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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 336**

**The Public Health Scotland Order 2019**

**Citation and commencement**

- 1.—(1) This Order may be cited as the Public Health Scotland Order 2019.  
(2) Subject to paragraph (3) this Order comes into force on 7 December 2019.  
(3) The following provisions of this Order come into force on 1 April 2020—  
(a) articles 6 and 7, and  
(b) paragraphs 1(2)(a) and 2 to 16 of schedule 2.

**Interpretation**

2. In this Order—  
“the Act” means the National Health Service (Scotland) Act 1978, and  
“the Board” means the Special Health Board, to be known as Public Health Scotland, which is constituted by this Order.

**Constitution, name and area of the Board**

3. There is constituted a Special Health Board for the whole of Scotland to be known as Public Health Scotland.

**Functions of the Board**

- 4.—(1) The Board is to exercise the following functions of the Scottish Ministers—  
(a) functions conferred by the Act in relation to—  
(i) health education, including that specified in section 42 of the Act (health education),  
(ii) the provision of research and development services in the field of public health, and  
(iii) the collection, dissemination and analysis of epidemiological data and the participation in epidemiological investigations,  
(b) examining data relating to prescriptions for drugs, medicines and appliances supplied under the arrangements for the provision of pharmaceutical services,  
(c) the provision of information services in support of the functions conferred on the Board,  
(d) the protection of public health including those specified in section 1 of the Public Health etc. (Scotland) Act 2008<sup>(1)</sup> (duty of Scottish Ministers to protect public health), and  
(e) functions specified in paragraph (2) subject to any limitations specified in that paragraph.  
(2) The functions specified for the purposes of paragraph (1)(e) are as follows:

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<sup>(1)</sup> 2008 asp 5.

- (a) the power of the Scottish Ministers under section 16 of the Act<sup>(2)</sup> to assist any voluntary organisations whose activities include the provision of a service similar or related to a service provided by the Board under the Act,
  - (b) the power of the Scottish Ministers to give financial assistance to voluntary organisations under section 16B of the Act<sup>(3)</sup> limited to assisting such organisations to which that section would apply if the expression “relevant service” as defined in section 16B(3) were limited to the provision of services provided by the Board,
  - (c) the duty of the Scottish Ministers under section 37 of the Act to make arrangements to such extent as the Board considers necessary in relation to its functions for the purposes of the prevention of illness, the care of persons suffering from illness or the after-care of such persons,
  - (d) the power of the Scottish Ministers under section 43 of the Act (control of spread of infectious disease),
  - (e) the duty and power of the Scottish Ministers under section 47 of the Act (educational and research facilities),
  - (f) the powers of the Scottish Ministers under section 79(1) of the Act<sup>(4)</sup> to take on lease or to purchase moveable property or land which is required for the purposes of the Board and to use for those purposes and manage any heritable or moveable property so acquired,
  - (g) the power of the Scottish Ministers under section 79(1A) of the Act<sup>(5)</sup> to dispose of land no longer required for the purposes of the Board,
  - (h) the powers of the Scottish Ministers under section 84B of the Act<sup>(6)</sup> (joint ventures) so far as relating to the functions of the Board,
  - (i) the power of the Scottish Ministers under paragraph 4 of schedule 1 of the Act<sup>(7)</sup> (health boards), as applied in relation to the Board by article 5, to pay remuneration to the chairman of the Board and to such other members of the Board and of the committees and sub-committees of the Board as may be prescribed, but this does not extend to the power—
    - (i) to determine remuneration, or
    - (ii) to prescribe the members of the Board and of committees and sub-committees of the Board to whom it may be paid,
  - (j) the power of the Scottish Ministers under paragraph 13 of schedule 1 of the Act (health boards), as applied in relation to the Board by article 5, to pay to members of the Board, any committees and sub-committees, travelling and other allowances, but this does not extend to the power to determine the amount of such allowances, and
  - (k) the powers of the Scottish Ministers referred to in section 7(1) of the Health and Medicines Act 1988<sup>(8)</sup> (extension of powers of secretary of state for financing the health service).
- (3) In exercising any functions of the Scottish Ministers to acquire, use, manage or dispose of land the Board must ensure—

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- (2) Section 16 was amended by the Vehicle Excise and Registration Act 1994 (c.22), schedule 3, paragraph 13 and by the Health Services Act 1980 (c.53), schedule 7.
  - (3) Section 16B was inserted by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 3.
  - (4) Section 79(1) was amended by the National Health Service and Community Care Act 1990 (c.19), section 66(1) and schedule 9, paragraph 19(15)(a).
  - (5) Section 79(1A) was inserted by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 14(2) and schedule 7, paragraph 3 and was amended by the Requirements of Writing (Scotland) Act 1995 (c.7), schedule 5, paragraph 1.
  - (6) Section 84B was inserted by the 2005 Act, section 37(1) and was amended by the Public Bodies (Joint Working) (Scotland) Act 2014 (asp 9), section 66.
  - (7) Schedule 1, paragraph 4 was amended by the Health Boards (Membership and Elections) (Scotland) Act 2009 (asp 5), schedule 1, paragraph 1.
  - (8) 1988 c.49. Relevantly amended by the National Health Service (Consequential Provisions) Act 2006 (c.43), schedule 1, paragraph 116(a).

- (a) that any instrument in connection with the exercise of those functions is in the name of the Scottish Ministers and not that of the Board, and
  - (b) that, where any such instrument requires to be executed by the Scottish Ministers, and it is not executed in accordance with section 1(8) of the Reorganisation of Offices (Scotland) Act 1939<sup>(9)</sup>, it is executed on their behalf in accordance with—
    - (i) paragraph 6 of schedule 2 of the Requirements of Writing (Scotland) Act 1995<sup>(10)</sup>, or
    - (ii) regulation 5 of the Electronic Documents (Scotland) Regulations 2014<sup>(11)</sup>.
- (4) Nothing in this Order will prevent or restrict the following persons from exercising any function under the Act or any other enactment specified in this Order—
- (a) the Scottish Ministers,
  - (b) any Health Board,
  - (c) any other Special Health Board,
  - (d) the Common Services Agency, or
  - (e) Healthcare Improvement Scotland.
- (5) Paragraph (4)(b) includes functions of a Health Board being exercised by an integrated joint board or a local authority in accordance with section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014<sup>(12)</sup> and the Public Bodies (Joint Working) (Prescribed Health Board Functions) (Scotland) Regulations 2014<sup>(13)</sup>.

### **Application of enactments**

5.—(1) Each of the enactments specified in column 1 of each part of schedule 1 (the subject matter of which is described generally in column 2 of each part of that schedule) applies in relation to the Board as it applies in relation to Health Boards, subject to the modifications and limitations (if any) specified in column 3 of each part of schedule 1 and to paragraph (2).

(2) The enactments which are applied in relation to the Board by virtue of paragraph (1) are so applied only for the purposes of the exercise by the Board of its functions.

### **Dissolution and revocation**

- 6.—(1) NHS Health Scotland<sup>(14)</sup> is dissolved.
- (2) The following enactments are revoked—
- (a) the Health Education Board for Scotland Order 1990<sup>(15)</sup>, and
  - (b) the Health Education Board for Scotland Amendment Order 2003<sup>(16)</sup>.

### **Transfer of property, rights and liabilities**

7. The property and all other rights and liabilities of NHS Health Scotland will transfer to and vest in Public Health Scotland with effect from 1 April 2020.

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<sup>(9)</sup> 1939 c.20. Relevantly amended by the Requirements of Writing (Scotland) Act 1995 (c.7), schedule 5, paragraph 1.

<sup>(10)</sup> 1995 c.7. Relevantly amended by the Land Registration etc. (Scotland) Act 2012 (asp 5), schedule 3, paragraph 25(g).

<sup>(11)</sup> S.S.I. 2014/83. Relevantly amended by S.S.I. 2014/347.

<sup>(12)</sup> 2014 asp 9.

<sup>(13)</sup> S.S.I. 2014/344, amended by S.S.I. 2016/15, S.S.I. 2017/381 and S.S.I. 2018/66.

<sup>(14)</sup> NHS Health Scotland is a Special Health Board constituted by article 3 of the Health Education Board for Scotland Order 1990 (S.I. 1990/2639). The name “NHS Health Scotland” was substituted by S.S.I. 2003/154, for “the Health Education Board for Scotland”.

<sup>(15)</sup> S.I. 1990/2639, amended by S.S.I. 2003/154.

<sup>(16)</sup> S.S.I. 2003/154.

**Consequential amendments**

8. Schedule 2 (consequential amendments) has effect.

St Andrew's House,  
Edinburgh  
23rd October 2019

*JEANE FREEMAN*  
A member of the Scottish Government