



National Health Service Reform (Scotland) Act 2004

2004 asp 7

PART 1

ORGANISATION AND OPERATION OF NATIONAL HEALTH SERVICE

Organisation

1 Dissolution of National Health Service trusts: modification of enactments

- (1) In the National Health Service (Scotland) Act 1978 (c. 29) (referred to in this Act as “the 1978 Act”), section 12A and Schedule 7A (establishment, functions, dissolution etc. of National Health Service trusts) are repealed.
- (2) In section 82 of the 1978 Act, after subsection (2A) insert—

“(2B) All endowments and property held in trust transferred to a Health Board by an order under paragraph 26 of Schedule 7A (whenever made) are held by the Health Board free of any trust existing immediately before the transfer (hereafter in this section referred to in relation to any such endowment or property as “the original trust”); but all such endowments and property shall be held by the Health Board on trust for such purposes relating to services provided under this Act, or to the functions of the Board with respect to research, as the Board may think fit.”
- (3) Until the coming into force of subsection (1) so far as repealing Schedule 7A to the 1978 Act, paragraph 26 of that Schedule has effect with the insertion after sub-paragraph (1) of the following sub-paragraph—

“(1A) For the avoidance of doubt, the reference to “property, rights and liabilities” in sub-paragraph (1) includes endowments and property held in trust.”

2 Community health partnerships

After section 4 of the 1978 Act insert—

Status: This is the original version (as it was originally enacted).

“Community health partnerships

4A Community health partnerships

- (1) Every Health Board shall establish, in accordance with a scheme under section 4B approved by the Scottish Ministers (an “approved scheme”)—
 - (a) a community health partnership for the area of the Board, or
 - (b) two or more community health partnerships for districts which, taken together, include the whole area of the Board.
- (2) Community health partnerships shall be established as committees or sub-committees of a Health Board.
- (3) Where the area or district of a community health partnership includes all or part of the areas of two or more Health Boards, the community health partnership (a “joint community health partnership”) shall be established jointly by those Boards in accordance with their approved schemes.
- (4) Joint community health partnerships shall be established as joint committees of the Health Boards by which they are established.
- (5) The functions of a community health partnership are—
 - (a) to co-ordinate, for its area or district, the planning, development and provision of—
 - (i) such of the services which it is the function of its Health Board to provide, or secure the provision of, as may be prescribed by regulations under section 4B(6) or specified in the approved scheme, and
 - (ii) such other of those services as its Health Board may specify, with a view to improving those services,
 - (b) to provide, or secure the provision of—
 - (i) such of the services which it is the function of its Health Board to provide, or secure the provision of, as may be prescribed by regulations under section 4B(6) or specified in the approved scheme, and
 - (ii) such other of those services as its Health Board may specify, and
 - (c) to exercise such other functions of its Health Board—
 - (i) as may be prescribed by regulations under section 4B(6),
 - (ii) as may be specified in the approved scheme,
 - (iii) as the Health Board may delegate to it.
- (6) In this section, references to the Health Board of a joint community health partnership are to each of the Health Boards by which it was established.

4B Community health partnerships: further provision

- (1) Every Health Board shall, within such period as the Scottish Ministers may specify, prepare and submit to them a scheme for the establishment of one or more community health partnerships in pursuance of section 4A(1).

Status: This is the original version (as it was originally enacted).

- (2) In preparing a scheme under subsection (1) or (5) a Health Board shall—
- (a) have regard to—
 - (i) any guidance issued under subsection (7),
 - (ii) community planning under section 15(1) of the Local Government in Scotland Act 2003 (asp 1) so far as relating to the area of the Board,
 - (b) consult—
 - (i) each local authority whose area includes all or part of the area or district of a community health partnership proposed by the scheme, and
 - (ii) any other person whom the Health Board think fit, and
 - (c) encourage the involvement of local authorities and other persons consulted under paragraph (b) in the preparation of the scheme.
- (3) The Scottish Ministers may—
- (a) approve (with or without modifications), or
 - (b) refuse to approve,
- a scheme submitted to them under subsection (1) or (5) or in pursuance of subsection (4).
- (4) Where the Scottish Ministers refuse to approve a scheme, they must return it to the Health Board and may direct the Board to resubmit the scheme with—
- (a) such modifications (if any) as the direction may specify, and
 - (b) any further modifications which the Board consider appropriate,
- by such time as the direction may specify.
- (5) A Health Board—
- (a) may, at any time,
 - (b) if so directed by the Scottish Ministers, must, within such period as they may specify,
- submit to the Scottish Ministers a new scheme under this section.
- (6) Regulations may make provision in relation to—
- (a) the membership of a community health partnership,
 - (b) the form and content of, and the procedure in relation to, schemes under this section,
 - (c) the functions of a community health partnership and the exercise of those functions,
 - (d) the application in relation to joint community health partnerships, with such modifications as may be specified, of the provisions of this Act, and any provision made under this Act, so far as applying in relation to community health partnerships,
 - (e) such other matters with respect to community health partnerships as the Scottish Ministers think fit.
- (7) The Scottish Ministers may, after consulting such persons as they think fit, issue guidance about community health partnerships and shall publish such guidance.
- (8) For the purposes of establishing a joint community health partnership in pursuance of section 4A(3), any power to appoint committees conferred on

Health Boards by virtue of this Act shall include power for two or more Health Boards jointly to appoint joint committees.

- (9) Nothing in section 4A or this section affects the extent of any power under this Act so far as relating to committees or sub-committees of Health Boards.”

3 **Duty in relation to governance of staff**

After section 12H of the 1978 Act insert—

“12I Duty in relation to governance of staff

It shall be the duty of every Health Board and Special Health Board and of the Agency to put and keep in place arrangements for the purposes of—

- (a) improving the management of the officers employed by it;
- (b) monitoring such management; and
- (c) workforce planning.”

Equal opportunities

4 **Equal opportunities**

After section 2C of the 1978 Act insert—

“2D Equal opportunities

- (1) Health Boards, Special Health Boards and the Agency must discharge their functions in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (2) In this section “equal opportunities” and “equal opportunity requirements” have the same meaning as in Section L2 (equal opportunities) of Part II of Schedule 5 to the Scotland Act 1998 (c. 46).”

Co-operation

5 **Health Boards: duty of co-operation**

Before section 13 of the 1978 Act insert—

“12J Health Boards: co-operation with other Health Boards, Special Health Boards and the Agency

- (1) In exercising their functions in relation to the planning and provision of services which it is their function to provide, or secure the provision of, under or by virtue of this Act, Health Boards shall co-operate with one another, and with Special Health Boards and the Agency, with a view to securing and advancing the health of the people of Scotland.
- (2) In pursuance of subsection (1) a Health Board may—

Status: This is the original version (as it was originally enacted).

- (a) undertake to provide, or secure the provision of, services as respects the area of another Health Board, and the other Health Board may enter into arrangements with the first Health Board for that purpose,
 - (b) undertake with one or more other Health Boards to provide, or secure the provision of, services jointly as respects their areas.
- (3) A Health Board undertaking to provide, or secure the provision of, services under subsection (2) may—
- (a) enter into arrangements with another Health Board, a Special Health Board or the Agency in relation to the provision of such services,
 - (b) do anything in relation to the provision of such services which they could do for the purpose of providing, or securing the provision of, such services as respects their area.
- (4) This section is without prejudice to any other power which a Health Board may have.”

Powers of intervention

6 Powers of intervention in case of service failure

After section 78 of the 1978 Act insert—

“78A Powers in case of service failure

- (1) This section applies where—
- (a) it is a function of a body or person under or by virtue of this Act to provide, or secure the provision of, a service, and
 - (b) the Scottish Ministers consider that the body or person has failed, is failing or is likely to fail—
 - (i) to provide the service, or
 - (ii) to provide it to a standard which they regard as acceptable.
- (2) The Scottish Ministers may, where they consider it necessary for the purpose of ensuring the provision of the service in question to a standard which they regard as acceptable, direct that specified functions of the body or person under or by virtue of this Act be performed, for a specified period and to a specified extent, by—
- (a) a body falling within subsection (4), or
 - (b) one or more persons falling within subsection (5).
- (3) In subsection (2), “specified” means specified in the direction.
- (4) A body falls within this subsection if it is—
- (a) a Health Board,
 - (b) a Special Health Board, or
 - (c) the Agency.
- (5) A person falls within this subsection if the person is—
- (a) an employee of a Health Board, a Special Health Board or the Agency,
 - (b) a member of the staff of the Scottish Administration, or

Status: This is the original version (as it was originally enacted).

- (c) an employee of a local authority.
- (6) A body or person appointed by a direction given under subsection (2) to perform functions of a body or person referred to in subsection (1) is referred to in this section as an “appointed person”.
- (7) An appointed person must comply with a direction given under subsection (2).
- (8) The remuneration and expenses of, and any other costs reasonably incurred by, an appointed person in performing the functions specified in the direction shall, unless otherwise specified in the direction, be paid by the body or person referred to in subsection (1).
- (9) Anything done or omitted by an appointed person in performing the functions specified in the direction is to be regarded as done or omitted by the body or person referred to in subsection (1).
- (10) A person dealing with an appointed person in good faith and for value is not concerned to inquire whether the appointed person is acting within the powers conferred by virtue of the direction.
- (11) The Scottish Ministers may vary or withdraw a direction given under subsection (2).

78B Relationship of sections 77, 78 and 78A

The powers conferred by each of sections 77, 78 and 78A are without prejudice to the powers conferred by the other two sections.”

Public involvement

7 Public involvement

After section 2A of the 1978 Act (inserted by section 9(2)) insert—

“2B Duty to encourage public involvement

- (1) It is the duty of every body to which this section applies to take action with a view to securing, as respects health services for which it is responsible, that persons to whom those services are being or may be provided are involved in, and consulted on—
 - (a) the planning and development, and
 - (b) decisions to be made by the body significantly affecting the operation, of those services.
- (2) This section applies to—
 - (a) Health Boards,
 - (b) Special Health Boards, and
 - (c) the Agency.
- (3) For the purposes of subsection (1) a body is responsible for health services if they are health services—

- (a) which it is the function of the body to provide, or secure the provision of, and
- (b) which are provided, or to be provided, to individuals by—
 - (i) the body, or
 - (ii) another person on the body’s behalf, at the body’s direction or in accordance with an agreement made by the body with that other person.”

8 Dissolution of local health councils

- (1) Local health councils established by virtue of section 7 of the 1978 Act are dissolved on such date as the Scottish Ministers may by order made by statutory instrument specify.
- (2) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

PART 2

PROMOTION OF HEALTH IMPROVEMENT

9 Duty to promote health improvement

- (1) After section 1 of the 1978 Act insert—

“1A Duty of the Scottish Ministers to promote health improvement

- (1) It is the duty of the Scottish Ministers to promote the improvement of the physical and mental health of the people of Scotland.
- (2) The Scottish Ministers may do anything which they consider is likely to assist in discharging that duty including, in particular—
 - (a) giving financial assistance to any person,
 - (b) entering into arrangements or agreements with any person,
 - (c) co-operating with, or facilitating or co-ordinating the activities of, any person.
- (3) Subsections (1) and (2) are without prejudice to section 1 and any other provision of this Act conferring or imposing functions on the Scottish Ministers.”

- (2) After section 2 of that Act insert—

“2A Duty of Health Board, Special Health Board and the Agency to promote health improvement

- (1) It is the duty of every Health Board and Special Health Board and of the Agency to promote the improvement of the physical and mental health of the people of Scotland.

- (2) A Health Board, a Special Health Board or the Agency may do anything which they consider is likely to assist in discharging that duty including, in particular—
- (a) giving financial assistance to any person,
 - (b) entering into arrangements or agreements with any person,
 - (c) co-operating with, or facilitating or co-ordinating the activities of, any person.
- (3) Subsections (1) and (2) are without prejudice to any other provision of this Act conferring or imposing functions on a Health Board, a Special Health Board or the Agency.
- (4) Anything done by a Health Board or Special Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on—
- (a) the Health Board by the order under section 2(1)(a) which constituted the Board, or
 - (b) the Special Health Board by the order under section 2(1)(b) which constituted the Board,
- as the case may be.”

PART 3

SUPPLEMENTARY

10 Ancillary provision

- (1) The Scottish Ministers may by order made by statutory instrument make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act.
- (2) An order under this section may—
- (a) make different provision for different purposes,
 - (b) modify any enactment, instrument or document.
- (3) A statutory instrument containing an order under this section (except where subsection (4) applies) is subject to annulment in pursuance of a resolution of the Parliament.
- (4) No order under this section containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.

11 Modification of enactments

- (1) Schedule 1 contains minor amendments and amendments consequential on the provisions of this Act.
- (2) The enactments specified in column 1 of schedule 2 are repealed to the extent specified in column 2.

12 Commencement and short title

- (1) The provisions of this Act, except section 10 and this section, come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (2) Different days may be appointed under this section for different purposes.
- (3) This Act may be cited as the National Health Service Reform (Scotland) Act 2004.