referred to as "the Research Trust").
- (2) Schedule 7 shall have effect in relation to the Research Trust.
- (3) It shall be the duty of the Research Trust to hold and administer funds on trust for the purpose of assisting the conduct of research into any matters relating to the causation, prevention, diagnosis or treatment of illness or to the development of medical or surgical appliances, including hearing aids.
- (4) The Research Trust shall have power to accept, hold and administer, in accordance with Schedule 7, any property on trust for the purpose aforesaid.
- (5) Before deciding to give assistance in any particular case the Research Trust shall consult with any advisory committee on medical research which the Secretary of State may from time to time direct them to consult.
- (6) The Research Trust shall cause proper accounts to be kept of the capital, income and expenditure vested in, received by, and expended by them, and shall cause such accounts to be audited and an abstract thereof to be published in such manner as the Secretary of State may approve.
- (7) The Research Trust shall make an annual report of their proceedings to the Secretary of State, which report shall include an abstract of the accounts; and the Secretary of State shall lay any such report annually before each House of Parliament.

Co-operation and assistance

13 Co-operation between Health Boards and other authorities

In exercising their respective functions, Health Boards, local authorities and education authorities shall co-operate with one another in order to secure and advance the health of the people of Scotland.

14 Designated medical officers

- (1) Every Health Board shall, in accordance with regulations, designate a medical officer or officers of the Board for the purpose of exercising such functions on behalf of local authorities as may be assigned to him by or under any enactment and such other functions as local authorities may, with the agreement of the Health Board, assign to him.
- (2) Any such medical officer shall, in any enactment, be known as " the designated medical officer ".
- (3) A designated medical officer may exercise any powers conferred by any enactment on an authorised officer of a local authority if the local authority authorises him in writing to do so.
- (4) A designated medical officer may appoint one or more persons approved by the Board to act as his depute or deputies, and all things required or authorised by law to be done by or to the designated medical officer may be done by or to any depute so appointed by him; and any reference in any enactment or instrument made under any enactment to the designated medical officer shall, where the depute is acting for the officer, include a reference to the depute.

15 Supply of goods and services to local authorities, etc.

- (1) The Secretary of State, a Health Board or the Agency may—
 - (a) purchase and store and, on such terms and conditions as may be agreed, supply to persons providing general medical, general dental or general ophthalmic services, or pharmaceutical services under Part II such equipment, goods or materials as may be prescribed;
 - (b) purchase and store and, on such terms and conditions as may be agreed, supply to local authorities, education authorities, government departments and such public bodies or classes of public bodies as may be determined by the Secretary of State, any equipment, goods or materials of a kind used in the health service ;
 - (c) provide local authorities and education authorities, on such terms and conditions as may be agreed, with any administrative, professional or other services of persons employed by the Secretary of State, a Health Board or the Agency;
 - (d) permit local authorities and education authorities, on such terms and conditions as may be agreed, to use premises occupied for the purposes of the health service;
 - (e) permit local authorities and education authorities, on such terms and conditions as may be agreed, to use any vehicle, plant or apparatus belonging to a Health Board or the Agency ;
 - (f) permit education authorities, on such terms and conditions as may be agreed, and for the purpose of providing special education within the meaning of section 5 of the Education (Scotland) Act 1962, to use any premises or facilities provided under section 36;
 - (g) carry out, on such terms and conditions as may be agreed, maintenance work in connection with land or buildings for the maintenance of which a local authority or education authority is responsible.

- (2) In paragraphs (a) and (b) of subsection (1), the power to supply equipment, goods and materials includes a power to make arrangements with third parties for the supply by them of those things.
- (3) The Secretary of State may by order provide that, in relation to a vehicle which is made available by him in pursuance of this section and is used in accordance with the terms on which it is so available, the Vehicles (Excise) Act 1971 and Part VI of the Road Traffic Act 1972 shall have effect with such modifications as are specified in the order.

16 Assistance to voluntary organisations

- (1) The Secretary of State may assist any voluntary organisation whose activities include the provision of a service similar or related to a service provided under this Act by permitting them to use premises belonging to him on such terms as may be agreed, and by making available goods, materials, vehicles or equipment (whether by way of gift, loan or otherwise) and the services of any staff who are employed in connection with the premises or other things which he permits the organisation to use.
- (2) The Secretary of State may by order provide that, in relation to a vehicle which is made available by him in pursuance of this section and is used in accordance with the terms on which it is so available, the Vehicles (Excise) Act 1971 and Part VI of the Road Traffic Act 1972 shall have effect with such modifications as are specified in the order.
- (3) In this section, " voluntary organisation " means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority.

17 Furnishing of overseas aid by Health Boards and the Agency

- (1) Any Health Board and the Agency shall each have power—
 - (a) with the consent of the Secretary of State, to enter into, and carry out, agreements with the appropriate Minister under which they act, at the expense of that Minister, as the instrument by means of which technical assistance is furnished by him in exercise of the power conferred on him by section 1 (1) of the Overseas Aid Act 1966; and
 - (b) with the consent of the Secretary of State and the appropriate Minister, to enter into and carry out agreements under which they furnish to any authority or person outside the United Kingdom, on such terms as to payment as may be agreed, technical or any other assistance, other than financial, for any purpose mentioned in the said section 1(1).
- (2) In this section " appropriate Minister " means the Minister for the time being discharging the functions expressed by the said Act of 1966 to be conferred on the Minister of Overseas Development.