
STATUTORY INSTRUMENTS

1991 No. 570 (S.55)

NATIONAL HEALTH SERVICE, SCOTLAND

The Functions of Health Boards (Scotland) Order 1991

<i>Made</i>	- - - -	<i>8th March 1991</i>
<i>Laid before Parliament</i>		<i>12th March 1991</i>
<i>Coming into force</i>	- -	<i>1st April 1991</i>

The Secretary of State, in exercise of the powers conferred on him by sections 2(1)(a) and 105(7) of the National Health Service (Scotland) Act 1978(1), and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Functions of Health Boards (Scotland) Order 1991 and shall come into force on 1st April 1991.

(2) In this Order—

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

“healthcare” means the provision of any services under the act and includes the provision of goods;

“persons for whose health care each Health Board is responsible” has the meaning indicated by article 2.

(3) Any reference in this Order to a numbered article is to the article of this Order which bears that number and any reference in an article to a numbered paragraph is to the paragraph bearing that number in that article.

Persons for whose health care each Health Board is responsible

2.—(1) In exercising the functions conferred on then under this Order it shall be a function of each Health Board to provide for the health care—

(1) 1978 c. 29; section 2(1) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (“the 1983 Act”), Schedule 7, paragraph 1 and by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 28; section 105(7), which was amended by the Health Services Act 1980 (c. 53) (“the 1980 Act”), Schedule 6, paragraph 5 and Schedule 7 and by the 1983 Act, Schedule 9, paragraph 24, contains provisions relevant to the exercise of the powers under which this Order is made.

- (a) in so far as that health care consists of providing or securing the provision to patients of goods and services, other than those specified in sub-paragraph (b) of this paragraph, for of—
 - (i) persons who reside ordinarily in its area; and
 - (ii) persons who reside ordinarily outside the United Kingdom who are in its area; and
 - (b) in so far as that health care consists of providing or securing the provision of—
 - (i) accident and emergency services; and
 - (ii) any other services, as the Secretary of State may direct, which are needed for any individual whose condition is such that it is not practicable before providing them to enter into an NHS contract for their provision,
 for all persons in the area of the Health Board.
- (2) Subject to any directions which the Secretary of State may give as to any particular case or class of case⁽²⁾, for the purpose of determining where a person ordinarily resides for the purposes of paragraph (1)(a) —
- (a) where it is unclear as to where he ordinarily resides he shall be treated as ordinarily residing at the address which he gives to the Health Board which provides him with health care as being that at which he ordinarily resides;
 - (b) where there is no evidence of his present address he shall be treated as ordinarily residing at his most recent address and, where there is any doubt as to this, he shall be treated as ordinarily residing at the address which he gives to that Health Board as his most recent address;
 - (c) where the address at which he usually resides cannot be determined under paragraphs (a) and (b) above he shall be treated as ordinarily residing in the area in which he is present.
- (3) In this article references to accident and emergency services are references to health care provided for a person who after an accident, or in an emergency, requires immediate treatment at a hospital where that treatment is provided in a department of a hospital which administers accident or emergency services excluding any in-patient or out-patient treatment provided subsequently for such a person and connected with the provision of those services,
- (4) In paragraph (3)—
- (a) “in-patient” means a patient who has been admitted to hospital and who spends at least one night in hospital (other than for overnight observation); and
 - (b) “out-patient” means any patient attending a hospital other than as an in-Patient.

Duty of Health Boards to exercise functions

3.—(1) It shall be the duty of each Health Board to exercise on behalf of the Secretary of State, for the benefit of those persons for whose health care each Health Board is responsible, those functions of the Secretary of State conferred or imposed upon him under the Act which are specified in Article 4 including functions under any Regulations, Orders or directions made under any enactments specified in those provisions, subject to any exception, qualification or condition specified therein or in this Order.

(2) In so far as there is conferred on a Health Board under this Order consists in the exercise any functions other than as specified in article 2, each Health Board shall exercise such function, generally as respects its area.

(2) Section 2(5) of the Act, which contains a power to direct Health Boards as to the carrying out of their functions, was amended by the 1990 Act, Schedule 9, paragraph 19(1).

(3) The duty of each Health Board under paragraph (1) shall be exercisable in relation to those persons for whose health care they are responsible under article 2(1)(a)(i) as well outside as in their area.

(4) The functions of a Health Board under paragraph (1)(a) shall not include providing or securing the provision of any services which are, or are to be, purchased by the members of a fund-holding practice in accordance with Regulations under section 87B(5) of the Act⁽³⁾.

Functions to be exercised by Health Boards

4. The functions referred to in article 3(1) include—

- (a) the power of the Secretary of State under section 16(1) to assist any voluntary organisations whose activities include the provision of a service similar or related to a service provided by a Health Board under the Act;
- (b) the power of the Secretary of State under section 16B⁽⁴⁾ to give financial assistance to voluntary organisations limited to assistance to such organisations whose activities consist in or include the provision of services similar to services provided by Health Boards or for the provision of which Health Boards are under a duty to make arrangements by virtue of the Act and the assistance so given is given on such terms and conditions as the Secretary of State with the approval of the Treasury might determine;
- (c) the duty of the Secretary of State under section 36 to provide to the extent that the Health Board considers necessary to meet all reasonable requirements facilities consisting of hospital accommodation and premises other than hospitals at which facilities are available for any of the services provided by a Health Board under the Act including—
 - (i) services provided in accordance with arrangements made under Part II by a Health Board;
 - (ii) medical, nursing or other services;
 - (iii) the determination under sub-section (2) of that section of terms and conditions under which accommodation or premises provided under sub-section (1) of that section are to be made available for the provision of general medical, general dental or general ophthalmic services or of pharmaceutical services;

but not including the provision of accommodation and facilities at state hospitals;

- (d) the duty of the Secretary of State under section 37 to make arrangements to such extent as the Health Board considers necessary for the purposes of the prevention of illness, the care of persons suffering from illness and the after-care of such persons;
- (e) the duty of the Secretary of State to make arrangements under section 38 to such extent as the Health Board considers necessary for the care, including in particular the medical or dental care, of expectant mothers and nursing mothers and of young children;
- (f) the duty of the Secretary of State under section 39⁽⁵⁾ to provide for the medical and dental inspection, supervision and treatment of pupils in attendance at any school under the management of an education authority and of all young persons in attendance at any junior college or other educational establishment under such management and for the education in dental health of such pupils and young persons but not including any duties under that section of an education authority;
- (g) the power of the Secretary of State under section 40 to make arrangements with medical practitioners for the vaccination or immunisation of persons against any disease and to supply vaccines, sera or other preparations for such vaccination or immunisation;

⁽³⁾ Section 87B was inserted by the 1990 Act, section 34.

⁽⁴⁾ Section 16B was inserted by the 1983 Act, section 3.

⁽⁵⁾ Section 39 was amended by the Health and Medicines Act 1988 (c. 49) (“the 1988 Act”), section 10(2).

- (h) the duty of the Secretary of State under section 41 to such extent as the Health Board considers necessary to make arrangements for the giving of advice on contraception, the medical examination of persons seeking advice on contraception, the treatment of such persons and the supply of contraceptive substances or appliances;
- (i) the power of the Secretary of State under section 42 to disseminate information relating to the promotion and maintenance of health and the prevention of illness;
- (j) the power of the Secretary of State under section 43 to provide or secure the provision of a service to control the spread of infectious disease, on such terms and conditions as to which services are provided at laboratories for that purpose as the Health Board may determine;
- (k) the duty of the Secretary of State under section 47 to make available such facilities as appear to the Health Board to be reasonably necessary for undergraduate and post-graduate clinical teaching and research and for the education and training of persons providing or intending to provide services under the Act and to conduct or assist by grants or otherwise under that section research into any matters relating to the causation, prevention, diagnosis or treatment of illness, or into other matters relating to the health service;
- (l) the power of the Secretary of State under section 48 to provide on such terms and conditions as may be agreed residential accommodation for officers employed for the purposes of any functions of the Health Board under the Act, including residential and practice accommodation for medical and dental practitioners;
- (m) the power of the Secretary of State under section 55(6) to authorise accommodation to be made available to patients including the power to—
 - (i) determine the extent to which such accommodation should be made available;
 - (ii) to recover charges for such accommodation; and
 - (iii) to calculate the charges on any basis that they consider to be the appropriate commercial basis;
- (n) the power of the Secretary of State under section 57(7) to authorise accommodation and services at a health service hospital to be made available for patients who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation and services made available such charges as may be determined including—
 - (i) the power of the Secretary of State to determine whether it is reasonable to make such accommodation and services available under that section;
 - (ii) the power of the Secretary of State to determine the extent to which such accommodation and services should be made available;
 - (iii) the power to determine the charges payable in respect of such accommodation and services;
 - (iv) the power to recover such charges;
 - (v) the power to calculate those charges on any commercial basis which he considers to be appropriate; and
 - (vi) the power under sub-section (2) of section 57 to allow accommodation and services to which an authorisation under sub-section (1) of that section relates to be made available in connection with treatment made available as specified in that sub-section;
- (o) the power of the Secretary of State under section 64 to consider applications to grant permission for the use of relevant health service accommodation or facilities for the purpose of providing medical, dental, pharmaceutical, ophthalmic or chiropody services

(6) Section 55 was amended by the 1988 Act, section 7(9) and Schedule 3.

(7) Section 57 was substituted by the 1988 Act, section 7(11) and amended by the 1990 Act, Schedule 10.

- to non-resident private patients including the power from time to time to determine the terms including terms as to the payment of charges for the use of the relevant health service accommodation or facilities pursuant to any permission given under that section;
- (p) the power of the Secretary of State under section 75A(8) to pay the travelling expenses of persons (including the travelling expenses of a companion of such persons) incurred for the purposes of availing themselves of any services provided under the Act by a Health Board and to pay overnight expenses of such persons, including the power to pay to NHS trusts such sums as will reimburse them for any sums paid by them in respect of such expenses;
 - (q) the powers of the Secretary of State under section 79(9) to purchase by agreement any moveable property or land which is required for the purposes of a Health Board or to take any such property on lease and to use for such purposes any property, heritable or moveable, acquired under the Act including any power of the Secretary of State to manage such property, and to dispose of any land no longer required for the purposes of the Health Board disregarding so much of section (1A) of that section as relates to the function of the Secretary of State under that sub-section to authorise certain officers to execute instruments on his behalf;
 - (r) the power of the Secretary of State under section 88(1)(e) and (2)(d) to pay to the members of a body specified in an Order under those provisions such travelling and other allowances and remuneration as the Secretary of State may determine from time to time with the approval of the Treasury;
 - (s) the powers of the Secretary of State under section 98(10) in relation to persons not ordinarily resident in Great Britain to—
 - (i) make and recover in accordance with regulations under that section charges for the provision by Health Boards to such persons of services under the Act;
 - (ii) determine the charges to be made and recovered; and
 - (iii) to calculate such charges on any basis which the Health Board considers to be the appropriate commercial basis;
 - (t) the power of the Secretary of State under paragraph 4 of Schedule 1 to the Act(11) to pay remuneration to the chairman and such other members of the Health Board as may be prescribed so, however, that this sub-paragraph shall not be construed as extending to the power with the approval of the Treasury to determine the amount of such remuneration(12);
 - (u) the power of the Secretary of State under paragraph 13 of Schedule 1 to the Act to pay to members of a Health Board, the committees and sub-committees thereof, travelling and other allowances so, however, that this sub-paragraph shall not be construed as extending to the power, with the approval of the Treasury, to determine the same;
 - (v) the duty of the Secretary of State under paragraph 23 of Schedule 7A to the Act(13) to remunerate an NHS trust in respect of the provision of goods and services in accordance with that paragraph but not including the power of the Secretary of State to determine the rate or rates appropriate for such remuneration.

(8) Section 75A was inserted by the Social Security Act 1988 (c. 7), section 14 and was amended by the 1990 Act, Schedule 9, paragraph 19(13).

(9) Section 79 was amended by the 1983 Act, Schedule 7, paragraph 3 and by the 1990 Act, Schedule 9, paragraph 19(15).

(10) Section 98 was amended by the 1988 Act, section 7(13) and (14).

(11) Paragraph 4 of Schedule 1 was amended by the 1990 Act, Schedule 5, paragraph 3.

(12) The functions of the Minister of the Civil Service under paragraphs 4 and 13 of Schedule 1 to the Act were transferred to the Treasury by S.I. 1981/1670.

(13) Schedule 7A was inserted by the 1990 Act, Schedule 6.

Qualifications to the exercise of functions by Health Boards

5.—(1) Notwithstanding the provisions of Article 4(o) of this Order a Health Board shall not, except with the consent of the Secretary of State, exercise powers under section 64 of the Act so as to refuse any application under that section.

(2) In exercising, by virtue of article 4(q) of this order any of the functions conferred upon the Secretary of State by section 79 to acquire, manage or dispose of land, a Health Board shall ensure—

- (a) that any instrument in connection with the exercise of those functions is in the name of the Secretary of State for Scotland and not that of the Health Board; and
- (b) that, where any such instrument requires to be executed by the Secretary of State for Scotland and it is not executed in accordance with section 1(8) of the Reorganisation of Offices (Scotland) Act 1939⁽¹⁴⁾, it is executed, on his behalf, in accordance with section 79(1A) of the Act.

(3) Nothing in this Order shall be construed as conferring on a Health Board any power to make Regulations, Orders or directions.

(4) Nothing in this Order shall prevent or restrict from exercising any function under the Act—

- (a) the Secretary of State;
- (b) any other Health Board;
- (c) any Special Health Board⁽¹⁵⁾; or
- (d) the Agency.

Revocations

6. There are hereby revoked—

- (a) the National Health Service (Functions of Health Boards) (Scotland) Order 1983⁽¹⁶⁾, and
- (b) the National Health Service (Functions of Health Boards) (Scotland) Order 1989⁽¹⁷⁾.

St. Andrew's House,
Edinburgh
8th March 1991

Michael B. Forsyth
Minister of State Scottish Office

⁽¹⁴⁾ 1939 c. 20.

⁽¹⁵⁾ See section 2(1)(b) as inserted by the 1990 Act, section 28.

⁽¹⁶⁾ S.I. 1983/1027.

⁽¹⁷⁾ S.I. 1989/446.

EXPLANATORY NOTE

(This note is not part of the Order)

The Order, which comes into force on 1st April 1991, specifies the functions to be exercised by Health Boards in Scotland on behalf of the Secretary of State by virtue of section 2(1) of the National Health Service (Scotland) Act 1978.

Article 1 contains provisions for interpretation of the Order and article 2 describes those persons for whose health care each Health Board is to be responsible. Article 3 provides for the duty of Health Boards to exercise functions on behalf of the Secretary of State and in regard to some functions outwith their areas as well as within them.

Article 4 specifies the functions to be exercised by reference to the provisions of the National Health Service (Scotland) Act 1978. Article 5 specifies certain qualifications to the exercise of those functions and article 6 revokes the existing orders which prescribe the functions to be exercised by Health Boards.