

These notes relate to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4) which received Royal Assent on 11 March 2003

PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Health Service Bodies

Section 5 – Property of the Scottish Hospital Trust

20. This section relates to the transfer of the endowments of the Scottish Hospital Trust to the fifteen Health Boards.
21. *Subsection (1)* provides for the transfer of all the property held by the Scottish Hospital Trust, endowments held by statute and other endowments transferred to the Scottish Hospital Trust (by, for example, Boards of Management, Regional Hospital Boards, Health Boards and NHS trusts) and any accumulated income thereof to be transferred to the Health Boards.
22. *Subsection (2)* enables the Scottish Ministers to make regulations providing for the division of property transferred from the Scottish Hospital Trust between different Health Boards and provides for any of the Scottish Hospital Trust property to be realised for value and for that value to be transferred.
23. *Subsection (3)* requires there to be consultation with the Scottish Hospital Trust and all the Health Boards and NHS trusts before regulations are made.
24. *Subsection (4)* provides for a Health Board to transfer property which has been transferred to it from the Scottish Hospital Trust on to another Health Board subject to conditions of transfer which the Scottish Ministers may provide for through regulations.
25. *Subsection (5)* provides for endowments transferred under *subsection (4)* to be transferred back to the Health Board within a reasonable time, if the relevant Health Board requires this.
26. *Subsection (6)* defines the expression ‘NHS trust’.

Section 6 – Transfer of certain property between Health Boards and NHS trusts

27. This section relates to the movement of endowments between Health Boards and NHS trusts.
28. *Subsection (1)* enables a Health Board to transfer property which has been transferred to it from the Scottish Hospital Trust, and which is attributable to a NHS trust, on to that trust. Such transfers will only be made following a request from the trust.
29. *Subsection (2)* provides for a NHS trust to transfer endowment property held by it (not limited to endowments transferred from the Scottish Hospital Trust) to any Health Board.

These notes relate to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4) which received Royal Assent on 11 March 2003

30. *Subsection (3)* provides for transferred endowments to be transferred back to the NHS trust within a reasonable time of the NHS trust requiring such a transfer.

Section 7 – Investment and borrowing

31. The provisions in section 7 relate to the powers of investment and borrowing by Health Boards and NHS trusts in respect of endowments.
32. The Scottish Hospital Trust was given specific powers of investment. *Subsection (1)* confers upon Health Boards like powers of investment and borrowing.
33. *Subsection (2)* requires Health Boards to seek financial advice with regard to such investments.
34. *Subsection (3)* permits a Health Board to borrow from any endowment which is attributable to it, subject to certain provisos.
35. *Subsections (4) and (5)* permit a Health Board to make loans to Health Boards and NHS trusts from endowments held by that Health Board but attributable to those other Health Boards or NHS trusts.
36. *Subsection (6)* permits NHS trusts to borrow from any endowment which it holds.
37. *Subsection (7)* requires Health Boards and NHS trusts to seek the consent of the Scottish Ministers to any loans or borrowing, under *subsections (3) to (6)*.
38. *Subsection (8)* allows the Scottish Ministers to make provisions by regulations as to the terms and conditions to apply to any loans or borrowing.

Section 8 – Endowment schemes

39. *Section 8* relates to endowment schemes. The Scottish Hospital Trust had a scheme which provided for the distribution of income from endowments, the resolution of disputes and the application of income by recipients.
40. *Subsection (1)* requires the Scottish Ministers to make regulations providing for the distribution of income where Health Boards and NHS trusts hold endowments attributable to other Health Boards and NHS trusts.
41. *Subsection (2)* requires the Scottish Ministers to consult all Health Boards and NHS trusts on such a scheme, and
42. *Subsection (3)* requires the scheme to include the permitted purposes for which income from endowments may be used.

Section 9 – Directions in relation to endowments

43. *Section 9* relates to the giving of directions in relation to endowments and enables the Scottish Ministers to direct Health Boards and NHS trusts as to the manner in which endowments are held and or managed.

Section 10 – Holding of certain property by NHS trusts and Health Boards

44. The provisions in section 10 relate to the holding of endowments by Health Boards and NHS trusts.
45. *Subsection (1)* amends section 12G(3) of the 1978 Act to apply the terms of section 82 of that Act to the holding by a NHS trust of endowments transferred by virtue of the provisions of this Act. This therefore requires NHS trusts holding such endowments, so far as reasonably practicable, to meet the objects of the original endowment in the holding and use of endowments so transferred.

*These notes relate to the Public Appointments and Public Bodies etc.
(Scotland) Act 2003 (asp 4) which received Royal Assent on 11 March 2003*

46. *Subsection (2)* amends section 82 of the 1978 Act to extend the application of that section to Health Boards holding endowments transferred by virtue of this Act.
47. *Subsection (3)* amends section 83 of the 1978 Act by adding a power for Health Boards to hold and administer property on trust for NHS trusts.