



National Health Service and Community Care Act 1990

1990 CHAPTER 19

PART II

THE NATIONAL HEALTH SERVICE: SCOTLAND

Miscellaneous

41 Schemes for meeting losses and liabilities etc. of certain health service bodies.

After section 85A of the 1978 Act there shall be inserted the following section—

“85B Schemes for meeting losses and liabilities etc. of certain health service bodies.

- (1) The Secretary of State may by regulations made with the consent of the Treasury establish a scheme whereby any of the bodies mentioned in subsection (2) may make provision to meet—
 - (a) expenses arising from any loss of or damage to their property; and
 - (b) liabilities to third parties for loss, damage (including solatium) or injury arising out of the carrying out of the functions of the bodies concerned.
- (2) The bodies referred to in subsection (1) are—
 - (a) Health Boards;
 - (b) the Agency;
 - (c) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984; and
 - (d) NHS trusts,

but a scheme under this section may limit the class or description of bodies which are eligible to participate in it.

Changes to legislation: National Health Service and Community Care Act 1990, Section 41 is up to date with all changes known to be in force on or before 24 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (3) Without prejudice to the generality of the power conferred by subsection (1), a scheme under this section may—
- (a) provide for the scheme to be administered by the Secretary of State, the Agency, or a Health Board or NHS trust specified in the scheme;
 - (b) require any body which participates in the scheme to make payments in accordance with the scheme; and
 - (c) provide for the making of payments for the purposes of the scheme by the Secretary of State.
- (4) Without prejudice to any other power of direction conferred on the Secretary of State,—
- (a) if the Secretary of State so directs, any body which is eligible to participate in a scheme shall do so; and
 - (b) where a scheme provides for it to be administered by the Secretary of State, the Agency or a Health Board or NHS trust shall carry out such functions in connection with the administration of the scheme as the Secretary of State may direct.
- (5) Neither the Secretary of State nor any body administering a scheme under this section shall, by virtue of their activities under the scheme, be regarded as carrying on insurance business for the purposes of the Insurance Companies Act 1982.”

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4A(1)(c) and word added by [S.I. 2006/1056 Sch. para. 5\(a\)\(ii\)](#) (This amendment comes into force on the day on which 2005 asp 13, s. 20 comes into force, see art. 1(2)(b))