



Health Services Act 1976

1976 CHAPTER 83

PART III

CONTROL OF HOSPITAL BUILDING OUTSIDE NATIONAL HEALTH SERVICE, ETC.

12 Control of construction and extension of controlled premises.

- (1) [^{F1}Subject to subsection (3) and (4)] below, no person shall execute any controlled works unless—
- (a) he is authorised in writing by [^{F2}the Secretary of State] to do so and the works are in accordance with the terms of the authorisation; or
 - (b) the works are executed in accordance with planning permission in force in pursuance of the ^{M1}Town and Country Planning Act 1971 or the ^{M2}Town and Country Planning (Scotland) Act 1972 and granted (otherwise than by a development order within the meaning of that Act) either before the passing of this Act or in consequence of an application for such permission which was made before 12th April 1976.
- (2) In this Part of this Act—
- “controlled works” means—
- (a) works for the construction of controlled premises or of a controlled extension of controlled premises; or
 - (b) works for converting any premises into controlled premises;
- [^{F3}“hospital premises” means premises at which there are or are to be facilities for the provision of hospital services;
- “hospital services” means all or any of the following services, namely—
- (a) the carrying out of surgical procedures under general anaesthesia;
 - (b) obstetrics;
 - (c) radiotherapy;
 - (d) haemodialysis or peritoneal dialysis;
 - (e) pathology or diagnostic radiology;

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“relevant hospital premises” means hospital premises occupied otherwise than by or on behalf of the Crown or for the purposes of a visiting force.]

[^{F4}“controlled premises” means hospital premises which provide or will provide beds for the use of patients, being hospital premises—

- (a) in the case of which the number of beds which are or will be so provided is one hundred and twenty or more; or
- (b) which are or are to be situated in an area designated by the Secretary of State under subsection (2A) below;]

“controlled extension” , in relation to any controlled premises, means works designed—

- (a) to extend, adapt or be used in conjunction with the controlled premises; or
- (b) to extend or adapt works used in conjunction with the controlled premises.

[^{F5}(2A) If, on an application by a health authority, the Secretary of State is satisfied that relevant hospital premises in the whole or any part of their area or district provide or will provide, if taken together, one hundred and twenty or more beds for the use of patients, he may, after consulting with such persons and representative bodies as appear to him to be concerned, by regulations designate the whole or, as the case may be, that part of the authority’s area or district as an area in which all hospital premises which provide or will provide beds for the use of patients shall be controlled premises; and regulations under this subsection—

- (a) may contain such transitional provisions as appear to the Secretary of State to be necessary or expedient; and
- (b) shall have effect for such period not exceeding five years as may be prescribed.

(2B) In determining for the purposes of subsection (2A) above how many beds relevant hospital premises will provide, the Secretary of State shall not take into account the proposed execution of any works unless—

- (a) an authorisation for the execution of those works has been granted; or
- (b) a contract for the execution of those works has been entered into.

(2C) The Secretary of State shall not exercise the power conferred by subsection (2A) above unless, having regard to the matters mentioned in subsection (3)(a) of section 13 below, he considers that the execution of works which, if the power were exercised, would be controlled works would be likely to interfere as mentioned in paragraph (a) or operate as mentioned in paragraph (b) of subsection (2) of that section.]

(3) Subsection (1) above—

- (a) does not apply in the case of works that are to be executed by or on behalf of the Crown or for the purposes of a visiting force; but
- (b) in the case of works that are to be executed otherwise than as aforesaid, shall apply notwithstanding any interest of the Crown in the land on which, or in any premises in connection with which, the works are to be executed.

[^{F6}(4) Subsection (1) above does not apply in the case of works for the construction of a controlled extension of controlled premises if—

- (a) the premises are situated elsewhere than in an area designated by the Secretary of State under subsection (2A) above; and
- (b) the premises were constructed as controlled premises, or were converted into controlled premises, whether before or after the coming into force of this Part of this Act; and

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- (c) where the works will enable additional beds to be provided, the aggregate number of additional beds which will then have been provided at the premises since the beginning of the current three year period (or, if later, the time when the premises were constructed or converted) will not exceed the permitted number.
- (5) In subsection (4) above—
- “permitted number” , in relation to a three year period, means one fifth of the number of beds provided at the premises in question at the beginning of that period or, if later, the time when the premises were constructed or converted;
- “three year period” means the period of three years beginning with the passing of the ^{M3}Health Services Act 1980 and each successive period of three years.]

Textual Amendments

- F1** Words substituted by [Health Services Act 1980 \(c. 53\), s. 13\(1\)](#)
- F2** Words substituted by [Health Services Act 1980 \(c. 53\), Sch. 2 para. 1](#)
- F3** Definitions inserted by [Health Services Act 1980 \(c. 53\), s. 12\(1\)\(b\)](#)
- F4** Definition substituted by [Health Services Act 1980 \(c. 53\), s. 12\(1\)\(a\)](#)
- F5** [S. 12\(2A\)–\(2C\)](#) inserted by [Health Services Act 1980 \(c. 53\), s. 12\(2\)](#)
- F6** [S. 12\(4\)\(5\)](#) inserted by [Health Services Act 1980 \(c. 53\), s. 13\(2\)](#)

Marginal Citations

- M1** [1971 c. 78.](#)
- M2** [1972 c. 52.](#)
- M3** [1980 c. 53.](#)

13 Authorisations to construct or extend controlled premises.

- (1) Every application for an authorisation shall be made to [^{F7}the Secretary of State]
- (2) On receiving an application for an authorisation [^{F8}the Secretary of State] shall consider whether, having regard to the matters mentioned in subsection (3) below, the execution of the works in question—
- (a) would to a significant extent interfere with the performance by the Secretary of State of any duty imposed on him by [^{F9}the principal Act] to provide accommodation or services of any kind; or
- (b) would to a significant extent operate to the disadvantage of persons seeking or afforded admission or access to any accommodation or services provided by the Secretary of State under [^{F9}that Act] (whether as resident or non-resident patients) otherwise than as private patients,
- and shall grant the authorisation unless, having regard to those matters, [^{F10}he] is satisfied that the executed of the works would do either or both of the things mentioned in paragraphs (a) and (b) above.
- [^{F11}(3) The matters referred to in subsection (2) above are—
- (a) how much accommodation and what facilities are or will be provided at, and what are or will be the staffing requirements of, relevant hospital premises in the area or areas served by the health service hospital or hospitals concerned;

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- (b) how much accommodation or additional accommodation the works would provide;
 - (c) what facilities or additional facilities the works would enable to be provided; and
 - (d) what staffing requirements or additional staffing requirements the works would give rise to.]
- (4) An authorisation may contain such terms as [^{F8}the Secretary of State] thinks appropriate, including in particular, without prejudice to the generality of the preceding provisions of this subsection, terms as to [^{F12}the use of the premises] the duration of the authorisation and the place at which or area within which the works may be executed; and [^{F8}the Secretary of State] may, with the consent of the person to whom an authorisation was issued, alter any of its terms at any time.

Textual Amendments

- F7** Words substituted by [Health Services Act 1980 \(c. 53\), Sch. 2 para. 2\(a\)](#)
- F8** Words substituted by [Health Services Act 1980 \(c. 53\), Sch. 2 para. 1](#)
- F9** Words substituted by [Health Services Act 1980 \(c. 53\), Sch. 3 para. 2\(1\)](#)
- F10** Word substituted by [Health Services Act 1980 \(c. 53\), Sch. 2 para. 2\(b\)](#)
- F11** [S. 13\(3\)](#) substituted by [Health Services Act 1980 \(c. 53\), Sch. 3 para. 2\(2\)](#)
- F12** Words inserted by [Health Services Act 1980 \(c. 53\), Sch. 3 para. 2\(3\)](#)

14 Notice of notifiable works.

- (1) Any person who proposes to make, after the coming into force of this Part of this Act,
- [^{F13}(a) an application for planning permission for any notifiable works; or
 - (b) a notifiable change,]
- must, before making the application [^{F14}or change], notify [^{F15}the Secretary of State] of the proposed application [^{F14}or change] by giving to [^{F16}him] a notice in the prescribed form.
- (2) A notice under this section must contain the prescribed information about—
- (a) the notifiable works for which planning permission is to be applied for [^{F17}or the notifiable change]; and
 - (b) [^{F17}in the case of notifiable works,] the purposes for which any hospital premises that will result from or be directly affected by the execution of those works are to be used.
- (3) On receipt of a notice under this section which is in the prescribed form and contains the information required by subsection (2) above [^{F15}the Secretary of State] shall issue to the person by whom the notice was given a written acknowledgment—
- (a) identifying the notice and stating the date on which it was received by [^{F15}the Secretary of State]; and
 - (b) acknowledging that it complies with the requirements of this section.
- (4) In any proceedings for an offence under section 18(2)(a) below, an acknowledgment under subsection (3) above shall be conclusive evidence of the matters which it states or acknowledges.
- (5)

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[^{F19}(6) Subsection (1) above—

- (a) does not apply in the case of works that are to be executed or a change that is to be made by or on behalf of the Crown or for the purposes of a visiting force; but
- (b) in the case of works that are to be executed or a change that is to be made otherwise than as aforesaid, shall apply notwithstanding any interest of the Crown in the land on which, or in any premises in connection with which, the works are to be executed or the change is to be made.]

(7) In this Part of this Act—

“notifiable works” means—

- (a) works for the construction of hospital premises or of an extension of hospital premises; or
- (b) works for converting any premises into hospital premises, not being, in either case, works for which an authorisation is required;

[^{F20}“notifiable change” means—

- (a) any change in the nature or extent of the hospital services provided at controlled premises; or
- (b) any change in the facilities or the number of beds provided at any premises which results in their becoming controlled premises;]

“extension”, in relation to any hospital premises, means works designed—

- (a) to extend, adapt or be used in conjunction with the hospital premises; or
- (b) to extend or adapt works used in conjunction with the hospital premises.

Textual Amendments

- F13** Words substituted by [Health Services Act 1980 \(c. 53\), s. 14\(1\)\(a\)](#)
- F14** Words inserted by [Health Services Act 1980 \(c. 53\), s. 14\(1\)\(b\)](#)
- F15** Words substituted by [Health Services Act 1980 \(c. 53\), Sch. 2 para. 1](#)
- F16** Words substituted by [Health Services Act 1980 \(c. 53\), Sch. 2 para. 3\(a\)](#)
- F17** Words inserted by [Health Services Act 1980 \(c. 53\), s. 14\(2\)](#)
- F18** [Ss. 3, 6, 14\(5\), 16\(2\)](#) and [Sch. 2](#) repealed by [Health Services Act 1980 \(c. 53\), Sch. 7](#)
- F19** [S. 14\(6\)](#) substituted by [Health Services Act 1980 \(c. 53\), s. 14\(3\)](#)
- F20** Definition substituted by [Health Services Act 1980 \(c. 53\), s. 14\(4\)](#)

Modifications etc. (not altering text)

- C1** [S. 14\(1\)](#) explained by [Health Services Act 1980 \(c. 53\), s. 14\(1\)\(c\)](#)

15 Planning permission for works requiring authorisation.

- (1) This section applies to works that consist of, or include, controlled works.
- (2) An application made after the coming into force of this Part of this Act for planning permission for works to which this section applies shall be of no effect unless it is accompanied by a copy of an authorisation in force for all of those works in the planning area or district concerned for which an authorisation is required.
- (3) Where at the time when this Part of this Act comes into force—
 - (a) an application for planning permission made on or after 12th April 1976 is pending, or any appeal to the Secretary of State connected with such an

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application is pending, or the time within which such an appeal may be begun has not expired; and

- (b) if the application had been made after the coming into force of this Part of this Act it would have been of no effect by virtue of subsection (2) above,

the application shall be of no effect, or as the case may be the appeal shall be stayed or sisted or not begun, until the authority to which the application was made is furnished with the document which would under subsection (2) above have been required to accompany the application if it had been made after the coming into force of this Part of this Act.

- (4) Where by virtue of the preceding subsection a prohibition imposed by that subsection on the beginning of an appeal ceases to be so imposed, the appeal may be begun during a period which begins with the cesser and is equal to so much of the time within which the appeal could have been begun apart from the prohibition as was unexpired when the prohibition was so imposed.

- (5) In this section:—

“local planning authority” has the same meaning as in the ^{M4}Town and Country Planning Act 1971;

“planning authority” has the same meaning as in the ^{M5}Town and Country Planning (Scotland) Act 1972;

“planning permission” has the same meaning as in the said Act of 1971 or 1972, as the case may be;

“the planning area or district concerned” means, in England and Wales, the area of the local planning authority or, in Scotland, the district of the planning authority, as the case may be.

- (6) Subsection (3) of section 12 above shall apply in relation to subsection (2) above as it applies in relation to subsection (1) of that section.

Marginal Citations

M4 1971 c. 78.

M5 1972 c. 52.

16 Regulations in connection with provisions of Part III.

- (1) The Secretary of State may by regulations make provision—

- (a) as to the manner and form in which any application for an authorisation is to be made to [^{F21}the Secretary of State] ;
- (b) as to the manner in which any notice under section 14 above is to be given to [^{F21}the Secretary of State], and as to the form in which any acknowledgment under subsection (3) of that section is to be issued by [^{F21}the Secretary of State] ;
- (c) for requiring such reasonable fees as may, with the consent of the Treasury, be prescribed to be paid in connection with any application for an authorisation;
- [^{F22}(d) for enabling the Secretary of State to require such person or persons as he may appoint to afford the applicant for an authorisation a hearing and to report thereon to the Secretary of State;
- (e) for determining the locality of, and entitling persons other than the applicant to appear and be heard at, such a hearing;]

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- (f) as to the time to be allowed on any such application for the production of evidence or the taking of any prescribed steps for the purposes of such a hearing;
 - (g) for requiring persons to attend and give evidence or produce documents at such hearings, and for authorising the administration of oaths to persons so attending;
 - (h) for enabling any person entitled to appear otherwise than as a witness at any such hearing to be represented by another person, whether professionally qualified or not;
 - (i) for prescribing anything which under this Part of this Act is required or authorised to be prescribed.
- (2) ^{F23}
- (3) Regulations under subsection (1) above may, for the purpose of securing compliance with requirements imposed by virtue of any provisions included in the regulations by virtue of paragraph (g) of that subsection, provide that a person who without reasonable excuse fails to comply with such a requirement shall be liable on summary conviction to a fine not exceeding such amount not greater than £100 as may be prescribed.
- (4) The Secretary of State may by regulations provide for the appointment by him of inspectors to act, [^{F24}under his direction], for the purposes of this Part of this Act, except so far as it relates to notifiable works [^{F25}or a notifiable change], and for conferring on such inspectors such powers (including powers of entry and inspection) as the Secretary of State considers necessary for those purposes.
- (5) Any powers conferred on inspectors by regulations made in pursuance of subsection (4) above shall, to the extent that the regulations so provide, be exercisable in relation to—
- (a) premises or land owned by, but not occupied by or for the purposes of, the Crown;
 - (b) works on such land which have been or are being executed otherwise than by or on behalf of the Crown or for the purposes of a visiting force.

Textual Amendments

- F21** Words substituted by [Health Services Act 1980 \(c. 53\), Sch. 2 para. 1](#)
- F22** [S. 16\(1\)\(d\)\(e\)](#) substituted by [Health Services Act 1980 \(c. 53\), Sch. 2 para. 4\(a\)](#)
- F23** [Ss. 3, 6, 14\(5\), 16\(2\)](#) and [Sch. 2](#) repealed by [Health Services Act 1980 \(c. 53\), Sch. 7](#)
- F24** Words substituted by [Health Services Act 1980 \(c. 53\), Sch. 2 para. 4\(c\)](#)
- F25** Words inserted by [Health Services Act 1980 \(c. 53\), Sch. 3 para. 3](#)

17 Appeals.

- (1) Where an application for an authorisation is refused or granted by [^{F26}the Secretary of State] and the decision to refuse or grant it, as the case may be, involves a question of law, then—
- (a) if the application is refused, the applicant or, if the applicant was afforded a hearing by [^{F26}a person or persons appointed by the Secretary of State], the applicant or any other person who appeared (in person or not) and was heard

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- at the hearing may on that question appeal from [^{F27}the Secretary of State's] decision to the court; or
- (b) if the application is granted in a case in which the applicant was afforded a hearing by [^{F26}a person or persons appointed by the Secretary of State], any other person who so appeared and was heard may on that question appeal as aforesaid.
- (2) In the preceding subsection “the court” means—
- (a) in England and Wales, the High Court;
- (b) in Scotland, the Court of Session.
- (3) An appeal under this section must be brought before the end of the three months beginning with the date on which the applicant is notified of the Board's decision on his application.
- (4) [^{F28}The Secretary of State] and (if he would not be so entitled apart from this subsection) the applicant shall each be entitled to appear and be heard on any appeal under this section.
- (5) Rules of court relating to appeals under this section may provide for excluding so much of section 63(1) of the ^{M6}Supreme Court of Judicature (Consolidation) Act 1925 as requires appeals to the High Court to be heard and determined by a Divisional Court; but no appeal to the Court of Appeal shall be brought by virtue of this section except with the leave of the High Court or the Court of Appeal.
- (6) In relation to proceedings in the High Court or the Court of Appeal or the Court of Session brought by virtue of this section the power to make rules of court shall include power to make rules prescribing the powers of the court with respect to—
- (a) the giving of any decision which might have been given by [^{F29}the Secretary of State] on the application;
- (b) the remitting of the application, with the court's decision on any question of law decided by it on appeal, for re-hearing and determination by [^{F29}the Secretary of State];
- (c) the giving of directions to [^{F29}the Secretary of State]
- (7) On any appeal brought under or by virtue of this section the court may, if the decision is in favour of the appellant, order [^{F29}the Secretary of State] (whether or not [^{F30}he] appears on the appeal) to pay the costs or, in Scotland, the expenses of the appellant or any other person.
- (8) An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs or otherwise as the Court of Session or the House of Lords may determine.

Textual Amendments

- F26** Words substituted by [Health Services Act 1980 \(c. 53\)](#), [Sch. 2 para. 5\(a\)](#)
- F27** Words substituted by [Health Services Act 1980 \(c. 53\)](#), [Sch. 2 para. 5\(b\)](#)
- F28** Words substituted by [Health Services Act 1980 \(c. 53\)](#), [Sch. 2 para. 5\(c\)](#)
- F29** Words substituted by [Health Services Act 1980 \(c. 53\)](#), [Sch. 2 para. 1](#)
- F30** Word substituted by [Health Services Act 1980 \(c. 53\)](#), [Sch. 2 para. 5\(d\)](#)

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Marginal Citations

M6 1925 c. 49.

18 Offences.

- (1) Any person who contravenes section 12(1) of this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400 or on conviction on indictment to a fine.
- (2) Any person who—
 - (a) without reasonable excuse fails to comply with the requirements of section 14(1) and (2) above in relation to an application for planning permission for any notifiable works [^{F31}or the making of any notifiable change]; or
 - (b) knowingly or recklessly furnishes a notice which is false in a material particular in purported compliance with section 14(1) above,shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.
- (3) Any person who—
 - (a) intentionally obstructs an inspector appointed by virtue of regulations made in pursuance of section 16(4) above in the exercise of any power of entry or inspection conferred on him by regulations so made; or
 - (b) without reasonable excuse fails to comply with any requirement imposed by such an inspector by virtue of regulations so made,shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.
- (4) Where an offence under any of the preceding provisions of this section has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (5) Where the affairs of a body corporate are managed by its members, subsection (4) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Textual Amendments

F31 Words inserted by [Health Services Act 1980 \(c. 53\)](#), [Sch. 3 para. 4](#)

19 Amendments to provisions about registration of nursing homes and private hospitals.

- (1) The paragraph set out in subsection (2) below shall be inserted—
 - (a) after paragraph (c) of section 4 of the ^{M7}Nursing Homes Act 1975, as paragraph (cc); and

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- (b) after paragraph (b) of the proviso in section 1(3) of the ^{M8}Nursing Homes Registration (Scotland) Act 1938, as paragraph (bb),
 so as to afford, in each case, an additional ground for refusing to register, or cancelling the registration of, a person in respect of a nursing home or mental nursing home.
- (2) The said paragraph is—
- “(0) that the home or any premises to used in connection therewith consist of or include works executed in contravention of section 12(1) of the Health Services Act 1976;”.
- (3) In section 16(1) of the ^{M9}Mental Health (Scotland) Act 1960 (prerequisites of registration of private hospital) the following paragraph shall be inserted after paragraph (b)—
- “(bb) that neither the hospital nor any premises to be used in connection therewith consist of or include works executed in contravention of section 12(1) of the Health Services Act 1976;”.
- (4) In each of the following provisions (penalties for carrying on a nursing home, mental nursing home or private hospital without registration) namely—
- (a) section 12 of the ^{M10}Nursing Homes Act 1975;
- (b) section 1(1) of the ^{M11}Nursing Homes Registration (Scotland) Act 1938;
- (c) section 22(1) of the Mental Health (Scotland) Act 1960;
- for the words from “shall be liable” onwards there shall be substituted the words “shall be liable on summary conviction to a fine not exceeding £400 or on conviction on indictment to a fine”.

Modifications etc. (not altering text)

C2 The text of ss. 19(2)(3)(4), 23(6) and Sch. 5 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

Marginal Citations

M7 1975 c. 37.
M8 1938 c. 73.
M9 1960 c. 61
M10 1975 c. 37
M11 1938 c. 73

20 Interpretation of Part III.

- (1) In this Part of this Act—
- “authorisation” means an authorisation required by section 12(1) above;
- “controlled works” has the meaning given by section 12(2) above;
- [^{F32}“health authority” means, for England and Wales, an Area Health Authority or a District Health Authority or, for Scotland, a Health Board;]
- “hospital premises” [^{F33}and “hospital services” have the meanings given by section 12(2)] above;
- “notifiable works” [^{F34}and “notifiable change” have the meanings] given by section 14(7) above;

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“prescribed” means prescribed by regulations made by the Secretary of State;

[^{F35}“relevant hospital premises” has the meaning given by section 12(2) above]

“visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the ^{M12}Visiting Forces Act 1952.

Textual Amendments

- F32** Definition inserted by [Health Services Act 1980 \(c. 53\), Sch. 3 para. 5\(2\)](#)
F33 Words substituted by [Health Services Act 1980 \(c. 53\), Sch. 3 para. 5\(3\)](#)
F34 Words substituted by [Health Services Act 1980 \(c. 53\), Sch. 3 para. 5\(4\)](#)
F35 Definition inserted by [Health Services Act 1980 \(c. 53\), Sch. 3 para. 5\(5\)](#)
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Marginal Citations

- M12** [1952 c. 67.](#)

Changes to legislation:

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