National Health Service and Community Care Act 1990

1990 CHAPTER 19

An Act to make further provision about health authorities and other bodies constituted in accordance with the National Health Service Act 1977; to provide for the establishment of National Health Service trusts; to make further provision about the financing of the practices of medical practitioners; to amend Part VII of the Local Government (Scotland) Act 1973 and Part III of the Local Government Finance Act 1982; to amend the National Health Service Act 1977 and the National Health Service (Scotland) Act 1978; to amend Part VIII of the Mental Health (Scotland) Act 1984; to make further provision concerning the provision of accommodation and other welfare services by local authorities and the powers of the Secretary of State as respects the social services functions of such authorities; to make provision for and in connection with the establishment of a Clinical Standards Advisory Group; to repeal the Health Services Act 1976; and for connected purposes. [29th June 1990]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

THE NATIONAL HEALTH SERVICE: ENGLAND AND WALES

Local management

1 Regional and District Health Authorities.

[F1](1) . . . . . .

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

[F1](2) . . . . . .

(3) [F2]. . . . . .

[F1](4) . . . . . .

[F1](5) . . . . . .

Textual Amendments

F1 S. 1(1)(2)(4)(5) repealed (1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5, **Sch. 3** (with Sch. 2 paras. 6, 16)

F2 S. 1(3) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

[F3]2 . . . . . .

Textual Amendments

F3 S. 2 repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3**

3 Primary and other functions of health authorities etc. and exercise of functions.

[F4]. . . . . .

Textual Amendments

F4 S. 3 omitted (the amendment coming into force immediately before the National Health Service Act 2006 (c. 41) which Act came into force on 1.3.2007 in accordance with s. 277(1) (subject to s. 277(2)-(5) of that Act)) by virtue of The National Health Service (Pre-consolidation Amendments) Order 2006, arts. 1(1), 2, Sch. 1 Pt. 2 {para. 2} (with art. 4)

4 NHS contracts.

[F5]. . . . . .

Textual Amendments

F5 Ss. 4-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

[[F6]4A Provision of certain services under NHS contracts.

[[F7](1) This section applies to any arrangement under which [[F8]a Strategic Health Authority,][[F9]a Primary Care Trust,] a Health Authority or such other health service body as may be prescribed arrange for the provision to them—

(a) by a person on an ophthalmic list, [F10]. . .

[[F11](aa) by a contractor under a general ophthalmic services contract, or]

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(b) by a person on a pharmaceutical list,

of goods or services that they reasonably require for the purposes of functions which they are exercising under Part I of the principal Act **[**[F12]other than under section 16CD of that Act**]**.

(2) Any such arrangement is to be treated as an NHS contract for the purposes of section 4 (other than subsections (4) and (6)).

(3) In this section—

[[F13]"general ophthalmic services contract" and "contractor" under such a contract have the meanings given by section 28WA of the principal Act;**]**

"health service body" means a body which is a health service body for the purposes of section 4;

"ophthalmic list" means a list published in accordance with regulations made under—

(a) section **[**[F14]39(1)(a)**]** of the principal Act;

(b) section 26(2)(a) of the [M1]National Health Service (Scotland) Act 1978; or

(c) Article 62(2)(a) of the [M2]Health and Personal Social Services (Northern Ireland) Order 1972; and

"pharmaceutical list" means a list published in accordance with regulations made under—

(a) section 42(2)(a) of the principal Act;

(b) section 27(2) of the National Health Service (Scotland) Act 1978; or

(c) Article 63(2A)(a) of the 1972 Order.

[[F15](4) In subsection (3), in paragraph (b) of the definition of "ophthalmic list" the reference to a list published in accordance with regulations made under paragraph (a) of section 26(2) of the National Health Service (Scotland) Act 1978 is a reference to the first part of the list (referred to in sub-paragraph (i) of that paragraph) which is published in accordance with regulations under that paragraph.**]]**

Textual Amendments

F6 S. 4A inserted (1.9.1997) by 1997 c. 46, **s. 31(1)**; S.I. 1997/1780,

F7 S. 4A repealed (1.3.2007 for certain purposes, 1.8.2008 for certain purposes and otherwise prosp.) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2)(4)(g)(h)(l)(5)(6), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1); S.I. 2008/1972, **art. 2(b)**

F8 Words in s. 4A(1) inserted (1.10.2002) by 2002 c. 17, s. 1(3), **Sch. 1 Pt. 2 para. 41**; S.I. 2002/2478, **art. 3(1)(c)** (with art. 3(3) and transitional provision in art. 4)

F9 Words in s. 4A(1) inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 54**; S.I. 2002/2478, **art. 3(1)(d)** (with art. 3(3) and transitional provision in art. 4)

F10 Word in s. 4A(1)(a) omitted (1.8.2008) by Health Act 2006 (c. 28), ss. 80(1), 83(7), **Sch. 8 para. 29(2)(a)**; S.I. 2008/1972, **art. 2(b)**

F11 S. 4A(1)(aa) inserted (1.8.2008) by Health Act 2006 (c. 28), ss. 80(1), 83(7), Sch. 8 {para. 29(2)(a)}; S.I. 2008/1972, **art. 2(b)**

F12 Words in s. 4A(1) inserted (1.8.2008) by Health Act 2006 (c. 28), ss. 80(1), 83(7), **Sch. 8 para. 29(2)(b)**; S.I. 2008/1972, **art. 2(b)**

F13 S. 4A(3): definition of "general ophthalmic services contract" and "contractor" inserted (19.7.2006 for specified purposes, otherwise 1.8.2008) by Health Act 2006 (c. 28), ss. 80(1), 83(1)(e)(7), **Sch. 8** {para. 29(3)}

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F14 Words in s. 4A(3) substituted (1.7.2002) by virtue of 2001 c. 15, s. 67, **Sch. 5 Pt. 1 para. 8** (with ss. 64(9), 65(4)); S.I. 2002/1475, art. 2, **Sch. Pt. 1**

F15 S. 4A(4) inserted (1.4.2006) by The Smoking, Health and Social Care (Scotland) Act 2005 (Consequential Modifications) (England, Wales and Northern Ireland) Order 2006 (S.I. 2006/1056, arts. 1(2)(c), 2, **Sch. para. 5(c)** (which came into force in accordance with art. 1(2) of that Order and The National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006 (S.S.I. 2006/135) which were made on 10.3.2006 under substituted s. 26 of the National Health Service (Scotland) Act 1978 (c. 29) and came into force on 1.4.2006)

Marginal Citations

M1 1978 c. 29.

M2 S.I. 1972/1265 (N.I.14).

National Health Service trusts

5 NHS trusts.

F16 . . . . . .

Textual Amendments

F16 Ss. 4-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

6 Transfer of staff to NHS trusts.

F17 . . . . . .

Textual Amendments

F17 Ss. 4-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

7 Supplementary provisions as to transfer of staff.

F18 . . . . . .

Textual Amendments

F18 Ss. 4-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

8 Transfer of property, rights and liabilities to NHS trust.

F19 . . . . . .

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Textual Amendments

F19 Ss. 4-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

9 Originating capital debt of, and other financial provisions relating to NHS trusts.

F20 . . . . . .

Textual Amendments

F20 Ss. 4-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

10 Financial obligations of NHS trusts.

F21 . . . . . .

Textual Amendments

F21 Ss. 4-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

11 Trust funds and trustees for NHS trusts.

F22 . . . . . .

Textual Amendments

F22 Ss. 4-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Family Health Services Authorities

12 Functions of Family Health Services Authorities.

F23 . . . . . .

Textual Amendments

F23 Ss. 4-12 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

F24 13 . . . . . .

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Textual Amendments

F24 S. 13 repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 paras. 6, 16)

Fund-holding practices

[F25 14 . . . . . .

Textual Amendments

F25 S. 14 repealed (1.10.1999 for E. and 1.4.2000 for W.) by 1999 c. 8, ss. 1, 65, **Sch. 5**; S.I. 1999/2540, art. 2(1)(a), **Sch. 1**; S.I. 2000/1026, art. 2(1), **Sch.**; S.I. 2000/1041, art. 2(1)(d), **Sch.**

[F26 15 Payments to recognised fund-holding practices.

F26(1) . . . . . .

F27(2) . . . . . .

F26(3) . . . . . .

F28(4) **[** In any case where—

(a) a Health Authority make a payment of, or of any part of, an allotted sum to the members of a recognised fund-holding practice, and

(b) some of the individuals on the list of patients of any of the members of the practice reside in the area of another Health Authority, or in the area of a Health Board,

the Health Authority making the payment shall be entitled to recover from that other Health Authority, or from that Health Board, an amount equal to such portion of the payment as may be determined in accordance with directions given by the Secretary of State.**]**

(5) . . . . . .

F26(6) . . . . . .

F26(7) . . . . . .

F27(8) . . . . . .

F26(9) . . . . . .

F26(10) . . . . . .**]**

Extent Information

E1 S. 15 other than s. 15(4) does not extend to Scotland

Textual Amendments

F26 S. 15 repealed (1.10.1999 for E., 1.4.2000 for W. and otherwise *prosp.*) by 1999 c. 8, ss. 1, 65, **Sch. 5**; S.I. 1999/2540, art. 2(1)(a), **Sch. 1**; S.I. 2000/1026, art. 2(1), **Sch.**; S.I. 2000/1041, art. 2(d), **Sch.**

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F27 S. 15(2)(5) and (8) repealed (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, ss. 2(1)(3), 5(1)(2), **Sch. 1 para. 74(b)(e)** and (g), Sch. 3 (with Sch. 2 paras. 6, 16)

F28 S. 15(4) substituted (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. II para. 74(a)** (with Sch. 2 paras. 6, 16)

Commencement Information

I1 S. 15 wholly in force at 1.4.1991 see s. 67(1) and S.I. 1990/1329, art. 2(8), **Sch. 3**.

[F29]16 . . . . . .

Textual Amendments

F29 S. 16 repealed (1.10.1999 for E. and 1.4.2000 for W.) by 1999 c. 8, ss. 1, 65, **Sch. 5**; S.I. 1999/2540, art. 2(1)(a), **Sch. 1**; S.I. 2000/1026, art. 2(1), **Sch.**; S.I. 2000/1041, art. 2(1)(d), **Sch.**

[F30]17 . . . . . .

Textual Amendments

F30 S. 17 repealed (1.10.1999 for E. and 1.4.2000 for W.) by 1999 c. 8, s. 65, **Sch. 5**; S.I. 1999/2540, **art. 2(1)(a)**; S.I. 2000/1026, art. 2(1), **Sch.**; S.I. 2000/1041, art. 2(1)(d), **Sch.**

Indicative amounts

[[F31]18 Indicative amounts for doctors' practices.

(1) Subject to **[**[F32]subsections (2) and (8)**]** below, for each financial year, **[**[F33]every Primary Care Trust and**]** every **[**[F34]Local Health Board**]** shall, by notice in writing given to each practice in relation to the members of which it is the relevant **[**[F35]Primary Care Trust or**][**[F34]Local Health Board**]**, specify an amount of money (in this Act referred to as an "indicative amount") representing the basic price of the drugs, medicines and listed appliances which, in the opinion of the **[**[F35]Primary Care Trust or**][**[F34]Local Health Board**]**, it is reasonable to expect will be supplied in that year pursuant to orders given by or on behalf of the members of that practice.

(2) Subsection (1) above does not apply with respect to a practice which is or forms part of a fund-holding practice recognised under section 14 above.

(3) For the purposes of this section, a "practice" means—

[[F36](a) a person or body who has entered into a contract under section 28Q of the principal Act, otherwise than in partnership; or

(b) two or more individuals practising in partnership who together have entered into such a contract,**]**

and any reference to the members of a practice shall be construed accordingly.

(4) The members of a practice shall seek to secure that, except with the consent of the relevant **[**[F37]Primary Care Trust or**][**[F38]Local Health Board**]** or for good cause, the orders for drugs, medicines and listed appliances given by them or on their behalf are such that the basic price of the items supplied pursuant to those orders in any financial

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year does not exceed the indicative amount notified to the practice for that year under subsection (1) above.

(5) For the purpose of measuring the extent to which a practice is operating within the indicative amount notified to it under subsection (1) above for any financial year, a **[**[F37]Primary Care Trust or**][**[F38]Local Health Board**]** shall set against that indicative amount an amount equal to the basic price of the drugs, medicines and listed appliances supplied in that year pursuant to orders given by or on behalf of members of the practice.

(6) For the purposes of this section, regulations may make provision as to the specification of, or means of calculating, the basic price of any drugs, medicines or listed appliances.

(7) [F39]. . . . . .

[F40]**[** (8) This section does not apply in relation to the performance or provision of personal medical services in accordance with arrangements made under section 28C of the principal Act.**]**

[F41]**[** (9) In this section, references to the "relevant" Primary Care Trust or Local Health Board, in relation to a practice, are to the Primary Care Trust or Local Health Board with which it has entered into a contract under section 28Q of the principal Act.**]]**

Textual Amendments

F31 S. 18 repealed by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 80, **Sch. 5** (the repeal being brought into force: on 1.10.1999 to the extent that Sch. 5 repeals s. 18(2) for E. by S.I. 1999/2540, art. 2(1)(a), **Sch. 1**; on 1.4.2000 to the extent that Sch. 5 repeals s. 18(2) and is not already in force by S.I. 2000/1041, art. 2(1)(d), **Sch.**; the repeal being otherwise prosp.)

F32 Words in s. 18(1) substituted (1.4.1998) by 1997 c. 46, **s. 41(10)**, (11), Sch. 2 para. 65(8); S.I. 1998/631, art. 2(b), **Sch. 2**

F33 Words in s. 18(1) inserted (1.10.2002 with effect as mentioned in Sch. 2 para. 55(2) of the amending act) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 55(1)(a)(i)(2)**; S.I. 2002/2478, **art. 3(1)(d)** (with art. 3(3) and transitional provision in art. 4)

F34 Words in s. 18(1) substituted (1.4.2004) by Health and Social Care (Community Health and Standards Act 2003 (c. 43), ss. 184, 199(1)(a), **Sch. 11 para. 56(2)**; S.I. 2004/288, arts. 1(5), **5(2)(v)** (as amended by S.I. 2004/866, art. 2(1)); S.I. 2004/480, **art. 4(2)(z)**

F35 Words in s. 18(1) inserted (1.10.2002 with effect as mentioned in Sch. 2 para. 55(2) of the amending act) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 55(1)(a)(ii)(2)**; S.I. 2002/2478, **art. 3(1)(d)** (with art. 3(3) and transitional provision in art. 4)

F36 S. 18(3)(a)(b) substituted (1.4.2004) by Health and Social Care (Community Health and Standards Act 2003 (c. 43), ss. 184, 199(1)(a), **Sch. 11 para. 56(3)**; S.I. 2004/288, arts. 1(5), **5(2)(v)** (as amended by S.I. 2004/866, art. 2(1)); S.I. 2004/480, **art. 4(2)(z)**

F37 Words in s. 18 inserted (1.10.2002 with effect as mentioned in Sch. 2 para. 55(2) of the amending act) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 55(1)(b)**; S.I. 2002/2478, **art. 3(1)(d)** (with art. 3(3) and transitional provision in art. 4)

F38 Words in s. 18(4)(5) substituted (1.4.2004) by Health and Social Care (Community Health and Standards Act 2003 (c. 43), ss. 184, 199(1)(a), **Sch. 11 para. 56(4)**; S.I. 2004/288, arts. 1(5), **5(2)(v)** (as amended by S.I. 2004/866, art. 2(1)); S.I. 2004/480, **art. 4(2)(z)**

F39 S. 18(7) repealed (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 196, 199(1), **Sch. 14 Pt. 4**; S.I. 2004/288, arts. 1(5), **6(2)(i)** (as amended (23.3.2004) by S.I. 2004/866, art. 2(1)); S.I. 2004/480, **art. 5(2)(i)** (as amended by S.I. 2004/1019, art. 2(5)(a))

F40 S. 18(8) inserted (1.4.1998) by 1997 c. 46, **s. 41**(10(11), Sch. 2 para. 65(10); S.I. 1998/631, art. 2(b), **Sch. 2**

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F41 S. 18(9) inserted (1.4.2004) by Health and Social Care (Community Health and Standards Act 2003 (c. 43), ss. 184, 199(1)(a), **Sch. 11 para. 56(5)**; S.I. 2004/288, arts. 1(5), **5(2)(v)** (as amended by S.I. 2004/866, art. 2(1)); S.I. 2004/480, **art. 4(2)(z)**

Modifications etc. (not altering text)

C1 S. 18 modified (1.4.1991) by S.I. 1991/556, **reg. 3**.
S. 18(2) applied (with modifications) (1.4.1997) by S.I. 1997/980, **reg. 3**

C2 S. 18: functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), **Sch. 2**

C3 S. 18 modified (temp.) (1.4.2004) by The General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004 (S.I. 2004/865), **art. 115**

C4 S. 18 modified (W.) (1.4.2004) by The General Medical Services Transitional and Consequential Provisions (Wales) (No. 2) Order 2004 (S.I. 2004/1016), **art. 91**

Commencement Information

I2 S. 18 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/1329, art. 2(8), **Sch. 3**.

Funding, audit and liabilities

[F42]19 . . . . . .

Textual Amendments

F42 S. 19 repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 paras. 6, 16)

20 Extension of functions etc. of Audit Commission to cover the health service.

[F43](1) . . . . . .

(2) In section 98 of the principal Act (accounts and audit),—

(a) in subsection (1), in the words following paragraph (e) for the words from "appointed" to "Comptroller" there shall be substituted "appointed by the Audit Commission for Local Authorities and the National Health Service in England and Wales and the Comptroller";

[F44](b) . . . . . .

[F45](c) . . . . . .

[F45](d) . . . . . .

[F43](3) . . . . . .

[F43](4) . . . . . .

[F43](5) . . . . . .

[F43](6) . . . . . .

[F43](7) . . . . . .

[F43](8) . . . . . .

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Textual Amendments

F43 S. 20(1)(3)-(8) repealed (11.9.1998) by 1998 c. 18, ss. 54(3), 55(2), **Sch. 5**

F44 S. 20(2)(b) repealed (1.10.1999 for E. and 1.4.2000 for W.) by 1999 c. 8, ss. 65(2), Sch. 4 para. 83(6), **Sch. 5**; S.I. 1999/2540, art. 2(1)(a), **Sch. 1**; S.I. 2000/1041, art. 2(d), **Sch.**

F45 S. 20(2)(c)(d) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6)

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

F46 . . . . . .

Textual Amendments

F46 S. 21 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Further amendments of the principal Act

22 The Medical Practices Committee.

23 Distribution of general medical services.

F47 . . . . . .

Textual Amendments

F47 S. 23 repealed (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 c. 43, ss. 196, 199(1), **Sch. 14 Pt. 4**; S.I. 2004/288, arts. 1(5), **6(2)(i)** (as amended (23.3.2004) by S.I. 2004/866, art. 2(1)); S.I. 2004/480, **art. 5(2)(i)** (as amended by S.I. 2004/1019, art. 2(5)(a))

24 Limitations on right to be included on list of dental practitioners.

F48 . . . . . .

Textual Amendments

F48 S. 24 repealed (1.4.2006) by Health and Social Care (Community Health and Standards) Act 2003 c. 43, ss. 196, 199(1), **Sch. 14 Pt. 4**; S.I. 2005/2925, arts. 1(3), **11(2)(l)**; S.I. 2006/345, **art. 7(2)(g)**

25 Transfer to DHA of certain functions relating to private patients.

F49 . . . . . .

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Textual Amendments

F49 S. 25 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Interpretation

26 Interpretation of Part I.

F50 . . . . . .

Textual Amendments

F50 S. 26 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

PART II

THE NATIONAL HEALTH SERVICE: SCOTLAND

Health Boards and other bodies

27 Health Boards, the Common Services Agency and state hospitals.

(1) Subject to subsection (2) below, at the end of the day appointed for the coming into force of this subsection, any person who is a member of—

(a) a Health Board;

(b) the management committee of the Common Services Agency for the Scottish Health Service; or

(c) a State Hospital Management Committee within the meaning of the [M3]Mental Health (Scotland) Act 1984,

shall cease to be such a member.

(2) Subsection (1) above does not apply to a person holding office as chairman of a Health Board or of a committee mentioned in subsection (1)(b) or (c) above.

(3) Schedule 1 (Health Boards) and Schedule 5 (Common Services Agency) to the [M4]National Health Service (Scotland) Act 1978 (in this Part of this Act referred to as "the 1978 Act") and Schedule 1 to the [M5]Mental Health (Scotland) Act 1984 (State Hospital Management Committees) shall be amended in accordance with Schedule 5 to this Act.

Commencement Information

I3 S. 27 wholly in force; s. 27 not in force at Royal Assent see s. 67(2); s. 27(3) in force at 17.9.1990 and s. 27(1)(2) in force for certain purposes at 31.3.1991 and at 30.6.1992 insofar as not already in force by S.I. 1990/1793, art. 2(1)(3)(5), **Sch. I** (art. 2(5) of that S.I. amended (13.3.1992) by S.I. 1992/799, **art. 2**).

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Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Marginal Citations

M3 1984 c. 36.
M4 1978 c. 29.
M5 1984 c. 36.

28 Special Health Boards.

In section 2 (Health Boards) of the 1978 Act—

(a) in subsection (1)—

(i) after the words "Secretary of State" there shall be inserted the word "(a)"; and

(ii) after the words "Health Boards" there shall be inserted—

"and

(b) subject to subsections (1A) and (1C), may by order constitute boards, either for the whole of Scotland or for such parts of Scotland as he may so determine, for the purpose of exercising such of his functions under this Act as he may so determine; and those boards shall, without prejudice to subsection (1B), be called Special Health Boards.";

(b) after subsection (1) there shall be inserted the following subsections—

"(1A) An order made under subsection (1)(b) may determine an area for a Special Health Board constituted under that subsection which is the same as the areas determined—

(a) for any other Special Health Board; or

(b) for any Health Board or Health Boards constituted by an order or orders made under subsection (1)(a).

(1B) An order under subsection (1)(b) may specify the name by which a board constituted by the order shall be known.

(1C) The Secretary of State may by order provide that such of the provisions of this Act or of any other enactment, or of any orders, regulations, schemes or directions made under or by virtue of this Act or of any other enactment, as apply in relation to Health Boards shall, subject to such modifications and limitations as may be specified in the order, so apply in relation to any Special Health Board so specified."; and

(c) in subsection (2), for the word "(1)" there shall be substituted the word "(1)(a)".

29 Scottish advisory bodies.

(1) Section 5 of the 1978 Act (Scottish Health Service Planning Council) shall cease to have effect.

(2) Section 6 of that Act (national consultative committees) shall cease to have effect.

(3) In section 7 of that Act (local health councils)—

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(a) in subsection (2), the words from "by local authorities" to "and for the appointment" shall cease to have effect;
(b) in subsection (9)(d), after the words "Health Board" there shall be inserted "and from any NHS trust in their area or district"; and
(c) in subsection (9)(e), after the words "Health Board" there shall be inserted "and establishments in their area or district administered by NHS trusts".

(4) In section 8(1) of that Act (university liaison committees)—
(a) after the words "those Boards" where they first occur there shall be inserted "and any NHS trusts in the area or combined areas";
(b) for the words "the area or combined" there shall be substituted "that area or those"; and
(c) after the words "those Boards" in the second place where they occur there shall be inserted ", any such NHS trust".

(5) In section 9 of that Act (local consultative committees)—
(a) for the words from "after consultation" to "is representative" in each of subsections (1), (3) and (4) there shall be substituted "a Health Board is satisfied that a committee formed for its area is representative";
(b) for the words "Secretary of State" in the second place where they occur in subsection (1) there shall be substituted "Health Board"; and
(c) for the word "he" in each of subsections (3) and (4) there shall be substituted "the Board".

30 NHS contracts.

After section 17 of the 1978 Act there shall be inserted the following sections—

"**17A NHS contracts.**

(1) The persons or bodies mentioned in paragraphs (a) to (e) of subsection (2) may, for the purpose of carrying out their functions under any enactment, and without prejudice to any other power they may have in that regard, enter into arrangements for the provision of goods or services to or by them with—
(a) one another; or
(b) any of the persons or bodies mentioned in paragraphs (f) to (m) of that subsection.

(2) The persons and bodies referred to in subsection (1) are—
(a) Health Boards;
(b) the Agency;
(c) the Scottish Dental Practice Board;
(d) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984;
(e) NHS trusts established under section 12A;
(f) health authorities within the meaning of section 128(1) (interpretation) of the National Health Service Act 1977;
(g) the Dental Practice Board;
(h) the Public Health Laboratory Service Board;

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(i) Family Health Services Authorities within the meaning of section 10 of the National Health Service Act 1977;

(j) recognised fund-holding practices;

(k) NHS trusts established under section 5 of the National Health Service and Community Care Act 1990;

(l) Health and Social Services Boards constituted under the Health and Personal Social Services (Northern Ireland) Order 1972; and

(m) the Secretary of State.

(3) In subsection (1)—

(a) "goods" includes accommodation; and

(b) "services" includes services of any description,

and in this Act an arrangement falling within that subsection is referred to as an "NHS contract".

(4) Whether or not an arrangement which constitutes an NHS contract would, apart from this subsection, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities, but if any dispute arises with respect to such an arrangement, either party may refer the matter to the Secretary of State for determination under the following provisions of this section.

(5) If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to either of the prospective parties that—

(a) the terms proposed by the other party are unfair by reason that that party is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement; or

(b) for any other reason arising out of the relative bargaining positions of the prospective parties any of the terms of the proposed arrangements cannot be agreed,

that party may refer the terms of the proposed arrangement to the Secretary of State for determination under the following provisions of this section.

(6) Where a reference is made to the Secretary of State under subsection (4) or (5), the Secretary of State may determine the matter himself or, if he considers it appropriate, appoint a person to consider and determine it in accordance with regulations.

(7) By his determination of a reference under subsection (5), the Secretary of State or, as the case may be, the person appointed by him under subsection (6) may specify terms to be included in the proposed arrangement and may direct that it be proceeded with; and it shall be the duty of the prospective parties to the proposed arrangement to comply with any such directions.

(8) A determination of a reference under subsection (4) may contain such directions (including directions as to payment) as the Secretary of State or, as the case may be, the person appointed under subsection (6) considers appropriate to resolve the matter in dispute; and it shall be the duty of the parties to the NHS contract in question to comply with any such directions.

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(9) Without prejudice to the generality of his powers on a reference under subsection (4), the Secretary of State or, as the case may be, the person appointed by him under subsection (6) may by his determination in relation to an arrangement constituting an NHS contract vary the terms of the arrangement or bring it to an end; and where the arrangement is so varied or brought to an end—

(a) subject to paragraph (b), the variation or termination shall be treated as being effected by agreement between the parties; and

(b) directions included in the determination by virtue of subsection (8) may contain such provisions as the Secretary of State or, as the case may be, the person appointed by him under subsection (6) considers appropriate in order satisfactorily to give effect to the variation or to bring the arrangement to an end.

17B Reimbursement of Health Boards' costs.

(1) Where a Health Board provide goods or services under this Act for an individual for whose health care it is not their function to provide by virtue of section 2(1), in circumstances where the condition of the individual is such that he needs those goods or services and, having regard to his condition, it is not practicable, before providing them, to enter into an NHS contract for their provision, that Health Board shall be remunerated in respect of that provision by the Health Board or Health and Social Services Board which has the function, or the District or Special Health Authority which has the primary functions, of providing those goods or services to that individual.

(2) The rate of any remuneration payable by virtue of subsection (1) shall be calculated in such manner or on such basis as may be determined by the Secretary of State.

(3) In any case where—

(a) a Health Board provide goods or services for the benefit of an individual; and

(b) the provision of those goods and services is not pursuant to an NHS contract; and

(c) the individual is resident outside the United Kingdom and is of a description (being a description associating the individual with another country) specified for the purposes of this subsection by a direction made by the Secretary of State,

the Health Board shall be remunerated by the Secretary of State in respect of the provision of the goods or services at such rate or rates as he considers appropriate.

(4) In subsection (1), "Health and Social Services Board" means such a Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972."

Commencement Information

I4 S. 30 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/1793, art. 2(4), **Sch. II**.

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National Health Service trusts

31 National Health Service trusts.

After section 12 of the 1978 Act there shall be inserted the following sections—

"12A National Health Service trusts.

(1) Subject to subsection (2), the Secretary of State may by order establish bodies, to be known as National Health Service trusts (in this Act referred to as "NHS trusts")—
  (a) to assume responsibility, in accordance with this Act, for the ownership and management of hospitals or other establishments or facilities which were previously managed or provided by Health Boards or the Agency; or
  (b) to provide and manage hospitals or other establishments or facilities.

(2) The Secretary of State shall by regulations provide for such consultation as may be so prescribed to be carried out by a Health Board or the Agency, before he makes an order under subsection (1).

(3) Every NHS trust—
  (a) shall be a body corporate having a board of directors consisting of a chairman appointed by the Secretary of State and, subject to paragraph 5(2) of Schedule 7A, executive and non-executive directors (that is to say, directors who, subject to subsection (5), respectively are and are not employees of the trust); and
  (b) shall have the functions conferred on it by an order under subsection (1) and by Schedule 7A.

(4) The functions specified in an order under subsection (1) shall include such functions as the Secretary of State considers appropriate in relation to the provision of services by the trust for one or more of the following—
  (a) Health Boards; and
  (b) the Agency.

(5) Regulations may make general provision with respect to—
  (a) the qualifications for and the tenure of office of the chairman and directors of an NHS trust (including the circumstances in which they shall cease to hold, or may be removed from, office or may be suspended from performing the functions of the office);
  (b) the persons by whom the directors and any of the officers are to be appointed and the manner of their appointment;
  (c) the maximum and minimum numbers of the directors;
  (d) the circumstances in which a person who is not an employee of the trust is nevertheless, on appointment as a director, to be regarded as an executive rather than as a non-executive director;
  (e) the proceedings of the trust (including the validation of proceedings in the event of a vacancy or defect in appointment);
  (f) the appointment, constitution and exercise of functions by committees and sub-committees of the trust (whether or not consisting of or including any members of the board); and

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(g) the application of the seal of the trust and the constitution and proof of instruments.

(6) Part I of Schedule 7A shall have effect with respect to orders under subsection (1); Part II of that Schedule shall have effect, subject to subsection (7), with respect to the general duties and the powers and status of NHS trusts; the supplementary provisions of Part III of that Schedule shall have effect; and Part IV of that Schedule shall have effect with respect to the dissolution of NHS trusts.

(7) The specific powers conferred by paragraphs 14 and 15 in Part II of Schedule 7A may be exercised only to the extent that the exercise will not—

(a) interfere with the duty of the trust to comply with directions under paragraph 6 of that Schedule; and

(b) to any significant extent interfere with the performance by the trust of its obligations under any NHS contract or any obligations imposed by an order under subsection (1).

(8) The Secretary of State may by order confer on NHS trusts specific powers additional to those contained in paragraphs 10 to 15 of Schedule 7A.

12B Transfer of staff to NHS trusts.

(1) Subject to subsection (5), this section applies to any person who, immediately before an NHS trust's operational date—

(a) is employed by a Health Board or the Agency (in this section and section 12C referred to as a "transferor authority") to work solely at, or for the purposes of, a hospital or other establishment or facility which is to become the responsibility of the trust; or

(b) is employed by a transferor authority to work at, or for the purposes of, any such hospital, establishment or facility and is designated for the purposes of this section by a scheme made by the body specified as mentioned in paragraph 3(1)(f) of Schedule 7A.

(2) A scheme under this section shall not have effect unless approved by the Secretary of State.

(3) Subject to section 12C, the contract of employment between a person to whom this section applies and the transferor authority shall have effect from the operational date as if originally made between him and the NHS trust.

(4) Without prejudice to subsection (3)—

(a) all the transferor authority's rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the NHS trust on its operational date; and

(b) anything done before that date by or in relation to the transferor authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the NHS trust.

(5) In any case where—

(a) an order under section 12A(1) provides for the establishment of an NHS trust with effect from a date earlier than the operational date of the trust; and

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(b) on or after that earlier date but before its operational date the NHS trust makes an offer of employment by the trust to a person who at that time is employed by a Health Board or the Agency to work, whether solely or otherwise, at, or for the purposes of, the hospital or other establishment or facility which is to become the responsibility of the trust; and

(c) as a result of the acceptance of the offer, the person to whom it was made becomes an employee of the NHS trust,

subsections (3) and (4) shall have effect in relation to that person's contract of employment as if he were a person to whom this section applies and any reference in those subsections to the operational date of the trust were a reference to the date on which he takes up employment with the trust.

(6) Subsections (3) and (4) are without prejudice to any right of an 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 of the change in employer effected by this section.

(7) A scheme under this section may designate a person either individually or as a member of a class or description of employees.

12C Supplementary provisions as to transfer of staff.

(1) In the case of a person who falls within subsection (1)(b) of section 12B, a scheme under that section may provide that, with effect from the NHS trust's operational date, his contract of employment (in this section referred to as "his original contract") shall be treated in accordance with the scheme as divided so as to constitute—

(a) a contract of employment with the NHS trust; and

(b) a contract of employment with the transferor authority by whom he was employed before that date.

(2) Where a scheme makes provision as mentioned in subsection (1)—

(a) the scheme shall secure that the benefits to the employee under the two contracts referred to in that subsection, when taken together, are not less favourable than the benefits under his original contract;

(b) section 12B shall apply in relation to the contract referred to in subsection (1)(a) as if it were a contract transferred under that section from the transferor authority to the NHS trust;

(c) so far as necessary to preserve any rights and obligations, the contract referred to in subsection (1)(b) shall be regarded as a continuation of the employee's original contract; and

(d) for the purposes of section 146 of and Schedule 13 to the Employment Protection (Consolidation) Act 1978, the number of hours normally worked, or, as the case may be, the hours for which the employee is employed in any week under either of those contracts shall be taken to be the total of the hours normally worked or, as the case may be, for which he is employed under the two contracts taken together.

(3) Where, as a result of the provisions of section 12B, by virtue of his employment during any period after the NHS trust's operational date—

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(a) an employee has contractual rights against an NHS trust to benefits in the event of his redundancy, and

(b) he also has statutory rights against the NHS trust under Part VI of the Employment Protection (Consolidation) Act 1978 (redundancy payments),

any benefits provided to him by virtue of the contractual rights referred to in paragraph (a) shall be taken as satisfying his entitlement to benefits under Part VI of that Act.

12D Transfer of property rights and liabilities to NHS trusts.

(1) The Secretary of State may by order provide for the transfer to an NHS trust, with effect from such date as may be specified in the order, of such of the property, liabilities and obligations of a Health Board, the Agency or the Secretary of State as, in his opinion, need to be transferred to the NHS trust for the purpose of enabling it to carry out its functions.

(2) An order under this section may create or impose, or provide for the creation or imposition of, such new rights, liabilities or obligations in respect of what is transferred or what is retained by a Health Board or the Agency as appear to the Secretary of State to be necessary or expedient.

(3) Nothing in this section affects the power of the Secretary of State or any power of a Health Board or the Agency to transfer property, liabilities or obligations to an NHS trust otherwise than under subsection (1).

(4) Stamp duty shall not be chargeable in respect of any transfer to an NHS trust effected by virtue of an order under this section.

(5) Where an order under this section provides for the transfer—

(a) of land held on lease from a third party, that is to say, a person other than the Secretary of State; or

(b) of 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 notwithstanding that, apart from this subsection, it would have required his consent or concurrence, or would have required to be intimated to him.

(6) Any property, liabilities and obligations which are to be transferred to an NHS trust shall be identified by agreement between, on the one hand, the NHS trust and, on the other hand, a Health Board or the Agency; or, in default of agreement, by direction of the Secretary of State.

(7) Where, for the purpose of a transfer pursuant to an order under this section, it becomes necessary to apportion any property, liabilities and obligations, the order may contain such provisions as appear to the Secretary of State to be appropriate for the purpose; and where any such property falls within subsection (5), the order shall contain such provisions as appear to the Secretary of State to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.

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(8) Without prejudice to section 105(7), an order under this section may include provision for matters to be settled by arbitration by a person determined in accordance with the order.

12E Originating capital debt of, and other financial provisions relating to NHS trusts.

(1) Each NHS trust shall have an originating capital debt of an amount specified in an order made by the Secretary of State with the consent of the Treasury, being an amount representing, subject to subsection (2), the excess of the valuation of the assets which, on or in connection with the establishment of the trust, are or are to be transferred to it (whether before, on or after its operational date) over the amounts of the liabilities which are or are to be so transferred.

(2) In determining the originating capital debt of an NHS trust, there shall be left out of account such assets or, as the case may be, such liabilities as are, or are of a class, determined for the purposes of this section by the Secretary of State, with the consent of the Treasury.

(3) An NHS trust's originating capital debt shall be deemed to have been issued out of moneys provided by Parliament and shall constitute an asset of the Consolidated Fund.

(4) In accordance with an order under subsection (1), an NHS trust's originating capital debt shall be divided between—
   (a) a loan on which interest shall be paid at such variable or fixed rates and at such times as the Treasury may determine; and
   (b) public dividend capital.

(5) The loan specified in subsection (4)(a) is in this Part of this Act referred to as an NHS trust's "initial loan" and a rate of interest on the initial loan shall be determined as if section 5 of the National Loans Act 1968 had effect in respect of it and subsections (5) to (5B) of that section shall apply accordingly.

(6) Subject to subsections (4)(a) and (5), the terms of the initial loan shall be such as the Secretary of State, with the consent of the Treasury, may determine; and, in the event of the early repayment of the initial loan, the terms may require the payment of a premium or allow a discount.

(7) With the consent of the Treasury, the Secretary of State may determine the terms on which any public dividend capital forming part of an NHS trust's originating capital debt is to be treated as having been issued, and, in particular, may determine the dividend which is to be payable at any time on any public dividend capital.

(8) Schedule 7B shall have effect with respect to—
   (a) borrowing by NHS trusts;
   (b) the limits on their indebtedness;
   (c) the payment of additional public dividend capital to them; and
   (d) the application of any surplus funds of NHS trusts.

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12F Financial obligations of NHS trusts.

(1) Every NHS trust shall ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account.

(2) It shall be the duty of every NHS trust to achieve such financial objectives as may from time to time be set by the Secretary of State with the consent of the Treasury and as are applicable to it; and any such objectives may be made applicable to NHS trusts generally, or to a particular NHS trust or to NHS trusts of a particular description."

32 Further provision relating to NHS trusts.

After Schedule 7 to the 1978 Act there shall be inserted the Schedules set out in Schedule 6 to this Act.

33 Trust property of NHS trusts.

After section 12F of the 1978 Act (as inserted by section 31 of this Act) there shall be inserted the following section—

"**12G Trust property of NHS trusts.**

(1) Subject to subsection (2), an NHS trust shall have power to accept, hold and administer any property on trust for purposes relating to any service which it is their function to make arrangements for, administer or provide.

(2) The Secretary of State may by order make such provision as he thinks appropriate in relation to the appointment of trustees in respect of an NHS trust for the purpose of holding in trust any property which is to be so held on behalf of the trust; and any such order may include provision as to the persons by whom, the manner in which, the conditions on which and the time within which, such trustees are to be appointed.

(3) Where—

(a) section 82 applies in relation to any endowment or property which is held on trust by a Health Board; and

(b) that endowment or property is, by virtue of an order under section 12D, transferred to an NHS trust,

section 82 shall apply to the use of that endowment or property by the trust as it applied to the use thereof by the Health Board.

(4) Trustees appointed by virtue of subsection (2) shall cause proper accounts to be kept of the capital, income and expenditure vested in, received by and expended by them; and shall cause such accounts to be audited and an abstract thereof to be published in such manner as the Secretary of State may approve."

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Fund-holding practices

34 Fund-holding practices.

After section 87 of the 1978 Act there shall be inserted the following sections—

" Fund-holding practices

87A Recognition of fund-holding practices of doctors.

(1) Any one or more medical practitioners who are providing general medical services in accordance with arrangements under section 19 may apply to the relevant Health Board for recognition as a fund-holding practice.

(2) The relevant Health Board shall not grant recognition as a fund-holding practice unless the medical practitioner or, as the case may be, each of the medical practitioners concerned fulfils such conditions as may be prescribed.

(3) Where two or more medical practitioners who wish to make an application under subsection (1) are not partners in a single partnership, section 19(8)(a) (construction of "relevant Health Board") shall apply as if the medical practitioners were practising in a single partnership.

(4) Regulations may make provision with respect to—
- (a) the making of applications under subsection (1);
- (b) the granting and refusal of recognition as a fund-holding practice;
- (c) the conditions to be fulfilled for obtaining and continuing to be entitled to such recognition;
- (d) appeals against any refusal of such recognition by a Health Board;
- (e) withdrawing from, or becoming a member of, an existing recognised fund-holding practice;
- (f) the continuity or otherwise of a recognised fund-holding practice in the event of the death or withdrawal of a member or the addition of a new member; and
- (g) the operation of this section in a case where one or more of the medical practitioners wishing to make an application under subsection (1) is also on the medical list of a Family Health Services Authority established under section 10 of the National Health Service Act 1977,

and regulations making the provision referred to in paragraph (g) may make such modifications of the preceding provisions of this section as the Secretary of State considers appropriate.

87B Payments to recognised fund-holding practices.

(1) In respect of each financial year, every Health Board shall be liable to pay to the members of each recognised fund-holding practice in relation to which it is the relevant Health Board a sum determined in such manner and by reference to such factors as the Secretary of State may direct (in this section referred to as an "allotted sum").

(2) The liability to pay an allotted sum under subsection (1) may be discharged, in whole or in part, in either of the following ways—

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(a) by making payments on account of the allotted sum at such times and in such manner as the Secretary of State may direct; and

(b) by discharging liabilities of the members of the practice to any other person (including, in particular, liabilities under NHS contracts);

and any reference in this section and section 87C to payment of or of a part of an allotted sum includes a reference to the discharge, in accordance with this subsection, of the whole or part of the liability to pay that sum.

(3) In any case where—

(a) a Health Board makes a payment of, or of any part of, an allotted sum to the members of a recognised fund-holding practice, and

(b) some of the individuals on the lists of patients of any of the members of the practice reside in the area of another Health Board, or in the region of a Regional Health Authority established under section 8 of the National Health Service Act 1977,

the Board making the payment shall be entitled to recover from that other Board or the Authority an amount equal to such portion of the payment as may be determined in accordance with directions given by the Secretary of State.

(4) The members of a recognised fund-holding practice may apply allotted sums only for purposes specified in regulations under subsection (5).

(5) Regulations shall make provision with respect to the purposes for which allotted sums are to be or may be applied and may make provision generally with respect to the operation of recognised fund-holding practices in relation to allotted sums; and the regulations may, in particular,—

(a) require the members of a practice to pay to the relevant Health Board out of allotted sums paid to them an amount determined in accordance with the regulations as the basic cost of the drugs, medicines and listed appliances supplied pursuant to orders given by or on behalf of members of the practice;

(b) provide that the goods and services, other than general medical services, which may be purchased by or on behalf of the members of such a practice out of allotted sums for the individuals on the lists of patients of the members of the practice shall be such as may be specified in a list approved for the purpose under the regulations; and

(c) impose a limit on the amount which may be spent out of an allotted sum on the provision of goods and services for any one individual, being a limit above which the cost of any goods and services for that individual in the financial year in question will fall to be met by the Health Board whose functions include the provision of goods and services (not necessarily the goods and services in question) to the individual concerned.

(6) In accordance with directions given by the Secretary of State, the relevant Health Board shall monitor the expenditure of the members of a recognised fund-holding practice and may institute an audit and review in any case where the Board consider it necessary to do so.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

87C Renunciation and removal of recognition as a fund-holding practice and withholding of funds.

(1) Regulations may make provision as to the circumstances in which the members of a recognised fund-holding practice may renounce that status and such regulations may, in particular, make provision as to—
   (a) the notice to be given and the number of members of the practice by whom it is to be given;
   (b) the procedure to be followed; and
   (c) the consequences of such a renunciation.

(2) Regulations may make provision as to the circumstances in which and the grounds on which the relevant Health Board may remove recognition from the members of a fund-holding practice,—
   (a) with immediate effect; or
   (b) with effect from the end of a particular financial year; or
   (c) with effect from such other date as may be specified by the Health Board.

(3) Where provision is made as mentioned in subsection (2), regulations shall make provision with respect to—
   (a) the procedure for removal of recognition;
   (b) appeals against the removal of recognition by a Health Board; and
   (c) the consequences of the removal of recognition.

(4) Without prejudice to the generality of the powers conferred by subsection (3), regulations making provision as mentioned in paragraph (c) of that subsection may—
   (a) provide for the transfer of rights and obligations from the members of the fund-holding practice to one or more Health Boards determined in accordance with the regulations;
   (b) provide for the recovery of sums from members of the practice; and
   (c) require the members of the practice to furnish such information as may reasonably be required by the Health Board.

(5) The bringing of an appeal against the removal of recognition by a Health Board shall not be regarded as preserving the recognised status of the members of the fund-holding practice and, accordingly, subject to the outcome of the appeal, the relevant Health Board shall not be required, after the removal takes effect, to make any (or, as the case may be, any further) payment to the members of the practice of any part of the allotted sum for the financial year in question or, as the case may be, to determine and pay any allotted sum for a future financial year.

(6) Where any part of an allotted sum has been applied by the members of a recognised fund-holding practice (or any one or more of them) for purposes other than those specified in regulations under section 87B(5), regulations may make provision for and in connection with the recovery by the relevant Health Board of an amount equal to that part.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

(7) Where provision is made as mentioned in subsection (6), regulations shall make provision with respect to appeals against the recovery of any amount by a Health Board."

Indicative amounts

35 Indicative amounts for doctors' practices.

After the sections inserted in the 1978 Act by section 34 above there shall be inserted the following section—

" Indicative amounts

87D Indicative amounts for doctors' practices.

(1) Subject to subsection (2), for each financial year every Health Board shall, by notice in writing given to each practice in relation to the members of which it is the relevant Health Board, specify an amount of money (in this Act referred to as an "indicative amount") representing the basic price of the drugs, medicines and listed appliances which, in the opinion of the Board, it is reasonable to expect will be supplied in that year pursuant to orders given by or on behalf of the members of that practice.

(2) Subsection (1) does not apply with respect to a practice which is or forms part of a fund-holding practice recognised under section 87A.

(3) For the purposes of this section, a "practice" means—
   (a) a single medical practitioner who practises otherwise than in partnership; or
   (b) any two or more medical practitioners who practise in partnership;

   and any reference to the members of a practice shall be construed accordingly.

(4) The members of a practice shall seek to secure that, except with the consent of the relevant Health Board or for good cause, the orders for drugs, medicines and listed appliances given by them or on their behalf are such that the basic price of the items supplied pursuant to those orders in any financial year does not exceed the indicative amount notified to the practice for that year under subsection (1).

(5) For the purpose of measuring the extent to which a practice is operating within the indicative amount notified to it under subsection (1) for any financial year, a Health Board shall set against that indicative amount an amount equal to the basic price of the drugs, medicines and listed appliances supplied in that year pursuant to orders given by or on behalf of members of the practice.

(6) For the purposes of this section, regulations may make provision as to the specification of, or means of calculating, the basic price of any drugs, medicines and listed appliances.

(7) If, in the case of any practice, a member is on the medical list of a Family Health Services Authority established under section 10 of the National Health Service Act 1977 (as well as on that of a Health Board), any question whether this

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section applies in relation to the members of the practice shall be determined in accordance with regulations; and any such regulations may modify the preceding provisions of this section in their application to such a practice."

Commencement Information

I5 S. 35 wholly in force at 1.4.1992 see s. 67(2) and S.I. 1990/1793, **art. 2(6)**.

Audit

36 Accounts and audit of NHS trusts and fund-holding practices.

(1) The enactments specified in Schedule 7 to this Act shall have effect subject to the amendments set out in that Schedule, being amendments—

(a) to extend the functions of the Commission for Local Authority Accounts in Scotland (in this section referred to as "the Commission") to cover Health Boards and other bodies established under the 1978 Act, the Mental Welfare Commission for Scotland and State Hospital Management Committees constituted under the [M6]Mental Health (Scotland) Act 1984;

(b) to alter the title and constitution of the Commission to reflect its wider role; and

(c) to make provision consequential on or supplemental to the amendments referred to in paragraphs (a) and (b) above.

(2) Section 86 of the 1978 Act (keeping and audit of accounts of certain Scottish health bodies) shall be amended in accordance with the following provisions of this section.

(3) In subsection (1), for the words from the beginning to "Agency" there shall be substituted—

"(1) The following bodies, that is to say—

(a) every Health Board;

(b) the Agency; and

(c) every NHS trust,".

(4) After subsection (1) there shall be inserted the following subsections—

"(1A) So far as relates to allotted sums paid to the members of a recognised fund-holding practice—

(a) accounts shall be kept in such form as the Secretary of State may with the approval of the Treasury direct and shall be audited by auditors appointed by the Secretary of State;

(b) the Comptroller and Auditor General may examine the accounts and the records relating to them and any report of the auditor on them;

(c) in respect of each financial year, annual accounts in such form as the Secretary of State may with the approval of the Treasury direct shall be prepared and submitted to the relevant Health Board; and

(d) in respect of each financial year, each Health Board shall prepare, in such form as the Secretary of State may with the approval of the Treasury direct, and include in its own accounts, a summarised version of the accounts submitted to the Board under paragraph (c).

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

(1B) In preparing its annual accounts in pursuance of subsection (1), an NHS trust shall comply with any directions given by the Secretary of State with the approval of the Treasury as to—

(a) the methods and principles according to which the accounts are to be prepared; and

(b) the information to be given in the accounts."

F51(5) . . . . . .

(6) In subsection (3), for the words "Health Board and the Agency" there shall be substituted "body mentioned in paragraphs (a) to (c) of subsection (1)".

(7) In subsection (4), for the words "Health Boards and the Agency" there shall be substituted "bodies mentioned in paragraphs (a) to (c) of subsection (1)".

(8) After subsection (4) there shall be added the following subsection—

"(5) In this section "recognised fund-holding practice" and "allotted sum" have the same meaning as in section 87B."

Textual Amendments

F51 S. 36(5) repealed (1.4.1995) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**; S.I. 1994/2658, **art. 4**

Commencement Information

I6 S. 36 wholly in force; s. 36 not in force at Royal Assent, see s. 67(2); s. 36 in force at 24.10.1994, 1.12.1994 by S.I. 1994/2658, **arts. 2**, 3

Marginal Citations

M6 1984 c. 36.

Miscellaneous

37 Relationship of Health Boards and medical practitioners.

After subsection (7) of section 19 of the 1978 Act (arrangements and regulations for general medical services) there shall be inserted the following subsection—

"(8) In relation to a medical practitioner, any reference in this Act to the relevant Health Board shall be construed as follows—

(a) if he practises in partnership with other medical practitioners, the relevant Health Board is the Board on whose medical list the members of the practice are included and, if some are included on one Board's medical list and some on another's or if any of the members is included on the medical lists of two or more Boards, the relevant Health Board is the Board in whose area resides the largest number of individuals who are on the lists of patients of members of the practice; and

(b) in any other case, the relevant Health Board is the Board on whose medical list he is included and, if there is more than one, the Board in whose area resides the largest number of individuals who are on his list of patients."

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

38 Scottish Medical Practices Committee.

(1) In section 3 of the 1978 Act (the Scottish Medical Practices Committee), after subsection (1) there shall be inserted the following subsection—

"(1A) After consulting the Medical Practices Committee, the Secretary of State may give the Committee directions with respect to the exercise of its functions; and it shall be the duty of the Committee to comply with any such directions."

(2) In Schedule 2 to the 1978 Act (constitution etc of Scottish Medical Practices Committee), after paragraph 2 there shall be inserted—

"2A The Secretary of State may by order make such modifications as he considers appropriate of paragraphs 1 and 2."

Commencement Information

I7 S. 38 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1991/607, **art.2**

39 Distribution of general medical services.

(1) In section 23 of the 1978 Act (distribution of general medical services), after subsection (1) there shall be inserted the following subsections—

"(1A) The Secretary of State may by order specify the maximum number of medical practitioners with whom, in any year, all Health Boards taken as a whole may enter into arrangements under section 19 for the provision of general medical services.

(1B) An order under subsection (1A) may contain such incidental and consequential provisions (including provisions amending this Part of this Act) as appear to the Secretary of State to be appropriate including, in particular, provisions as to the basis on which the Medical Practices Committee are to refuse applications under section 20 in order to secure that any maximum number specified in the order is not exceeded."

(2) At the beginning of subsection (2) of that section (the Medical Practices Committee to select the person whose applications are to be granted) there shall be inserted "Subject to subsection (2A)" and after that subsection there shall be inserted the following subsection—

"(2A) If, in the opinion of the Medical Practices Committee, a medical practitioner is required for a particular part of the area of a Health Board, then, in such circumstances as may be prescribed,—

(a) the Board shall, in accordance with regulations, select the medical practitioner whose application they wish to be considered by the Committee; and

(b) the Committee shall not consider any application from a medical practitioner who is not so selected; and

(c) any medical practitioner who has made an application but is not so selected may appeal to the Secretary of State on a point of law;

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and if the Secretary of State allows an appeal under paragraph (c) he shall remit the application to the Board for reconsideration."

(3) In subsection (4) of that section (applications under section 20 may be granted subject to certain conditions), after the word "but" there shall be inserted—

"(a) in granting an application shall specify, by reference to one or more prescribed conditions relating to hours or the sharing of work, the provision of general medical services for which the applicant will be entitled to be remunerated; and

(b)";

and at the end of the subsection there shall be inserted the words "and an order under subsection (1A) may make provision as to the extent to which account is to be taken under the order of medical practitioners whose ability to carry out remunerated work is limited by virtue of conditions imposed under paragraph (a)".

(4) In subsection (5) of that section (appeals to the Secretary of State) for the words "such conditions" there shall be substituted "conditions under paragraph (a) or (b) of subsection (4)" and for the words following "Secretary of State", in the first place where those words occur, there shall be substituted "on a point of law; and, if the Secretary of State allows such an appeal, he shall remit the application to the Medical Practices Committee for reconsideration".

(5) Subsection (7) of that section (directions on a successful appeal) shall be omitted.

(6) In subsection (8) of that section (matters to be taken into account) for the words from the beginning to "in any such case" there shall be substituted "In any case where medical practitioners have to be selected from a number of applicants, the Medical Practices Committee or, where subsection (2A) applies, the Health Board shall".

(7) [F52]. . . . . .

(8) In the case of a medical practitioner who, on the day appointed for the coming into force of this section, is providing general medical services in accordance with arrangements under section 19 of the 1978 Act, regulations may make transitional provisions by virtue of which those services shall be treated for the purposes of that Act as provided subject to such of the prescribed conditions referred to in section 23(4)(a) of that Act as are determined under the regulations and, accordingly, for enabling any such condition to be varied in accordance with regulations under section 24(2) of that Act.

Textual Amendments

F52 S. 39(7) repealed (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 11(a)**; S.S.I. 2004/148, **art. 2(c)**

Commencement Information

I8 S. 39 partly in force; s. 39 (except 39(4)) in force for certain purposes at 1.4.1991, see s. 67(2) and S.I. 1991/607, **art. 2**, (art. 3(1) of S.I. 1991/607 contains transitional provisions relating to s. 39(2))

Status: *Point in time view as at 01/08/2008.*
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40 Limitations on right to be included on list of dental practitioners.

(1) Section 25 of the 1978 Act (arrangements for general dental services) shall be amended in accordance with this section.

(2) In subsection (2)(b) (regulations to include provision conferring a right, subject to certain qualifications, to be entered on a list of dental practitioners providing general dental services) for the words "subsection (2A)" there shall be substituted "subsections (2A) and (2B)".

(3) After subsection (2A) there shall be inserted the following subsection—

"(2B) Regulations may make the exercise of the right conferred by virtue of paragraph (b) of subsection (2) subject to any provision made by or under the regulations, and, in such cases as may be prescribed, may confer a right of appeal to a prescribed body in respect of a refusal to include a dental practitioner on such a list as is referred to in paragraph (a) of that subsection."

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.

(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,—

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(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."

PART III

COMMUNITY CARE: ENGLAND AND WALES

Modifications etc. (not altering text)

C5 Pt. III (ss. 42-50) applied (with modifications) (1.4.1993) by S.I. 1993/570, **art. 2(2)(a)**

Provision of accommodation and welfare services

42 Provision of accommodation and welfare services: agency arrangements.

(1) In section 21(1) of the [M7]National Assistance Act 1948 (duties of local authorities to provide accommodation for persons aged 18 or over who are in need of care and attention by reason of age, infirmity or other circumstances)—

(a) in paragraph (a) for the word "infirmity" there shall be substituted "illness, disability"; and

(b) at the end of that paragraph there shall be added "and

(aa) residential accommodation for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them".

[F53](2) . . . . . .

(3) **[**[F54]In section 26 of that Act (arrangements for provision of accommodation in premises maintained by voluntary organisations etc.), at the end of subsection (2)**]** (under which the arrangements must provide for the local authority to make payments in respect of accommodation provided) there shall be added "and subject to subsection (3A) below the local authority shall recover from each person for whom accommodation is provided under the arrangements the amount of the refund which he is liable to make in accordance with the following provisions of this section".

(4) At the beginning of subsection (3) of that section (liability of persons for whom accommodation is provided to make refunds to the local authority) there shall be inserted "Subject to subsection (3A) below" and after that subsection there shall be inserted the following subsection—

"(3A) Where accommodation in any premises is provided for any person under arrangements made by virtue of this section and the local authority, the

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person concerned and the voluntary organisation or other person managing the premises (in this subsection referred to as "the provider") agree that this subsection shall apply—

(a) so long as the person concerned makes the payments for which he is liable under paragraph (b) below, he shall not be liable to make any refund under subsection (3) above and the local authority shall not be liable to make any payment under subsection (2) above in respect of the accommodation provided for him;

(b) the person concerned shall be liable to pay to the provider such sums as he would otherwise (under subsection (3) above) be liable to pay by way of refund to the local authority; and

(c) the local authority shall be liable to pay to the provider the difference between the sums paid by virtue of paragraph (b) above and the payments which, but for paragraph (a) above, the authority would be liable to pay under subsection (2) above."

(5) At the end of subsection (7) of that section (interpretation) there shall be added

""small home" means an establishment falling within section 1(4) of the Registered Homes Act 1984 and "exempt body" means an authority or body constituted by an Act of Parliament or incorporated by Royal Charter".

(6) In section 30(1) of that Act (under which a local authority may employ certain voluntary organisations as their agents for the provision of welfare services for disabled persons) for the words from "any voluntary organisation" onwards there shall be substituted "any voluntary organisation or any person carrying on, professionally or by way of trade or business, activities which consist of or include the provision of services for any of the persons to whom section 29 above applies, being an organisation or person appearing to the authority to be capable of providing the service to which the arrangements apply".

(7) In section 45(3) of the [M8]Health Services and Public Health Act 1968 (under which a local authority may employ certain voluntary organisations as their agents for promoting the welfare of old people) for the words from "any voluntary organisation" onwards there shall be substituted "any voluntary organisation or any person carrying on, professionally or by way of trade or business, activities which consist of or include the provision of services for old people, being an organisation or person appearing to the authority to be capable of promoting the welfare of old people".

Textual Amendments

F53 S. 42(2) repealed (1.4.1993) by Community Care (Residential Accommodation) Act 1992 (c. 49), **s. 1(2)(a)**; S.I. 1992/2976, **art.2**.

F54 Words in s. 42(3) substituted (1.4.1993) by Community Care (Residential Accommodation) Act 1992 (c. 49), **s. 1(2)**; S.I. 1992/2976, **art. 2**.

Commencement Information

I9 S. 42 wholly in force at 1.4.1993; s. 42 not in force at Royal Assent see s. 67(2); s. 42(6)(7) in force at 1.4.1991 by S.I. 1990/2218, **art. 2**; s. 42(1)-(5) in force at 1.4.1993 by S.I. 1992/2975, art. 2(2), **Sch.**

Marginal Citations

M7 1948 c. 29.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

M8 1968 c. 46.

[F55 43 Exclusion of powers to provide accommodation in certain cases.

After section 26 of the M9 National Assistance Act 1948 there shall be inserted—

" **Exclusion of powers to provide accommodation under this Part in certain cases.**

(1) Subject to subsection (3) of this section, no accommodation may be provided under section 21 or 26 of this Act for any person who immediately before the date on which this section comes into force was ordinarily resident in relevant premises.

(2) In subsection (1) "relevant premises" means—

(a) premises in respect of which any person is registered under the Registered Homes Act 1984;

(b) premises in respect of which such registration is not required by virtue of their being managed or provided by an exempt body;

(c) premises which do not fall within the definition of a nursing home in section 21 of that Act by reason only of their being maintained or controlled by an exempt body; and

(d) such other premises as the Secretary of State may by regulations prescribe;

and in this subsection "exempt body" has the same meaning as in section 26 of this Act.

(3) The Secretary of State may by regulations provide that, in such cases and subject to such conditions as may be prescribed, subsection (1) of this section shall not apply in relation to such classes of persons as may be prescribed in the regulations.

(4) The Secretary of State shall by regulations prescribe the circumstances in which persons are to be treated as being ordinarily resident in any premises for the purposes of subsection (1) of this section.

(5) This section does not affect the validity of any contract made before the date on which this section comes into force for the provision of accommodation on or after that date or anything done in pursuance of such a contract."]

Textual Amendments

F55 S. 43 repealed (15.5.2002) 2001 c. 15, s. 67, **Sch. 6 Pt. 3** (with ss. 64(9), 65(4)); S.I. 2002/1312, **art. 3(c)**

Commencement Information

I10 S. 43 wholly in force at 1.4.1993 see s. 67(2) and S.I. 1992/2975, art. 2(2), **Sch.**

Marginal Citations

M9 1948 c. 29.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

44 Charges for accommodation provided by local authorities.

(1) Section 22 of the [M10]National Assistance Act 1948 (charges for accommodation provided under Part III of that Act to be made at a standard rate fixed by the local authority subject to a minimum weekly rate prescribed under subsection (3)) shall have effect subject to the amendments specified in subsections (2) to (6) below.

(2) In subsection (1) (which relates to a person's liability to pay for accommodation) for the words from the beginning to "the accommodation" there shall be substituted " Subject to section 26 of this Act, where a person is provided with accommodation under this Part of this Act the local authority providing the accommodation shall recover from him the amount of the payment which he is liable to make ".

(3) In subsection (2) (which requires the authority managing premises to fix the standard rate) after the word "payment" there shall be inserted " which a person is liable to make " and at the end of that subsection there shall be added the words " and that standard rate shall represent the full cost to the authority of providing that accommodation "

(4) In subsection (3) (which makes provision for people who are unable to pay at the standard rate)—

(a) the words "(disregarding income support)", and

(b) the words from "Provided that" to the end of the subsection,

shall be omitted.

(5) After subsection (4) (under which the Secretary of State may prescribe the minimum sum assumed to be required for a resident's personal needs in determining the rate payable by him) there shall be inserted—

"(4A) Regulations made for the purposes of subsection (4) of this section may prescribe different sums for different circumstances."

(6) In subsection (5A) (under which a local authority managing premises in which accommodation is provided for a person may limit the payments required from him for a certain period to the minimum rate prescribed under subsection (3)) for the words "the minimum weekly rate prescribed under subsection (3) above" there shall be substituted " such amount as appears to them reasonable for him to pay ".

(7) In section 29 of that Act (under subsection (4)(c) of which arrangements may be made for the provision of hostels where persons for whom welfare services are provided under that section may live) after subsection (4) there shall be inserted—

"(4A) Where accommodation in a hostel is provided under paragraph (c) of subsection (4) of this section—

(a) if the hostel is managed by a local authority, section 22 of this Act shall apply as it applies where accommodation is provided under section 21;

(b) if the accommodation is provided in a hostel managed by a person other than a local authority under arrangements made with that person, subsections (2) to (4A) of section 26 of this Act shall apply as they apply where accommodation is provided under arrangements made by virtue of that section; and

(c) sections 32 and 43 of this Act shall apply as they apply where accommodation is provided under sections 21 to 26;

Status: *Point in time view as at 01/08/2008.*
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and in this subsection references to "accommodation" include references to board and other services, amenities and requisites provided in connection with the accommodation, except where in the opinion of the authority managing the premises or, in the case mentioned in paragraph (b) above, the authority making the arrangements their provision is unnecessary."

Commencement Information

I11 S. 44 wholly in force at 1.4.1993 see s. 67(2) and S.I. 1992/2975, art. 2(2), **Sch.**

Marginal Citations

M10 1948 c. 29.

45 Recovery of charges due to local authorities for accommodation.

(1) In section 21 of the [M11]Health and Social Services and Social Security Adjudication Act 1983 (recovery of sums due to local authority where persons in residential accommodation have disposed of assets) after subsection (3) there shall be inserted—

"(3A) If the Secretary of State so directs, subsection (1) above shall not apply in such cases as may be specified in the direction."

(2) In sections 22 and 23 of that Act (which make provision as to arrears of contributions charged on interests in land in England and Wales and in Scotland respectively) after subsection (2) there shall be inserted—

"(2A) In determining whether to exercise their power under subsection (1) above and in making any determination under subsection (2) above, the local authority shall comply with any directions given to them by the Secretary of State as to the exercise of those functions."

(3) In section 24 of that Act (interest on sums charged on or secured over interests in land) for subsection (2) there shall be substituted—

"(2) The rate of interest shall be such reasonable rate as the Secretary of State may direct or, if no such direction is given, as the local authority may determine."

Commencement Information

I12 S. 45 wholly in force at 12.4.1993 see s. 67(2) and S.I. 1992/2975, **art. 2(3)(a)**.

Marginal Citations

M11 1983 c. 41.

General provisions concerning community care services

46 Local authority plans for community care services.

(1) Each local authority—

Status: *Point in time view as at 01/08/2008.*
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(a) shall, within such period after the day appointed for the coming into force of this section as the Secretary of State may direct, prepare and publish a plan for the provision of community care services in their area;

(b) shall keep the plan prepared by them under paragraph (a) above and any further plans prepared by them under this section under review; and

(c) shall, at such intervals as the Secretary of State may direct, prepare and publish modifications to the current plan, or if the case requires, a new plan.

(2) In carrying out any of their functions under paragraphs (a) to (c) of subsection (1) above, a local authority shall consult—

(a) any **[**[F56]Health Authority **[**[F57]and any Local Health Board**]** the whole or any part of whose area**]** lies within the area of the local authority;

[F58](b) . . . . . .

(c) in so far as any proposed plan, review or modifications of a plan may affect or be affected by the provision or availability of housing and the local authority is not itself a local housing authority, within the meaning of the [M12]Housing Act 1985, every such local housing authority whose area is within the area of the local authority;

(d) such voluntary organisations as appear to the authority to represent the interests of persons who use or are likely to use any community care services within the area of the authority or the interests of private carers who, within that area, provide care to persons for whom, in the exercise of their social services functions, the local authority have a power or a duty to provide a service.

(e) such voluntary housing agencies and other bodies as appear to the local authority to provide housing or community care services in their area; and

(f) such other persons as the Secretary of State may direct.

(3) In this section—

"local authority" means the council of a county, **[**[F59]a county borough,**]**a metropolitan district or a London borough or the Common Council of the City of London;

"community care services" means services which a local authority may provide or arrange to be provided under any of the following provisions—

(a) Part III of the [M13]National Assistance Act 1948;

(b) section 45 of the [M14]Health Services and Public Health Act 1968;

[[F60](c) section 254 of, and Schedule 20 to, the National Health Service Act 2006, and section 192 of, and Schedule 15 to, the National Health Service (Wales) Act 2006**]**

(d) section 117 of the [M15]Mental Health Act 1983; and

"private carer" means a person who is not employed to provide the care in question by any body in the exercise of its functions under any enactment.

Textual Amendments

F56 Words in s. 46(2)(a) substituted (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. II para. 80(a)** (with Sch. 2 paras. 6, 16)

F57 Words in s. 46(2)(a) inserted (W.) (31.3.2003) by The Health, Social Care and Well-being Strategies (Wales) Regulations 2003 (S.I. 2003/154), reg. 7(6), **Sch. para. 4**

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F58 S. 46(2)(b) repealed (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, ss. 2(1)(3), 5, Sch. 1 Pt. II para. 80(b), **Sch. 3** (with Sch. 2 paras. 6, 16)

F59 Words in definition in s. 46(3) inserted (3.4.1995) by 1994 c. 19, s. 22(4), **Sch. 10 para. 14** (with ss. 54(5)(7), 55(5), Sch. 17 para. 22(1), 23(2)); S.I. 1995/852, art. 4(1), **Sch. 2**

F60 S. 46(3): definition of "community care services" para. (c) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 129**

Modifications etc. (not altering text)

C6 S. 46; functions of local authority not to be sole responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 4(1), **Sch. 3**

C7 S. 46(1)(2) excluded (E.) (9.7.2003) by The Community Care Plans (Disapplication) (England) Order 2003 (S.I. 2003/1716), arts. 1(3), **2(a)**

Commencement Information

I13 S. 46 wholly in force at 1.4.1991 see s. 67(2)(3) and S.I. 1990/2218, art. 2, **Sch.** .

Marginal Citations

M12 1985 c. 68.

M13 1948 c. 29.

M14 1968 c. 46.

M15 1983 c. 20.

47 Assessment of needs for community care services.

(1) Subject to subsections (5) and (6) below, where it appears to a local authority that any person for whom they may provide or arrange for the provision of community care services may be in need of any such services, the authority—

(a) shall carry out an assessment of his needs for those services; and

(b) having regard to the results of that assessment, shall then decide whether his needs call for the provision by them of any such services.

(2) If at any time during the assessment of the needs of any person under subsection (1)(a) above it appears to a local authority that he is a disabled person, the authority—

(a) shall proceed to make such a decision as to the services he requires as is mentioned in section 4 of the [M16]Disabled Persons (Services, Consultation and Representation) Act 1986 without his requesting them to do so under that section; and

(b) shall inform him that they will be doing so and of his rights under that Act.

(3) If at any time during the assessment of the needs of any person under subsection (1)(a) above, it appears to a local authority—

(a) that there may be a need for the provision to that person by such **[**[F61]Primary Care Trust or**][**[F62]Health Authority**]** as may be determined in accordance with regulations of any services under the **[**[F63]National Health Service Act 2006 or the National Health Service (Wales) Act 2006**]**, or

(b) that there may be a need for the provision to him of any services which fall within the functions of a local housing authority (within the meaning of the [M17]Housing Act 1985) which is not the local authority carrying out the assessment,

the local authority shall notify that **[**[F61]Primary Care Trust,**][**[F62]Health Authority**]** or local housing authority and invite them to assist, to such extent as is reasonable in the

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circumstances, in the making of the assessment; and, in making their decision as to the provision of the services needed for the person in question, the local authority shall take into account any services which are likely to be made available for him by that **[**[F61]Primary Care Trust,**][**[F62]Health Authority**]** or local housing authority.

(4) The Secretary of State may give directions as to the manner in which an assessment under this section is to be carried out or the form it is to take but, subject to any such directions and to subsection (7) below, it shall be carried out in such manner and take such form as the local authority consider appropriate.

(5) Nothing in this section shall prevent a local authority from temporarily providing or arranging for the provision of community care services for any person without carrying out a prior assessment of his needs in accordance with the preceding provisions of this section if, in the opinion of the authority, the condition of that person is such that he requires those services as a matter of urgency.

(6) If, by virtue of subsection (5) above, community care services have been provided temporarily for any person as a matter of urgency, then, as soon as practicable thereafter, an assessment of his needs shall be made in accordance with the preceding provisions of this section.

(7) This section is without prejudice to section 3 of the [M18]Disabled Persons (Services, Consultation and Representation) Act 1986.

(8) In this section—

"disabled person" has the same meaning as in that Act; and

"local authority" and "community care services" have the same meanings as in section 46 above.

Textual Amendments

F61 Words in s. 47(3) inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 56**; S.I. 2002/2478, **art. 3(1)(d)** (with art. 3(3) and transitional provision in art. 4)

F62 Words in s. 47(3) substituted (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. II para. 81** (with Sch. 2 paras. 6, 16)

F63 Words in s. 47(3) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 130**

Commencement Information

I14 S. 47 wholly in force at 1.4.1993 see s. 67(2) and S.I. 1992/2975, art. 2(2), **Sch.**

Marginal Citations

M16 1986 c. 33.

M17 1985 c. 68.

M18 1986 c. 33.

48 Inspection of premises used for provision of community care services.

(1) Any person authorised by the Secretary of State may at any reasonable time enter and inspect any premises (other than premises in respect of which any person is registered under **[**[F64]Part II of the Care Standards Act 2000**]**) in which community care services are or are proposed to be provided by a local authority, whether directly or under arrangements made with another person.

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(2) Any person inspecting any premises under this section may—
- (a) make such examination into the state and management of the premises and the facilities and services provided therein as he thinks fit;
- (b) inspect any records (in whatever form they are held) relating to the premises, or any person for whom community care services have been or are to be provided there; and
- (c) require the owner of, or any person employed in, the premises to furnish him with such information as he may request.

(3) Any person exercising the power to inspect records conferred by subsection (2)(b) above—
- (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question; and
- (b) may require—
  - (i) the person by whom or on whose behalf the computer is or has been so used; or
  - (ii) any person having charge of or otherwise concerned with the operation of the computer, apparatus or material,

  to give him such reasonable assistance as he may require.

(4) Any person inspecting any premises under this section—
- (a) may interview any person residing there in private—
  - (i) for the purpose of investigating any complaint as to those premises or the community care services provided there, or
  - (ii) if he has reason to believe that the community care services being provided there for that person are not satisfactory; and
- (b) may examine any such person in private.

(5) No person may—
- (a) exercise the power conferred by subsection (2)(b) above so as to inspect medical records; or
- (b) exercise the power conferred by subsection (4)(b) above,

unless he is a registered medical practitioner and, in the case of the power conferred by subsection (2)(b) above, the records relate to medical treatment given at the premises in question.

(6) Any person exercising the power of entry under subsection (1) above shall, if so required, produce some duly authenticated document showing his authority to do so.

(7) Any person who intentionally obstructs another in the exercise of that power shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) In this section “local authority” and “community care services” have the same meanings as in section 46 above.

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Textual Amendments

F64 Words in s. 48(1) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 15**; S.I. 2001/4150, **arts. 3(3)(a)** (with transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **arts. 2**, 3 (with art. 3(4)-(10) and transitional provisions in Schs. 1-3)

Commencement Information

I15 S. 48 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/2218, art. 2, **Sch.**

49 Transfer of staff from health service to local authorities.

(1) In connection with arrangements relating to community care services made by virtue of this Part of this Act, the Secretary of State may make regulations with respect to the transfer to employment by a local authority of persons previously employed by a National Health Service body.

(2) Regulations under this section may also make provision with respect to the return to employment by a National Health Service body of a person to whom the regulations previously applied on his transfer (whether from that or another National Health Service body) to employment by a local authority.

(3) Without prejudice to the generality of subsections (1) and (2) above, regulations under this section may make provision with respect to—

(a) the terms on which a person is to be employed by a local authority or National Health Service body;

(b) the period and continuity of a person's employment for the purposes of **[**[F65]the Employment Rights Act 1996**]**;

(c) superannuation benefits; and

(d) the circumstances in which, if a person declines an offer of employment made with a view to such a transfer or return as is referred to in subsection (1) or subsection (2) above and then ceases to be employed by a National Health Service body or local authority, he is not to be regarded as entitled to benefits in connection with redundancy.

(4) In this section—

(a) "local authority" and "community care services" have the same meaning as in section 46 above; and

(b) "National Health Service body" means a **[**[F66]Strategic Health Authority,**][**[F67]Primary Care Trust,**][**[F68]Health Authority **[**[F69], Local Health Board**]** or Special Health Authority**]** or a National Health Service trust.

(5) Regulations under this section may make different provision with respect to different cases or descriptions of case, including different provision for different areas.

Textual Amendments

F65 Words in s. 49(3)(b) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 45(3)(b)** (with ss. 191-200, 202)

F66 Words in s. 49(4)(b) inserted (1.10.2002) by 2002 c. 17, s. 1(3), **Sch. 1 Pt. 2 para. 44**; S.I. 2002/2478, **art. 3(1)(c)** (with transitional provision in art. 4)

Status: *Point in time view as at 01/08/2008.*
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F67 Words in s. 49(4)(b) inserted (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 57**; S.I. 2002/2478, **art. 3(1)(d)** (with transitional provision in art. 4)

F68 Words in s. 49(4)(b) substituted (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. II para. 82** (with Sch. 2 paras. 6, 16)

F69 Words in s. 49(4)(b) inserted (10.10.2002 for W. and otherwise in force immediately before the National Health Service Act 2006 (c. 41) (which Act came into force on 1.3.2007 in accordance with s. 227(1) (subject to s. 277(2)-(5) of that Act))) by National Health Service Reform and Health Care Profession Act 2002 (c. 17), ss. 6(2), 42(3), **Sch. 5 para. 34**; S.I. 2002/2532, art. 2, **Sch**; S.I. 2006/1407, art. 1(1), **Sch. 1**. Pt. 2 {para. 12(c)}

Commencement Information

I16 S. 49 wholly in force at 10.12.1992 see s. 67(2) and S.I. 1992/2975, **art. 2(1)(a)**.

50 Powers of the Secretary of State as respects social services functions of local authorities.

After section 7 of the [M19]Local Authority Social Services Act 1970 (local authorities to exercise social services functions under guidance of the Secretary of State) there shall be inserted the following sections—

"7A Directions by the Secretary of State as to exercise of social services functions.

(1) Without prejudice to section 7 of this Act, every local authority shall exercise their social services functions in accordance with such directions as may be given to them under this section by the Secretary of State.

(2) Directions under this section—
  (a) shall be given in writing; and
  (b) may be given to a particular authority, or to authorities of a particular class, or to authorities generally.

7B Complaints procedure.

(1) The Secretary of State may by order require local authorities to establish a procedure for considering any representations (including any complaints) which are made to them by a qualifying individual, or anyone acting on his behalf, in relation to the discharge of, or any failure to discharge, any of their social services functions in respect of that individual.

(2) In relation to a particular local authority, an individual is a qualifying individual for the purposes of subsection (1) above if—
  (a) the authority have a power or a duty to provide, or to secure the provision of, a service for him; and
  (b) his need or possible need for such a service has (by whatever means) come to the attention of the authority.

(3) A local authority shall comply with any directions given by the Secretary of State as to the procedure to be adopted in considering representations made as mentioned in subsection (1) above and as to the taking of such action as may be necessary in consequence of such representations.

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(4) Local authorities shall give such publicity to any procedure established pursuant to this section as they consider appropriate.

7C Inquiries.

(1) The Secretary of State may cause an inquiry to be held in any case where, whether on representations made to him or otherwise, he considers it advisable to do so in connection with the exercise by any local authority of any of their social services functions (except in so far as those functions relate to persons under the age of eighteen).

(2) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to an inquiry under that section.

7D Default powers of Secretary of State as respects social services functions of local authorities.

(1) If the Secretary of State is satisfied that any local authority have failed, without reasonable excuse, to comply with any of their duties which are social services functions (other than a duty imposed by or under the Children Act 1989), he may make an order declaring that authority to be in default with respect to the duty in question.

(2) An order under subsection (1) may contain such directions for the purpose of ensuring that the duty is complied with within such period as may be specified in the order as appear to the Secretary of State to be necessary.

(3) Any such direction shall, on the application of the Secretary of State, be enforceable by mandamus.

7E Grants to local authorities in respect of social services for the mentally ill.

The Secretary of State may, with the approval of the Treasury, make grants out of money provided by Parliament towards any expenses of local authorities incurred— (a) in connection with the exercise of their social services functions in relation to persons suffering from mental illness; or (b) in making payments in accordance with directions given by the Secretary of State to voluntary organisations which provide care and services to persons who are, have been, or are likely to become dependant upon alcohol or drugs.”

Commencement Information

I17 S. 50 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/2218, art. 2, **Sch.**

Marginal Citations

M19 1970 c. 42.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

PART IV

COMMUNITY CARE: SCOTLAND

51 Power of Secretary of State to give directions.

After subsection (1) of section 5 (powers of Secretary of State) of the [M20]Social Work (Scotland) Act 1968 (in this Part of this Act referred to as "the 1968 Act") there shall be inserted the following subsection—

"(1A) Without prejudice to subsection (1) above, the Secretary of State may issue directions to local authorities, either individually or collectively, as to the manner in which they are to exercise any of their functions under this Act or any of the enactments mentioned in section 2(2) of this Act; and a local authority shall comply with any direction made under this subsection."

Commencement Information

I18 S. 51 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/2510, art. 2, **Sch.**

Marginal Citations

M20 1968 c. 49.

52 Local authority plans for, and complaints in relation to, community care services in Scotland.

After section 5 of the 1968 Act there shall be inserted the following sections—

"**5A Local authority plans for community care services.**

(1) Within such period after the day appointed for the coming into force of this section as the Secretary of State may direct, and in accordance with the provisions of this section, each local authority shall prepare and publish a plan for the provision of community care services in their area.

(2) Each local authority shall from time to time review any plan prepared by them under subsection (1) above, and shall, in the light of any such review, prepare and publish—
   (a) any modifications to the plan under review; or
   (b) if the case requires, a new plan.

(3) In preparing any plan or carrying out any review under subsection (1) or, as the case may be, subsection (2) above the authority shall consult—
   (a) any Health Board providing services under the National Health Service (Scotland) Act 1978 in the area of the authority;
   (b) in so far as the plan or, as the case may be, the review may affect or be affected by the provision or availability of housing, every district council in the area of the authority;
   (c) such voluntary organisations as appear to the authority to represent the interests of persons who use or are likely to use any community care services within the area of the authority or the interests of private carers who, within that area, provide care to persons for whom, in the exercise

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of their functions under this Act or any of the enactments mentioned in section 2(2) of this Act, the local authority have a power or a duty to provide, or to secure the provision of, a service;

(d) such voluntary housing agencies and other bodies as appear to the authority to provide housing or community care services in their area; and

(e) such other persons as the Secretary of State may direct.

(4) In this section—

"community care services" means services, other than services for children, which a local authority are under a duty or have a power to provide, or to secure the provision of, under Part II of this Act or section 7 (functions of local authorities), 8 (provision of after-care services) or 11 (training and occupation of the mentally handicapped) of the Mental Health (Scotland) Act 1984; and

"private carer" means a person who is not employed to provide the care in question by any body in the exercise of its functions under any enactment.

5B Complaints procedure.

(1) Subject to the provisions of this section, the Secretary of State may by order require local authorities to establish a procedure whereby a person, or anyone acting on his behalf, may make representations (including complaints) in relation to the authority's discharge of, or failure to discharge, any of their functions under this Act, or any of the enactments referred to in section 2(2) of this Act, in respect of that person.

(2) For the purposes of subsection (1) of this section, "person" means any person for whom the local authority have a power or a duty to provide, or to secure the provision of, a service, and whose need or possible need for such a service has (by whatever means) come to the attention of the authority.

(3) An order under subsection (1) of this section may be commenced at different times in respect of such different classes of person as may be specified in the order.

(4) In relation to a child, representations may be made by virtue of subsection (1) above by the child, or on his behalf by—

(a) his parent;

(b) any person having parental rights in respect of him;

(c) any local authority foster parent; or

(d) any other person appearing to the authority to have a sufficient interest in the child's wellbeing to warrant his making representations on the child's behalf.

(5) In this section—

"child" means a child under the age of 18 years; and

"parent" and "parental rights" have the same meaning as in section 8 (interpretation) of the Law Reform (Parent and Child) (Scotland) Act 1986.

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(6) A local authority shall comply with any directions given by the Secretary of State as to the procedure to be adopted in considering representations made as mentioned in subsection (1) of this section and as to the taking of such action as may be necessary in consequence of such representations.

(7) Every local authority shall give such publicity to the procedure established under this section as they consider appropriate."

Commencement Information

I19 S. 52 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/2510, art. 2, **Sch.**

53 Inspection of premises providing accommodation.

F70 . . . . . .

Textual Amendments

F70 S. 53 repealed (23.2.2006) by Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006 (asp 3) {ss. 8(4)(e)}, 10(2)

Commencement Information

I20 S. 53 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/2510, art. 2, **Sch.**

54 Inquiries.

After section 6 of the 1968 Act there shall be inserted the following section—

"6A Inquiries.

(1) The Secretary of State may cause an inquiry to be held into the functions of a local authority under this Act or any of the enactments mentioned in section 2(2) of this Act, except in so far as those functions relate to persons under the age of 18.

(2) The Secretary of State may, before an inquiry is commenced, direct that it shall be held in private, but where no such direction has been given the person holding the inquiry may if he thinks fit hold it or any part of it in private.

(3) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section."

Commencement Information

I21 S. 54 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/2510, art. 2, **Sch.**

55 Duty of local authority to make assessment of needs.

After section 12 of the 1968 Act there shall be inserted the following section—

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

"12A Duty of local authority to assess needs.

(1) Subject to the provisions of this section, where it appears to a local authority that any person for whom they are under a duty or have a power to provide, or to secure the provision of, community care services may be in need of any such services, the authority—
   (a) shall make an assessment of the needs of that person for those services; and
   (b) having regard to the results of that assessment, shall then decide whether the needs of that person call for the provision of any such services.

(2) Before deciding, under subsection (1)(b) of this section, that the needs of any person call for the provision of nursing care, a local authority shall consult a medical practitioner.

(3) If, while they are carrying out their duty under subsection (1) of this section, it appears to a local authority that there may be a need for the provision to any person to whom that subsection applies—
   (a) of any services under the National Health Service (Scotland) Act 1978 by the Health Board—
      (i) in whose area he is ordinarily resident; or
      (ii) in whose area the services to be supplied by the local authority are, or are likely, to be provided; or
   (b) of any services which fall within the functions of a housing authority (within the meaning of section 130 (housing) of the Local Government (Scotland) Act 1973) which is not the local authority carrying out the assessment,

   the local authority shall so notify that Health Board or housing authority, and shall request information from them as to what services are likely to be made available to that person by that Health Board or housing authority; and, thereafter, in carrying out their said duty, the local authority shall take into account any information received by them in response to that request.

(4) Where a local authority are making an assessment under this section and it appears to them that the person concerned is a disabled person, they shall—
   (a) proceed to make such a decision as to the services he requires as is mentioned in section 4 of the Disabled Persons (Services, Consultation and Representation) Act 1986 without his requesting them to do so under that section; and
   (b) inform him that they will be doing so and of his rights under that Act.

(5) Nothing in this section shall prevent a local authority from providing or arranging for the provision of community care services for any person without carrying out a prior assessment of his needs in accordance with the preceding provisions of this section if, in the opinion of the authority, the condition of that person is such that he requires those services as a matter of urgency.

(6) If, by virtue of subsection (5) of this section, community care services have been provided for any person as a matter of urgency, then, as soon as practicable thereafter, an assessment of his needs shall be made in accordance with the preceding provisions of this section.

Status: *Point in time view as at 01/08/2008.*
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(7) This section is without prejudice to section 3 of the said Act of 1986.

(8) In this section—

"community care services" has the same meaning as in section 5A of this Act;

"disabled person" has the same meaning as in the said Act of 1986; and

"medical practitioner" means a fully registered person within the meaning of section 55 (interpretation) of the Medical Act 1983."

Commencement Information

I22 S. 55 wholly in force at 1.4.1993 see s. 67(2) and S.I. 1992/2975, art. 2(2), **Sch.**

56 Residential accommodation with nursing and provision of care and after-care.

After section 13 of the 1968 Act there shall be inserted the following sections—

" Residential accommodation with nursing

13A Residential accommodation with nursing.

(1) Without prejudice to section 12 of this Act, a local authority shall make such arrangements as they consider appropriate and adequate for the provision of suitable residential accommodation where nursing is provided for persons who appear to them to be in need of such accommodation by reason of infirmity, age, illness or mental disorder, dependency on drugs or alcohol or being substantially handicapped by any deformity or disability.

(2) The arrangements made by virtue of subsection (1) above shall be made with a voluntary or other organisation or other person, being an organisation or person managing premises which are—

(a) a nursing home within the meaning of section 10(2)(a) of the Nursing Homes Registration (Scotland) Act 1938 in respect of which that organisation or person is registered or exempt from registration under that Act; or

(b) a private hospital registered under section 12 of the Mental Health (Scotland) Act 1984,

for the provision of accommodation in those premises.

(3) The provisions of section 6 of this Act apply in relation to premises where accommodation is provided for the purposes of this section as they apply in relation to establishments provided for the purposes of this Act.

Provision of care and after-care

13B Provision of care and after-care.

(1) Subject to subsection (2) below, a local authority may, with the approval of the Secretary of State, and shall, if and to the extent that the Secretary of State so

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directs, make arrangements for the purpose of the prevention of illness, the care of persons suffering from illness, and the after-care of such persons.

(2) The arrangements which may be made under subsection (1) above do not include arrangements in respect of medical, dental or nursing care, or health visiting."

Commencement Information

I23 S. 56 wholly in force at 1.4.1993; S. 56 not in force at Royal Assent see s. 67(2); s. 56 in force for certain purposes at 1.4.1991 by S.I. 1990/2510, art. 2, **Sch.**; s. 56 in force at 1.4.1993 so far as not already in force by S.I. 1992/2975, art. 2(2), **Sch.**

[F71 57 Exclusion of powers to provide accommodation in certain cases.

After section 86 of the 1968 Act there shall be inserted the following section—

" **Exclusion of powers to provide accommodation in certain cases.**

(1) Subject to subsection (3) below, no accommodation may be provided under this Act for any person who, immediately before the date on which this section comes into force, was ordinarily resident in relevant premises.

(2) In subsection (1) above "relevant premises" means—

(a) any establishment in respect of which a person is registered under section 62 of this Act;

(b) any nursing home within the meaning of the Nursing Homes Registration (Scotland) Act 1938 in respect of which a person is registered or exempt from registration under that Act;

(c) any private hospital registered under section 12 of the Mental Health (Scotland) Act 1984; and

(d) such other premises as the Secretary of State may by regulations prescribe.

(3) The Secretary of State may by regulations provide that in such cases and subject to such conditions as may be prescribed subsection (1) above shall not apply in relation to such classes of persons as may be prescribed in the regulations.

(4) The Secretary of State shall by regulations prescribe the circumstances in which persons are to be treated as being ordinarily resident in any premises for the purposes of subsection (1) above.

(5) This section does not affect the validity of any contract made before the date on which this section comes into force for the provision of accommodation on or after that date or anything done in pursuance of such a contract."**]**

Textual Amendments

F71 S. 57 repealed (15.4.2002) by 2001 c. 15, s. 67, **Sch. 6 Pt. 3** (with ss. 64(9), 65(4)); S.I. 2002/1312, **art. 3(d)**

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Commencement Information

I24 S. 57 wholly in force at 1.4.1993 see s. 67(2) and S.I. 1992/2975, art. 2(2), **Sch.**

58 Power of Secretary of State to make grants.

After section 92 of the 1968 Act there shall be inserted the following section—

"92A Power of the Secretary of State to make grants.

The Secretary of State may, with the approval of the Treasury, make grants out of money provided by Parliament towards any expenses of local authorities in respect of their functions under—

(a) Part II of this Act; and

(b) sections 7 and 8 of the Mental Health (Scotland) Act 1984,

in relation to persons suffering from mental illness."

Commencement Information

I25 S. 58 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/2510, art. 2, **Sch.**

PART V

MISCELLANEOUS AND GENERAL

59 Parliamentary disqualification.

[F72](1) . . . . . .

(2) In the said Part III there shall be inserted (at the appropriate place) the following entry—

"Chairman or non-executive member of a National Health Service trust established under the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978".

(3) In the said Part III—

(a) in the entry which begins "Paid Chairman of a Health Board", for the words "Paid Chairman" there shall be substituted "Chairman or any member, not being also an employee,";

(b) in the entry which begins "Chairman of the Management Committee of the Common Services Agency" after the word "Chairman" there shall be inserted "or any member, not being also an employee,"; and

(c) in the entry relating to the Chairman of a committee constituted under section 91 of the [M21]Mental Health (Scotland) Act 1984, after the word "Chairman" there shall be inserted "or any member, not being also an employee".

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Textual Amendments

F72 S. 59(1) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6)

Commencement Information

I26 S. 59 wholly in force; s. 59(3) in force at 1.4.1991 by s. 67(2) and S.I. 1991/607, **art. 2(c)**

Marginal Citations

M21 1984 c. 36.

60 Removal of Crown immunities.

(1) Subject to the following provisions of this section, on and after the day appointed for the coming into force of this subsection, no health service body shall be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and so far as concerns land in which the Secretary of State has an interest, at any time when—

(a) by virtue of directions under any provision of the **[**[F73]National Health Service Act 2006, the National Health Service (Wales) Act 2006,**][**[F74]the Mental Health (Scotland) Act 1984**]** or the [M22]Health and Medicines Act 1988 or by virtue of orders under section 2 or section 10 of the [M23]National Health Service (Scotland) Act 1978, powers of disposal or management with respect to the land are conferred on a health service body, or

(b) the land is otherwise held, used or occupied by a health service body,

the interest of the Secretary of State shall be treated for the purposes of any enactment or rule of law relating to Crown land or interests as if it were an interest held otherwise than by the Secretary of State (or any other emanation of the Crown).

(2) In Schedule 8 to this Act—

(a) Part I has effect to continue certain exemptions for health service bodies and property held, used or occupied by such bodies;

(b) the amendments in Part II have effect, being amendments consequential on subsection (1) above; and

(c) the transitional provisions in Part III have effect in connection with the operation of subsection (1) above.

(3) Where, as a result of the provisions of subsection (1) above, by virtue of his employment during any period after the day appointed for the coming into force of that subsection—

(a) an employee has contractual rights against a health service body to benefits in the event of his redundancy, and

(b) he also has statutory rights against the health service body under **[**[F75]Part XI of the Employment Rights Act 1996**]** (redundancy payments),

any benefits provided to him by virtue of the contractual rights referred to in paragraph (a) above shall be taken as satisfying his entitlement to benefits under **[**[F75]that Part of that Act**]**.

(4) Nothing in subsection (1) above affects the extent of the expression "the services of the Crown" where it appears in—

(a) Schedule 1 to the [M24]Registered Designs Act 1949 (provisions as to the use of registered designs for the services of the Crown etc.); and

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(b) sections 55 to 59 of the [M25]Patents Act 1977 (use of patented inventions for the services of the Crown);

and, accordingly, services provided in pursuance of any power or duty of the Secretary of State under **[**[F76]the National Health Service Act 2006**]** or Part I or Part III of the [M26]National Health Service (Scotland) Act 1978 shall continue to be regarded as included in that expression, whether the services are in fact provided by a health service body, a National Health Service trust or any other person.

(5) The Secretary of State may by order made by statutory instrument provide that, in relation to any enactment contained in a local Act and specified in the order, the operation of subsection (1) above shall be excluded or modified to the extent specified in the order.

(6) No order shall be made under subsection (5) above unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

(7) In this section "health service body" means—

[[F77](a) **[**[F78]a Strategic Health Authority **[**[F79]established under section 13 of the National Health Service Act 2006**]** or**]** a Health Authority [F80]. . . ;

(aa) a Special Health Authority established under **[**[F81]section 28 of that Act or section 22 of the National Health Service (Wales) Act 2006**]**;**]**

(b) a Health Board or Special Health Board constituted under section 2 of the [M27]National Health Service (Scotland) Act 1978;

(c) **[**[F82]a State Hospital Management Committee constituted under section 91 of the [M28]Mental Health (Scotland) Act 1984;**]**

[F83](d) . . . . . .

(e) the Common Services Agency for the Scottish Health Service;

(f) [F84]. . . . . .

(g) the Scottish Dental Practice Board; [F85]. . .

(h) [F85]. . . . . .

Textual Amendments

F73 Words in s. 60(1)(a) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 131(a)** (with Sch. 3 Pt. 1)

F74 Words in s. 60(1)(a) repealed (S.) (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 3, **Sch. 2**

F75 Words in s. 60(3) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 45(4)**

F76 Words in s. 60(4) substituted (1.3.2007) by virtue of National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 131(b)** (with Sch. 3 Pt. 1)

F77 S. 60(7)(a)(aa) substituted (1.4.1996 subject to s. 8 of the amending Act) for s. 60(7)(a) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. II para. 83(a)** (with Sch. 2 paras. 6, 16)

F78 Words in s. 60(7)(a) inserted (E.W.) (1.10.2002) by 2002 c. 17, s. 1(3), **Sch. 1 Pt. 2 para. 45**; S.I. 2002/2478, **art. 3(1)(c)** (with art. 3(3) and transitional provision in art. 4)

F79 Words in s. 60(7)(a) inserted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 131(c)(i)** (with Sch. 3 Pt. 1)

F80 Words in s. 60(7)(a) omitted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 131(c)(ii)** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

F81 Words in s. 60(7)(aa) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 131(d)** (with Sch. 3 Pt. 1)

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F82 S. 60(7)(c) repealed (S.) (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 3, **Sch. 2**

F83 S. 60(7)(d) repealed (1.4.1996 subject to s. 8 of the amending Act) by 1995 c. 17, ss. 2(1)(3), 5, Sch. 1 Pt. II para. 83(b), **Sch. 3** (with Sch. 2 paras. 6, 16)

F84 S. 60(7)(f) repealed (1.4.2006 for E.W.) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 196, 199(1), **Sch. 14 Pt. 4**; S.I. 2005/2925, **art. 11(l)(2)(l)**

F85 S. 60(7)(h) and preceding word repealed (1.4.2005 for E.W.) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 190(2), 196, 199(1), Sch. 13 para. 6(c), **Sch. 14 Pt. 7**; S.I. 2005/457, **art. 2(1)(a)(b)**

Commencement Information

I27 S. 60 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/1329, art. 2(8), **Sch. 3**.

Marginal Citations

M22 1988 c. 49.
M23 1978 c. 29.
M24 1949 c. 88.
M25 1977 c. 37.
M26 1978 c. 29.
M27 1978 c. 29.
M28 1984 c. 36.

61 Health service bodies: taxation.

(1) In Part XII of the [M29]Income and Corporation Taxes Act 1988 (special classes of companies and business: miscellaneous businesses and bodies) after section 519 there shall be inserted the following section—

"519A Health service bodies.

(1) A health service body—

(a) shall be exempt from income tax in respect of its income, and

(b) shall be exempt from corporation tax,

and, so far as the exemption from income tax conferred by this subsection calls for repayment of tax, effect shall be given thereto by means of a claim.

(2) In this section "health service body" means—

(a) a health authority, within the meaning of the National Health Service Act 1977;

(b) a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990;

(c) a Family Health Services Authority;

(d) a Health Board or Special Health Board, the Common Services Agency for the Scottish Health Service and a National Health Service trust respectively constituted under sections 2, 10 and 12A of the National Health Service (Scotland) Act 1978;

(e) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984;

(f) the Dental Practice Board;

(g) the Scottish Dental Practice Board; and

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(h) the Public Health Laboratory Service Board."

(2)

[F86F87F88(3) In the case of a body falling within subsection (3A) below—

(a) where any conveyance, transfer or lease is made or agreed to be made to the body, no stamp duty shall be chargeable under Part 1 or 2, or paragraph 16, of Schedule 13 to the Finance Act 1999 on the instrument by which the conveyance, transfer, lease, or the agreement for it, is effected;

(b) where the body is the purchaser in relation to a land transaction, the land transaction is exempt from charge for the purposes of stamp duty land tax.

(3A) The bodies are—

(a) a National Health Service trust established under Part 1 of this Act or Part 1 of the National Health Service (Scotland) Act 1978;

(b) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991;

(c) a Primary Care Trust;

(d) a Local Health Board.

(3B) Relief under subsection (3)(b) above must be claimed in a land transaction return or an amendment of such a return.

(3C) In this section—

"land transaction" has the same meaning as in Part 4 of the Finance Act 2003 (see section 43(1) of that Act);

"land transaction return" shall be construed in accordance with section 76(1) of that Act;

"purchaser" has the same meaning as in Part 4 of that Act (see section 43(4) of that Act).]

F89(4) . . . . . .

(5) At the end of Schedule 3 to the Inheritance Tax Act 1984 (gifts for national purposes) there shall be added—

"A health service body, within the meaning of section 519A of the Income and Corporation Taxes Act 1988".

Textual Amendments

F86 S. 61(3)-(3C) substituted for s. 61(3) (11.2.2005) by The Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2005 (S.I. 2005/82), **reg. 2(2)**

F87 S. 61(2) repealed by Finance Act 1990 (c. 29, SIF 63:1), s. 132, **Sch. 19 Pt. IV**

F88 S. 61(3): words "the National Health Service Act 2006, the National Health Service (Wales) Act 2006" expressed to be substituted for "Part 1 of the National Health Service and Community Care Act 1990" (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), **Sch. 1 para. 132** (with Sch. 3 Pt. 1)

F89 S. 61(4) repealed (1.9.1994) by 1994 c. 23, ss. 100(2), 101(1), **Sch. 15**

Modifications etc. (not altering text)

C8 S. 61(3) applied (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), {ss. 33(2) }, 199(1); S.I. 2004/759, **art. 2**

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C9 S. 61(3) applied (E.W.) (1.3.2007) by National Health Service Act 2006 (c. 41), **ss. 58**, 277(1)

Marginal Citations

M29 1988 c. 1.

[F90 61A Health service bodies: stamp duty land tax

F91 . . . . . .]

Textual Amendments

F90 S. 61A inserted (1.12.2003) by The Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003 (S.I. 2003/2867), reg. 2, **Sch. para. 15**

F91 S. 61A repealed (11.2.2005) by The Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2005 (S.I. 2005/82), **reg. 4**

F92 62 . . . . . .

Textual Amendments

F92 S. 62 repealed (1.11.1999) by 1999 c. 8, s. 65(2), **Sch. 5**; S.I. 1999/2793, **art. 2(1)(d)**

63 Repeal of remaining provisions of Health Services Act 1976.

(1) Part III (control of hospital building outside National Health Service) and Part IV (supplementary and general) of the M30 Health Services Act 1976 shall cease to have effect.

(2) Notwithstanding the repeal of Part III of the Health Services Act 1976 by this Act,—

(a) that Part shall continue to have effect in relation to any authorisation granted by the Secretary of State under section 13(2) of that Act which is in force when that repeal takes effect; **[**F93 and

(b) the amendment made by section 19(4)(b) of that Act shall continue to have effect.**]**

Textual Amendments

F93 S. 63(2)(b) and word "and" immediately preceding it repealed (S.) (1.4.2002) by 2001 asp 8, s. 80(1), **Sch. 4**; S.S.I. 2002/162, **art. 2(i)**

Commencement Information

I28 S. 63 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/1329, art. 2(8), **Sch. 3**.

Marginal Citations

M30 1976 c. 83.

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64 Financial provisions.

(1) There shall be paid out of moneys provided by Parliament—

(a) any sums required by the Secretary of State for making loans to a National Health Service trust;

(b) any sums required by the Secretary of State for fulfilling a guarantee of a sum borrowed by a National Health Service trust;

(c) any amount paid as public dividend capital under paragraph 5 of Schedule 3 to this Act;

(d) any expenses of the Secretary of State under this Act; and

(e) any increase attributable to this Act in the sums so payable under any other enactment.

(2) Any sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund.

65 Regulations, orders and directions.

(1) Any power to make regulations conferred by this Act shall be exercisable by statutory instrument, and any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) [F94] . . . . . .

Textual Amendments

F94 S. 65(2) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 8(2), 6, **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

66 Amendments and repeals.

(1) Schedule 9 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, shall have effect.

(2) The enactments specified in Schedule 10 to this Act, which include some that are spent, are hereby repealed to the extent specified in the third column of that Schedule.

Commencement Information

I29 S. 66 partly in force; s. 66 not in force at Royal Assent see s. 67(2); s. 66 partly in force at 5.7.1990, 17.9.1990, 1.1.1991 and 1.4.1991 by S.I. 1990/1329; at 24.7.1990 by S.I. 1990/1520; at 17.9.1990, 1.1.1991 and 1.4.1991 by S.I. 1990/1793; at 1.4.1991 by S.I. 1990/2218; at 1.4.1991 by S.I. 1990/2510; at 6.4.1992 by S.I. 1992/567, **art. 2**; at 10.12.1992, 1.4.1993 and 12.4.1993 by S.I. 1992/2975, art. 2, **Sch.**; at 1.4.1995 by S.I. 1994/2658, **art. 4(b)**

67 Short title, commencement and extent.

(1) This Act may be cited as the National Health Service and Community Care Act 1990.

(2) This Act, other than this section, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be

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so appointed for different provisions or for different purposes and for different areas or descriptions of areas.

(3) An order under subsection (2) above may contain such transitional provisions and savings (whether or not involving the modification of any statutory provision) as appear to the Secretary of State necessary or expedient in connection with the provisions brought into force.

(4) [F95]. . . Part II, other than section 34, and Part IV of this Act do not extend to England and Wales; and Part III of this Act, other than subsections (3) and (4) of section 42, subsections (1) and (3) to (6) of section 44 and section 45, does not extend to Scotland.

(5) This Act, other than sections 59 **[**[F96],61 and 62**]** , does not extend to Northern Ireland.

(6) The Secretary of State may by order made by statutory instrument provide that so much of this Act as extends to England and Wales shall apply to the Isles of Scilly with such modifications, if any, as are specified in the order and, except as provided in pursuance of this subsection, Parts I and III of this Act do not apply to the Isles of Scilly.

Subordinate Legislation Made

P1 S. 67(2) power of appointment conferred by s. 67(2) partly exercised: S.I. 1990/1329, 1520, 1793 (as amended (13.3.1992) by S.I. 1992/799, **art. 2**), 2218, 2510, 2511

P2 S. 67(2) power partly exercised: 6.3.1991 appointed for specified provisions by S.I. 1991/388, **art. 2**
S.67(2)(3) power partly exercised : 1.4.1991 appointed for specified provisions by S.I. 1991/607, **art. 2**
s. 67(2) power partly exercised (9.3.1992): 6.4.1992 appointed day for specified provisions by S.I. 1992/567, **art. 2**.
s. 67(2) power partly exercised (30.11.1992): different dates appointed for specified provisions by S.I. 1992/2975, art. 2, **Sch.**
s. 67(2) power partly exercised (10.10.1994): different dates appointed for specified provisions by S.I. 1994/2658, **arts. 2-4**

P3 S. 67(6) power exercised by S.I.1991/552.

Textual Amendments

F95 Words in s. 67(4) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

F96 Words in s. 67(5) substituted (1.4.1991) by S.I. 1991/195, **art. 7(8)**

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

SCHEDULES

SCHEDULE 1

Sections 1 and 2.

HEALTH AUTHORITIES AND FAMILY HEALTH SERVICES AUTHORITIES

[F97]PART I

Textual Amendments

F97 Sch. 1 Pt. I repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6)

Regional health authorities

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1 (1) A Regional Health Authority shall consist of—

(a) a chairman appointed by the Secretary of State;

(b) a prescribed number of members appointed by him;

(c) the chief officer of the authority;

(d) such other officers as may be prescribed; and

(e) not more than a prescribed number of other officers of the authority appointed by the chairman and the members specified in paragraphs (b) and (c) above.

(2) Except in so far as regulations otherwise provide, no person who is an officer of the authority may be appointed under sub-paragraph (1)(b) above; and, without prejudice to any provision made by virtue of paragraph 12(a) of Schedule 5 to the principal Act (regulations as to appointment and tenure)—

(a) at least one of the persons appointed under sub-paragraph (1)(b) above must hold a post in a university with a medical or dental school; and

(b) regulations may provide that all or any of the other persons appointed under sub-paragraph (1)(b) above must fulfil prescribed conditions or hold posts of a prescribed description.

District health authorities

. . . . . .

2 (1) A District Health Authority for a district in England shall consist of—

(a) a chairman appointed by the Secretary of State;

(b) a prescribed number of members appointed by the Regional Health Authority whose region includes the district in question;

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

(c) the chief officer of the authority;
(d) such other officers as may be prescribed; and
(e) not more than a prescribed number of other officers of the authority appointed by the chairman and the members specified in paragraphs (b) and (c) above.

(2) Except in so far as regulations otherwise provide, no person who is an officer of the authority may be appointed under sub-paragraph (1)(b) above; and, without prejudice to any provision made by virtue of paragraph 12(a) of Schedule 5 to the principal Act (regulations as to appointment and tenure), but subject to sub-paragraph (3) below, regulations may provide that all or any of the persons appointed under sub-paragraph (1)(b) above must fulfil prescribed conditions or hold posts of a prescribed description.

(3) In the case of a prescribed authority, at least one of the persons appointed under sub-paragraph (1)(b) above must hold a post in a university with a medical or dental school.

. . . . . .

3 (1) A District Health Authority for a district in Wales shall consist of—
(a) a chairman appointed by the Secretary of State;
(b) a prescribed number of members appointed by him;
(c) the chief officer of the authority;
(d) such other officers as may be prescribed; and
(e) not more than a prescribed number of other officers of the authority appointed by the chairman and the members specified in paragraphs (b) and (c) above.

(2) Sub-paragraphs (2) and (3) of paragraph 2 above apply in relation to sub-paragraph (1) above as they apply in relation to sub-paragraph (1) of that paragraph.

[F98]PART II

Textual Amendments
F98 Sch. 1 Pt. II repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6)

. . . . . .

4 (1) A Family Health Services Authority in England shall consist of—
(a) a chairman appointed by the Secretary of State;
(b) a prescribed number of members appointed by the Regional Health Authority which (in accordance with Section 15(1A) of the principal Act) is the relevant Regional Health Authority in relation to the Family Health Services Authority; and
(c) the chief officer of the Authority;
(d) such other officers as may be prescribed;

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

and, if the Secretary of State so directs, the Authority shall also include not more than a prescribed number of other officers of the Authority appointed by the chairman and the members appointed under paragraphs (b) and (c) above.

(2) No person who is an officer of the Authority may be appointed under sub-paragraph (1)(b) above; and, without prejudice to any provision made by virtue of paragraph 12(a) of Schedule 5 to the principal Act (regulations as to appointment and tenure), regulations may provide that all or any of the persons appointed under sub-paragraph (1)(b) above must fulfil prescribed conditions or hold posts of a prescribed description.

. . . . . .

5 (1) A Family Health Services Authority in Wales shall consist of—

(a) a chairman appointed by the Secretary of State;

(b) a prescribed number of members appointed by him; and

(c) the chief officer of the Authority;

(d) such other officers as may be prescribed;

and, if the Secretary of State so directs, the Authority shall also include not more than a prescribed number of other officers of the Authority appointed by the chairman and the members appointed under paragraphs (b) and (c) above.

(2) Sub-paragraph (2) of paragraph 4 above applies in relation to sub-paragraph (1) above as it applies in relation to sub-paragraph (1) of that paragraph.

PART III

AMENDMENTS OF PART III OF SCHEDULE 5 TO THE PRINCIPAL ACT

F99 6 . . . . . .

Textual Amendments

F99 Sch. 1 Pt. III para. 6 repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6)

7 (1) F100 . . . . . .

(2) F101 . . . . . .

Textual Amendments

F100 Sch. 1 para. 7(1) repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

F101 Sch. 1 para. 7(2) repealed by The National Health Service (Pre-consolidation Amendments) Order 2006 (S.I. 2006/1407), arts. 1(1), 3, **Sch. 2** (with art. 4) the amendment coming into force immediately before the National Health Service Act 2006 (which Act came into force on 1.3.2007 in accordance with s. 227(1) (subject to s. 277(2)-(5) of that Act))

8 F102 . . . . . .

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Textual Amendments

F102 Sch. 1 paras. 8-10 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

9 F103 . . . . . .

Textual Amendments

F103 Sch. 1 paras. 8-10 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

10 F104 . . . . . .

Textual Amendments

F104 Sch. 1 paras. 8-10 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

F105F105SCHEDULE 2

Textual Amendments

F105 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

F106F106PART I

ORDERS UNDER SECTION 5(1)

Textual Amendments

F106 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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1 F107 . . . . . .

Textual Amendments

F107 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

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2 F108 . . . . . .

Textual Amendments

F108 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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3 F109 . . . . . .

Textual Amendments

F109 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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4 F110 . . . . . .

Textual Amendments

F110 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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5 F111 . . . . . .

Textual Amendments

F111 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

F112F112PART II

DUTIES, POWERS AND STATUS

Textual Amendments

F112 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Specific duties

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6 F113 . . . . . .

Textual Amendments

F113 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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7 F114 . . . . . .

Textual Amendments

F114 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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8 F115 . . . . . .

Textual Amendments

F115 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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9 F116 . . . . . .

Textual Amendments

F116 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Specific powers

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10 F117 . . . . . .

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Textual Amendments

F117 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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11 **F118** . . . . . .

Textual Amendments

F118 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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12 **F119** . . . . . .

Textual Amendments

F119 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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13 **F120** . . . . . .

Textual Amendments

F120 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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14 **F121** . . . . . .

Textual Amendments

F121 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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15 **F122** . . . . . .

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Textual Amendments

F122 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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15A F123 . . . . . .

Textual Amendments

F123 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

General powers

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16 F124 . . . . . .

Textual Amendments

F124 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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17 F125 . . . . . .

Textual Amendments

F125 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Status

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18 F126 . . . . . .

Textual Amendments

F126 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

[F127][F127]PART III

SUPPLEMENTARY PROVISIONS

Textual Amendments

F127 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Re-imbursement for health services work carried out otherwise than under NHS contract

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19 [F128] . . . . . .

Textual Amendments

F128 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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20 [F129] . . . . . .

Textual Amendments

F129 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Supply of goods and services by local authorities

. . . . . .

21 [F130] . . . . . .

Textual Amendments

F130 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Making of charges

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22 [F131] . . . . . .

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Textual Amendments

F131 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Power to raise money by appeals etc.

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23 F132 . . . . . .

Textual Amendments

F132 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Accounts and audit

. . . . . .

24 F133 . . . . . .

Textual Amendments

F133 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Protection of members and officers

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25 F134 . . . . . .

Textual Amendments

F134 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Compulsory acquisition

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26 F135 . . . . . .

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Textual Amendments

F135 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Use and development of consecrated land and burial grounds

. . . . . .

27 F136 . . . . . .

Textual Amendments

F136 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Instruments etc.

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28 F137 . . . . . .

Textual Amendments

F137 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

F138F138PART IV

DISSOLUTION

Textual Amendments

F138 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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29 F139 . . . . . .

Textual Amendments

F139 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

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30 [F140] . . . . . .

Textual Amendments

F140 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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31 [F141] . . . . . .

Textual Amendments

F141 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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32 [F142] . . . . . .

Textual Amendments

F142 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

[F143][F143]SCHEDULE 3

Textual Amendments

F143 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Borrowing

. . . . . .

1 [F144] . . . . . .

Textual Amendments

F144 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Guarantees of borrowing

. . . . . .

2 F145 . . . . . .

Textual Amendments

F145 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Limits on indebtedness

. . . . . .

3 F146 . . . . . .

Textual Amendments

F146 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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4 F147 . . . . . .

Textual Amendments

F147 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Additional public dividend capital

. . . . . .

5 F148 . . . . . .

Textual Amendments

F148 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Modifications etc. (not altering text)

C10 Sch. 3 para. 5: Treasury consent requirement continued (W.) (1.7.1999) by S.I. 1999/672, arts. 1(2), 2, **Sch. 1**

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Supplementary payments

5A [F149] . . . . . .

Textual Amendments

F149 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Surplus funds

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6 [F150] . . . . . .

Textual Amendments

F150 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

Investment

. . . . . .

7 [F151] . . . . . .

Textual Amendments

F151 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

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8 [F152] . . . . . .

Textual Amendments

F152 Schs. 2, 3 repealed (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4** (with Sch. 2 Pt. 1, Sch. 3 Pt. 1)

[F153]SCHEDULE 4

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Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Textual Amendments

F153 Sch. 4 repealed (11.9.1998) by 1998 c. 18, ss. 54(3), 55(2), **Sch. 5**

SCHEDULE 5

Section 27.

HEALTH BOARDS, THE COMMON SERVICES AGENCY AND STATE HOSPITALS

Health Boards

1 Schedule 1 to the 1978 Act shall be amended in accordance with paragraphs 2 to 7 below.

2 After paragraph 2 of that Schedule (membership of Health Boards) there shall be inserted the following paragraph—

"2A In the case of a prescribed Health Board at least one of the persons appointed under paragraph 2 above must hold a post in a university with a medical or dental school."

3 In paragraph 4 of that Schedule (remuneration), after the words "Health Board" there shall be inserted "and to such other members of a Health Board as may be prescribed".

4 At the end of paragraph 5A of that Schedule there shall be added the words "and a direction under that paragraph may relate to a particular officer or servant or class of officer or servant specified in the direction".

5 After paragraph 7 of that Schedule there shall be inserted the following paragraphs—

"7A Regulations may provide for the transfer of officers and servants from a Health Board to—

(a) another Health Board;
(b) the Agency; or
(c) a state hospital,

and for arrangements under which the services of an officer or servant of a Health Board are placed at the disposal of a body mentioned in sub-paragraphs (a) to (c).

7B Directions may be given by the Secretary of State—

(a) to a Health Board to place services of any of its officers or servants at the disposal of a body mentioned in sub-paragraphs (a) to (c) of paragraph 7A; and
(b) to any such body to employ as an officer or servant any person who is or was employed by a Health Board and is specified in the direction,

and a Board or body to which such directions are given shall comply with the directions.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

7C Before making regulations under paragraph 7A or 8A, the Secretary of State shall consult such bodies and organisations as appear to him to be concerned."

6 After paragraph 8 of that Schedule there shall be inserted the following paragraph—

"8A In connection with arrangements relating to community care services (within the meaning of section 5A(4) (local authority plans for community care services) of the Social Work (Scotland) Act 1968), regulations may make provision with respect to—

(a) the transfer to employment by a local authority of officers or servants employed by a Health Board; and

(b) the transfer to employment by a National Health Service body of officers and servants transferred to employment by a local authority by virtue of this paragraph,

and for the purposes of this paragraph "National Health Service body" means a Health Board, the Agency or an NHS trust.".

7 In paragraph 11(b) of that Schedule (delegation to committees etc), for the words "composed, as to a majority, by members of Health Boards" there shall be substituted "constituted in accordance with the regulations".

Common Services Agency

8 Schedule 5 to the 1978 Act shall be amended in accordance with paragraphs 9 to 12 below.

9 In paragraph 3 of that Schedule (appointment of chairman and members) for the words from "other members appointed" to the end there shall be substituted "such other members as the Secretary of State may, after consultation with the Health Boards, appoint."

10 In paragraph 3A of that Schedule (remuneration), after the words "management committee" there shall be inserted "and to such other members of the management committee as may be prescribed".

11 After paragraph 7A of that Schedule there shall be inserted the following paragraphs—

"7B Regulations may provide for the transfer of officers and servants from the Agency to a Health Board or state hospital, and for arrangements under which the services of an officer or servant of the Agency are placed at the disposal of a Health Board or state hospital.

7C Directions may be given by the Secretary of State—

(a) to the Agency to place services of any of its officers or servants at the disposal of a Health Board or state hospital; and

(b) to a Health Board or state hospital to employ as an officer or servant any person who is or was employed by the Agency and is specified in the direction,

and it shall be the duty of the Agency, a Health Board or a state hospital to comply with any such directions given to it."

12 After paragraph 8 of that Schedule there shall be inserted the following paragraphs—

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

"8A In connection with arrangements relating to community care services (within the meaning of section 5A(4) (local authority plans for community care services) of the Social Work (Scotland) Act 1968), regulations may make provision with respect to—

(a) the transfer to employment by a local authority of officers or servants employed by the Agency; and

(b) the transfer to employment by a National Health Service body of officers and servants transferred to employment by a local authority by virtue of this paragraph,

and for the purposes of this paragraph "National Health Service body" means the Agency, a Health Board or an NHS trust.

8B Before making regulations under paragraph 7B or 8A, the Secretary of State shall consult such bodies and organisations as appear to him to be concerned.".

State hospitals

13 F154 . . . . . .

Textual Amendments

F154 Sch. 5 para. 13 repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp. 13), ss. 331(2), 333(3), **Sch. 5 Pt. 1**; S.S.I. 2005/161, **art. 3** (as substituted by S.S.I. 2005/375, **art. 2** and as amended by S.S.I. 2005/459, **art. 2**)

SCHEDULE 6

Section 32.

SCHEDULES TO BE INSERTED AFTER SCHEDULE 7 TO THE NATIONAL HEALTH SERVICE (SCOTLAND) ACT 1978

"SCHEDULE 7A

NATIONAL HEALTH SERVICE TRUSTS

PART I

ORDERS ESTABLISHING NHS TRUSTS ETC.

1 Any reference in this Part of this Schedule to an order is a reference to an order under section 12A(1) establishing an NHS trust or any subsequent order under that provision amending or revoking a previous order.

2 The provisions made by an order shall be in conformity with any general provision made by regulations under section 12A(5).

3 (1) Without prejudice to any amendment made by a subsequent order, the first order to be made in relation to any NHS trust shall specify—

(a) the name of the trust;

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

(b) the functions of the trust;

(c) the number of executive directors and non-executive directors;

(d) where the trust is to be regarded as having a significant teaching commitment, a provision to secure the inclusion in the non-executive directors referred to in paragraph (c) of a person appointed from a university with a medical or dental school specified in the order;

(e) the operational date of the trust, that is to say, the date on which the trust is to begin to undertake the whole of the functions conferred on it; and

(f) if a scheme is to be made under section 12B, the body (being a Health Board or the Agency) which is to make the scheme.

(2) For the purposes of sub-paragraph (1)(d), an NHS trust is to be regarded as having a significant teaching commitment in the following cases—

(a) if the trust is established to assume responsibility for the ownership and management of a hospital or other establishment or facility which, in the opinion of the Secretary of State, has a significant teaching and research commitment; and

(b) in any other case, if the Secretary of State so provides in the order.

(3) In a case where the order contains a provision made by virtue of sub-paragraph (1)(d) and a person who is being considered for appointment by virtue of that provision—

(a) is employed by the university in question; and

(b) would also, apart from this sub-paragraph, be regarded as employed by the trust,

his employment by the trust shall be disregarded in determining whether, if appointed, he will be a non-executive director of the trust.

(4) An order shall specify the accounting date of the trust.

4 (1) An order may require a Health Board and the Agency to make staff, premises and other facilities available to an NHS trust pending the transfer or appointment of staff to or by the trust and the transfer of premises or other facilities to the trust.

(2) An order making provision under this paragraph may make provision with respect to the time when the Health Board's functions under the provision are to come to an end.

5 (1) An order may provide for the establishment of an NHS trust with effect from a date earlier than the operational date of the trust and, during the period between that earlier date and the operational date, the trust shall have such limited functions for the purposes of enabling it to begin to operate satisfactorily with effect from the operational date as may be specified in the order.

(2) If an order makes the provision referred to in sub-paragraph (1), then, at any time during the period referred to in that sub-paragraph, the NHS trust shall be regarded as properly constituted (and may carry out its limited functions accordingly) notwithstanding that, at that time, all or any of the executive officers have not yet been appointed.

(3) If an order makes the provision referred to in sub-paragraph (1) above, the order may require a Health Board to discharge such liabilities of the NHS trust as—

(a) may be incurred during the period referred to in that sub-paragraph; and

(b) are of a description specified in the order.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

PART II

DUTIES, POWERS AND STATUS OF NHS TRUSTS

Specific duties

6 (1) An NHS trust shall carry out effectively, efficiently and economically the functions for the time being conferred on it by an order under section 12A(1) and by the provisions of this Schedule and, with respect to the exercise of the powers conferred by an order under section 12A(8) or paragraphs 10 to 15, shall comply with any directions given to it by the Secretary of State, whether of a general or a particular nature.

(2) An NHS trust shall comply with any directions given to it by the Secretary of State with respect to all or any of the following matters—

(a) the qualifications of persons who may be appointed as officers of the trust;

(b) the employment, for the purpose of performing functions specified in the direction, of officers having qualifications or experience of a description so specified;

(c) the manner in which officers of the trust are to be appointed;

(d) prohibiting or restricting the disposal of, or of any interest in, any asset which, at the time the direction is given, the Secretary of State reasonably considers to have a value in excess of such sum as may be specified in an order under section 12A(1) and in respect of which the Secretary of State considers that the interests of the National Health Service require that the asset should not be disposed of;

(e) compliance with guidance or directions given (by circular or otherwise) to Health Boards or particular descriptions of Health Boards, or the Agency; and

(f) the implementation of awards relating to the distinction or merit of medical practitioners or dental practitioners or any class or classes of such practitioners.

7 (1) For each accounting year an NHS trust shall prepare and send to the Secretary of State an annual report in such form as may be determined by the Secretary of State.

(2) At such time or times as may be prescribed, an NHS trust shall hold a public meeting at which its audited accounts, its annual report, and such other documents as may be prescribed shall be presented.

(3) In such circumstances and at such time or times as may be prescribed, an NHS trust shall hold a public meeting at which such documents as may be prescribed shall be presented.

8 An NHS trust shall furnish to the Secretary of State such reports, returns and other information, including information as to its forward planning as, and in such form as, he may require.

9 (1) An NHS trust shall be liable to pay—

(a) to the chairman and any non-executive director of the trust—

(i) remuneration of an amount determined by the Secretary of State, not exceeding such amount as may be approved by the Treasury; and

(ii) such travelling and other allowances as may be determined by the Secretary of State with the approval of the Treasury; and

(b) to any member of a committee or sub-committee of the trust who is not also a director such travelling and other allowances as may be so determined.

Status: *Point in time view as at 01/08/2008.*
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(2) If an NHS trust so determines in the case of a person who is or has been a chairman of the trust, the trust shall be liable to pay such pension, allowances or gratuities to or in respect of him as may be determined by the Secretary of State with the approval of the Treasury.

(3) Different determinations may be made under sub-paragraph (1) or (2) in relation to different cases or description of cases.

Specific powers

10 An NHS trust may enter into NHS contracts.

11 An NHS trust may undertake and commission research and make available staff and provide facilities for research by other persons.

12 An NHS trust may—

(a) provide training for persons employed or likely to be employed by the trust or otherwise in the provision of services under this Act; and

(b) make facilities and staff available in connection with training by a university or any other body providing training in connection with the health service.

13 An NHS trust may enter into arrangements for the carrying out, on such terms as seem to it to be appropriate, of any of its functions jointly with any Health Board, with the Agency, with another NHS trust or with any other body or individual.

14 According to the nature of its functions, an NHS trust may make accommodation or services or both available for patients who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation or services (or both) such charges as the trust may determine.

15 For the purpose of making additional income available in order better to perform its functions, an NHS trust shall have the powers specified in section 7(2) of the Health and Medicines Act 1988 (extension of powers of Secretary of State for financing the Health Service).

General powers

16 Subject to Schedule 7B, an NHS trust shall have power to do anything which appears to it to be necessary or expedient for the purpose of or in connection with the discharge of its functions, including in particular power—

(a) to acquire and dispose of land and other property;

(b) to enter into such contracts as seem to the trust to be appropriate;

(c) to accept gifts of money, land or other property, including money, land or other property to be held on trust, for purposes relating to any service which it is their function to provide, administer, or make arrangements for, which purposes shall include any purposes relating to a hospital or other establishment or facility which is provided or managed by the trust; and

(d) to employ staff on such terms as the trust thinks fit.

17 In connection with arrangements relating to community care services (within the meaning of section 5A(4) (local authority plans for community care services) of the Social Work (Scotland) Act 1968), the Secretary of State may by regulations make provision with respect to—

Status: *Point in time view as at 01/08/2008.*
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(a) the transfer to employment by a local authority of staff employed by an NHS trust; and

(b) the transfer to employment by a National Health Service body of staff transferred to employment by a local authority by virtue of this paragraph,

and for the purposes of this paragraph "National Health Service body" means an NHS trust, a Health Board or the Agency.

18 Regulations made under paragraph 17 may make such incidental and consequential provision in relation to staff transferred by virtue of that paragraph as may be made in relation to officers and servants of a Health Board transferred by virtue of regulations made under paragraph 8A of Schedule 1.

19 Before making regulations under paragraph 17, the Secretary of State shall consult such bodies and organisations as appear to him to be concerned.

20 (1) Without prejudice to the generality of paragraph 16, to or in respect of such of its employees as it may determine, an NHS trust may make such arrangements for providing pensions, allowances or gratuities as it may determine; and such arrangements may include the establishment and administration, by the trust or otherwise, of one or more pension schemes.

(2) The reference in sub-paragraph (1) to pensions, allowances or gratuities to or in respect of employees of an NHS trust includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the trust's employees who suffer loss of office or employment or loss or diminution of emoluments.

Status

21 An NHS trust shall not be regarded as the servant or agent of the Crown or, except as provided by this Act, as enjoying any status, immunity or privilege of the Crown; and an NHS trust's property shall not be regarded as property of, or property held on behalf of, the Crown.

PART III

SUPPLEMENTARY PROVISIONS

Reimbursement for health services work carried out otherwise than under contract

22 (1) In any case where an NHS trust provides goods or services for the benefit of an individual and—

(a) those goods or services are not provided pursuant to an NHS contract; and

(b) the condition of the individual is such that he needs those goods or services and, having regard to his condition, it is not practicable before providing them to enter into an NHS contract for their provision, and

(c) the provision of those goods or services is a function of a Health Board or is within the primary functions of a District Health Authority within the meaning of the National Health Service Act 1977,

the trust shall be remunerated by that Board or Authority in respect of the provision of the goods or services in question.

(2) The rate of any remuneration payable by virtue of sub-paragraph (1) shall be calculated in such manner or on such basis as may be determined by the Secretary of State.

Status: *Point in time view as at 01/08/2008.*
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23 In any case where an NHS trust provides goods or services for the benefit of an individual and—

(a) paragraph 22(1)(a) applies but paragraph 22(1)(c) does not apply; and

(b) the individual is resident outside the United Kingdom and is of a description (being a description associating the individual with another country) specified for the purposes of this paragraph by a direction made by the Secretary of State,

the trust shall be remunerated by the Secretary of State in respect of the provision of the goods or services in question at such rate or rates as he considers appropriate.

Use and development of land used for religious purposes and burial grounds

24 Where land consisting of a church or other building used or formerly used for religious worship, or the site thereof, or a burial ground, within the meaning of **[**[F155]section 197 of the Town and County Planning (Scotland) 1997**]** (provisions as to churches and burial grounds), is held by an NHS trust for any of its purposes, that section applies to the land as if—

(a) the land had been acquired by the trust as mentioned in subsection (1) of that section; and

(b) the trust were a statutory undertaker, within the meaning of that Act.

PART IV

DISSOLUTION

25 (1) The Secretary of State may by order dissolve an NHS trust.

(2) An order under this paragraph may be made—

(a) on the application of the NHS trust concerned; or

(b) if the Secretary of State considers it appropriate in the interests of the health service as a whole.

(3) Except where it appears to the Secretary of State necessary to make an order under this paragraph as a matter of urgency, no such order shall be made until after the completion of such consultation as may be prescribed.

26 (1) If an NHS trust is dissolved under this Part of this Schedule, the Secretary of State may by order transfer or provide for the transfer to—

(a) the Secretary of State, or

(b) a Health Board, or

(c) the Agency, or

(d) another NHS trust,

of such of the property, rights and liabilities of the NHS trust which is dissolved as in his opinion is appropriate and any such order may include provisions corresponding to those of section 12D.

(2) An order under this paragraph may make provision in connection with the transfer of staff employed by or for the purposes of the NHS trust which is dissolved; and such an order may include provisions corresponding to those of sections 12B and 12C, including provision for the making of a scheme by such body (being a Health Board or the Agency) as may be specified in the order.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

(3) No order shall be made under this paragraph until after completion of such consultation as may be prescribed.

27 If an NHS trust is dissolved under this Part of this Schedule, the Secretary of State or such other NHS trust or Health Board as he may direct or, if he so directs, the Agency shall undertake the responsibility for the continued payment of any such pension, allowances or gratuities as, by virtue of paragraph 9(2) or paragraph 20 above, would otherwise have been the responsibility of the trust which has been dissolved.

28 An NHS trust may not be dissolved or wound up except in accordance with this Part of this Schedule.

SCHEDULE 7B

FINANCIAL PROVISIONS RELATING TO NHS TRUSTS

Borrowing

1 (1) Subject to the provisions of this paragraph and to any limit imposed under the following provisions of this Schedule, for the purpose of its functions an NHS trust may borrow (both temporarily, by way of overdraft, and longer term) from the Secretary of State or from any other person.

(2) An NHS trust may not grant any security over any of its assets or in any other way use any of its assets as security for a loan.

(3) Except with the consent of the Secretary of State, an NHS trust may not borrow in any currency other than sterling; and the Secretary of State shall not give his consent to any such borrowing except with the approval of the Treasury.

(4) Interest on any sums borrowed from the Secretary of State by an NHS trust shall be paid at such variable or fixed rates and at such times as the Treasury may determine.

(5) A rate of interest under sub-paragraph (4) shall be determined as if section 5 of the National Loans Act 1968 had effect in respect of it and subsections (5) to (5B) of that section shall apply accordingly.

(6) Subject to sub-paragraphs (4) and (5), the terms on which any sums are borrowed from the Secretary of State by an NHS trust shall be such as he may determine; and, in the event of the early repayment of any sums so borrowed, such terms may require the payment of a premium or allow a discount.

Guarantees of borrowing

2 (1) The Secretary of State may guarantee, in such manner and on such conditions as, with the approval of the Treasury, he considers appropriate, the repayments of the principal of and the payment of interest on any sums which an NHS trust borrows from a person other than the Secretary of State.

(2) Immediately after a guarantee is given under this paragraph, the Secretary of State shall lay a statement of the guarantee before each House of Parliament.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

(3) Where any sum is issued for fulfilling a guarantee so given, the Secretary of State shall lay before each House of Parliament a statement relating to that sum as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.

(4) If any sums are issued in fulfilment of a guarantee given under this paragraph, the NHS trust concerned shall make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct,—

(a) payments of such amounts as the Secretary of State with the consent of the Treasury so directs in or towards repayment of the sums so issued; and

(b) payments of interest, at such rates as the Secretary of State with the consent of the Treasury so directs, on what is outstanding for the time being in respect of sums so issued.

Limits on indebtedness

3 (1) The aggregate of all sums borrowed by NHS trusts established to assume responsibility for the ownership and management of, or to provide and manage, hospitals or other establishments or facilities which are situated in Scotland shall not exceed £500 million or such other sum not exceeding £1,000 million as may be specified by order made by the Secretary of State with the consent of the Treasury.

(2) The reference in sub-paragraph (1) to sums borrowed does not include a reference to the initial loan of NHS trusts.

4 Any power to make an order under paragraph 3 shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

Additional public dividend capital

5 (1) If the Secretary of State, with the consent of the Treasury, considers it appropriate to do so, he may, instead of making a loan to an NHS trust under paragraph 1, pay an amount to the trust as public dividend capital.

(2) Section 12E shall apply to public dividend capital paid to an NHS trust under this paragraph as it applies to public dividend capital forming part of the trust's originating capital debt.

Surplus funds

6 If it appears to the Secretary of State that any amount standing in the reserves of an NHS trust is surplus to its foreseeable requirements, the trust shall, if the Secretary of State with the approval of the Treasury and after consultation with the trust so directs, pay that amount into the Consolidated Fund.

Investment

7 An NHS trust may not invest any money held by it except in securities of the Government of the United Kingdom or in such other manner as the Secretary of State may with the consent of the Treasury approve."

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Textual Amendments

F155 Sch. 6: words in para. 24 of the Sch. 7A to be inserted in 1978 c. 29 substituted (27.5.1997) by virtue of 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 46(1)**

SCHEDULE 7

Section 36.

AMENDMENTS RELATING TO AUDIT OF ACCOUNTS OF SCOTTISH HEALTH SERVICE BODIES

The Local Government (Scotland) Act 1973

1 Part VII of the [M31]Local Government (Scotland) Act 1973 (finance) shall be amended in accordance with paragraphs 2 to 13 below.

Commencement Information

I30 Sch. 7 para. 1 wholly in force; Sch. 7 para. 1 not in force at Royal Assent, see s. 67(2); Sch. 7 para. 1 in force for certain purposes at 24.10.1994 and 1.12.1994 and 1.4.1995 so far as not already in force by S.I. 1994/2658, **arts. 2**, 3, 4

Marginal Citations

M31 1973 c. 65.

[F156]2 . . . . . .

Textual Amendments

F156 Sch. 7 para. 2 repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 8**; S.S.I. 2000/10, **art. 2(3)**

3 (1) Section 97 (establishment of Commission for Local Authority Accounts in Scotland) shall be amended as follows.

(2) In subsection (1)—

(a) for the words "Commission for Local Authority Accounts in Scotland" there shall be substituted "Accounts Commission for Scotland";

[F157](b) . . . . . .

[F157](c) . . . . . .

[F157](d) . . . . . .

[F157](3) . . . . . .

[F157](4) . . . . . .

[F157](5) . . . . . .

[F157](6) . . . . . .

[F157](7) . . . . . .

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Textual Amendments

F157 Sch. 7 para. 3(2)(b)-(d)(3)-(7) repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 8**; S.S.I. 2000/10, **art. 2(3)**

Commencement Information

I31 Sch. 7 para. 3 wholly in force; Sch. 7 para. 3 not in force at Royal Assent see s.67(2); Sch. 7 para. 3 in force for certain purposes at 24.10.1994 and 1.12.1994 and and 1.4.1995 so far as not already in force by S.I. 1994/2658, **arts. 2**, 3, 4

F158 4 . . . . . .

Textual Amendments

F158 Sch. 7 para. 4 repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 8**; S.S.I. 2000/10, **art. 2(3)**

F159 5 . . . . . .

Textual Amendments

F159 Sch. 7 para. 5 repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 8**; S.S.I. 2000/10, **art. 2(3)**

F160 6 . . . . . .

Textual Amendments

F160 Sch. 7 para. 6 repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 8**; S.S.I. 2000/10, **art. 2(3)**

7 (1) Section 100 (auditor's right of access to documents) shall be amended as follows.

F161 (2) . . . . . .

(3) After subsection (1) there shall be inserted the following subsection—

"(1A) In the case of a recognised fund-holding practice, the reference in subsection (1) above to documents includes a reference to documents relating to all the accounts and records of the members of the practice, whether or not relating to an allotted sum."

F161 (4) . . . . . .

Textual Amendments

F161 Sch. 7 para. 7(2)(4) repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 8**; S.S.I. 2000/10, **art. 2(3)**

F162 8 . . . . . .

Textual Amendments

F162 Sch. 7 para. 8 repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 8**; S.S.I. 2000/10, **art. 2(3)**

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

[F163]9 . . . . . .

Textual Amendments
F163 Sch. 7 para. 9 repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 8**; S.S.I. 2000/10, **art. 2(3)**

[F164]10 . . . . . .

Textual Amendments
F164 Sch. 7 para. 10 repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 8**; S.S.I. 2000/10, **art. 2(3)**

[F165]11 . . . . . .

Textual Amendments
F165 Sch. 7 para. 11 repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 8**; S.S.I. 2000/10, **art. 2(3)**

[F166]12 . . . . . .

Textual Amendments
F166 Sch. 7 para. 12 repealed (1.4.2000) by 2000 asp 1, s. 26, **Sch. 4 para. 8**: S.S.I. 2000/10, **art. 2(3)**

13 In Schedule 8 (provisions as to the Commission), for the words "Commission for Local Authority Accounts in Scotland" in both places where they occur there shall be substituted "Accounts Commission for Scotland".

The National Health Service (Scotland) Act 1978

14 (1) Section 86 of the [M32]National Health Service (Scotland) Act 1978 (keeping and audit of accounts of certain Scottish health bodies) shall be amended as follows.

(2) In subsections (1) and (1A), for the words "by auditors appointed by the Secretary of State" there shall be substituted "in accordance with Part VII of the Local Government (Scotland) Act 1973 by auditors appointed by the Accounts Commission for Scotland".

(3) After subsection (1B) there shall be inserted the following subsection—

"(1C) In such circumstances and to such extent as regulations made by the Secretary of State so provide, the requirement in subsection (1A)(a) to have accounts audited shall not apply to the accounts for any year of a recognised fund-holding practice if those accounts are submitted to a Health Board and summarised in the Board's accounts."

(4) Subsection (2) shall cease to have effect.

Marginal Citations
M32 1978 c. 29.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

General amendment

15 Without prejudice to any express amendment made by this Act, for any reference in any enactment (including an enactment comprised in subordinate legislation) to the Commission for Local Authority Accounts in Scotland there shall be substituted a reference to the Accounts Commission for Scotland.

SCHEDULE 8

Section 60.

PROVISIONS ARISING OUT OF REMOVAL OF CROWN IMMUNITIES FROM HEALTH SERVICE BODIES

Commencement Information
I32 Sch. 8 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/1329, art. 2(8), **Sch. 3**.

PART I

AMENDMENTS CONTINUING CERTAIN STATUTORY EXEMPTIONS

The Employers' Liability (Compulsory Insurance) Act 1969

1 In section 3 of the [M33]Employers' Liability (Compulsory Insurance) Act 1969 (employers exempted from insurance), in subsection (2) after the words "subsection (1)(a) above" there shall be inserted—

"(a) a health service body, as defined in section 60(7) of the National Health Service and Community Care Act 1990, and a National Health Service trust established under Part I of that Act or the National Health Service (Scotland) Act 1978; and

(b)".

Marginal Citations
M33 1969 c. 57.

The Vehicles (Excise) Act 1971

[F167]2 . . . . . .

Textual Amendments
F167 Sch. 8 para. 2 repealed (1.9.1994) by 1994 c. 22, ss. 65, 66(1), **Sch. 5 Pt. I** (with s. 57(4))

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

The Copyright, Designs and Patents Act 1988

3 At the end of section 48 of the [M34]Copyright, Designs and Patents Act 1988 (material communicated to the Crown in the course of public business) there shall be added the following subsection—

"(6) In this section "the Crown" includes a health service body, as defined in section 60(7) of the National Health Service and Community Care Act 1990, and a National Health Service trust established under Part I of that Act or the National Health Service (Scotland) Act 1978; and the reference in subsection (1) above to public business shall be construed accordingly."

Marginal Citations
M34 1988 c. 48.

The Road Traffic Act 1988

4 In section 144 of the [M35]Road Traffic Act 1988 (exceptions from requirement of third-party insurance or security) in subsection (2) after paragraph (d) there shall be inserted the following paragraphs—

"(da) to a vehicle owned by a health service body, as defined in section 60(7) of the National Health Service and Community Care Act 1990, at a time when the vehicle is being driven under the owner's control,

(db) to an ambulance owned by a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978, at a time when a vehicle is being driven under the owner's control".

Marginal Citations
M35 1988 c. 52.

PART II

CONSEQUENTIAL AMENDMENTS

The Acquisition of Land (Authorisation Procedure)(Scotland) Act 1947

5 In the First Schedule to the [M36]Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (procedure for authorising compulsory purchases), after paragraph 10 there shall be inserted the following paragraph—

"10A In paragraphs 9 and 10 of this Schedule "statutory undertakers" include—

(a) a health service body, as defined in section 60(7) of the National Health Service and Community Care Act 1990; and

(b) a National Health Service trust established under Part I of that Act or the National Health Service (Scotland) Act 1978;

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

but in relation to a health service body, as so defined, any reference in those paragraphs to land acquired or available for acquisition by the statutory undertakers shall be construed as a reference to land acquired or available for use by the Secretary of State for use or occupation by that body."

Marginal Citations
M36 1947 c. 42.

The Town and Country Planning Act 1971

6 In section 128 of the [M37]Town and Country Planning Act 1971 (use and development of consecrated land and burial grounds) after subsection (4) there shall be inserted the following subsection—

"(4A) In the case of land—

(a) which has been acquired by the Secretary of State under subsection (1) of section 87 of the National Health Service Act 1977 or to which, by virtue of subsection (6) of that section, this section applies as if it had been so acquired, and

(b) which is held, used or occupied by a health service body, as defined in section 60(7) of the National Health Service and Community Care Act 1990,

subsection (1) or, as the case may be, subsection (4) above shall apply with the omission of paragraph (a) and, in paragraph (b), of the words "in any other case"."

Marginal Citations
M37 1971 c. 78.

The Town and Country Planning (Scotland) Act 1972

[F168]7 . . . . . .

Textual Amendments
F168 Sch. 8 para. 7 repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. I** (with s. 5, Sch. 3)

The Acquisition of Land Act 1981

8 (1) At the end of section 16 of the [M38]Acquisition of Land Act 1981 (statutory undertakers' land excluded from compulsory purchase) there shall be added the following subsection—

"(3) In the preceding provisions of this section "statutory undertakers" include—

(a) a health service body, as defined in section 60(7) of the National Health Service and Community Care Act 1990; and

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

(b) a National Health Service trust established under Part I of that Act or the National Health Service (Scotland) Act 1978;

but in relation to a health service body, as so defined, any reference in those provisions to land acquired or available for acquisition by the statutory undertakers shall be construed as a reference to land acquired or available for acquisition by the Secretary of State for use or occupation by that body".

(2) In section 17 of that Act (local authority and statutory undertakers' land) at the end of subsection (2) there shall be inserted the following subsection—

"(2A) Subsection (3) of section 16 above applies in relation to subsections (1) and (2) above as it applies in relation to the preceding provisions of that section."

Marginal Citations
M38 1981 c. 67.

The Value Added Tax Act 1983

F169 9 . . . . . .

Textual Amendments
F169 Sch. 8 para. 9 repealed (1.9.1994) by 1994 c. 23, ss. 100(2), 101(1), **Sch. 15**

The Housing Act 1988

10 In Schedule 2 to the M39 Housing Act 1988 (grounds for possession of dwelling-houses let on assured tenancies), at the end of Ground 16 (dwelling-house let in consequence of employment by the landlord) there shall be added the following paragraph—

"For the purposes of this ground, at a time when the landlord is or was the Secretary of State, employment by a health service body, as defined in section 60(7) of the National Health Service and Community Care Act 1990, shall be regarded as employment by the Secretary of State."

Marginal Citations
M39 1988 c. 50.

The Housing (Scotland) Act 1988

11 In Schedule 5 to the M40 Housing (Scotland) Act 1988 (grounds for possession of houses let on assured tenancies) at the end of Ground 17 (house let in consequence of employment by the landlord) there shall be added the following paragraph—

"For the purposes of this ground, at a time when the landlord is or was the Secretary of State, employment by a health service body, as defined in section 60(7) of the National Health Service and Community Care Act 1990, shall be regarded as employment by the Secretary of State."

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Marginal Citations
M40 1988 c. 43.

PART III

TRANSITIONAL PROVISIONS

12 In this Part of this Schedule—

(a) "the appointed day" means the day appointed for the coming into force of subsection (1) of section 60 of this Act;

(b) "functional health service land" means land which for the time being falls within paragraph (a) or paragraph (b) of that subsection;

(c) "health service body" has the same meaning as in that section; and

(d) "NHS trust" means such a trust established under Part I of this Act or the [M41]National Health Service (Scotland) Act 1978.

Marginal Citations
M41 1978 c. 29.

The Building (Scotland) Act 1959

13 (1) Notwithstanding section 60(1) of this Act, where, on or after the appointed day, relevant work is carried out by or on behalf of a health service body or an NHS trust—

(a) in relation to a building which is, immediately before the appointed day, a Crown building within the meaning of section 26(3) of the [M42]Building (Scotland) Act 1959 (application to the Crown); or

(b) in constructing a building which, if it had been constructed before the appointed day, would have been a Crown building within the meaning of that provision,

Part II of that Act shall apply to the relevant work as if it were being carried out before the appointed day.

(2) In sub-paragraph (1) above, "relevant work" means work in respect of which, before the appointed day, a health service body has granted a certificate that the detail design has been completed.

Marginal Citations
M42 1959 c. 24.

The Medicines Act 1968

14 (1) In any case where—

(a) before the appointed day, a health service body or an NHS trust has made an application for a licence under Part II of the [M43]Medicines Act 1968 or any

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

such application as is referred to in section 36 of that Act (applications for clinical trial and animal test certificates), and

(b) the application was accompanied by a declaration under paragraph (a) or paragraph (b) of sub-paragraph (2) below, and

(c) the application has not been determined before the appointed day,

then, on and after the appointed day and until the application is determined, the health service body or NHS trust concerned shall be treated for all purposes as if it held a licence or, as the case may be, a certificate of the description applied for.

(2) The declarations referred to in sub-paragraph (1)(b) above are,—

(a) in the case of a health service body, that, at the date of the application, the body was carrying on activities which, after the appointed day, it would be unlawful to carry on except in accordance with a licence or certificate of the description applied for; and

(b) in the case of an NHS trust, that the trust has been established to assume responsibility for the ownership and management of a hospital or other establishment or facility and, at the date of the application, a health service body was carrying on at that hospital, establishment or facility activities which it is unlawful for the NHS trust to carry on except in accordance with a licence or certificate of the description applied for.

(3) For the purposes of sub-paragraph (1) above, an application is determined when the licensing authority—

(a) grant a licence or, as the case may be, certificate to the applicant (whether or not in accordance with the application); or

(b) notify the applicant of their refusal to grant a licence or certificate on the application.

(4) Expressions used in sub-paragraphs (1) to (3) above have the same meaning as in sections 18 to 22 of the Medicines Act 1968 (applications for, and grant of, licences), including, where applicable, any of those sections as applied by subsection (3) of section 36 of that Act in relation to applications falling within subsection (1) of that section.

Marginal Citations

M43 1968 c. 67.

The Fire Precautions Act 1971

15 [F170] . . . . . .

Textual Amendments

F170 Sch. 8 para. 15 repealed (E.W.) (1.10.2006) by The Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541), art. 53(2), **Sch. 4** (with art. 49) (as amended by The Regulatory Reform (Fire Safety) Subordinate Provisions Order 2006 (S.I. 2006/484), **arts. 1(1)**, 2) and Sch. 8 para. 15 repealed (S.) (1.10.2006) by The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006 (S.S.I. 2006/475), art. 2, **Sch. 2**

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

The Town and Country Planning Act 1971

16 (1) This paragraph applies if—

(a) before the appointed day, notice of any proposed development has been given to a local planning authority in accordance with arrangements relating to development by government departments; and

(b) the development relates to land which, at the time the notice was given, was functional health service land; and

(c) the proposed development has not been carried out before the appointed day.

(2) So far as relates to the carrying out of the development of which notice was given as mentioned in sub-paragraph (1)(a) above, for the purposes of the arrangements referred to in that paragraph and of the [M44]Town and Country Planning Act 1971,—

(a) the carrying out of the development shall continue to be regarded as being by or on behalf of the Crown; and

(b) so long as the interest of the Secretary of State in the land referred to in sub-paragraph (1)(b) above continues on and after the appointed day to be held in fact by the Secretary of State or an NHS trust, that interest shall be regarded as continuing to be an interest of, or held on behalf of, the Crown.

(3) Subject to paragraph 12 above, expressions used in sub-paragraphs (1) and (2) above have the same meaning as in the Town and Country Planning Act 1971.

Marginal Citations

M44 1971 c. 78.

The Town and Country Planning (Scotland) Act 1972

17 (1) This paragraph applies if—

(a) before the appointed day, notice of any proposed development has been given to a planning authority in accordance with arrangements relating to development by government departments; and

(b) the development relates to land which, at the time the notice was given, was functional health service land; and

(c) the proposed development has not been carried out before the appointed day.

(2) So far as relates to the carrying out of the development of which notice was given as mentioned in sub-paragraph (1)(a) above, for the purposes of the arrangements referred to in that paragraph and of **[**[F171]the Town and Country Planning (Scotland) Act 1997**]**—

(a) the carrying out of the development shall continue to be regarded as being by or on behalf of the Crown; and

(b) so long as the interest of the Secretary of State in the land referred to in sub-paragraph (1)(b) above continues on and after the appointed day to be held in fact by the Secretary of State or an NHS trust, that interest shall be regarded as continuing to be an interest of, or held on behalf of, the Crown.

(3) Subject to paragraph 12 above, expressions used in sub-paragraphs (1) and (2) above have the same meaning as in **[**[F171]the Town and Country Planning (Scotland) Act 1997**]**.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Textual Amendments

F171 Words in Sch. 8 para. 17(2)(3) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 46(2)**

The Building Act 1984

18 (1) If, immediately before the appointed day, approved work is proposed to be carried out by or on behalf of a Crown authority (whether or not in relation to a Crown building) the fact that, on or after the appointed day, the work may be carried out by or on behalf of a health service body or an NHS trust shall not prevent it continuing to be regarded for the purposes of Part I of the [M45]Building Act 1984 as work carried out by a Crown authority.

(2) Subject to sub-paragraph (3) below, expressions used in sub-paragraph (1) above have the same meaning as in section 44 of the [M46]Building Act 1984 (application of Part I to Crown).

(3) Any reference in sub-paragraph (1) above to approved work is a reference to work in respect of which, before the appointed day, either a contract for carrying it out was entered into or all necessary design certificates were signed in accordance with arrangements relating to compliance with the substantive requirements of building regulations by Regional and District Health Authorities and certain Special Health Authorities.

Marginal Citations

M45 1984 c. 55.
M46 1984 c. 55.

The Housing Act 1988 and the Rent Act 1977

19 (1) This paragraph applies to a tenancy—

(a) which was entered into before the appointed day; and

(b) which is of land in England or Wales which, immediately before the appointed day, was functional health service land.

(2) If and so long as the interest of the landlord under a tenancy to which this paragraph applies continues on and after the appointed day to belong in fact either to the Secretary of State or to an NHS trust, it shall be taken to belong to a government department for the purposes of—

(a) paragraph 11 of Schedule 1 to the [M47]Housing Act 1988 (Crown tenancies entered into after the commencement of Part I of that Act not to be assured tenancies); or

(b) section 13 of the [M48]Rent Act 1977 (earlier Crown tenancies not to be protected tenancies).

(3) Expressions used in sub-paragraphs (1) and (2) above have the same meaning as in Part I of the Housing Act 1988 or, as the case may require, the Rent Act 1977.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Marginal Citations
M47 1988 c. 50.
M48 1977 c. 42.

The Housing (Scotland) Act 1988 and the Rent (Scotland) Act 1984

20 (1) This paragraph applies to a tenancy—
(a) which was entered into before the appointed day; and
(b) which is of land in Scotland which, immediately before the appointed day, was functional health service land.

(2) If and so long as the interest of the landlord under a tenancy to which this paragraph applies continues on and after the appointed day to belong in fact either to the Secretary of State or to an NHS trust, it shall be taken to belong to a government department for the purposes of—
(a) paragraph 10 of Schedule 4 to the [M49]Housing (Scotland) Act 1988 (Crown tenancies entered into after the commencement of that Schedule not to be assured tenancies); or
(b) section 4 of the [M50]Rent (Scotland) Act 1984 (earlier Crown tenancies not to be protected tenancies).

(3) Expressions used in sub-paragraphs (1) and (2) above have the same meaning as in Part II of the Housing (Scotland) Act 1988 or, as the case may be, the Rent (Scotland) Act 1984.

Marginal Citations
M49 1988 c. 43.
M50 1984 c. 58.

SCHEDULE 9

Section 66(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

The Public Health (Scotland) Act 1897

1 (1) In section 54 of the [M51]Public Health (Scotland) Act 1897 (removal of infected persons without proper lodging to hospital), after the words "Secretary of State" in both places where they occur, there shall be inserted the words "or to any hospital managed by a National Health Service trust established under section 12A of the National Health Service (Scotland) Act 1978".

(2) In section 55(1) of that Act (detention of infected persons without proper lodging in hospital) after the word "hospital", where it first appears, there shall be inserted the words "vested in the Secretary of State or managed by a National Health Service trust established under section 12A of the National Health Service (Scotland) Act 1978".

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

(3) In section 55(3) of that Act, after the words "vested in the Secretary of State" there shall be inserted the words "or managed by a National Health Service trust established under section 12A of the National Health Service (Scotland) Act 1978".

(4) In section 96 of that Act (power of local authority to remove sick persons to hospital), after the words "Secretary of State" there shall be inserted the words "or managed by a National Health Service trust established under section 12A of the National Health Service (Scotland) Act 1978".

Marginal Citations
M51 1897 c. 38.

The Voluntary Hospitals (Paying Patients) Act 1936

2 In section 1 of the [M52]Voluntary Hospitals (Paying Patients) Act 1936 (definitions) —

(a) in the definition of "voluntary hospital", after the words "of the rates" there shall be inserted "or which is vested in an NHS trust"; and

(b) after the definition of "committee of management" there shall be inserted—

""NHS trust" means a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990."

Marginal Citations
M52 1936 c. 17.

The Nursing Homes Registration (Scotland) Act 1938

[[F172]3 In section 10(3)(a) (interpretation) of the [M53]Nursing Homes Registration (Scotland) Act 1938, after the words "local authority" there shall be inserted the words "or a National Health Service trust established under section 12A of the National Health Service (Scotland) Act 1978.".**]**

Textual Amendments
F172 Sch. 9 para. 3 repealed (S.) (1.4.2002) by 2001 asp 8, s. 80(1), **Sch. 4**; S.S.I. 2002/162, **art. 2(i)**

Marginal Citations
M53 1938 c. 73.

The Public Health (Scotland) Act 1945

4 In section 1(3) of the [M54]Public Health (Scotland) Act 1945 (regulations with regard to treatment and prevention of spread of certain diseases)—

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

(a) after the words "Health Boards" there shall be inserted the words "or National Health Service trusts established under section 12A of the National Health Service (Scotland) Act 1978"; and

(b) in the proviso to that subsection, after the word "Board" there shall be inserted the words "National Health Service trust,".

Marginal Citations

M54 1945 c. 15. (9 & 10 Geo. 6).

The National Assistance Act 1948

5 (1) At the beginning of subsection (4) of section 21 of the [M55]National Assistance Act 1948 (accommodation provided under section 21 to be provided in premises managed by a local authority) there shall be inserted "Subject to the provisions of section 26 of this Act".

(2) For paragraphs (b) and (c) of subsection (7) of that section (which enable health services to be provided on premises where accommodation is provided under that section) there shall be substituted—

"(b) make arrangements for the provision on the premises in which the accommodation is being provided of such other services as appear to the authority to be required."

(3) At the end of subsection (8) of that section (which excludes from that section provision required to be made by a local authority under other enactments) there shall be inserted "or authorised or required to be provided under the National Health Service Act 1977".

(4) In section 24 of that Act (authority liable for provision of accommodation)—

(a) in subsection (6) for the words from "patient" to "shall" there shall be substituted "patient in a hospital vested in the Secretary of State or an NHS trust shall"; and

(b) at the end there shall be added—

"(7) In subsection (6) above "NHS trust" means a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990 or under the National Health Service (Scotland) Act 1978."

(5) In section 26 of that Act (provision of accommodation in premises maintained by voluntary organisations etc.)—

(a) in subsection (2) the words "subsection (1) of" shall be omitted;

(b) after subsection (4) there shall be inserted—

"(4A) Section 21(5) of this Act shall have effect as respects accommodation provided under arrangements made by virtue of this section with the substitution for the reference to the authority managing the premises of a reference to the authority making the arrangements.";

(c) in subsection (5) the words "subsection (1) of" shall be omitted.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

(6) Subsections (2) and (3) of section 35 of that Act (duty of authorities to exercise functions under Part III of that Act in accordance with regulations) shall cease to have effect.

(7) Section 36 of that Act (default powers of Minister) shall cease to have effect.

(8) Section 54 of that Act (which enables inquiries to be held for the purposes of that Act) shall cease to have effect.

(9) In paragraph (f) of section 65 of that Act (application to Scotland)—
  (a) the words "Part IV of" shall cease to have effect;
  (b) at the end there shall be inserted "or section 7 (functions of local authorities) of the Mental Health (Scotland) Act 1984,".

Commencement Information

I33 Sch. 9 para. 5 wholly in force at 1.4.1993; Sch. 9 para. 5 not in force at Royal Assent see s. 67(2); Sch. 9 para. 5(4) in force at 5.7.1990 by S.I. 1990/1329, art. 2(1), **Sch. 1**; Sch. 9 para. 5(6)(7)(8)(9)(b) in force at 1.4.1991 by S.I. 1990/2218, art. 2, **Sch.** and 1990/2510, art. 2, Sch.; Sch. 9 para. 5(1)-(3)(5)(9)(a) in force at 1.4.1993 by S.I. 1992/2975, art. 2(2), **Sch.**

Marginal Citations

M55 1948 c. 29.

The Public Records Act 1958

6 In Schedule 1 to the [M56]Public Records Act 1958 (definition of public records), in the Table in Part I, in the entry relating to the Department of Health, in the second column—
  (a) after the words "National Health Service Authorities" there shall be inserted "including National Health Service trusts"; and
  (b) for the words "National health service hospitals" there shall be substituted "health service hospitals, within the meaning of the National Health Service Act 1977".

Marginal Citations

M56 1958 c. 51.

The Human Tissue Act 1961

7 [F173] . . . . . .

Textual Amendments

F173 Sch. 9 para 7 repealed (1.9.2006) by Human Tissue Act 2004 (c. 30), ss. 57, 60(2), **Sch. 7 Pt. 1** (with s. 58); S.I. 2006/1997, **art. 3(1)(2)** (subject to transitional provisions in arts. 4, 7, 8) (as amended by S.I. 2006/2169, **art. 2**)

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

The Abortion Act 1967

8 In section 1 of the [M57]Abortion Act 1967 (medical termination of pregnancy), in subsection (3) after the words "National Health Service (Scotland) Act 1978" there shall be inserted "or in a hospital vested in a National Health Service trust".

Marginal Citations
M57 1967 c. 87.

The Leasehold Reform Act 1967

9 In section 28 of the [M58]Leasehold Reform Act 1967 (retention or resumption of land required for public purposes)—

(a) in subsection (5)(d) for the words "and any special health authority" there shall be substituted "any special health authority and any National Health Service trust"; and

(b) in subsection (6)(c) for the words "or special health authority" there shall be substituted "special health authority or National Health Service trust".

Marginal Citations
M58 1967 c. 88.

The Social Work (Scotland) Act 1968

10 (1) The [M59]Social Work (Scotland) Act 1968 shall be amended as follows.

(2) In section 2 (the social work committee), in subsection (2) after paragraph (k) there shall be inserted—

"(l) sections 21 to 23 of the Health and Social Services and Social Security Adjudications Act 1983;

(m) the Access to Personal Files Act 1987."

(3) In section 4 (provisions relating to performance of functions by local authorities), after the word "Act", there shall be inserted the words "or section 7 (functions of local authorities) or 8 (provision of after-care services) of the Mental Health (Scotland) Act 1984,".

(4) [F174] . . . . . .

(5) In section 12 (general social welfare services of local authorities) at the end there shall be inserted—

"(6) For the purposes of subsection (2) of this section "person in need" includes a person who is in need of care and attention arising out of drug or alcohol dependency or release from prison or other form of detention."

(6) In section 14 (home help), for the words—

(a) "home help", where they first occur there shall be substituted the words "domiciliary services";

(b) "help is", there shall be substituted the words "services are"; and

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(c) "home help is", there shall be substituted the words "domiciliary services are".

(7) In section 59(1) (provision of residential and other establishments), at the beginning there shall be inserted the words "Subject to section 13A of this Act,".

[[F175](8) In section 61(1A) (definition of "establishment")—

(a) after the word "include" there shall be inserted "(a)"; and

(b) at the end of the definition of "establishment" there shall be inserted—

"; or

(b) any establishment providing residential accommodation with nursing falling within section 13A of this Act;".

(9) In subsection (1) of section 67 (inspection of establishments by local authorities)—

(a) for the words "duly authorised officer of" there shall be substituted the words "person duly authorised by";

(b) for the words "required to be kept therein by virtue of this Part of this Act" there shall be substituted the words "(in whatever form they are held) relating to the place or to any person for whom services have been or are provided there by virtue of this Act or section 7 (functions of local authorities) or 8 (provision of after-care services) of the Mental Health (Scotland) Act 1984";

(c) after the words "subsections (2)", there shall be inserted the words "to (2D)";

(d) for the words "an officer", where they first occur, there shall be substituted the words "a person"; and

(e) for the words "an officer of" there shall be substituted the words "a person authorised by".

(10) In subsection (2) of the said section 67, for the word "officer", in both places where it occurs, there shall be substituted the word "person".**]**

(11) In subsection (1)(d) of section 86 (adjustments between authority providing accommodation etc., and authority of area of residence), at the end there shall be inserted—

"or

(e) in the provision of accommodation, services or facilities for persons ordinarily so resident under section 7 (functions of local authorities) or 8 (provision of after-care services) of the Mental Health (Scotland) Act 1984;".

(12) In subsection (3) of the said section 86, after the words "1978" there shall be inserted the words "or in a hospital managed by a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990 or section 12A of the National Health Service (Scotland) Act 1978".

(13) In section 87 (charges for services and accommodation),—

(a) in subsection (1), after the words "under this Act", there shall be inserted the words "or section 7 (functions of local authorities) or 8 (provision of after-care services) of the Mental Health (Scotland) Act 1984";

(b) in subsection (1A), after the words "under this Act", there shall be inserted the words "or section 7 or 8 of the said Act of 1984";

(c) in subsections (2), (3) and (4), after the words "under this Act", there shall be inserted the words "or section 7 of the said Act of 1984;" and

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(d) in subsection (4), after the word "organisation" there shall be inserted the words "or any other person or body".

(14) In subsection (1) of section 94 (interpretation),—

(a) after the definition of "contributor" there shall be inserted the following definition—

""domiciliary services" means any services, being services provided in the home, which appear to a local authority to be necessary for the purpose of enabling a person to maintain as independent an existence as is practicable in his home;"; and

(b) in the definition of "hospital", after the words "1978" there shall be inserted—

"(aa) any hospital managed by a National Health Service trust established under section 12A of the National Health Service (Scotland) Act 1978;".

Textual Amendments

F174 Sch. 9 para. 10(4) repealed (S.) (23.2.2006) by Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006 (asp 3), **ss. 8(4)(e)**, 10(2)

F175 Sch. 9 para. 10(8)-(10) repealed (S.) (1.4.2002) by 2001 asp 8, ss. 80(1), 81(2), **Sch. 4**; S.S.I. 2002/162, **art. 2(i)**

Commencement Information

I34 Sch. 9 para. 10 partly in force; Sch. 9 para. 10 not in force at Royal Assent see s.67(2); Sch. 9 para. 10(12)(14)(b) in force at 24.07.1990 by S.I. 1990/1520; Sch. 9 para. 10(2)-(6)(9)-(11)(13)(14)(a) in force at 1.4.1991 by S.I. 1990/2510, art. 2, **Sch.**; Sch. 9 para. 10(7)(8) in force at 1.4.1993 by S.I. 1992/2975, art. 2(2), **Sch.**

Marginal Citations

M59 1968 c. 49.

The Local Authority Social Services Act 1970

11 In Schedule 1 to the [M60]Local Authority Social Services Act 1970 (enactments conferring functions assigned to social services committee)—

(a) in the entry relating to the Children Act 1989, in the second column after the words "health authorities" there shall be inserted "National Health Service trusts";

(b) for the entry relating to section 6 of the Local Authority Social Services Act 1970 there shall be substituted—

"Sections 6 and 7B of this Act	Appointment of director of social services, etc; provision and conduct of complaints procedure."; and

(c) at the end of that Schedule there shall be inserted—

"National Health Service and Community Care Act 1990 (c.19)

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Section 46	Preparation of plans for community care services.
Section 47	Assessment of needs for community care services.”

Commencement Information

I35 Sch. 9 para. 11 wholly in force at 1.4.1993; Sch. 9 para. 11 not in force at Royal Assent see s. 67(2); Sch. 9 para. 11(b) in force and para. 11(c) in force for certain purposes at 1.4.1991 by S.I. 1990/2218, **art. 2 Sch.**; Sch. 9 para. 11(a) in force and para. 11(c) in force so far as not already in force at 1.4.1993 by S.I. 1992/2975, art. 2(2), **Sch.**

Marginal Citations

M60 1970 c. 42.

The Chronically Sick and Disabled Persons Act 1970

12 In section 2(1) of the [M61]Chronically Sick and Disabled Persons Act 1970, the words from “to the provisions” in the first place where they occur, to “the purpose) and” shall be omitted and after the words “Secretary of State)” there shall be inserted “and to the provisions of section 7A of that Act (which requires local authorities to exercise their social services functions in accordance with directions given by the Secretary of State)”.

Commencement Information

I36 Sch. 9 para. 12 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/2218, art. 2, **Sch.**

Marginal Citations

M61 1970 c. 44.

The Local Government Act 1972

13 In section 113 of the [M62]Local Government Act 1972 (placing of staff at disposal of other bodies),—

(a) [F176] . . . . . .

(b) at the end there shall be added the following subsection—

“(4) In subsection (1A) above “NHS trust” means a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990.”

Textual Amendments

F176 Sch. 9 para. 13(a) repealed (1.4.2004) by Health and Social Care (Community Health and Standards Act 2003 (c. 43), ss. 196, 199(1)(b), **Sch. 14 Pt. 1**; S.I. 2004/759, **art. 12**

Marginal Citations

M62 1972 c. 70.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

The Criminal Procedure (Scotland) Act 1975

14 In section 462 (interpretation) of the [M63]Criminal Procedure (Scotland) Act 1975, in paragraph (a) of the definition of "hospital", after the words "Secretary of State" there shall be inserted the words "or in a National Health Service trust".

Marginal Citations

M63 1975 c. 21.

The Child Benefit Act 1975

[F177]15 . . . . . .

Textual Amendments

F177 Sch. 9 para. 15 repealed (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 3, 7(2), **Sch.1** (subject as mentioned (6.3.1992) in Local Government Finance Act 1992 (c. 14) s. 118(5)(7) (with s. 118(1)(2)(4))).

Commencement Information

I37 Sch. 9 para. 15, before being brought into force was repealed (1.7.1992). By art. 2(2), Sch. of S.I. 1992/2975 (made on 30.11.1992), Sch. 9 para. 15 was expressed to be brought into force on 1.4.1993.

The Children Act 1975

16 In section 99(1)(b) of the [M64]Children Act 1975 (inquiries in Scotland) the words "paragraph (a) of section 1(4) and" shall cease to have effect and after the word "(h)" there shall be inserted "to (k)".

Commencement Information

I38 Sch. 9 para. 16 wholly in force at 10.12.1992 see s. 67(2) and S.I. 1992/2975, **art. 2(1)(b)**.

Marginal Citations

M64 1975 c. 72.

The Adoption Act 1976

17 [F178] . . . . . .

Textual Amendments

F178 Sch. 9 para. 17 repealed (30.12.2005) by Adoption and Children Act 2002 (c. 38), ss. 139(3), 148, **Sch. 5** (with Sch. 4 paras. 6-8); S.I. 2005/2897, **art. 2(b)**

The National Health Service Act 1977

18 [F179] . . . . . .

Status: *Point in time view as at 01/08/2008.*
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Textual Amendments

F179 Sch. 9 para. 18 repealed (E.W.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 6, 8(2), **Sch. 4**

The National Health Service (Scotland) Act 1978

19 (1) In section 2 of the [M65]National Health Service (Scotland) Act 1978 (Health Boards), in subsection (5) after the words "subsection (1)" there shall be inserted "and in exercising any function otherwise conferred on them by or under this Act".

(2) [F180] . . . . . .

(3) In section 12 of that Act (Scottish Hospital Endowments Research Trust), after subsection (4) there shall be inserted the following subsections—

"(4A) The Research Trust shall have power to engage in activities intended to stimulate the giving of money or other property to assist them in carrying out the purpose aforesaid.

(4B) Subject to any directions of the Secretary of State excluding specified activities or descriptions of activity, the activities authorised by subsection (4A) include public appeals or collections, and the soliciting of sponsorship, donations, legacies, bequests and gifts."

(4) In section 13 of that Act (co-operation between Health Boards and other authorities), after the word "Boards," there shall be inserted "NHS trusts,".

(5) In subsection (1)(a) of section 13A of that Act (co-operation in planning of services for disabled persons, the elderly and others) for the words from "being" to the end there shall be substituted the words "by Health Boards and such of the authorities mentioned in that section as may be concerned;".

(6) For paragraph (b) of subsection (2) of section 25 of that Act (arrangements for provision of general dental services) there shall be substituted the following paragraph—

"(b) for conferring a right, subject to—

(i) subsection (2A);

(ii) the provisions of this Part relating to the disqualification of persons providing services; and

(iii) section 8 (persons over retiring age) of the Health and Medicines Act 1988 and regulations made under that section,

on any dental practitioner who wishes to be included in any such list to be so included;".

(7) In section 27 of that Act (arrangements for provision of pharmaceutical services)—

(a) in subsection (1)—

(i) for the word "supply" there shall be substituted "provision";

(ii) in paragraph (b), after the word "Board" there shall be inserted "or by an NHS trust";

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(iii) at the end of paragraph (c) there shall be inserted—

"; and

(d) such services as may be prescribed,";and

(iv) for the words "services provided in accordance with the arrangements are" there shall be substituted "provision of drugs, medicines, appliances and services in accordance with the arrangements is";

(b) in subsection (2), after the word "mentioned" in the second place where it occurs there shall be inserted ", or to whom services mentioned in subsection (1)(d) are to be provided,";

(c) in subsections (3)(b), (c) and (d) and (4), before the word "services" in each place where it occurs there shall be inserted "pharmaceutical"; and

(d) in subsection (4)(d) for the words "a prescribed criterion" there shall be substituted "prescribed criteria".

(8) In section 28(2) of that Act (persons authorised to provide pharmaceutical services)—

(a) after the word "medicines" in the first place where it occurs there shall be inserted "or the provision of pharmaceutical services";

(b) after the word "undertake" there shall be inserted "(a)";

(c) for the word "supplied" there shall be substituted "provided"; and

(d) after the word "dispensed" there shall be inserted—

", and

(b) that all services mentioned in section 27(1)(d) provided by them under those arrangements shall be provided,".

(9) In section 55(1) (hospital accommodation on part payment) of that Act, after the word "hospital" there shall be inserted the words "vested in the Secretary of State".

(10) In section 57(1) (accommodation and services for private patients), after the word "hospital" where it first occurs there shall be inserted "vested in the Secretary of State".

(11) In section 73 of that Act (charges for more expensive supplies) at the end there shall be inserted—

"(c) by a National Health Service trust in respect of the supply by them of any appliance or vehicle which is, at the request of the person supplied, of a more expensive type than the prescribed type, or in respect of the replacement or repair of any such appliance, or the replacement of any such vehicle.".

(12) In section 74 of that Act (charges for repairs and replacement in certain cases), after paragraph (b) there shall be inserted—

"or

(c) by an NHS trust in respect of the replacement or repair of any appliance or vehicle supplied by them,".

(13) In section 75A of that Act (remission and repayment of charges and payment of travelling expenses)—

(a) in subsection (1), at the end there shall be inserted—

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"and

(d) for the payment by the Secretary of State to NHS trusts of such sums as will reimburse them for any sums paid by them as travelling expenses in such cases as may be prescribed"; and

(b) in subsection (2), for the words "or (c)" there shall be substituted the words ", (c) or (d)".

(14) In section 77 of that Act (default powers), after paragraph (a) of subsection (1) there shall be inserted—

"(aa) an NHS trust".

(15) In section 79 of that Act (purchase of land and moveable property)—

(a) in subsection (1), after the word "Act" where it first appears there shall be inserted the words "and may take any such property or land on lease,"; and

(b) in subsection (2), after the word "(1)," there shall be inserted the words "other than on lease".

(16) In section 84 of that Act (power of trustees to make payments to Health Boards)—

(a) in subsection (1), after the words "Health Board" where they—

(i) second occur, there shall be inserted the words "or an NHS trust"; and

(ii) third occur, there shall be inserted the words "or NHS trust";

(b) in subsection (2)—

(i) after the words "Health Board" there shall be inserted the words "or NHS trust"; and

(ii) after the word "Boards" there shall be inserted the words "or NHS trusts". and

(c) in subsection (3), after the words "Health Board" there shall be inserted the words "or an NHS trust".

(17) In section 84A of that Act (power to raise money by appeals etc)—

(a) in subsection (1), after the word "Board" there shall be inserted "or NHS trust"; and

(b) in subsections (3) to (7), after the word "Board" in each place where it occurs there shall be inserted ", NHS trust".

F181(18) . . . . . .

(19) In section 101 of that Act (protection of health bodies and their officers), after the word "Board" there shall be inserted ", an NHS trust".

(20) In section 102(1) of that Act (management of state hospitals), for the word "90(2)" there shall be substituted "91(2)".

(21) In section 105 of that Act (orders, regulations and directions)—

(a) after subsection (1) there shall be inserted the following subsection—

"(1A) Subsection (1) does not apply to orders made under section 12D(1) or paragraph 26(1) of Schedule 7A.";

(b) in subsection (4), after the words "10(3) to (5)" there shall be inserted the words "12A(1), 12A(8), 12E(1), 12G(2),"; and

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(c) at the end of the said subsection (4) there shall be inserted the words "paragraph 25(1) of Schedule 7A and paragraph 3 of Schedule 7B".

(22) In section 108(1) of that Act (interpretation)—

(a) in the definition of "Health Board", for the word "board" there shall be substituted the words "Health Board";

(b) at the end of the definition of "health service hospital" there shall be added "or vested in an NHS trust";

(c) after the definition of "modifications" there shall be inserted—

""National Health Service trust" has the meaning indicated by section 12A and "NHS trust" shall be construed accordingly";and

""NHS contract" has the meaning indicated by section 17A(3)";

(d) after the definition of "officer" there shall be inserted—

""operational date", in relation to an NHS trust, shall be construed in accordance with paragraph 3(1)(e) of Schedule 7A;";and

(e) after the definition of "the Research Trust" there shall be inserted—

""Special Health Board" means a Special Health Board constituted under section 2;".

(23) In section 110 of that Act (citation, extent and commencement)—

(a) in subsection (2), for the words "subsection (3)" there shall be substituted "subsections (2A) and (3)"; and

(b) after subsection (2) there shall be inserted—

"(2A) Section 87B(3) extends also to England and Wales."

(24) In Schedule 6 to that Act (the Hospital Trust)—

(a) in paragraph 4(c), after the words "Health Boards" there shall be inserted the words "and NHS trusts";

(b) after paragraph 4(e) there shall be inserted—

"(ea) power to accept from any NHS trust for investment and management on behalf of the trust any property held on behalf of the trust by trustees appointed by virtue of section 12G(2), and any endowments or accumulated income otherwise held by the trust;";

(c) in paragraph 4(f)—

(i) after the words "paragraph (e)" there shall be inserted the words "or, as the case may be, 0paragraph (ea)"; and

(ii) after the words "Health Board" there shall be inserted the words "or, as the case may be, by an NHS Trust";

(d) in paragraph 6(2), after the words "Health Boards" there shall be inserted the words "or NHS trusts";

(e) in paragraph 7(1), after the words "Health Boards" there shall be inserted the words ", NHS trusts";

(f) in paragraph 7(2), after the words "Health Boards" there shall be inserted the words ", NHS trusts"; and

(g) in paragraph 7(3), at the end there shall be inserted—

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"(c) in so far as it is distributed among NHS trusts, being used by that trust for any purpose for which the trust was established."

Textual Amendments

F180 Sch. 9 para. 19(2) repealed (S.) (1.4.2002) by S.S.I. 2002/176, **art. 5** and expressed to be repealed (S.) (prosp.) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp. 4), ss. 17, 21(2), **sch. 4 para. 11(b)**

F181 Sch. 9 para. 19(18) repealed (5.2.1994) by 1993 c. 46, ss. 20, 22(4), **Sch. 3** (with s. 3(4)).

Marginal Citations

M65 1978 c. 29.

The Employment Protection (Consolidation) Act 1978

F182 20 . . . . . .

Textual Amendments

F182 Sch. 9 para. 20 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-200, 202)

The Overseas Development and Co-operation Act 1980

F183 21 . . . . . .

Textual Amendments

F183 Sch. 9 para. 21 repealed (17.6.2002) by 2002 c. 1, s. 19, **Sch. 4** (with s. 20, Sch. 5 para. 5); S.I. 2002/1408, **art. 2**

The Education Act 1981

F184 22 . . . . . .

Textual Amendments

F184 Sch. 9 para. 22 repealed (1.9.1994) by S.I. 1994/2038, art. 3, **Sch. 2** Appendix

The Acquisition of Land Act 1981

23 In the M66 Acquisition of Land Act 1981, in section 17 (local authority and statutory undertakers' land), in subsection (4), in the definition of "statutory undertakers" after paragraph (a) there shall be inserted—

"(aa) a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990, and".

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Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

Marginal Citations
M66 1981 c. 67.

The Mental Health Act 1983

24 (1) In section 12 of the [M67]Mental Health Act 1983 (general provisions as to medical recommendations), in subsection (3) after the words "National Health Service Act 1977" there shall be inserted "or paragraph 14 of Schedule 2 to the National Health Service and Community Care Act 1990".

(2) In section 19 of that Act (regulations as to transfer of patients), in subsection (3)—
(a) after the words "such a hospital" there shall be inserted "or in a hospital vested in a National Health Service trust", and
(b) for the words from "for which the managers" to "also the managers", there shall be substituted "which is managed by the managers of, or is vested in the National Health Service trust for, the first-mentioned hospital".

(3) In section 23 of that Act (discharge of patients)—
(a) in subsection (3) after the words "a contract with a" there shall be inserted "National Health Service trust"[F185]. . ., and
(b) in subsection (4), after the word "exercised" there shall be inserted "subject to subsection (5) below" and after the word "authority", in each place in which it occurs, there shall be inserted "trust", and
(c) after subsection (4) there shall be inserted the following subsection—

"(5) The reference in subsection (4) above to the members of an authority, trust or body or the members of a committee or sub-committee of an authority, trust or body,—
(a) in the case of a District or Special Health Authority or a committee or sub-committee of such an authority, is a reference only to the chairman of the authority and such members (of the authority, committee or sub-committee, as the case may be) as are not also officers of the authority, within the meaning of the National Health Service Act 1977; and
(b) in the case of a National Health Service trust or a committee or sub-committee of such a trust, is a reference only to the chairman of the trust and such directors or (in the case of a committee or sub-committee) members as are not also employees of the trust."

[F185](4) . . . . . .

(5) In section 32 of that Act (regulations for purposes of Part II), in subsection (3) [F185]. . . and for the words "and authorities" there shall be inserted "authorities and trusts".

[F185](6) . . . . . .

(7) In section 139 of that Act (protection for acts done in pursuance of the Act), at the end of subsection (4) there shall be inserted "or against a National Health Service trust established under the National Health Service and Community Care Act 1990".

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

(8) In section 140 of that Act (notification of hospitals having arrangements for reception of urgent cases) after the words "administered by" there shall be inserted "or otherwise available to".

(9) In section 145(1) of that Act (definitions) in the definition of "the managers", after paragraph (b) there shall be inserted the following paragraph—

"(bb) in relation to a hospital vested in a National Health Service trust, the directors of the trust".

Textual Amendments

F185 Sch. 9 para. 24(4)(6) and words in sub-paras. (3)(a), (5) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6)

Marginal Citations

M67 1983 c. 20.

The Health and Social Services and Social Security Adjudications Act 1983

25 (1) In section 17 of the [M68]Health and Social Services and Social Security Adjudications Act 1983 (charges for local authority services in England and Wales) after paragraph (e) of subsection (2) (services to which that section applies) there shall be inserted "other than the provision of services for which payment may be required under section 22 or 26 of the National Assistance Act 1948".

(2) In subsection (8) of section 21 of that Act (recovery of sums due to local authority where persons in residential accommodation have disposed of assets), at the end there shall be inserted the words "or section 7 (functions of local authorities) of the Mental Health (Scotland) Act 1984,".

Commencement Information

I39 Sch. 9 para. 25 wholly in force at 12.4.1993; Sch. 9 para. 25 not in force at Royal Assent see s. 67(2); Sch. 9 para. 25(1) in force at 1.4.1993 and para. 25(2) in force at 12.4.1993 by S.I. 1992/2975, art. 2(2)(3)(b), **Sch.**

Marginal Citations

M68 1983 c. 41.

The Public Health (Control of Disease) Act 1984

26 [F186](1) . . . . . .

(2) In section 37 of that Act (removal to hospital of person with notifiable disease), in subsection (1)—

(a) in paragraph (c) after the words "Secretary of State" there shall be inserted "or, pursuant to arrangements made by a District Health Authority (whether under an NHS contract or otherwise), in a suitable hospital vested in a NHS trust or other person"; [F187]. . .

[F187](b) . . . . . .

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

(3) In section 41 of that Act (removal to hospital of inmate of common lodging-house with notifiable disease), in subsection (1)—

(a) in paragraph (c) after the words "Secretary of State" there shall be inserted "or, pursuant to arrangements made by a District Health Authority (whether under an NHS contract or otherwise) in a suitable hospital vested in an NHS trust or any other person"; [F188]. . .

[F188](b) . . . . . .

(4) In section 74 of that Act (definitions) after the definition of "London port health authority" there shall be inserted—

""NHS trust" and "NHS contract" have the same meaning as in Part I of the National Health Service and Community Care Act 1990 or, as the case may require, the National Health Service (Scotland) Act 1978".

Textual Amendments

F186 Sch. 9 para. 26(1) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6)

F187 Sch. 9 para. 26(2)(b) and preceding "and" repealed (1.10.2002) by S.I. 2002/2469, reg. 19, **Sch. 13**

F188 Sch. 9 para. 26(3)(b) and preceding "and" repealed (1.10.2002) by S.I. 2002/2469, reg. 19, **Sch. 13**

The Registered Homes Act 1984

27 [F189]. . . . . .

Textual Amendments

F189 Sch. 9 para. 27 repealed (1.4.2002 for E.W.) by 2000 c. 14, ss. 117(2), 122, **Sch. 6**; S.I. 2001/4150, **arts. 3(3)(c)(ix)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(g)(vii)** (with art. 3(5)(10))

The Mental Health (Scotland) Act 1984

28 [F190]. . . . . .

Textual Amendments

F190 Sch. 9 para. 28 repealed (S.) (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp. 13), ss. 331(2), 333(3), **Sch. 5 Pt. 1**; S.S.I. 2005/161, **art. 3** (as substituted by S.S.I. 2005/375, **art. 2**, and as amended by S.S.I. 2005/459, **art. 2**)

The Hospital Complaints Procedure Act 1985

[F191]29 . . . . . .

Textual Amendments

F191 Sch. 9 para. 29 repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6)

Status: *Point in time view as at 01/08/2008.*
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The Disabled Persons (Services, Consultation and Representation) Act 1986

30 (1) In section 2 of the [M69]Disabled Persons (Services, Consultation and Representation) Act 1986 (rights of authorised representatives of disabled persons), in subsection (5) (by virtue of which a disabled person's authorised representative may visit and interview him in various categories of accommodation)—

(a) in paragraph (a) (hospital accommodation) after the words "the 1977 Act" there shall be inserted "or by a National Health Service trust established under the provisions of the National Health Service and Community Care Act 1990" and after the words "the 1978 Act" there shall be inserted "or by a National Health Service trust established under that Act";

(b) in paragraph (c) (accommodation provided by a voluntary organisation in accordance with arrangements made under section 26 of the National Assistance Act 1948) after the word "organisation", in the first place where it occurs, there shall be inserted the words "or other person"; and

(c) in paragraph (cc) (which is inserted by paragraph 59(4) of Schedule 13 to the [M70]Children Act 1989) after the word "organisation" there shall be inserted the words "or other person".

(2) In section 7 of that Act (persons discharged from hospital), in subsection (9), in the definition of "managers" the word "and" at the end of paragraph (c) shall be omitted and after that paragraph there shall be inserted—

"(cc) in relation to a hospital vested in a National Health Service trust means the directors of that trust; and".

Marginal Citations

M69 1986 c. 33.

M70 1989 c. 41.

The Education (No. 2) Act 1986

[F192]31 . . . . . .

Textual Amendments

F192 Sch. 9 para. 31 repealed (1.11.1996) by 1996 c. 56, ss. 582(2)(3), 583(2), Sch. 38 Pt. I, **Sch. 39** (with ss. 1(4), 561, Sch. 39 paras. 5, 6, 8 and 30)

The AIDS (Control) Act 1987

32 (1) Section 1 of the [M71]AIDS (Control) Act 1987 (periodical reports on matters relating to AIDS and HIV) shall be amended as follows—

(a) in subsection (1), in paragraph (b) [F193]. . . at the end of sub-paragraph (iii) there shall be inserted—

"and

(iv) each NHS trust";

[F193](b) . . . . . .

[F193](c) . . . . . .

Status: *Point in time view as at 01/08/2008.*
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(d) at the end there shall be added—

"(10) In this section "NHS trust" means a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990 or, as the case may be, under the National Health Service (Scotland) Act 1978."

(2) In the Schedule to that Act (contents of reports), after the word "Authority", in each place in which that word appears, there shall be inserted "NHS trust".

Textual Amendments

F193 Sch. 9 para. 32(1)(b)(c) and words in para.(a) repealed (1.4.1996) by 1995 c. 17, s. 5(1)(2), **Sch. 3** (with Sch. 2 para. 6)

Marginal Citations

M71 1987 c. 33.

The Community Health Councils (Access to Information) Act 1988

33 In section 1 of the [M72]Community Health Councils (Access to Information) Act 1988 (access to meetings and documents of Community Health Councils), in subsection (6)(a) after the words "exercises functions" there shall be inserted "or any National Health Service trust which is established under Part I of the National Health Service and Community Care Act 1990 and carries on any of its activities from premises in the area of the authority".

Marginal Citations

M72 1988 c. 24.

The Health and Medicines Act 1988

34 In section 7 of the [M73]Health and Medicines Act 1988 (extension of powers for financing the health service) in subsection (2), after the word "powers", in the second place where it occurs, there shall be inserted "(exercisable outside as well as within Great Britain)".

Marginal Citations

M73 1988 c. 49.

The Road Traffic Act 1988

35 In section 161 of the [M74]Road Traffic Act 1988 (interpretation) in subsection (1), in the definition of "hospital" for the word "an", in the first place where it occurs, there shall be substituted "any health service hospital, within the meaning of the National Health Service Act 1977 or the National Health Service (Scotland) Act 1978 and any other".

Status: *Point in time view as at 01/08/2008.*
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Marginal Citations

M74 1988 c. 52.

The Children Act 1989

36 (1) In section 21 of the [M75]Children Act 1989 (provision of accommodation for children in police protection etc.), in subsection (3) after the words "vested in the Secretary of State" shall be inserted the words "or otherwise made available pursuant to arrangements made by a District Health Authority".

(2) In section 24 of that Act (advice and assistance for certain children)—

(a) at the end of subsection (2)(d)(ii) there shall be added the words "or in any accommodation provided by a National Health Service trust"; and

(b) at the end of subsection (12)(c) there shall be added the words "or any accommodation provided by a National Health Service trust".

(3) In section 29 of that Act (recoupment of cost of providing services etc.), at the end of paragraph (c) of subsection (8) there shall be added the words "or any other hospital made available pursuant to arrangements made by a District Health Authority".

(4) In section 80 of that Act (inspection of children's homes etc.).—

(a) [F194] . . . . . .

(b) in subsection (5)(e) after the words "health authority" there shall be inserted "National Health Service trust".

(5) In section 85 of that Act (children accommodated by health authorities and local education authorities), in subsection (1) after the words "health authority" there shall be inserted "National Health Service trust".

Textual Amendments

F194 Sch. 9 para. 36(4)(a) repealed (1.4.2004) by Health and Social Care (Community Health and Standards Act 2003 (c. 43), ss. 196, 199(1)(b), **Sch. 14 Pt. 1**; S.I. 2004/759, **art. 12**

Marginal Citations

M75 1989 c. 41.

The Opticians Act 1989

37 In section 27 of the [M76]Opticians Act 1989 (sale and supply of optical appliances), at the end of subsection (4)(b)(i) there shall be inserted "or the National Health Service and Community Care Act 1990".

Marginal Citations

M76 1989 c. 44.

Status: *Point in time view as at 01/08/2008.*
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SCHEDULE 10

Section 66(2).

ENACTMENTS REPEALED

Commencement Information

I40 Sch. 10 partly in force; Sch. 10 not in force at Royal assent see s. 67(2); Sch. 10 in force so far as it relates to specified repeals: at 5.7.1990, 17.9.1990, 1.10.1990, 1.1.1991 and 1.4.1991 by S.I. 1990/1329; at 17.9.1990, 1.1.1991 and 1.4.1991 by S.I. 1990/1793; at 6.4.1992 by S.I. 1992/567, **art 2**; at 10.12.1992 and 1.4.1993 by S.I. 1992/2975, art. 2, **Sch.**; at 1.4.1995 by S.I. 1994/2658, **art. 4(c)**

Chapter	Short title	Extent of repeal
1 & 2 Geo.6 c. 73.	The Nursing Homes Registration (Scotland) Act 1938.	Section 1(3)(bb) and (bc).
11 & 12 Geo.6 c. 29.	The National Assistance Act 1948.	In section 21(8) the words from the beginning to "subsection". Section 22(7). In section 26, in subsections (2) and (5) the words "subsection (1) of". Section 35(2) and (3). Section 36. In section 41(1) the words "the Mental Health Act 1959, or". Section 54.
7 & 8 Eliz.2 c. 72.	The Mental Health Act 1959.	In section 8, subsection (1), in subsection (2) the words from the beginning to "description; and" and the words "accommodation or" in the second place where they occur and subsection (3).
1968 c. 46.	The Health Services and Public Health Act 1968.	Section 44(1). In section 45, in subsection (5), in paragraph (b) the word "36" and in paragraph (c) the word "54".
1968 c. 49.	The Social Work (Scotland) Act 1968.	In section 1, in subsection (4)(b), the word "and", and subsection (4)(c).

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1970 c. 44.	The Chronically Sick and Disabled Persons Act 1970.	In section 2(1) the words from “to the provisions” in the first place where they occur, to “the purpose) and”.
1971 c. 40.	The Fire Precautions Act 1971.	In section 40, subsections (2)(c) and (10).
1972 c. 70.	The Local Government Act 1972.	In Schedule 23, in paragraph 2, in sub-paragraph (3) the words from “in subsection (1)” to “whereby” and" and “of that section” and sub-paragraph (7), and paragraph 9(1).
1973 c. 32.	The National Health Service Reorganisation Act 1973.	In Schedule 4, paragraph 45.
1975 c. 14.	The Social Security Act 1975.	In section 35(6)(a) the words from “paragraph 2” to “1977”.
1975 c. 72.	The Children Act 1975.	In section 99(1)(b) the words “paragraph (a) of section 1(4) and”.
1976 c. 83.	The Health Services Act 1976.	The whole Act.
1977 c. 49.	The National Health Service Act 1977.	In section 8, in subsection (1) the word “areas”, in each place where it occurs, and in paragraph (b) the word “or”, where it first appears; subsection (1A)(b); in subsection (2) the words “area or” (and “Area or”), in each place where they occur; in subsection (3) the words “areas or” and “area or”; subsection (5). Section 10(7). In section 11(1) the words “Area or”. In section 12(a) the words “Area Health Authorities”. In section 13(1) the words “an Area Health Authority of which the area is in Wales”. In section 14 the words “Area or” and “area or”, in each place where they occur.

Status: *Point in time view as at 01/08/2008.*
Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

		In section 16, in subsection (1) the words "Area or", where they occur in paragraphs (c) and (d); in subsection (2) the words "an Area Health Authority", in the first place where they occur, and the words "an Area Health Authority and a District Health Authority are equivalent to each other".
		In section 18(3) the words "Area or".
		Section 33(7).
		In section 41(b) the final word "and".
		Section 55.
		Section 85(1)(e), (3) and (4).
		In section 91(3)(b) the words "Area or".
		In section 97(6) the word "Area".
		In section 98, subsections (1)(b) and (3).
		Section 99(1)(b).
		In Schedule 5, Parts I and II in paragraph 8 the words "Area Health Authority" and paragraph 15(2).
		In Schedule 8, in paragraph 2, sub-paragraph (1)(a), in sub-paragraph (3) the words "residential accommodation or", and sub-paragraph (4).
		In Schedule 14, in paragraph 13(1)(b) the word "44".
		In Schedule 15, paragraphs 5, 24(1), 63 and 67.
1978 c. 29.	The National Health Service (Scotland) Act 1978.	Section 2(9).
		Sections 5 and 6.
		In section 7(2), the words from "by local authorities" to "and for the appointment".

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Changes to legislation: *National Health Service and Community Care Act 1990 is up to date with all changes known to be in force on or before 18 September 2024. 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)*

		In section 10, in subsection (4), the words "the Planning Council", and subsection (9).
		Section 13A(1)(c).
		Section 13B.
		Section 23(7).
		Section 57(3).
		Section 85(1)(a).
		Section 86(2).
		In section 108(1), the definitions of "the national consultative committees" and "the Planning Council".
		Schedule 3.
		In Schedule 15, in paragraph 10(b) "82" and paragraph 15.
1978 c. 44.	The Employment Protection (Consolidation) Act 1978.	In section 99, in subsection (1), paragraph (c) and the word "or" immediately preceding it.
		In section 111(1)(a) the words "or paragraph (c)".
		Section 138(5).
		Section 149(1)(d).
		Schedule 5.
1980 c. 53.	The Health Services Act 1980.	Sections 12 to 15.
		Section 22.
		In Schedule 1, paragraph 5; in paragraph 78, sub-paragraphs (2) to (6); paragraph 79.
		In Schedule 2, paragraphs 1 to 6.
		Schedule 3.
		In Schedule 4, paragraph 7(b).
1983 c. 20.	The Mental Health Act 1983.	Section 124.
		In section 135(6) the words from "or under" to "1977".

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1983 c. 41.	The Health and Social Services and Social Security Adjudications Act 1983.	In section 30, in subsection (3), paragraph (a) and in the words following paragraph (b) the words "2(1) and" and "respectively".
1984 c. 22.	The Public Health (Control of Disease) Act 1984.	In section 37(1) the words "Area or". In section 41(1) the words "Area or".
1984 c. 23.	The Registered Homes Act 1984.	Section 25(1)(d) and (e).
1984 c. 36.	The Mental Health (Scotland) Act 1984.	Section 13(1)(c).
1984 c. 48.	The Health and Social Security Act 1984.	In Schedule 3, paragraphs 6(a) and 12.
1986 c. 33.	The Disabled Persons (Services, Consultation and Representation) Act 1986.	In section 2(5)(b), the words "or Schedule 8 to the 1977 Act".
1986 c. 50.	The Social Security Act 1986.	In Schedule 10, paragraph 32(2).
1986 c. 66.	The National Health Service (Amendment) Act 1986.	Sections 1 and 2.
1988 c. 9.	The Local Government Act 1988.	In Schedule 1, in paragraph 2(4)(b) the words from "Schedule 8" to "1977".
1988 c. 41.	The Local Government Finance Act 1988.	In Schedule 1, in paragraph 9(2)(b) the words from "or paragraph" to "1977".
1988 c. 49.	The Health and Medicines Act 1988.	In Schedule 2, paragraph 11.
1989 c. 42.	The Local Government and Housing Act 1989.	In section 184, subsections (1) and (3).
1990 c. 19.	The National Health Service and Community Care Act 1990.	Section 36(5).

Status:
Point in time view as at 01/08/2008.

Changes to legislation:
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