

## SCHEDULES

### SCHEDULE 2

Section 4(1).

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### *Property, rights and liabilities of RHAs, DHAs, FHSAs and SHAs*

- 1 (1) On 1st April 1996—
- (a) all property held by a Regional Health Authority immediately before that date, and
  - (b) all rights and liabilities to which a Regional Health Authority are entitled or subject immediately before that date,
- shall by virtue of this sub-paragraph be transferred to and vest in the Secretary of State.
- (2) Sub-paragraph (1) has effect in relation to any rights and liabilities which immediately before 1st April 1996 are (by or by virtue of any enactment) enforceable by or against a Regional Health Authority so that on and after that date they are enforceable by or against the Secretary of State.
- (3) Sub-paragraph (1) does not apply to—
- (a) property, rights or liabilities transferred to an NHS trust on 1st April 1996,
  - (b) property, rights or liabilities transferred by virtue of paragraph 3 of this Schedule or section 92 of the National Health Service Act 1977 (transfers of trust property and rights and liabilities arising from trust property) on that date, or
  - (c) rights or liabilities which are transferred by paragraph 9 of this Schedule (or would be so transferred but for sub-paragraph (5) or (8) of that paragraph) or to which paragraph 14 of this Schedule applies.
- 2 (1) The Secretary of State may, where it appears appropriate to do so, by order transfer to a specified Health Authority or Special Health Authority any specified property, rights or liabilities which have been transferred by paragraph 1(1).
- (2) An order may be made under sub-paragraph (1) to have effect in relation to any specified rights or liabilities such as are mentioned in paragraph 1(2) so that they are enforceable by or against (or only by or against) a specified Health Authority or Special Health Authority.
- (3) An order made under sub-paragraph (1) may take effect immediately after paragraph 1 takes effect or on a later specified date.
- (4) An order made under sub-paragraph (1) may, in particular, specify any Special Health Authority administering a scheme under section 21 of the National Health Service and Community Care Act 1990 (schemes for meeting liabilities of health service bodies).

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- (5) An order made under sub-paragraph (1) may create or impose such new rights or liabilities in respect of what is transferred, or what is retained by the Secretary of State, as appear appropriate.
- (6) In the case of any transfer made by an order under sub-paragraph (1), a certificate issued by the Secretary of State that—
- (a) any property described in the certificate,
  - (b) any interest in or right over property so described, or
  - (c) any right or liability so described,
- is vested in the specified Health Authority or Special Health Authority shall be conclusive evidence of that fact for all purposes.
- (7) Sub-paragraph (1) does not affect any power of the Secretary of State to transfer any property, rights or liabilities to a Health Authority or Special Health Authority otherwise than under this paragraph.
- 3 (1) The Secretary of State may by order transfer on 1st April 1996 to a specified health service body any specified property held on trust by a Regional Health Authority immediately before that date.
- (2) In sub-paragraph (1) “health service body” means—
- (a) a Health Authority,
  - (b) a Special Health Authority,
  - (c) an NHS trust,
  - (d) special trustees, or
  - (e) trustees for an NHS trust.
- (3) Sub-paragraph (1) does not apply to property transferred by virtue of section 92 of the National Health Service Act 1977 on 1st April 1996.
- (4) The Secretary of State shall exercise the power conferred by sub-paragraph (1) so as to secure that all property to which that sub-paragraph applies is dealt with in exercise of the power.
- (5) In this paragraph references to property include references to any rights and liabilities arising from the property.
- 4 (1) The Secretary of State may by order transfer on 1st April 1996 to a specified Health Authority—
- (a) any specified property held by a District Health Authority or a Family Health Services Authority immediately before that date, or
  - (b) any specified rights or liabilities to which a District Health Authority or a Family Health Services Authority are entitled or subject immediately before that date.
- (2) An order may be made under sub-paragraph (1) to have effect in relation to any specified rights or liabilities which immediately before 1st April 1996 are (by or by virtue of any enactment) enforceable by or against a District Health Authority or a Family Health Services Authority so that on and after that date they are enforceable by or against (or only by or against) a specified Health Authority.
- (3) Sub-paragraph (1) does not apply to—
- (a) property, rights or liabilities transferred to an NHS trust on 1st April 1996,

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- (b) property transferred by virtue of section 92 of the National Health Service Act 1977 on that date, or
  - (c) rights or liabilities which are transferred by paragraph 9 of this Schedule (or would be so transferred but for sub-paragraph (5) or (8) of that paragraph) or to which paragraph 14 of this Schedule applies.
- (4) The Secretary of State shall exercise the power conferred by sub-paragraph (1) so as to secure that all property to which that sub-paragraph applies is, and all rights and liabilities to which that sub-paragraph applies are, dealt with in exercise of the power.
- (5) In this paragraph references to property include trust property; and, for the purposes of this paragraph, rights and liabilities arising from trust property shall be treated as being part of the property (so that references in this paragraph to rights and liabilities do not include rights and liabilities arising from trust property).
- 5 (1) Where an order made under paragraph 2, 3 or 4 transfers—
- (a) land held on lease from a third party, or
  - (b) any other asset leased or hired from a third party or in which a third party has an interest,
- the transfer shall be binding on the third party even if, apart from this sub-paragraph, it would have required his consent or concurrence; and the order may contain such provisions as appear appropriate to safeguard the interests of the third party, including (where appropriate) provision for the payment of compensation of an amount to be determined in accordance with the order.
- (2) Stamp duty is not chargeable in respect of any transfer effected by or by virtue of any of paragraphs 1 to 4.
- (3) The references in sections 93(1), 94(1) and (3) and 96A(10) of the National Health Service Act 1977 (provisions about trust property) to section 92 of that Act include references to paragraphs 3 and 4 of this Schedule; and the reference in section 93(2) of that Act to Part IV of that Act includes a reference to those paragraphs.
- 6 Nothing in this Act prevents any rights or liabilities which immediately before 1st April 1996 are (by or by virtue of any enactment repealed by this Act) enforceable by or against a Special Health Authority from continuing on and after that date to be enforceable by or against the Special Health Authority.

*Staff of RHAs, DHAs and FHSAs*

- 7 (1) The Secretary of State may—
- (a) by order made in relation to any specified description of relevant health authority employees specify the health service body to which they are to be transferred on 1st April 1996, and
  - (b) by scheme made in relation to relevant health authority employees designated by the scheme (either individually or as members of a class) designate the health service body to which they are to be transferred on 1st April 1996.
- (2) In this paragraph and paragraphs 8 to 10 references to relevant health authority employees are to persons who immediately before 1st April 1996 are employees of—
- (a) a Regional Health Authority,
  - (b) a District Health Authority, or
  - (c) a Family Health Services Authority,

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other than persons to whom sub-paragraph (3) applies.

- (3) This sub-paragraph applies to persons to whom section 6 of the National Health Service and Community Care Act 1990 (transfers of staff to an NHS trust) applies if the operational date of the trust in question (or, in the case of employees within subsection (5) of that section, the date on which they take up employment) is 1st April 1996.
- (4) In this paragraph and paragraphs 8 to 11 references to a health service body are to—
- (a) the Secretary of State,
  - (b) a Health Authority,
  - (c) a Special Health Authority, or
  - (d) an NHS trust.
- (5) The Secretary of State shall exercise the power conferred by this paragraph so as to secure that all relevant health authority employees are dealt with in exercise of the power.
- (6) A scheme may be made under this paragraph only if sub-paragraph (7) is satisfied in relation to each of the employees to be designated by the scheme.
- (7) This sub-paragraph is satisfied in relation to an employee if—
- (a) the employee, or such body as the Secretary of State may recognise as representing the employee, has been consulted about the scheme by the Secretary of State, or
  - (b) the Secretary of State is satisfied that the employee, or such body as the authority from which the employee would be transferred by the scheme may recognise as representing the employee, has been consulted about the scheme by that authority.
- 8 (1) This paragraph applies where, at any time during the period beginning with 1st April 1996 and ending with 30th September 1996, it appears to the Secretary of State appropriate for any relevant health authority employees to be transferred from the health service body to which they were transferred on 1st April 1996 to another health service body.
- (2) The Secretary of State may at any time during that period make, in relation to any of the employees who (in the opinion of the Secretary of State) ought to be transferred and are designated by the scheme (either individually or as members of a class), a scheme designating the body to which they are to be transferred on a date during that period designated by the scheme.
- (3) A scheme may be made under this paragraph only if sub-paragraph (4) is satisfied in relation to each of the employees to be designated by the scheme.
- (4) This sub-paragraph is satisfied in relation to an employee if—
- (a) the employee, or such body as the Secretary of State may recognise as representing the employee, has been consulted about the scheme by the Secretary of State, or
  - (b) the Secretary of State is satisfied that the employee, or such body as the body from which the employee would be transferred by the scheme may recognise as representing the employee, has been consulted about the scheme by that body.

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- 9 (1) The abolition on 1st April 1996 of the authority by which a relevant health authority employee was employed immediately before that date does not operate to terminate his contract of employment.
- (2) Subject to sub-paragraph (3), the contract of employment of a relevant health authority employee shall have effect on and after that date as if originally made between the employee and the health service body to which he is transferred on that date.
- (3) Where a scheme is made in relation to a relevant health authority employee under paragraph 8 his contract of employment shall have effect on and after the date designated by the scheme as if originally made between the employee and the health service body to which he is transferred on that date.
- (4) Without prejudice to sub-paragraphs (2) and (3)—
- (a) all the rights, powers, duties and liabilities of the authority or body from which an employee is transferred in accordance with an order or scheme made under paragraph 7 or 8 under or in connection with his contract of employment shall by virtue of this sub-paragraph be transferred to the body to which the employee is transferred in accordance with the order or scheme, and
  - (b) anything done before the date of the transfer by or in relation to the authority or body from which he is so transferred in respect of the employee or the contract of employment shall be deemed from that date to have been done by or in relation to the body to which he is so transferred.
- (5) Sub-paragraphs (2) and (4) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the authority or body from which they would be transferred, or the body to which they would be transferred, that he objects to the transfer.
- (6) Where an employee objects as mentioned in sub-paragraph (5) his contract of employment with the authority or body from which he would be transferred shall be terminated immediately before the date on which the transfer would occur; but he shall not be treated, for any purpose, as having been dismissed by that authority or body.
- (7) This paragraph is without prejudice to any right of a relevant health authority employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only that, under this paragraph, the identity of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.
- (8) This paragraph does not apply—
- (a) to so much of a contract of employment as relates to an occupational pension scheme (within the meaning of section 1 of the Pension Schemes Act 1993), or
  - (b) to any rights, powers, duties or liabilities under or in connection with a contract of employment, or otherwise arising in connection with a person's employment, and relating to such a scheme,
- other than any provisions of the scheme which do not relate to benefits for old age, invalidity or survivors.

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- 10 (1) A scheme made under paragraph 7 or 8 may provide that the contract of employment of a relevant health authority employee designated by the scheme shall, on 1st April 1996 (in the case of a scheme made under paragraph 7) or the date designated by the scheme (in the case of a scheme made under paragraph 8), be divided so as to constitute two separate contracts of employment with two health service bodies designated by the scheme.
- (2) Where a scheme makes such provision it shall provide for paragraph 9 to have effect in the case of the employee and his contract of employment subject to appropriate modifications.
- 11 Where as a result of the operation of paragraph 9 an employee has both—
- (a) a contractual right against any health service body to benefits in the event of his redundancy, and
  - (b) a statutory right against the body to a redundancy payment,
- any benefits provided to him by virtue of the contractual right shall be taken as satisfying the statutory right.

*Early retirements on reorganisation under 1973 Act*

- 12 The repeal by this Act of the National Health Service Reorganisation Act 1973 does not prevent the continuing operation on and after 1st April 1996 of section 44 of that Act (provision for early retirement in lieu of compensation for loss of office) or regulations made under that section (or of any other provision relating to that section or such regulations).

*Accounts and winding up of affairs of RHAs, DHAs and FHSAs*

- 13 (1) The Secretary of State—
- (a) shall keep, or prepare, any accounts which (but for this Act) would have been required by section 98 of the National Health Service Act 1977 (accounts and audit) to be kept, or prepared and transmitted, by a Regional Health Authority, and
  - (b) may do any other thing which appears appropriate in connection with the winding up of the affairs of a Regional Health Authority.
- (2) The Secretary of State—
- (a) shall by order provide that any accounts which (but for this Act) would have been required by that section to be kept, or prepared and transmitted, by a District Health Authority or Family Health Services Authority shall be kept, or prepared and transmitted, by a specified Health Authority, and
  - (b) may by order provide that any other thing which appears appropriate in connection with the winding up of the affairs of a specified District Health Authority or Family Health Services Authority shall be done by a specified Health Authority.
- (3) An order made under sub-paragraph (2) may provide that the Health Authority keeping, or preparing and transmitting, accounts or doing any other thing shall be assisted by any other specified Health Authority.
- (4) The provisions of subsection (1) of section 98 of the National Health Service Act 1977 relating to audit and examination shall apply in relation to accounts kept under or by virtue of this paragraph and related records and reports.

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- (5) Subsection (2B)(c) of that section shall apply, in relation to accounts of the members of a fund-holding practice in respect of the financial year ending with 31st March 1996, as if the reference to the relevant Health Authority were a reference to the Health Authority specified by virtue of sub-paragraph (2)(a) of this paragraph in relation to the Family Health Services Authority which was the relevant Family Health Services Authority in relation to the members in that financial year.
- (6) Subsection (4) of that section shall apply in relation to accounts relating to Regional Health Authorities, District Health Authorities and Family Health Services Authorities in respect of the financial year ending with 31st March 1996.

*Trustees etc.*

- 14 (1) The Secretary of State may by order provide that a power to make any appointment (including an appointment of a trustee) which, immediately before 1st April 1996, is exercisable by—
- (a) a Regional Health Authority,
  - (b) a District Health Authority, or
  - (c) a Family Health Services Authority,
- shall be exercisable on and after that date by a specified Health Authority or Special Health Authority.
- (2) The Secretary of State may by order provide that any qualification for holding any office (including office as a trustee) which, immediately before 1st April 1996, consists of being a member or officer of—
- (a) a Regional Health Authority,
  - (b) a District Health Authority, or
  - (c) a Family Health Services Authority,
- shall, on and after that date, consist of being a member or officer of a specified Health Authority or Special Health Authority.
- (3) An order under this paragraph may include provision for the appointment of a person holding any office to which it relates immediately before 1st April 1996 to continue, or not to continue, on and after that date.

*Mental Health Review Tribunals*

- 15 (1) On 1st April 1996 the Secretary of State shall be deemed to have determined by an order made under subsection (1B)(a) of section 65 of the Mental Health Act 1983 (Mental Health Review Tribunals) as regions for the purposes of subsection (1A)(a) of that section each of the regions for which, immediately before that date, a Regional Health Authority is established in pursuance of the National Health Service Act 1977.
- (2) Each Mental Health Review Tribunal in existence immediately before that date shall, subject to the provisions of that section and of Schedule 2 to that Act (provisions about Tribunals), continue on and after that date to be the Tribunal for the area for which it was the Tribunal immediately before that date.

*Complaints and appeals*

- 16 (1) Nothing in this Act—

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- (a) prevents a complaint or appeal made (but not disposed of) before 1st April 1996 from being continued on and after that date, or
  - (b) prevents the exercise of any right to make a complaint or appeal which has arisen (but not been exercised) before that date at any time on or after that date when it would have been exercisable but for this Act.
- (2) The Secretary of State may by order make such provision as appears appropriate in relation to complaints and appeals which may be continued, or any right which may be exercised, by virtue of sub-paragraph (1).
- (3) Sub-paragraph (1) applies in particular—
- (a) to complaints to the Health Service Commissioner for England or (except in relation to a Regional Health Authority) the Health Service Commissioner for Wales, and
  - (b) (except in relation to a Family Health Services Authority) to complaints in relation to which section 1 of the Hospital Complaints Procedure Act 1985 (directions as to hospital complaints procedure) applies.

*Arrangements about certain hospital premises etc.*

- 17 The Secretary of State may by order make provision for and in connection with continuing in effect on and after 1st April 1996 any arrangements under paragraph 7 or 8 of the sixth Schedule to the National Assistance Act 1948 (transitional provisions) which are in force immediately before that date.

*Continuity*

- 18 (1) The abolition by this Act of Regional Health Authorities, District Health Authorities and Family Health Services Authorities on 1st April 1996 does not affect the validity of anything done by any of those authorities before that date.
- (2) The Secretary of State may by order provide—
- (a) for anything which immediately before 1st April 1996 is in the process of being done by or in relation to a Regional Health Authority, District Health Authority or Family Health Services Authority (or a particular such Authority) to be continued, and
  - (b) for anything done by or in relation to such an authority (or a particular such authority) before 1st April 1996 to be treated on and after that date as if done, by or in relation to the Secretary of State or by or in relation to a Health Authority or Special Health Authority (or a specified such Authority).
- (3) Sub-paragraph (2)(b) applies in particular to—
- (a) allotments, applications, appointments, arrangements, determinations, records and representations made,
  - (b) approvals, directions and notices given,
  - (c) conditions and disqualifications imposed,
  - (d) consultations undertaken,
  - (e) contracts (including NHS contracts) entered into,
  - (f) information recorded,
  - (g) facilities, goods, materials and services made available, provided or supplied,
  - (h) payments made,

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- (i) proceedings (including appeals) begun, and
- (j) recognitions granted or removed.

*Instruments and other documents*

- 19 (1) The Secretary of State may by order provide that any instrument (including an instrument made under any enactment) made by or in relation to a Regional Health Authority, District Health Authority or Family Health Services Authority shall continue in force on and after 1st April 1996.
- (2) The Secretary of State may by order—
- (a) provide that any reference in any instrument (including any instrument made under an enactment) or any other document to a Regional Health Authority, District Health Authority or Family Health Services Authority (or a particular such Authority) shall be construed on and after 1st April 1996 as being, or as including, a reference to the Secretary of State or to a Health Authority or Special Health Authority (or a specified such Authority), and
  - (b) make any other provision amending or otherwise modifying any such instrument or other document which appears appropriate in consequence of, or otherwise in connection with, any provision of this Act.

*General*

- 20 (1) The Secretary of State may by order make any transitional provision which appears appropriate in connection with any provision of this Act.
- (2) Nothing in any other provision of this Act prejudices the generality of the power conferred by sub-paragraph (1).
- (3) An order made under sub-paragraph (1) may, in particular, include any saving from the effect of any amendment or repeal made by this Act.
- 21 Nothing in any provision made by or by virtue of this Schedule prejudices the operation of sections 16 and 17 of the Interpretation Act 1978 (effect of repeals).

*Interpretation*

- 22 (1) In this Schedule “specified” means specified in an order made under this Schedule.
- (2) Expressions used in both this Schedule and the National Health Service Act 1977 have the same meaning in this Schedule as in that Act.