

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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

Section 2.

#### HEALTH BOARDS

#### PART I

##### *Constitution*

1 A Health Board shall be a body corporate and shall have a common seal.

##### **Modifications etc. (not altering text)**

- C1** Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C2** Sch. 1 para. 1 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
Sch. 1 para. 1 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
Sch. 1 para. 1 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**  
Sch. 1 para. 1 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**  
Sch. 1 para. 1 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**  
Sch. 1 para. 1 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))  
Sch. 1 para. 1 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
- C3** Sch. 1 paras. 1 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

2 A Health Board shall consist of a chairman appointed by the Secretary of State and such number of other members so appointed as the Secretary of State thinks fit.

##### **Modifications etc. (not altering text)**

- C4** Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C5** Sch. 1 para. 2 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
Sch. 1 para. 2 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
Sch. 1 para. 2 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**  
Sch. 1 para. 2 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**  
Sch. 1 para. 2 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**  
Sch. 1 para. 2 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))  
Sch. 1 para. 2 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
- C6** Sch. 1 para. 2 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

[<sup>F1</sup>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.]

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#### Textual Amendments

- F1** Sch. 1 para. 2A inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 27(3), Sch. 5 para. 2

- 3 Appointments under paragraph 2 shall be made after consultation with the following bodies—
- (a) each local authority (within the meaning of the <sup>M1</sup>Local Government (Scotland) Act 1973) in the area of the Health Board concerned;
  - (b) any university appearing to the Secretary of State to have an interest in the provision of health services in that area;
  - (c) such organisations as the Secretary of State may recognise as representative in that area of the medical, dental, nursing, pharmaceutical and ophthalmic professions and such other professions as the Secretary of State considers appropriate, or of those professions generally; and
  - (d) such other organisations as appear to the Secretary of State to be concerned.

#### Marginal Citations

- M1** 1973 c. 65.

VALID FROM 24/06/2009

- [<sup>F2</sup>3A A person appointed as chairman of a Health Board may not be an employee of that Health Board.]

#### Textual Amendments

- F2** Sch. 1 para. 3A inserted (24.6.2009 for certain purposes and otherwise prosp.) by Health Boards (Membership and Elections) (Scotland) Act 2009 (asp 5), ss. 1(5), 4, 7, 11(1); S.S.I. 2009/242, art. 2

- 4 The Secretary of State may pay to the chairman of a Health Board [<sup>F3</sup>and to such other members of a Health Board as may be prescribed] such remuneration as he may, with the approval of the Minister for the Civil Service, from time to time determine.

#### Textual Amendments

- F3** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 27(3), Sch. 5 para. 3

#### Modifications etc. (not altering text)

- C7** By S.I. 1990/2639, art. 4(2)(e) certain functions of the Secretary of State under para. 4 are made exercisable (1.4.1991) by the Health Education Board for Scotland
- C8** Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), Sch. Pt. I

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- 5 A Health Board may employ such officers and servants on such terms as to remuneration and conditions of service as the Board may, <sup>F4</sup> determine [<sup>F5</sup>in accordance with regulations and any directions given under this paragraph by the Secretary of State].

#### Textual Amendments

- F4** Words repealed by [Health Services Act 1980 \(c. 53\), Sch. 7](#)  
**F5** Words inserted by [Health Services Act 1980 \(c. 53\), Sch. 6 para. 7\(2\)\(b\)](#)

#### Modifications etc. (not altering text)

- C9** [Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C](#) applied by [S.I. 1990/2639, art. 5\(1\)\(2\), Sch. Pt. I](#)

- [<sup>F6</sup>5A Regulations or directions under paragraph 5 may provide for approvals, authorisations or determinations to have effect from a date (which may be before or after the date of giving or making them but may not be before if to the detriment of such officers and servants) specified in them [<sup>F7</sup>and a direction under that paragraph may relate to a particular officer or servant or class of officer or servant specified in the direction].]

#### Textual Amendments

- F6** [Sch. 1 para. 5A](#) added by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\), s. 14\(2\), Sch. 7 para. 4](#)  
**F7** Words added by [National Health Service and Community Care Act 1990 \(c.19, SIF 113:2\), s. 27\(3\), Sch. 5 para. 4](#)

#### Modifications etc. (not altering text)

- C10** [Sch. 1 para. 5A](#) applied (1.4.2000) by [S.S.I. 2000/47, art. 5\(1\)\(2\), Sch. Pt. I](#)  
[Sch. 1 para. 5A](#) applied (6.4.2001) by [S.S.I. 2001/137, art. 5\(1\), Sch. Pt. I](#)  
[Sch. 1 para. 5A](#) applied (31.3.2002) by [S.S.I. 2002/103, art. 6, Sch. Pt. I](#) (with [art. 4\(4\)](#))  
[Sch. 1 para. 5A](#) applied (27.6.2002) by [S.S.I. 2002/305, art. 5\(1\), Sch. Pt. I](#) (with [art. 4\(4\)](#))  
**C11** [Sch. 1 para. 5A](#) applied (1.4.2003) by [S.I. 1990/2639, art. 5\(1\), Sch. Pt. 1](#) (as amended by [The Health Education Board for Scotland Amendment Order 2003 \(S.S.I. 2003/154\), art. 6\(d\)](#))

- 6 Regulations may make provision with respect to the method of appointment of officers or servants of a Health Board and as to the qualifications, remuneration and conditions of service of those persons.

#### Modifications etc. (not altering text)

- C12** [Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C](#) applied by [S.I. 1990/2639, art. 5\(1\)\(2\), Sch. Pt. I](#)

- [<sup>F8</sup>6A Notwithstanding paragraph 7 of this Schedule, where the registration of a dental practitioner in the dentists register is suspended—  
(a) by an order under [<sup>F9</sup>section 32 of the Dentists Act 1984] (interim suspension); or

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(b) by [<sup>F10</sup>an order of the Health Committee under] that Act (health cases), the suspension shall not terminate any contract of employment made between him and a Health Board but a person whose registration is suspended under that Part of that Act shall not perform any duties under a contract made between him and a Health Board which involve the practice of dentistry within the meaning of [<sup>F11</sup>the Dentists Act 1984].]

#### Textual Amendments

- F8** Sch. 1 para. 6A (expressed as para. (6A)) inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), [s. 16\(b\)](#)
- F9** Words substituted by [Dentists Act 1984 \(c.24, SIF 83:1\)](#), [s. 54\(1\)](#), [Sch. 5 paras. 12\(a\)](#), 14
- F10** Words substituted by virtue of [Dentists Act 1984 \(c.24, SIF 83:1\)](#), [s. 54\(1\)](#), [Sch. 5 paras. 12\(b\)](#), 14
- F11** Words substituted by [Dentists Act 1984 \(c.24, SIF 83:1\)](#), [s. 54\(1\)](#), [Sch. 5 para. 14](#)

7 No officer or servant of a Health Board to whom regulations [<sup>F12</sup>or any directions given under paragraph 5] apply shall be employed otherwise than in accordance with the regulations [<sup>F13</sup>or, as the case may be, the directions].

#### Textual Amendments

- F12** Words inserted by [Health Services Act 1980 \(c. 53\)](#), [Sch. 6 para. 7\(3\)\(a\)](#)
- F13** Words inserted by [Health Services Act 1980 \(c. 53\)](#), [Sch. 6 para. 7\(3\)\(b\)](#)

#### Modifications etc. (not altering text)

- C13** Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by [S.I. 1990/2639](#), [art. 5\(1\)\(2\)](#), [Sch. Pt. I](#)
- C14** Sch. 1 para. 7 applied (1.4.1993) by [S.I. 1993/577](#), [art. 5\(1\)\(2\)](#), [Sch. Pt. I](#) (with [art. 6](#))  
Sch. 1 para. 7 applied (1.4.1995) by [S.I. 1995/574](#), [art. 5\(1\)\(2\)](#), [Sch. Pt. I](#) (with [art. 6](#))  
Sch. 1 para. 7 applied (1.4.1999) by [S.I. 1999/686](#), [art. 5\(1\)\(2\)](#), [Sch. Pt. I](#)  
Sch. 1 para. 7 applied (1.4.2000) by [S.S.I. 2000/47](#), [art. 5\(1\)\(2\)](#), [Sch. Pt. I](#)  
Sch. 1 para. 7 applied (6.4.2001) by [S.S.I. 2001/137](#), [art. 5\(1\)](#), [Sch. Pt. I](#)  
Sch. 1 para. 7 applied (31.3.2002) by [S.S.I. 2002/103](#), [art. 6](#), [Sch. Pt. I](#) (with [art. 4\(4\)](#))  
Sch. 1 para. 7 applied (27.6.2002) by [S.S.I. 2002/305](#), [art. 5\(1\)](#), [Sch. Pt. I](#) (with [art. 4\(4\)](#))
- C15** Sch. 1 para. 7 applied (1.4.1999) by [S.I. 1999/726](#), [art. 5\(1\)\(2\)](#), [Sch. Pt. I](#)

[<sup>F14</sup>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).]

#### Textual Amendments

- F14** Sch. 1 paras. 7A–7C inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 27\(3\)](#), [Sch. 5 para. 5](#)

#### Modifications etc. (not altering text)

- C16** Sch. 1 paras. 7A, 7B, 11A applied (1.4.1991) by [S.I. 1990/2639](#), [art. 5\(1\)\(2\)](#), [Sch. Pt. I](#)

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- C17** Sch. 1 para. 7A applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
Sch. 1 para. 7A applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
Sch. 1 para. 7A applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**  
Sch. 1 para. 7A applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**  
Sch. 1 para. 7A applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**  
Sch. 1 para. 7A applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))  
Sch. 1 para. 7A applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
- C18** Sch. 1 para. 7A applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

- 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.

**Modifications etc. (not altering text)**

- C19** Sch. 1 paras. 7A, 7B, 11A applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C20** Sch. 1 para. 7B applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. 1 Pt. I** (with art. 6)  
Sch. 1 para. 7B applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
Sch. 1 para. 7B applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**  
Sch. 1 para. 7B applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**  
Sch. 1 para. 7B applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**  
Sch. 1 para. 7B applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))  
Sch. 1 para. 7B applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
- C21** Sch. 1 para. 7B applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

- 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.

- 8 Regulations under paragraph 6 shall not contain a requirement that all consultants employed for the purpose of hospitals shall be employed whole-time.

- [<sup>F15</sup>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.]

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### Textual Amendments

- F15** Sch. 1 para. 8A inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 27(3), [Sch. 5 para. 6](#)

- 9 The application of the seal of a Health Board to any document shall be attested by at least one member of the Board and by the person for the time being acting as Secretary of the Board.

### Modifications etc. (not altering text)

- C22** Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by [S.I. 1990/2639](#), art. 5(1)(2), [Sch. Pt. I](#)
- C23** Sch. 1 para. 9 applied (with modifications) (1.4.1993) by [S.I. 1993/577](#), art. 5(1)(2), [Sch. 1 Pt. I](#) (with art. 6)
- Sch. 1 para. 9 applied (with modifications) (1.4.1995) by [S.I. 1995/574](#), art. 5(1)(2), [Sch. 1 Pt. I](#) (with art. 6)

- 10 Every document purporting to be an instrument issued by a Health Board, and to be sealed and attested as aforesaid or to be duly signed on behalf of the Board, shall be received in evidence and shall be deemed to be such an instrument without further proof, unless the contrary is shown.

### Modifications etc. (not altering text)

- C24** Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by [S.I. 1990/2639](#), art. 5(1)(2), [Sch. Pt. I](#)
- C25** Sch. 1 para. 10 applied (with modifications) (1.4.1993) by [S.I. 1993/577](#), art. 5(1), [Sch. 1 Pt. I](#).

## PART II

### *Supplementary provisions*

VALID FROM 24/06/2009

- [<sup>F16</sup>10A(1) An elected member holds office for a period beginning with the day after the day of the Health Board election at which the member was elected and ending on the day of the next following Health Board election in the Health Board area.
- (2) An elected member vacates office on becoming—
- (a) a member of the European Parliament,
  - (b) a member of the House of Commons,
  - (c) a member of the House of Lords,
  - (d) a member of the Scottish Parliament, or
  - (e) a local authority councillor.
- (3) Regulations may specify further circumstances in which an elected member must vacate office before the end of that period and, in particular, may specify that an

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lected member is to vacate office on becoming the holder of a post set out in a list of restricted posts maintained by the Health Board concerned for that purpose.]

#### Textual Amendments

- F16** Sch. 1 para. 10A inserted (temp. from 24.6.2009 for certain purposes and prosp. otherwise) by Health Boards (Membership and Elections) (Scotland) Act 2009 (asp 5), ss. 1(6), 4, 6(2)(3), 7, 11(1); S.S.I. 2009/242, art. 2

- 11 Regulations may make provision—
- (a) as to the appointment, tenure and vacation of office of chairman and members of Health Boards;
  - (b) as to the delegation of functions to committees or sub-committees [F17 constituted in accordance with the regulations]; [F18 and]
  - (c) as to the procedure of Health Boards, their committees and sub-committees; F19
  - (d) F19

#### Textual Amendments

- F17** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 27(3), Sch. 5 para. 7
- F18** Word inserted by Health Services Act 1980 (c. 53), Sch. 6 para. 7(4)(a)
- F19** Word and para. 11(d) repealed by Health Services Act 1980 (c. 53), Sch. 7

#### Modifications etc. (not altering text)

- C26** Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), Sch. Pt. I

- [F20]11A A Health Board may subscribe to the funds of any associations or other bodies having objects of which the Board approves.]

#### Textual Amendments

- F20** Para. 11A inserted by Health Services Act 1980 (c. 53), Sch. 6 para. 7(5)

#### Modifications etc. (not altering text)

- C27** Sch. 1 paras. 7A, 7B, 11A applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), Sch. Pt. I
- C28** Sch. 1 para. 11A applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), Sch. Pt. I (with art. 6)
- Sch. 1 para. 11A applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), Sch. Pt. I (with art. 6)
- Sch. 1 para. 11A applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), Sch. Pt. I
- Sch. 1 para. 11A applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), Sch. Pt. I
- Sch. 1 para. 11A applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), Sch. Pt. I
- Sch. 1 para. 11A applied (31.3.2002) by S.S.I. 2002/103, art. 6, Sch. Pt. I (with art. 4(4))
- Sch. 1 para. 11A applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), Sch. Pt. I (with art. 4(4))
- C29** Sch. 1 para. 11A applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), Sch. Pt. I

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- 12 The proceedings of a Health Board shall not be invalidated by any vacancy in membership or by any defect in the appointment of any member thereof.

**Modifications etc. (not altering text)**

- C30** Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C31** Sch. 1 para. 12 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
- C32** Sch. 1 para. 12 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
Sch. 1 para. 12 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**  
Sch. 1 para. 12 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**  
Sch. 1 para. 12 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))  
Sch. 1 para. 12 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

- 13 The Secretary of State shall pay to members of a Health Board, the committees and sub-committees thereof, such travelling and other allowances, including compensation for loss of remunerative time, as he may, with the approval of the Minister for the Civil Service, from time to time determine.

**Modifications etc. (not altering text)**

- C33** Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C34** By S.I. 1990/2639, **art. 4(2)(f)** certain functions of the Secretary of State under para. 13 are made exercisable (1.4.1991) by Health Education Board for Scotland
- C35** Sch. 1 para. 13 applied (with modifications) (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. 1 Pt. I** (with art. 6)  
Sch. 1 para. 13 applied (with modifications) (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. 1 Pt. I** (with art. 6)  
Sch. 1 para. 13 applied (with modifications) (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. 1 Pt. I**  
Sch. 1 para. 13 applied (with modifications) (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**  
Sch. 1 para. 13 applied (with modifications) (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**  
Sch. 1 para. 13 applied (with modifications) (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))  
Sch. 1 para. 13 applied (with modifications) (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
- C36** Sch. 1 para. 13 applied (with modifications) (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
- C37** Sch. 1 para. 13: functions transferred (31.3.2002) by S.S.I. 2002/103, **art. 4(2)(e)** (with art. 4(4))  
Sch. 1 para. 13: functions transferred (27.6.2002) by S.S.I. 2002/305, **art. 4(2)(k)** (with art. 4(4))

- 14 Allowances shall not be paid under paragraph 13 except in connection with the performance of such powers or duties, in such circumstances, as the Secretary of State may determine.

**Modifications etc. (not altering text)**

- C38** Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C39** Sch. 1 para. 14 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. 1 Pt. I** (with art. 6)  
Sch. 1 para. 14 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
Sch. 1 para. 14 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**  
Sch. 1 para. 14 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**  
Sch. 1 para. 14 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**



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Sch. 1 para. 14 applied (with modifications) (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))

Sch. 1 para. 14 applied (with modifications) (27.6.2002) by S.S.I. 2002/305, art. 6, **Sch. Pt. I** (with art. 4(4))

**C40** Sch. 1 para. 14 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

- 15 Payment under paragraph 13 shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may determine.

#### Modifications etc. (not altering text)

**C41** Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**

**C42** Sch. 1 para. 15 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. 1 Pt. I** (with art. 6)

Sch. 1 para. 15 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. 1 Pt. I** (with art. 6)

Sch. 1 para. 15 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. 1 Pt. I**

Sch. 1 para. 15 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**

Sch. 1 para. 15 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**

Sch. 1 para. 15 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))

Sch. 1 para. 15 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

**C43** Sch. 1 para. 15 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

- 16 A Health Board may by agreement transfer to the Hospital Trust any endowments or income referred to in paragraph 4(e) of Schedule 6 for investment and management on their behalf, subject to any terms or conditions set out in the agreement, notwithstanding any restriction on the powers of investment of such endowments or income.

- 17 A Health Board may borrow from the Hospital Trust against their share in the capital of the Hospital Trust.

- 18 The functions transferred to and exercisable by Health Boards under section 56 of the <sup>M2</sup>National Health (Scotland) Act 1972 (functions under the <sup>M3</sup>Nursing Homes Registration (Scotland) Act 1938) shall continue to be exercisable by them under this paragraph.

#### Marginal Citations

**M2** 1972 c. 58.

**M3** 1938 c. 73.

- 19 The Secretary of State may, with any necessary modifications, by order apply any of the provisions of [<sup>F21</sup>paragraph 6 of Schedule 3 to the Civil Aviation Act 1982] to the case of a person who enters the employment of a Health Board after having been employed in employment to which [<sup>F22</sup>the said paragraph 6] applies, and any such order may provide that for the purposes of any enactment specified in the order, or for any other purposes so specified, there shall be deemed to have been no break in the employment of any such person.

*Status: Point in time view as at 01/02/1991.*

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### Textual Amendments

- F21** Words substituted by [Civil Aviation Act 1982 \(c. 16\)](#), [Sch. 15 para. 22\(a\)](#)  
**F22** Words substituted by [Civil Aviation Act 1982 \(c. 16\)](#), [Sch. 15 para. 22\(b\)](#)

VALID FROM 24/06/2009

[<sup>F23</sup>SCHEDULE 1A (introduced by section 2(10A))

### HEALTH BOARD ELECTIONS

### Textual Amendments

- F23** [Sch. 1A](#) inserted (temp. from 24.6.2009 for certain purposes and otherwise prosp.) by [Health Boards \(Membership and Elections\) \(Scotland\) Act 2009 \(asp 5\)](#), [ss. 2\(3\)](#), [4](#), [6\(2\)\(3\)](#), [7](#), [11\(1\)](#); [S.S.I. 2009/242](#), [art. 2](#)

#### *Health Board elections*

- 1 An election held under this Schedule is known as a “Health Board election”.

#### *Timing of Health Board elections*

- 2 (1) A Health Board must hold the first Health Board election in the Health Board area on the day specified in election regulations.
- (2) Election regulations may specify different days for the first election in different Health Board areas.
- (3) A Health Board must hold subsequent Health Board elections on the first Thursday falling after the end of the period of 4 years beginning with the day of the previous election.
- (4) But a Health Board election may be held in a Health Board area before the day specified in sub-paragraph (3) if the Scottish Ministers make an order under section 77 specifying the date of a Health Board election in that area.

#### *Electoral wards*

- 3 (1) Each Health Board area is to be comprised of a single electoral ward unless election regulations specify that a Health Board area is to be divided into more than one ward.
- (2) If regulations specify such a division they must also specify—
- (a) the number of electoral wards in the Health Board area,
  - (b) the boundaries of those wards, and
  - (c) the number of elected members to be elected in each ward.
- (3) Before regulations specifying such a division are made—

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- (a) the Scottish Ministers must consult the Local Government Boundary Commission for Scotland, and
- (b) the Commission must give the Scottish Ministers advice about the boundaries of the electoral wards which the Health Board is to be divided into.

#### *Conduct of election*

- 4 (1) Election regulations must appoint an individual as the returning officer for each ward in which a Health Board election is to be held.
- (2) Election regulations may make provision about—
- (a) the tenure and vacation of office of a returning officer,
  - (b) the functions of a returning officer,
  - (c) a returning officer's fees and expenses,
  - (d) any other matters relating to returning officers that the Scottish Ministers consider appropriate.
- 5 (1) The nomination of a candidate must be made—
- (a) within the period specified in election regulations (the “nomination period”), and
  - (b) in accordance with any other requirement made in those regulations.
- (2) A candidate may withdraw from a Health Board election at any time before the end of the nomination period.
- 6 If, at the end of the nomination period, the number of nominated candidates in an electoral ward is equal to or less than the number of elected members to be elected for that ward—
- (a) the Health Board election is not to be held in the ward, and
  - (b) on the day on which the election was to be held the returning officer must—
    - (i) declare the nominated candidates (if any) to be deemed to have been elected as elected members for the ward, and
    - (ii) if the number of nominated candidates is less than the number of elected members to be elected for the ward, declare the number of vacancies in the ward.
- 7 (1) In any other case, the elected members are to be elected for the electoral ward at a poll held in accordance with this paragraph.
- (2) At the poll, each individual entitled to vote may vote by marking on the ballot paper—
- (a) the voter's first preference from among the candidates, and
  - (b) if the voter wishes to express a further preference for one or more candidates, the voter's second and, if the voter wishes, subsequent preferences from among those candidates.
- (3) Election regulations must, in particular, make provision about—
- (a) the manner in which and period during which votes may be cast,
  - (b) the form and content of ballot papers,
  - (c) the manner in which the number of votes which will secure the return of a candidate as an elected member is to be calculated,

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- (d) the procedure for counting votes,
- (e) the declaration of the result of the poll.

#### *Candidates*

- 8 (1) An individual is disqualified from being a candidate in a Health Board election if the individual is—
- (a) a member of the European Parliament,
  - (b) a member of the House of Commons,
  - (c) a member of the House of Lords,
  - (d) a member of the Scottish Parliament, or
  - (e) a local authority councillor.
- (2) Election regulations may make further provision about—
- (a) who is qualified to be a candidate in a Health Board election, and
  - (b) the circumstances in which an individual may be disqualified from being a candidate,
- and, in particular, may disqualify from being a candidate an individual holding a post set out in a list of restricted posts maintained by the Health Board concerned for that purpose.

#### *Franchise*

- 9 (1) An individual is entitled to vote at a Health Board election if the individual—
- (a) is aged 16 or over, and
  - (b) meets any further criteria specified in election regulations.
- (2) Such further criteria may, in particular, provide that an individual is entitled to vote at a Health Board election only if the individual—
- (a) is registered in the register of local government electors in respect of an address in the Health Board area, and
  - (b) would be entitled to vote at a local government election in an electoral area falling wholly or partly in the Health Board area (or would be so entitled if aged 18 or over).
- (3) Election regulations may determine, or set out the criteria for determining, the electoral ward in which an individual is entitled to vote.
- (4) Election regulations may not entitle an individual to vote—
- (a) more than once in the same Health Board area, nor
  - (b) in more than one Health Board area.

#### *Election expenses*

- 10 Election regulations may make provision about the expenses which may be incurred by any person in connection with a Health Board election.

#### *Vacancies*

- 11 (1) This paragraph applies if—

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- (a) a returning officer declares a vacancy in an electoral ward (see paragraph 6), or
  - (b) an elected member vacates office before the end of the period mentioned in paragraph 10A(1) of Schedule 1.
- (2) The Scottish Ministers may—
- (a) direct the Health Board with the vacancy to invite an unelected candidate to fill the vacancy, or
  - (b) appoint, in accordance with any provision made by election regulations, an individual to fill the vacancy.
- (3) If a vacancy arises less than 6 months before the date of the next Health Board election in the Health Board area where it arises, the Scottish Ministers may, instead of taking action under sub-paragraph (2), direct the Health Board to leave the vacancy unfilled until that next election.
- (4) An individual who fills a vacancy is to be deemed to be an elected member of the Health Board elected for the ward in which the vacancy occurred.
- (5) In sub-paragraph (2)(a), an “unelected candidate” is an individual who—
- (a) was a nominated candidate in the last Health Board election to be held in the Health Board area, and
  - (b) is identified by criteria specified in election regulations.
- Election regulations*
- 12 (1) The Scottish Ministers may make regulations (“election regulations”) in relation to any matter specified in this Schedule as something in relation to which provision may be made by election regulations.
- (2) Election regulations may make further provision about Health Board elections (in so far as not already provided for in this Schedule).
- (3) In particular, election regulations may provide that an enactment applies (with or without modifications specified in the regulations) or does not apply to Health Board elections.
- (4) In sub-paragraph (3), “enactment” includes an Act of the Scottish Parliament and any instrument made under such an Act.]

## SCHEDULE 2

### THE MEDICAL PRACTICES COMMITTEE

- 1 The Medical Practices Committee shall consist of a chairman, who shall be a medical practitioner, and 5 other members of whom 3 shall be medical practitioners actively engaged in medical practice.

*Status: Point in time view as at 01/02/1991.*

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- 2 The chairman and members shall be appointed by the Secretary of State after consultation with such organisations as the Secretary of State may recognise as representative of the medical profession.
- 3 The Secretary of State may make regulations with respect to the appointment, tenure of office and vacation of office of the members of the Committee.
- 4 The Secretary of State may provide the services of such officers as the Committee may require.
- 5 The proceedings of the Committee shall not be invalidated by any vacancy in the membership of the Committee or by any defect in the appointment or qualification of any member thereof.

### SCHEDULE 3

Section 5.

#### THE PLANNING COUNCIL <sup>F24</sup>

#### Textual Amendments

- F24** Sch. 3 repealed by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(2), [Sch. 10](#)

### SCHEDULE 4

Section 8.

#### UNIVERSITY LIAISON COMMITTEES

The University Liaison Committee for any area or combination of areas shall consist of such number of members as the Secretary of State thinks fit; and of those members—

- (a) not less than one-third shall be appointed by any university or universities appearing to the Secretary of State to have an interest in the health service in the area or combined areas;
- (b) a number, equal to the number appointed under paragraph (a), shall be appointed by the Health Board for the area or, as the case may be, by the Health Boards for the combined areas acting jointly; and
- (c) any other members shall be appointed in such manner as may be provided in the order constituting the Committee.

The Committee shall appoint one of their number to be chairman.

*Status: Point in time view as at 01/02/1991.*

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## SCHEDULE 5

Section 10.

### THE AGENCY

- 1 The Agency shall be a body corporate and shall have a common seal.
- 2 The affairs of the Agency shall be managed by a management committee constituted in accordance with paragraph 3.
- 3 The management committee shall consist of a chairman appointed by the Secretary of State and [<sup>F25</sup>such other members as the Secretary of State may, after consultation with the Health Boards, appoint.]

#### Textual Amendments

- F25** Words substituted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 27(3), [Sch. 5 para. 9](#)

- [<sup>F26</sup>3A The Secretary of State may pay to the chairman of the management committee [<sup>F27</sup>and to such other members of the management committee as may be prescribed] such remuneration as he may, with the approval of the Minister for the Civil Service, from time to time determine.]

#### Textual Amendments

- F26** [Para. 3A](#) inserted by [Health Services Act 1980 \(c. 53\)](#), [Sch. 6 para. 8\(2\)](#)
- F27** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 27(3), [Sch. 5 para. 10](#)

- 4 The proceedings of the management committee shall not be invalidated by any vacancy in its membership or by any defect in the appointment of any member thereof.
- 5 The Secretary of State shall pay to members of the management committee and sub-committees thereof such travelling and other allowances, including compensation for loss of remunerative time, as he may, with the approval of the Minister for the Civil Service, from time to time determine.
- 6 Allowances shall not be paid under paragraph 5 except in connection with the performance of such powers or duties, in such circumstances, as the Secretary of State may determine.
- 7 The Agency may employ such officers and servants on such terms as to remuneration and conditions of service as the management committee may, <sup>F28</sup>determine [<sup>F29</sup>in accordance with regulations and any directions given under this paragraph by the Secretary of State].

#### Textual Amendments

- F28** Words repealed by [Health Services Act 1980 \(c. 53\)](#), [Sch. 7](#)
- F29** Words inserted by [Health Services Act 1980 \(c. 53\)](#), [Sch. 6 para. 8\(3\)\(b\)](#)

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- [<sup>F30</sup>7A Regulations or directions under paragraph 7 may provide for approvals, authorisations or determinations to have effect from a date (which may be before or after the date of giving or making them but may not be before if to the detriment of such officers and servants) specified in them.]

#### Textual Amendments

- F30** Sch. 5 para. 7A added by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 14(2), [Sch. 7 para. 4\(2\)](#)

- [<sup>F31</sup>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.]

#### Textual Amendments

- F31** Sch. 5 para. 7B, 7C inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 27(3), [Sch. 5 para. 11](#)

#### Modifications etc. (not altering text)

- C44** Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by [S.I. 1990/2639](#), art. 5(1)(2), [Sch. Pt. I](#)

- 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.

#### Modifications etc. (not altering text)

- C45** Sch. 1 paras. 1, 2, 4–7, 9–15, Sch. 5 paras. 7B, 7C applied by [S.I. 1990/2639](#), art. 5(1)(2), [Sch. Pt. I](#)
- C46** Sch. 5 para. 7C applied (1.4.1993) by [S.I. 1993/577](#), art. 5(1), [Sch. Pt. I](#) (with art. 6)
- Sch. 5 para. 7C applied (1.4.1995) by [S.I. 1995/574](#), art. 5(1)(2), [Sch. Pt. I](#) (with art. 6)
- Sch. 5 para. 7C applied (1.4.1999) by [S.I. 1999/686](#), art. 5(1)(2), [Sch. Pt. I](#)
- Sch. 5 para. 7C applied (1.4.1999) by [S.I. 1999/726](#), art. 5(1)(2), [Sch. Pt. I](#)
- Sch. 5 para. 7C applied (1.4.2000) by [S.S.I. 2000/47](#), art. 5(1)(2), [Sch. Pt. I](#)
- Sch. 5 para. 7C applied (6.4.2001) by [S.S.I. 2001/137](#), art. 5(1), [Sch. Pt. I](#)
- Sch. 5 para. 7C applied (with modifications) (31.3.2002) by [S.S.I. 2002/103](#), art. 6, [Sch. Pt. I](#) (with art. 4))
- Sch. 5 para. 7C applied (27.6.2002) by [S.S.I. 2002/503](#), art. 5(1), [Sch. Pt. I](#) (with art. 4(4))

- 8 Regulations may make provision with respect to—
- (a) the appointment, tenure and vacation of office of the chairman and members of the management committee;



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- (b) enabling alternative members to attend in place of any member of the committee who may be absent;
- (c) the appointment by the management committee of sub-committees, whose membership may include persons who are not members of the management committee;
- (d) the procedure of the management committee; and
- (e) the method of appointment of officers or servants of the Agency and the qualifications, remuneration and conditions of service of those persons.

[<sup>F32</sup>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.]

#### Textual Amendments

**F32** Sch. 5 paras. 8A, 8B inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 27(3), [Sch. 5 para. 12](#)

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.

9 No officer or servant of the Agency to whom regulations [<sup>F33</sup>or any directions given under paragraph 7] apply shall be employed otherwise than in accordance with the regulations [<sup>F33</sup>or, as the case may be, the directions].

#### Textual Amendments

**F33** Words inserted by [Health Services Act 1980 \(c. 53\)](#), [Sch. 6 para. 8\(4\)](#)

10 The application of the seal of the Agency to any document shall be attested by at least one member of the management committee and by an officer authorised for the purpose by the management committee.

11 Every document purporting to be an instrument issued by the Agency and to be sealed and attested as aforesaid or to be duly signed on behalf of the Agency shall be received in evidence, and shall be deemed to be such an instrument without further proof unless the contrary is shown.

12 The Secretary of State may exercise the powers conferred by paragraph 19 of Schedule 1 in the case of a person who enters the employment of the Agency and to whom that paragraph otherwise applies.

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VALID FROM 01/08/2010

<sup>F34</sup>SCHEDULE 5A (introduced by section 10A(5))

## HEALTHCARE IMPROVEMENT SCOTLAND

### Textual Amendments

**F34** Sch. 5A inserted (1.8.2010 for certain purposes, 1.10.2010 for certain purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), ss. 110(1), 134(7), [Sch. 16](#); S.S.I. 2010/221, [art. 3\(2\)\(3\)](#), Sch.; S.S.I. 2010/321, [art. 3](#), Sch.; S.S.I. 2011/122, [art. 2](#), Sch.

## SCHEDULE 6

Section 11.

### THE HOSPITAL TRUST

#### PART I

##### *Constitution*

- 1 The Hospital Trust (hereafter in this Schedule referred to as “the Trust”) shall consist of a chairman appointed by the Secretary of State and not more than 7 and not less than 5 other members so appointed.
- 2 The Trust shall be a body corporate.
- 3 The proceedings of the Trust shall not be invalidated by any vacancy in the membership thereof or by any defect in the appointment of a member.

#### PART II

##### *Powers*

- 4 The Trust shall have the following powers—
  - (a) the like powers in relation to their funds as trustees have in relation to their trust estate under section 4(1) of the <sup>M4</sup>Trusts (Scotland) Act 1921;

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- (b) power to purchase and lease land and to invest in any security in which trustees are authorised to invest under or in pursuance of the <sup>M5</sup>Trusts (Scotland) Act 1921 [<sup>F35</sup>and the Trustee Investments Act 1961] and—
  - (i) to retain any investment which they from time to time receive,
  - (ii) to make a narrower-range investment falling within Part II of Schedule 1 to the <sup>M6</sup>Trustee Investments Act 1961 without first obtaining advice as required by section 6 of that Act,
  - (iii) to invest in the units of a unit trust scheme or in participation certificates or in any form of participation under any trust or scheme having the effect of enabling persons to participate in the profits and income arising from the acquisition, holding, management or disposal of securities or of land;
- (c) power to make loans to Health Boards [<sup>F36</sup>and NHS trusts] against their share in the capital of the Trust;
- (d) power to pay all the expenses of the constitution and administration of the Trust from their funds;
- (e) power to accept from any Health Board for investment and management on behalf of the Board any endowments or accumulated income thereof transferred to the Board under Part VI of the <sup>M7</sup>National Health Service (Scotland) Act 1972 and any endowments, or accumulated income thereof, otherwise held by a Health Board;
- [<sup>F37</sup>(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;]
- (f) power to accept, hold, administer and dispose of any property (other than a relevant endowment or such an endowment as is referred to in subparagraph (e) [<sup>F38</sup>or, as the case may be, paragraph (ea)]) on trust for purposes similar to those for which property is held by a Health Board [<sup>F39</sup>or, as the case may be, by an NHS Trust];
- (g) power to give advice to a Health Board relating to the investment or management of any such endowment or income as is referred to in subparagraph (e) and which is not transferred to the Trust under paragraph 16 of Schedule 1, and to recover from the Board concerned any expenses reasonably incurred by them in giving such advice. [<sup>F40</sup> It is hereby declared, for the avoidance of doubt, that the Trust has at all times had the power referred to in sub-paragraph (b) above to invest in any security in which trustees are authorised to invest under or in pursuance of the Trustee Investments Act 1961.]

#### Textual Amendments

- F35** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. 54(1)
- F36** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(24)(a)
- F37** Sch. 6 para. 4(ea) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(24)(b)
- F38** Words expressed to be inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(24)(c)(i)

*Status: Point in time view as at 01/02/1991.*

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- F39** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(24)(c)(ii)
- F40** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. 54(2)

#### Marginal Citations

- M4** 1921 c. 58.
- M5** 1921 c. 58.
- M6** 1961 c. 62.
- M7** 1972 c. 58.

- 5 (1) It shall be the duty of the Trust to obtain advice on the investment of any property held by them under this Act from a person whom the Trust reasonably believe to be qualified to give such advice by his ability in, and practical experience of, financial matters.
- (2) For the purposes of sub-paragraph (1), the advice referred to therein may be obtained from a person other than an officer or servant of the Trust on such terms as may be agreed between the Trust and that person.
- 6 (1) Regulations may prescribe the method of calculating the capital value of relevant endowments transferred from Boards of Management and Regional Hospital Boards to the Trust under section 2(1) of the <sup>M8</sup>Hospital Endowments (Scotland) Act 1971 and the shares of Health Boards in the total endowments so transferred.
- (2) Regulations may prescribe the terms and conditions on which sums may be borrowed from the Trust by Health Boards [<sup>F41</sup>or NHS trusts].

#### Textual Amendments

- F41** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(24)(d)

#### Marginal Citations

- M8** 1971 c. 8.

- 7 (1) The Trust shall, at such date or dates in each year as the Secretary of State may determine, distribute the income from all relevant endowments transferred to them under section 2(1) of the <sup>M9</sup>Hospital Endowments (Scotland) Act 1971 and from property accepted by them in pursuance of paragraph 4(f), after deduction of such expenses as have been incurred under this Act or the said Act of 1971 or regulations made thereunder, among Health Boards [<sup>F42</sup>, NHS trusts] and state hospitals in accordance with schemes made from time to time by the Secretary of State by statutory instrument.
- (2) Before making a scheme under this paragraph the Secretary of State shall give to Health Boards [<sup>F43</sup>, NHS trusts] and the bodies charged with the management of state hospitals an opportunity to make representations to him about the scheme.
- (3) Such schemes shall provide for the income from such relevant endowments—

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- (a) in so far as it is distributed among Health Boards, being used by those Boards for purposes relating to services provided under this Act in or in relation to hospitals, or to research into any such matters as are mentioned in section 47(2), or for purposes intended to preserve the memory of any person or class of persons;
  - (b) in so far as it is distributed to a state hospital, being used by that hospital for any purpose for which the hospital was provided, including research in connection with any such purpose.
  - [<sup>F44</sup>(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.]
- (4) In making a scheme under this paragraph the Secretary of State shall have regard to the arrangements for the distribution of income under any scheme, being a scheme made under section 7 of the said Act of 1971 and in operation immediately before 1st April 1974; and any scheme made under this paragraph may provide that any accumulated income held by a Health Board by virtue of section 2(2)(a) of the said Act of 1971 may be used only for such purposes as may be specified in the scheme.
- (5) No scheme shall be made under this paragraph unless a draft has been laid before Parliament and has been approved by a resolution of each House of Parliament.

#### Textual Amendments

- F42** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(24)(e)**
- F43** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(24)(f)**
- F44** Sch. 6 para. 7(3)(c) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(24)(g)**

#### Marginal Citations

- M9** 1971 c. 8.

- 8 The total annual expenses of administration of the Trust shall be limited to such maximum amount as the Secretary of State may from time to time determine.
- 9 Regulations may make provision in respect of any of the following matters—
- (a) the appointment, and tenure and vacation of office, of the members of the Trust;
  - (b) the procedure of the Trust;
  - (c) the appointment, remuneration and conditions of service of officers and servants of the Trust;
  - (d) the making of payments, not exceeding limits to be determined from time to time by the Secretary of State, from the funds of the Trust to the members thereof in respect of any loss of earnings they would otherwise have made or any additional expenses (including travelling and subsistence expenses) to which they would not otherwise have been subject, being loss or expenses necessarily suffered or incurred by them for the purpose of enabling them to perform duties as members of the Trust;

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- (e) any matters consequential on, or incidental to, any of the aforesaid matters.
- 10 (1) The accounts of the Trust shall be audited annually by an auditor appointed by the Trust.
- (2) No person shall be qualified to be appointed auditor under this paragraph unless he is a member of one or more of the following bodies:
- (a) the Institute of Chartered Accountants of Scotland;
  - (b) the Institute of Chartered Accountants in England and Wales;
  - (c) the Association of Certified and Corporate Accountants;
  - (d) the Institute of Chartered Accountants in Ireland;
  - (e) any other body of accountants established in the United Kingdom and for the time being recognised for the purposes of section 161(1)(a) of the <sup>M10</sup>Companies Act 1948 by the Secretary of State;
- but a Scottish firm may be so appointed if each of the partners therein is qualified to be so appointed.

#### Marginal Citations

**M10** 1948 c. 38.

## SCHEDULE 7

### THE RESEARCH TRUST

- 1 The Research Trust shall consist of a chairman appointed by the Secretary of State and such number of other members so appointed as the Secretary of State may from time to time determine.
- 2 The Research Trust shall be a body corporate.
- <sup>F453</sup> The Secretary of State may make regulations for—
- (a) the appointment, and tenure and vacation of office, of the members of the Research Trust;
  - (b) the procedure of the Trust;
  - (c) the appointment, remuneration and conditions of service of officers of the Trust;
  - (d) the making of payments from the funds of the Trust to its members in respect of any loss of earnings they would otherwise have made or any additional expenses (including travelling and subsistence expenses) to which they would not otherwise have been subject, being loss of expenses necessarily suffered or incurred by them for the purpose of enabling them to perform duties as members of the Trust; and
  - (e) any matters consequential or incidental to those matters.

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#### Textual Amendments

**F45** Sch. 7 paras. 3-3G and cross-headings substituted (1.11.2005) for Sch. 7 para. 3 by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), ss. **38(3)(b)**, 43(3); S.S.I. 2005/492, **art. 3(b)**, Sch. 2

- 4 The Research Trust shall have power to purchase land and to invest in any securities in which trustees are authorised to invest under or in pursuance of the <sup>M11</sup>Trusts (Scotland) Act 1921; and they may—
- (a) retain any investment which they from time to time receive;
  - (b) make a narrower-range investment falling within Part II of Schedule 1 to the <sup>M12</sup>Trustee Investments Act 1961 without first obtaining advice as required by section 6 of that Act;
  - (c) invest in the units of a unit trust scheme or in participation certificates or in any form of participation under any trust or scheme having the effect of enabling persons to participate in the profits and income arising from the acquisition, holding, management or disposal of securities or of land. [<sup>F46</sup> It is hereby declared, for the avoidance of doubt, that the Research Trust has at all times had the power referred to in this paragraph to invest in any security in which trustees are authorised to invest under or in pursuance of the Trustee Investments Act 1961.]

#### Textual Amendments

**F46** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 39:1\)](#), s. **54(3)**

#### Marginal Citations

**M11** 1921 c. 58.

**M12** 1961 c. 62.

- 5 The Research Trust shall have, in relation to their funds, the like powers as trustees have in relation to their trust estate under subsection (1) of section 4 of the <sup>M13</sup>Trusts (Scotland) Act 1921.

#### Marginal Citations

**M13** 1921 c. 58.

- 6 Where the Research Trust borrow money or draw upon capital to meet expenditure of a capital nature, they shall set aside annually a sum sufficient to repay such loan or draft within a period which, unless the Secretary of State otherwise approves in any case, shall not exceed 30 years; but this paragraph shall not apply in the case of a draft on capital to the extent only of surplus income added to capital.
- 7 The proceedings of the Research Trust shall not be invalidated by any vacancy in the membership thereof or by any defect in the appointment of a member.

*Status: Point in time view as at 01/02/1991.*

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## [<sup>F47</sup>SCHEDULE 7A

### NATIONAL HEALTH SERVICE TRUSTS]

#### Textual Amendments

**F47** Schs. 7A, 7B inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 32, [Sch. 6](#)

#### Modifications etc. (not altering text)

**C47** [Sch. 7A](#) applied in part (1.4.1999) by [S.I. 1999/686](#), [art. 5\(1\)\(2\)](#)

## [<sup>F47</sup>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.

#### Subordinate Legislation Made

**P1** [Sch. 7A para. 1](#): s. 12A(1)(4) (with [Sch. 7A paras. 1, 3, 4, 5, 6\(2\)\(d\)](#)) power exercised (18.12.1991) by [S.I. 1991/2898](#).  
[Sch. 7A para. 1](#): s. 12A(1)(4) (with [Sch. 7A paras. 1, 3, 4, 5, 6\(2\)\(d\)](#)) power exercised (18.12.1991) by [S.I. 1991/2899](#).

- 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 subsequent order, the first order to be made in relation to any NHS trust shall specify—
- (a) the name of the trust;
  - (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 [<sup>F48</sup>provide services at] a hospital or other establishment or facility which, in the opinion of the Secretary of State, has a significant teaching and research commitment; and



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- (b) in any other case, if the Secretary of State so provides in the order.
- (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.

#### Textual Amendments

**F48** Words in Sch. 7A para. 3(2)(a) substituted (*retrospectively*) by 1999 c. 8, s. 46(6)(8); S.S.I. 1999/90, art. 2(a)

- 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 provisions 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.

## 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.

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- (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.

#### Subordinate Legislation Made

- P2** [Sch. 7A para. 6\(2\)\(d\)](#): s. 12A(1)(4) (with Sch. 7A paras. 1, 3, 4, 5, 6(2)(d)) power exercised (18.12.1991) by [S.I.1991/2898](#).  
[Sch. 7A para. 6\(2\)\(d\)](#): s. 12A(1)(4) (with 7A paras. 1, 3, 4, 5, 6(2)(d)) power exercised (18.12.1991) by [S.I.1991/2899](#).

- 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

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- (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.
- (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 <sup>M14</sup>1988 (extension of powers of Secretary of State for financing the Health Service).

#### **Marginal Citations**

**M14** 1988 c.49(113:2).

#### *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

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- 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—
- (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 of 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

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- (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.

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 section 118 of the Town and Country Planning (Scotland) Act <sup>M15</sup>1972 (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.

**Marginal Citations**

**M15** 1972 c.52(123:2).

**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.

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- (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.
- (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.]

## [<sup>F49</sup>SCHEDULE 7B

### FINANCIAL PROVISIONS RELATING TO NHS TRUSTS]

#### Textual Amendments

**F49** Schs. 7A, 7B inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 32, [Sch. 6](#)

*Status: Point in time view as at 01/02/1991.*

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### [<sup>F50</sup> Borrowing]

#### Textual Amendments

**F50** Schs. 7A, 7B inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 32, Sch. 6

- 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 <sup>M16</sup>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.

#### Marginal Citations

**M16** 1968 c.13(99:3).

### *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.
- (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.

*Status: Point in time view as at 01/02/1991.*

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- (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.

VALID FROM 01/04/2000

*[<sup>F51</sup>Surplus funds*

**Textual Amendments**

**F51** Cross-heading and Sch. 7B paras. 2A, 2B inserted (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 2(1)**; S.S.I. 2000/10, **art. 2(3)**

- <sup>F52</sup>2A In any financial year the net aggregate amount of sums borrowed by NHS trusts shall not exceed the amount specified for that year for the purposes of this paragraph in a Budget Act.

**Textual Amendments**

**F52** Sch. 7B paras. 2A, 2B and cross-heading inserted (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 2(1)**; S.S.I. 2000/10, **art. 2(3)**

- <sup>F53</sup>2B In paragraph 2A above, “net aggregate amount” means the aggregate amount of sums borrowed in the financial year less any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that or any other year.]

**Textual Amendments**

**F53** Sch. 7B paras. 2A, 2B and cross heading inserted (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 2(1)**; S.S.I. 2000/10, **art. 2(3)**

*Limits on indebtedness*

- 3 (1) The aggregate of all sums borrowed by NHS trusts [<sup>F54</sup>which are required to provide services at or from] 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.



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#### Textual Amendments

**F54** Words in [Sch. 7B para. 3\(1\)](#) substituted (*retrospectively*) by 1999 c. 8, [s. 46\(7\)\(8\)](#); S.S.I. 1999/90, art. 2(a), [Sch. 1](#)

- 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.

VALID FROM 01/10/1999

[<sup>F55g</sup> Any direction with respect to—  
(a) the power conferred on an NHS trust by paragraph 1; or  
(b) the maximum amount which an NHS trust may invest in any investment or class of investment,  
may be given only with the consent of the Treasury.]

#### Textual Amendments

**F55** [Sch. 7B para. 8](#) inserted (1.10.1999) by 1999 c. 8, [s. 65\(1\)](#), [Sch. 4 para. 63\(4\)](#); S.S.I. 1999/90, art. 2(a) (b), [Sch. 1](#)

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## SCHEDULE 8

Section 29.

## THE TRIBUNAL

- 1 The Tribunal for the purposes of section 29 shall consist of a chairman and 2 other members.
- 2 The chairman shall be a practising advocate or solicitor of not less than 10 years' standing appointed by the Lord President of the Court of Session.
- 3 One of the other members shall be a person appointed by the Secretary of State after consultation with such body as the Secretary of State may recognise as being representative of Health Boards.
- 4 The remaining member (hereafter referred to as "the practitioner member") shall be appointed by the Secretary of State from such one of the panels appointed under paragraph 5 as the Secretary of State considers appropriate having regard to the profession or calling of the person whose case is being investigated.
- 5 For the purposes of paragraph 4, the Secretary of State shall, after consultation with such organisations as he may recognise as representative of the several professions or callings concerned, appoint the following panels, none of which shall exceed 6 persons, that is to say:—
- (a) a panel of medical practitioners;
  - (b) a panel of medical practitioners having the qualifications prescribed under section 26;
  - (c) a panel of dental practitioners;
  - (d) a panel of ophthalmic opticians;
  - (e)
  - <sup>F56</sup>(f) a panel of registered pharmacists.

**Textual Amendments**

**F56** Sch. 8 para. 5(e) repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, Sch. 8 Pt. I

- 6 If any member of the Tribunal is unable to act in any case a deputy may be appointed by the Lord President of the Court of Session or the Secretary of State, as in the case of the appointment of the member in question; and, if the member is the chairman, the deputy shall possess the professional qualifications required for the office of chairman, and, if the member is the practitioner member, the deputy shall be appointed from the same panel.
- 7 Regulations may make provision—
- (a) with respect to the appointment, tenure of office and vacation of office of members of the Tribunal;

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- (b) with respect to the appointment of officers of the Tribunal.

VALID FROM 01/01/1996

- [<sup>F57</sup>8 (1) The functions of the Tribunal shall be exercised by three members consisting of—
- (a) the chairman or a deputy chairman,
  - (b) a person appointed under paragraph 1(c) above, and
  - (c) a person appointed under such one of sub-paragraphs (d) to (h) of paragraph 1 above as provides for the appointment of persons of the same profession or calling as that of the person concerned.
- (2) In sub-paragraph (1)(c) above, the reference to the person concerned is—
- (a) in the case of functions under section 29, to the person to whom the representations in question relate,
  - (b) in the case of functions under section 30 (or paragraph 6 of Schedule 15), to the person whose disqualification is under consideration,
  - (c) in the case of functions under section 32A, to the person to whom the application in question relates, and
  - (d) in the case of functions under section 32B, to the person in relation to whom the application of section 32A(3) may be continued.
- (3) In the case of functions under section 32A or 32B, sub-paragraph (1) above is subject to section 32C(2)(b).]

#### Textual Amendments

**F57** Sch. 8 para. 8 added (1.1.1996) by 1995 c. 31, s. 12(3); S.I. 1995/3214, art. 2(1), Sch. (with art. 3)

## SCHEDULE 9

Section 35.

### ADDITIONAL PROVISIONS AS TO PROHIBITION OF SALE OF MEDICAL PRACTICES

#### *Prohibition, and certificate of Practices Committee*

- 1 (1) Any person who sells or buys the goodwill, or any part of the goodwill, of a medical practice which it is unlawful to sell by virtue of section 35(1) is guilty of an offence and liable on conviction on indictment to a fine <sup>F58</sup> or to imprisonment for a term not exceeding 3 months, or to both such fine and such imprisonment.
- (2) Any medical practitioner or his personal representative may apply to the Medical Practices Committee for their opinion whether a proposed transaction or series of transactions involves the sale of the goodwill, or any part of the goodwill, of a medical practice which it is unlawful to sell by virtue of section 35(1).
- (3) The Committee shall consider any such application, and, if they are satisfied that the transaction or series of transactions does not involve the giving of valuable

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consideration in respect of the goodwill, or any part of the goodwill, of such a medical practice, they shall issue to the applicant a certificate to that effect, which shall be in the prescribed form and shall set out all material circumstances disclosed to the Committee.

- (4) Where any person is charged with an offence under this paragraph in respect of any transaction or series of transactions, it shall be a defence to the charge to prove that the transaction or series of transactions was certified by the Medical Practices Committee under sub-paragraph (3).
- (5) Any document purporting to be such a certificate shall be admissible in evidence and shall be deemed to be such a certificate unless the contrary is proved.
- (6) If it appears to the court that the applicant for any such certificate failed to disclose to the Committee all the material circumstances, or made any misrepresentation with respect thereto, the court may disregard the certificate, and sub-paragraph (4) shall not apply thereto.
- (7) The Medical Practices Committee shall, at the request of the Lord Advocate, furnish him with a copy of any certificate issued by them under sub-paragraph (3), and with copies of any documents produced to them in connection with the application for that certificate.
- (8) For the purposes of this paragraph (and paragraph 2) references to the goodwill of a medical practice shall, in relation to a medical practitioner practising in partnership, be construed as referring to his share of the goodwill of the partnership practice.

#### **Textual Amendments**

**F58** Sch. 9 para. 1(1)(a)(b) and words repealed by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 16](#)

#### **Modifications etc. (not altering text)**

**C48** Sch. 9 para. 1(3) modified (31.3.1995) by [S.I. 1995/416, reg. 18](#), [Sch. 8](#)

### *Certain transactions deemed sale of goodwill*

- 2 (1) Where—
  - (a) any medical practitioner or his personal representative knowingly sells or lets premises previously used by that practitioner for the purposes of his practice to another medical practitioner, or in any other way disposes or procures the disposition of the premises, whether by a single transaction or a series of transactions, with a view to enabling another practitioner to use the premises for the purposes of his practice, and
  - (b) the consideration for the sale, letting or other disposition is substantially in excess of the consideration which might reasonably have been expected to be paid by a medical practitioner for the premises as such irrespective of goodwill,

the sale, letting or other disposition of the premises shall be deemed for the purposes of section 35(1) and paragraph 1 to be a sale by the first medical practitioner or his personal representative of the goodwill, or part of the goodwill, of the practice of that practitioner to that other practitioner.

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Where a medical practitioner or his personal representative sells, lets or disposes or procures the disposition of any premises together with any other property, the court shall, for the purposes of this sub-paragraph, make such apportionment of the consideration as it thinks just.

- (2) Where in pursuance of any partnership agreement between medical practitioners—
- (a) any valuable consideration, other than the performance of services in the partnership business, is given by a partner or proposed partner as consideration for his being taken into partnership.
  - (b) any valuable consideration is given to a partner, on or in contemplation of his retirement or of his acceptance of a reduced share of the partnership profits, or to the personal representative of a partner on his death, not being a payment in respect of that partner's share in past earnings of the partnership or in any partnership assets or any other payment required to be made to him as the result of the final settlement of accounts, as between him and the other partners, in respect of past transactions of the partnership, or
  - (c) services are performed by any partner for a consideration substantially less than those services might reasonably have been expected to be worth having regard to the circumstances at the time when the agreement was made,

there shall be deemed for the purposes of section 35(1) and paragraph 1 to have been a sale of the goodwill, or part of the goodwill, of the practice of any partner to whom, or to whose personal representative, the consideration or any part thereof is given or, as the case may be, for whose benefit the services are performed, to the partner or each of the partners by or on whose behalf the consideration or any part thereof was given or, as the case may be, the partner who performed the services, and the said sale shall be deemed for the purposes of section 35(1) and paragraph 1 to have been effected—

- (i) in a case to which paragraph (a) or paragraph (b) applies, at the time when the consideration was given, or, if the consideration was not all given at the same time, at the time when the first part thereof was given, or
- (ii) in a case to which paragraph (c) applies, at the time when the agreement was made.

- (3) Where any medical practitioner—
- (a) performs services as an assistant to another medical practitioner for a remuneration substantially less than those services might reasonably have been expected to be worth, having regard to the circumstances at the time when the remuneration was fixed, and
  - (b) subsequently succeeds, whether as the result of a partnership agreement or otherwise, to the practice or any part of the practice of the second practitioner,

there shall be deemed for the purposes of section 35(1) and paragraph 1 to have been a sale (effected at the time when the remuneration was fixed) of the goodwill, or part of the goodwill, of that practice by the second practitioner to the first practitioner, unless it is shown that the said remuneration of the first practitioner was not fixed in contemplation of his succeeding to the practice, or any part of it.

- (4) For the purposes of section 35(1) and paragraph 1—
- (a) if a medical practitioner or the personal representative of a medical practitioner agrees, for valuable consideration, to do or refrain from doing any act, or to allow any act to be done, for the purpose of facilitating the

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- succession of another medical practitioner to the practice, or any part of the practice, of the first practitioner, the transaction shall be deemed to be a sale of the goodwill, or part of the goodwill, of that practice by the first practitioner or his personal representative to the second practitioner; and
- (b) if any medical practitioner, or any person acting on his behalf, gives any valuable consideration to another medical practitioner, or the personal representative of another medical practitioner, and the first medical practitioner succeeds, or has succeeded, whether before or after the transaction aforesaid, to the practice, or any part of the practice, of the second practitioner, the transaction shall be deemed to be a sale of the goodwill, or part of the goodwill, of the practice of the second practitioner by him or by his personal representative to the first practitioner, unless it is shown that no part of the consideration was given in respect of the said goodwill or part of it.
- (5) Sub-paragraph (4) shall not apply to anything done in relation to the acquisition of premises for the purposes of a medical practice, or in pursuance of a partnership agreement, or to the performance of services as an assistant to a medical practitioner.
- (6) In determining for the purposes of section 35(1) and this Schedule the consideration given in respect of any transaction, the court shall have regard to any other transaction appearing to the court to be associated with the first transaction, and shall estimate the total consideration given in respect of both or all the transactions, and shall apportion it between those transactions in such manner as it thinks just.
- (7) Where any consideration is, with the knowledge and consent of a medical practitioner or his personal representative, given to any other person, and it appears to the court that the medical practitioner or, if he has died, his estate or some person beneficially interested in his estate derives a substantial benefit from the giving of the consideration, the consideration shall be deemed for the purposes of section 35(1) and this Schedule to have been given to the medical practitioner or his personal representative, as the case may be.

VALID FROM 01/04/1998

*[<sup>F59</sup> Carried-over goodwill]*

**Textual Amendments**

**F59** Sch. 9 para 3 and crossheading inserted (1.4.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 59(10); S.I. 1998/631, art. 2(1)(b), Sch. 2 (with arts. 3, 5)

**F60**<sub>3</sub>

The fact that a person's medical practice was previously carried on by another person who at any time provided general medical services or personal medical services does not, by itself, make it unlawful under section 35(1) for the goodwill of his practice to be sold.

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### Textual Amendments

**F60** Sch. 3 and heading inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 59(10)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2** (with arts. 3, 5)

## SCHEDULE 10

Section 49.

### ADDITIONAL PROVISIONS AS TO THE CONTROL OF MAXIMUM PRICES FOR MEDICAL SUPPLIES

#### *Orders and directions*

- 1 (1) Any power of making orders under section 49 includes power to provide for any incidental and supplementary provisions which the Secretary of State thinks it expedient for the purposes of the order to provide.
- (2) An order under section 49 may make such provisions (including provision for requiring any person to furnish any information) as the Secretary of State thinks necessary or expedient for facilitating the introduction or operation of a scheme of control for which provision has been made, or for which, in his opinion, it will or may be found necessary or expedient that provision should be made, under that section.
- (3) An order under section 49 may prohibit the doing of anything regulated by the order except under the authority of a licence granted by such authority or person as may be specified in the order, and may be made so as to apply either to persons or undertakings generally or to any particular person or undertaking or class of persons or undertakings, and so as to have effect either generally or in any particular area.
- (4) The <sup>M17</sup>Interpretation Act 1889 shall apply to the interpretation of any order made under section 49 as it applies to the interpretation of an Act of Parliament and for the purposes of section 38 of that Act any such order shall be deemed to be an Act of Parliament.

### Marginal Citations

**M17** 1889 c. 63.

#### *Notices, authorisations and proof of documents*

- 2 (1) A notice to be served on any person for the purposes of section 49, or of any order or direction made or given under that section, shall be deemed to have been duly served on the person to whom it is directed if—
  - (a) it is delivered to him personally; or
  - (b) it is sent by registered post or the recorded delivery service addressed to him at his last or usual place of abode or place of business.

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- (2) Where under section 49 and this Schedule a person has power to authorise other persons to act thereunder, the power may be exercised so as to confer the authority either on particular persons or on a specified class of persons.
- (3) Any permit, licence, permission or authorisation granted for the purposes of section 49 may be revoked at any time by the authority or person empowered to grant it.
- (4) Every document purporting to be an instrument made or issued by the Secretary of State or other authority or person in pursuance of section 49 and this Schedule or any provisions so having effect and to be signed by or on behalf of the Secretary of State, or that authority or person, shall be received in evidence and shall until the contrary is proved, be deemed to be an instrument made or issued by the Secretary of State, or that authority or person.
- (5) Prima facie evidence of any such instrument as is described in sub-paragraph (4) may in any legal proceedings (including arbitrations) be given by the production of a document purporting to be certified to be a true copy of the instrument by or on behalf of the Secretary of State or other authority or person having power to make or issue the instrument.

#### *Territorial extent*

- 3 So far as any provisions contained in or having effect under section 49 and this Schedule impose prohibitions, restrictions or obligations on persons, those provisions apply to any persons in the United Kingdom and all persons on board any British ship or aircraft, not being an excepted ship or aircraft, and to all other persons, wherever they may be, who are ordinarily resident in the United Kingdom and who are citizens of the United Kingdom and Colonies or British protected persons.

In this paragraph—

“British aircraft” means an aircraft registered in—

- (a) any part of her Majesty’s dominions;
- (b) any country outside Her Majesty’s dominions in which for the time being Her Majesty has jurisdiction;
- (c) any country consisting partly of one or more colonies and partly of one or more such countries as are mentioned in paragraph (b);

“British protected person” means the same as in [<sup>F61</sup>the British Nationality Act 1981];

“excepted ship or aircraft” means a ship or aircraft registered in any country for the time being listed in [<sup>F62</sup>Schedule 3 to the British Nationality Act 1981] or in any territory administered by the government of any such country, not being a ship or aircraft for the time being placed at the disposal of, or chartered by or on behalf of, Her Majesty’s Government in the United Kingdom.

#### **Textual Amendments**

**F61** Words substituted by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), [Sch. 7](#)

**F62** Words substituted by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), [Sch. 7](#)



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### *False documents and false statements*

- 4 (1) A person shall not, with intent to deceive—
- (a) use any document issued for the purposes of section 49 and this Schedule or of any order made under that section;
  - (b) have in his possession any document so closely resembling such a document as is described in paragraph (a) as to be calculated to deceive;
  - (c) produce, furnish, send or otherwise make use of for purposes connected with that section and this Schedule or any order or direction made or given under that section, any book, account, estimate, return, declaration or other document which is false in a material particular.
- (2) A person shall not, in furnishing any information for the purposes of section 49 and this Schedule or of any order made under that section, make a statement which he knows to be false in a material particular or recklessly make a statement which is false in a material particular.

### *Restrictions on disclosing information*

- 5 No person who obtains any information by virtue of section 49 and this Schedule shall, otherwise than in connection with the execution of that section and this Schedule or of an order made under that section, disclose that information except for the purposes of any criminal proceedings, or of a report of any criminal proceedings, or with permission granted by or on behalf of a Minister of the Crown.

### *Offences by corporations*

- 6 Where an offence under this Schedule committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In this paragraph, the expression “director”, in relation to a body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

### *Penalties*

- 7 (1) If any person contravenes or fails to comply with any order made under section 49, or any direction given or requirement imposed under that section, or contravenes or fails to comply with this Schedule (except for paragraph 8(3) or paragraph 9(4)) he is, save as otherwise expressly provided, guilty of an offence.
- (2) Subject to any special provisions contained in this Schedule, a person guilty of such an offence shall—

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- (a) on summary conviction, be liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding [<sup>F63</sup>the statutory maximum], or to both; or
- (b) on conviction on indictment, be liable to imprisonment for a term not exceeding 2 years or to a fine <sup>F64</sup>, or to both.

(3)<sup>F65</sup>

#### Textual Amendments

**F63** “£100” substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 15 para. 21\(a\)](#), [Sch. 17 para. 18](#)

**F64** Words repealed by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [s. 80\(2\)](#), [Sch. 16](#)

**F65** [Sch. 10 para. 7\(3\)](#) repealed by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 16](#)

### *Production of documents*

- 8 (1) For the purposes—
- (a) of securing compliance with any order made or direction given under section 49 by or on behalf of the Secretary of State, or
  - (b) of verifying any estimates, returns or information furnished to the Secretary of State in connection with section 49 or any order made or direction given under that section,
- an officer of the Secretary of State duly authorised in that behalf has power, on producing (if required to do so) evidence of his authority, to require any person carrying on an undertaking or employed in connection with an undertaking to produce to that officer forthwith any documents relating to the undertaking which that officer may reasonably require for the purpose set out in this paragraph.
- (2) The power conferred by this paragraph to require any person to produce documents includes power—
- (a) if the documents are produced, to take copies of them or extracts from them and to require that person, or where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them;
  - (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (3) If any requirement to produce documents or provide an explanation or make a statement which is imposed by virtue of this paragraph is not complied with, the person on whom the requirement was so imposed is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding [<sup>F66</sup>level 3 on the standard scale], or to both.

Where a person is charged with such an offence in respect of a requirement to produce any document, it shall be a defence to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirements.

*Status: Point in time view as at 01/02/1991.*

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#### Textual Amendments

**F66** “£100” substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), **ss. 289F**, 289G (as inserted by [Criminal Justice Act 1982 \(c.48, SIF 39:1\)](#), **s. 54**)

- 9 (1) If a sheriff, magistrate or justice of the peace is satisfied, on information on oath laid on the Secretary of State’s behalf, that there are any reasonable grounds for suspecting that there are on any premises any documents of which production has been required by virtue of paragraph 8 and which have not been produced in compliance with that requirement, he may issue a warrant under this paragraph.

A warrant so issued may authorise any constable, together with any other persons named in the warrant and any other constables—

- (a) to enter the premises specified in the information (using such force as is reasonably necessary for the purpose); and
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned above, or to take in relation to any documents so appearing any other steps which may appear necessary for preserving them and preventing interference with them.

- (2) Every warrant issued under this paragraph shall continue in force until the end of the period of one month after the date on which it is issued.
- (3) Any documents of which possession is taken under this paragraph may be retained for a period of 3 months, or, if within that period there are commenced any proceedings for an offence under section 49 and this Schedule to which they are relevant, until the conclusion of those proceedings.
- (4) Any person who obstructs the exercise of any right of entry or search conferred by virtue of a warrant under this paragraph, or who obstructs the exercise of any rights so conferred to take possession of any documents, is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding [<sup>F67</sup>level 3 on the standard scale], or to both.

#### Textual Amendments

**F67** “£50” substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), **ss. 289F**, 289G (as inserted by [Criminal Justice Act 1982 \(c.48, SIF 39:1\)](#), **s. 54**)

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## SCHEDULE 11

Sections 69—71.

### ADDITIONAL PROVISIONS AS TO REGULATIONS FOR THE MAKING AND RECOVERY OF CHARGES

*Regulations under section 69—charges for drugs,  
medicines or appliances, or pharmaceutical services*

- 1 (1) No charge shall be made under section 69(1) in relation to the supply of drugs, medicines and appliances referred to in paragraph (a) of that subsection in respect of—
- (a) the supply of any drug, medicine or appliance for a patient who is for the time being resident in hospital, or
  - (b) the supply of any drug or medicine for the treatment of venereal disease, or
  - (c) the supply of any appliance for a person who is under 16 years of age <sup>F68</sup>or is under 19 years of age and is receiving qualifying full-time education, or]
  - (d) the replacement or repair of any appliance in consequence of a defect in the appliance as supplied,

<sup>F69</sup>(2<sup>F70</sup>)

#### Textual Amendments

- F68** Words from “or is under” to “education, or” substituted for words from “or is undergoing” to “school, or” by [Health Services Act 1980 \(c. 53\), s. 26\(2\)](#), [Sch. 5 Pt II para. 5](#)
- F69** Words repealed by [Social Security Act 1988 \(c. 7, SIF 113:1\), s. 16\(2\)](#), [Sch. 5](#)
- F70** [Sch. 11 para. 1\(2\)](#) repealed by [Social Security Act 1988 \(c. 7, SIF 113:1\), s. 16\(2\)](#), [Sch. 5](#)

*Regulations under section 70—charges for dental or optical appliances*

- 2 <sup>F71</sup>(1) The optical appliances referred to in section 70(1) are glasses and contact lenses, and the charge for glasses and contact lenses which that subsection authorises is a charge of such sum as may be determined by or in accordance with directions given by the Secretary of State.]
- (2) Regulations may—
- (a) vary the amount or maximum amount of any charge authorised by section 70(1) for any <sup>F72</sup>optical appliance, and this power includes power to direct that the charge shall not be payable; or
  - (b) vary the descriptions of appliances for which any such charge is authorised; and regulations made for the purposes of section 70(1) may be made so as to take effect—
    - (i) in the case of appliances supplied under this Act otherwise than under Part II, where the examination or testing of sight (otherwise than under that Part) leading to the supply of those appliances, or the first such examination or testing takes place on or after the date on which the regulations come into force;

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- (ii)
- <sup>F73</sup>(iii)
- <sup>F74</sup>(3) No charge shall be made under section 70(1) [<sup>F75</sup>or (1A)] in respect of any appliance supplied otherwise than under Part II to a patient for the time being resident in a hospital.
- (4) No charge shall be made under section 70 [<sup>F76</sup>(1A)] in respect of the supply of a dental appliance if at the relevant time the person for whom that appliance was supplied—
- [<sup>F77</sup>(a) was under [<sup>F78</sup>18] years of age or was under 19 years of age and receiving qualifying full-time education; or]
- (b) was an expectant mother or had borne a child within the previous 12 months.
- (5)
- <sup>F79</sup>(6) Regulations made with respect to any exemption under sub-paragraph (4) <sup>F80</sup> may provide that it shall be a condition of the exemption that such declaration is made in such form and manner, or such certificate or other evidence is supplied in such form and manner, as may be prescribed.
- (7) [<sup>F81</sup>In sub-paragraph (4), “the relevant time” means—
- (a) in relation to a dental appliance supplied otherwise than under Part II, the time of the examination leading to the supply of the appliance, or the first such examination;]
- (b) in relation to a dental appliance supplied under Part II, the time of the making of the contract or arrangement in pursuance of which the appliance is supplied.
- (8) References in section 70 and in this paragraph to the supply of appliances shall be construed as including references to their replacement [<sup>F82</sup>and, in the case of dentures, to their being relined or adjusted or having additions made to them] but no charge shall be made under those provisions in respect of the replacement of dentures <sup>F83</sup> if the replacement is required in consequence of loss or damage.

#### Textual Amendments

- F71** Sch. 11 para. 2(1) substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), **Sch. 2 para. 15(1)**
- F72** Words repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**
- F73** Sch. 11 para. 2(2)(ii) repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**
- F74** Sch. 11 para. 2(2)(iii) repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**
- F75** “or (1A)” inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), **Sch. 2 para. 15(2)**
- F76** “(1A)” substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), **Sch. 2 para. 15(3)**
- F77** Para. 2(4)(a) substituted by Health Services Act 1980 (c. 53), s. 26(2), **Sch. 5 Pt. II para. 6(3)**
- F78** “18” substituted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 11(8)
- F79** Sch. 11 para. 2(5) repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**
- F80** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**
- F81** Sch. 11 para. 2(7)(a) and preceding words substituted by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 1(7), **Sch. 1 Pt. II para. 6**
- F82** Words inserted by Health Services Act 1980 (c. 53), s. 26(2), **Sch. 5 Pt. II para. 6(5)**
- F83** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**

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- [<sup>F84</sup>2A (1) It shall be the duty of the Secretary of State to provide by regulations for payments to be made by him or by a Health Board to meet, or to contribute towards, the cost incurred (whether by way of charge under this Act or otherwise) for the supply of optical appliances for which a prescription has been given in consequence of a testing of sight under this Act—
- (a) for a child;
  - (b) for a person whose resources fall to be treated under the regulations as being less than his requirements; or
  - (c) for a person of such other description as may be prescribed [<sup>F85</sup>or for which a prescription has been given for a person such as is mentioned in paragraph (a), (b) or (c) above in consequence of a testing of sight (not being a testing of sight under this Act) which took place in prescribed circumstances].
- (2) In sub-paragraph (1) (above) “child” means—
- (a) a person who is under the age of 16 years; or
  - (b) a person who is under the age of 19 years and receiving qualifying full-time education.
- [ The Secretary of State may by regulations—
- <sup>F86</sup>(3) (a) provide for himself or a Health Board to contribute to the cost of a testing of sight which he or the Board accepts as having been incurred by a person whose resources fall to be treated under the regulations as exceeding his requirements but only by an amount calculated under the regulations;
- (b) provide for payments to be made by him or by a Health Board to meet, or to contribute towards, any cost accepted by him or by the Board as having been incurred (whether by way of charge under this Act or otherwise) for the replacement or repair in prescribed circumstances of optical appliances for which a prescription was given in consequence of a testing of the sight of a person of a prescribed description; and
  - (c) direct how a person’s resources and requirements are to be calculated and, without prejudice to the generality of this sub-paragraph, give any such direction as to how they are to be calculated as may be given by regulations under section 75A(3).
- (3A) Descriptions of persons may be prescribed under this paragraph by reference to any criterion and, without prejudice to the generality of this sub-paragraph, by reference to any of the criteria specified in section 75A(2).
- (3B) Subsection (4) of section 75A shall have effect in relation to regulations under this paragraph as it has effect in relation to regulations under that section.]
- (4) If regulations under this paragraph provide for payments to be made by a Health Board, it shall be the duty of the Secretary of State to pay to the Board, in respect of each financial year, the sum attributable to the Board’s disbursements under the regulations.
  - (5) Sums falling to be paid in pursuance of regulations made under this paragraph shall be payable subject to compliance with such conditions as to records, certificates or otherwise as the Secretary of State may determine.]

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### Textual Amendments

- F84** Sch. 11 para. 2A inserted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(7), **Sch. 1 Pt. II para. 7**
- F85** Words added after paragraph (c) of sub-paragraph (1) by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 13(2)
- F86** Paragraphs (3)–(3B) substituted for paragraph (3) by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 13(5)

### *Regulations under section 71—charges for dental treatment*

- 3 (1)
- <sup>F87</sup>(2) Regulations may vary the amount or the maximum amount of any charge authorised by section 71(1), and this power includes power to direct that the charge shall not be payable.
- (3) Where any services in respect of which a charge is payable under section 70 are provided in pursuance of the contract or arrangement, the charges payable under that section and section 71(1) in respect of all services provided in pursuance of the contract or arrangement shall not exceed a prescribed sum in the aggregate.
- (4) No charge shall be made under section 71(1) in respect of services provided for any person who, on the date of the contract or arrangement for the services—
- <sup>F88</sup>(a) was under 18 years of age or was under 19 years of age and receiving qualifying full-time education, or]
  - (c) was an expectant mother or had borne a child within the previous 12 months,
- <sup>F89</sup>(5) Regulations [<sup>F90</sup>made with respect to any exemptions under sub-paragraph (4)] may provide that it shall be a condition of the exemption that such declaration is made in such form and manner, or such certificate or other evidence is supplied in such form and manner, as may be prescribed.

### Textual Amendments

- F87** Sch. 11 para. 3(1) repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), **Sch. 3**
- F88** Words substituted by [Health Services Act 1980 \(c. 53\)](#), s. 26(2), **Sch. 5 Pt. II para. 7(2)**.
- F89** Words repealed by [Health Services Act 1980 \(c. 53\)](#), s. 26(2), **Sch. 5 Pt. II para. 7(2)**
- F90** Words substituted by [Health Services Act 1980 \(c. 53\)](#), s. 26(2), **Sch. 5 Pt. II para. 7(3)**

### *Miscellaneous Provisions*

- 4 For the purposes of section 39(2) (which provides for the Secretary of State to arrange for the free medical treatment of certain pupils) any charge made in pursuance of regulations under this Act in respect of the supply of drugs, medicines or appliances shall be disregarded.
- 5 Regulations may provide for the remission or repayment of any charges which, in pursuance of section 70(1) or section 71(1), are payable apart from this paragraph by a person whose income as calculated in accordance with regulations is at less than

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the prescribed rate, in respect of the supply or replacement of dental <sup>F91</sup> appliances or in respect of services provided as part of the general dental services.

#### Textual Amendments

**F91** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 24, [Sch. 8 Pt. I](#)

- 6 For the purposes of sections 69 and 70 and of this Schedule, a bridge, whether fixed or removable, which takes the place of any teeth shall be deemed to be a denture having that number of teeth; <sup>F92</sup>

#### Textual Amendments

**F92** Words repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), [Sch. 3](#)

- [<sup>F937</sup> References in this Schedule to qualifying full-time education mean full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State, and for the purposes of such references—
- (a) “recognised educational establishment” means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university; and
  - (b) regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.]

#### Textual Amendments

**F93** [Para. 7](#) inserted by [Health Services Act 1980 \(c. 53\)](#), s. 26(2), [Sch. 5 Pt. II para. 8](#)

## SCHEDULE 12

Section 76.

### INQUIRIES

- 1 The Secretary of State shall appoint a person to hold the inquiry and to report thereon to him.
- 2 The Secretary of State or the person appointed to hold the inquiry shall send to any person who appears to them to be interested, notification of the time when and the place where the inquiry is to be held.
- 3 The person appointed to hold the inquiry may by notice require any person—
  - (a) to attend at the time and place set forth in the notice, to give evidence or to produce any books or documents in his custody or under his control which relate to any matter in question at the inquiry; or
  - (b) to furnish within such reasonable period as is specified in the notice such information relating to any matter in question at the inquiry as the person appointed to hold the inquiry may think fit, and as the person so required is able to furnish; but—
    - (i) no person shall be required in obedience to such a notice to attend at any place which is more than 10 miles from the place where he



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- resides unless the necessary expenses are paid or tendered to him;  
and
- (ii) nothing in this paragraph shall empower the person appointed to hold the inquiry to require any person to produce any book or document or to answer any question which he would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.
- 4 The person appointed to hold the inquiry may administer oaths and examine witnesses on oath, and may accept in lieu of evidence on oath by any person a statement in writing by that person.
- 5 Any person who refuses or wilfully neglects to attend in obedience to a notice under paragraph 3, or to give evidence, or who wilfully alters, suppresses, conceals, destroys or refuses to produce any book or document which he may be required by any such notice to produce, or who refuses or wilfully neglects to furnish any information which he is required to furnish under sub-paragraph (b) of paragraph 3, shall be liable on summary conviction to a fine not exceeding [<sup>F94</sup>level 1 on the standard scale] or to imprisonment for a period not exceeding 3 months.

#### Textual Amendments

**F94** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), **ss. 289F**, 289G (as inserted by [Criminal Justice Act 1982 \(c.48\)](#), **s. 54**)

- 6 The expenses incurred by the Secretary of State in relation to any inquiry held under this Act (including a reasonable sum for the services of any officer engaged in the inquiry) shall be paid by such of the parties to the inquiry in such proportions as the Secretary of State may order.
- 7 The Secretary of State may make orders as to the expenses incurred by the parties appearing at any such inquiry and as to the parties by whom such expenses shall be paid.
- 8 Any order by the Secretary of State under paragraph 6 or paragraph 7 may be enforced in like manner as a recorded decree arbitral.

## SCHEDULE 13

Section 79.

### ACQUISITION OF PROPERTY OTHER THAN LAND

- 1 Where under this Act, in connection with the acquisition of any premises, the Secretary of State proposes to acquire any equipment, furniture or other moveable property used in or in connection with the premises, he may, at any time after the acquisition of the premises (in the case of acquisition by agreement) or at any time after the service of a notice to treat (in the case of a compulsory acquisition of premises), serve a notice on the owner of the premises specifying the property proposed to be acquired and specifying the time within which and the manner in which any objection to such acquisition may be made.
- 2 If any objection is duly made the Secretary of State shall afford to the said owner an opportunity of appearing before, and being heard by, a person appointed by him for the purpose; and after considering any such objection and the report of the person so

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- appointed by him, the Secretary of State shall either withdraw the notice aforesaid or serve upon the owner a notice confirming that notice.
- 3 The property with respect to which a notice is served under paragraph 1 and is not withdrawn shall—
- (a) if no objection is duly made to the notice, vest in the Secretary of State at the expiration of the time for making such an objection;
  - (b) if such an objection is duly made and the notice is confirmed by a notice served under paragraph 2, vest in the Secretary of State on the service of the last mentioned notice;
- and shall in each case vest free of any pledge, lien or right in security.
- 4 Where any property is acquired in accordance with this Schedule there shall be paid by way of compensation to the owner of the property concerned a sum equal to the price which he might reasonably have been expected to have obtained upon a sale of the property effected by him immediately before the acquisition of the property by the Secretary of State; and any dispute as to the amount of such compensation shall be determined by arbitration; and the compensation shall accrue due at the time when the property vested in the Secretary of State.
- 5 Where property in respect of which compensation is payable as aforesaid was, immediately before the acquisition thereof by the Secretary of State, in the possession of some person by virtue of a hire purchase agreement, that person may, by a notice served on the Secretary of State, make a claim to have apportioned to him such part of the compensation as may be specified in his claim; and in default of agreement between the parties the claim shall be determined by arbitration, and the arbiter may apportion the compensation between the owner and the other person in such manner as appears to him to be just.
- 6 Any such compensation shall carry interest, as from the time when it accrues due until payment, at such rate as the Treasury may from time to time by order prescribe.
- 7 Where any sum by way of compensation is paid in accordance with this Schedule in respect of any property and, at the time when the compensation accrues due, the property is subject to any pledge, lien or right in security, the sum so paid shall be deemed to be subject to that pledge, lien or right.

## SCHEDULE 14

Section 93.

### ACTION NOT SUBJECT TO INVESTIGATION BY THE COMMISSIONER

- 1 Action taken by medical practitioners, dental practitioners, ophthalmic or dispensing opticians or pharmacists in pursuance of their contracts with Health Boards under Part II or with Executive Councils under Part IV of the <sup>M18</sup>National Health Service (Scotland) Act 1947.

#### **Marginal Citations**

**M18** 1947 c. 27.

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- 2 Action taken in connection with the diagnosis of illness or disease or the care or treatment of a patient, being action which, in the opinion of the Commissioner, was taken solely in the exercise of clinical judgment, whether formed by the person taking the action or by any other person.
- 3 Action taken by a Health Board or [<sup>F95</sup>a Joint Ophthalmic Committee] in the exercise of functions under—
- (a) the <sup>M19</sup>National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1974, or
  - (b)
  - <sup>F96</sup>(c) any regulations <sup>F97</sup> amending or replacing those regulations <sup>F97</sup>, or
  - (d) any regulations revoked by any of the regulations mentioned in paragraphs (a) and (c).

#### Textual Amendments

**F95** Words substituted by [Health Services Act 1980 \(c. 53\)](#), [Sch. 6 para. 9\(a\)](#)

**F96** [Para. 3\(b\)](#) repealed by [Health Services Act 1980 \(c. 53\)](#), [Sch. 7](#)

**F97** Words repealed by [Health Services Act 1980 \(c. 53\)](#), [Sch. 7](#)

#### Marginal Citations

**M19** [S.I. 1974/504](#).

- 4 Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service under this Act or any Act relating to the National Health Service repealed by this Act.
- 5 Action taken in matters relating to contractual or other commercial transactions other than in matters arising from arrangements between a body subject to investigation and an authority or body outwith the health service for the provision of services to patients by that authority or body.
- 6 Action which has been or is the subject of an inquiry under section 69 of the <sup>M20</sup>National Health Service (Scotland) Act 1947 or section 76 of this Act.

#### Marginal Citations

**M20** [1947 c. 27](#).

- 7 Action in relation to which the protective functions of the Mental Welfare Commission have been, are being or may be exercised under the [<sup>F98</sup>Mental Health (Scotland) Act 1984].

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### Textual Amendments

**F98** Words substituted by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), ss. 17(2), 127(1), [Sch. 3 para. 42](#)

## SCHEDULE 15

Section 109.

### TRANSITIONAL PROVISIONS AND SAVINGS

#### *General*

- 1 (1) In so far as—
- (a) any agreement, appointment, apportionment, authorisation, determination, scheme, instrument, order or regulation made by virtue of an enactment repealed by this Act, or
  - (b) any approval, consent, direction, or notice given by virtue of such an enactment, or
  - (c) any complaint made or investigation begun by virtue of such an enactment, or
  - (d) any other proceedings begun by virtue of such an enactment, or
  - (e) anything done or having effect as if done,
- could, if a corresponding enactment in this Act were in force at the relevant time, have been made, given, begun or done by virtue of the corresponding enactment, it shall, if effective immediately before the corresponding enactment comes into force, continue to have effect thereafter as if made, given, begun or done by virtue of that corresponding enactment.
- (2) Where—
- (a) there is any reference in this Act (whether express or implied) to a thing done or required or authorised to be done, or to a thing omitted, or to an event which has occurred, under or for the purposes of or by reference to or in contravention of any provisions of this Act, then,
  - (b) that reference shall be construed (subject to its context) as including a reference to the corresponding thing done or required or authorised to be done, or omitted, or to the corresponding event which occurred, as the case may be, under or for the purposes of or by reference to or in contravention of any of the corresponding provisions of the repealed enactments.
- 2 Where any enactment passed before the commencement of this Act, or any instrument or document, refers either expressly or by implication to an enactment repealed by this Act, the reference shall (subject to its context) be construed as or as including a reference to the corresponding provision of this Act.
- 3 Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, this Act has effect as if its corresponding provision had been in force when that period began to run.

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*Section 37 of the National Health Service (Scotland) Act 1947*

- 4 Notwithstanding the repeal by this Act of section 37 of the <sup>M21</sup>National Health Service (Scotland) Act 1947 (compensation for loss of right to sell a medical practice) that section shall continue to have such effect as may be necessary for the purposes of sections 1 to 7 of the <sup>M22</sup>National Health Service (Amendment) Act 1949.

The saving made by this paragraph applies to section 51 of the <sup>M23</sup>National Health Service Reorganisation Act 1973 (which amended section 37 of the National Health Service (Scotland) Act 1947), and to any regulations made under that section 37 which were in force immediately before the coming into force of this Act.

**Marginal Citations**

**M21** 1947 c. 27.

**M22** 1949 c. 93.

**M23** 1973 c. 32.

*Persons authorised to provide pharmaceutical services*

- 5 A person who for three years immediately before 16th December 1911 acted as a dispenser to a medical practitioner or a public institution is in the same position in relation to the undertaking referred to in section 28(2) regarding the dispensing of medicines as a registered pharmacist.

*Disqualification of practitioners*

- 6 Where by virtue of section 43(8) of the National Health Service (Scotland) Act 1947 a person's name was disqualified for inclusion in any list referred to in section 43(1) of that Act, that person's name is disqualified for inclusion in any list referred to in section 29(1), until such time as the Tribunal or the Secretary of State directs to the contrary.

*Section 4 of the Health Services and Public Health Act 1968*

- 7 An undertaking given before the coming into force of section 4(1) of the <sup>M24</sup>Health Services and Public Health Act 1968 in respect of payment under section 4 of the <sup>M25</sup>National Health Service (Scotland) Act 1947 (accommodation available on part payment) continues to have the same effect as it had immediately before the coming into force of this Act.

**Marginal Citations**

**M24** 1968 c. 46.

**M25** 1947 c. 27.

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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)*

### *Compensation of officers*

- 8 Notwithstanding the repeal by the <sup>M26</sup>National Health Service (Scotland) Act 1972 of section 67 of the said Act of 1947, regulations made under paragraphs (c) to (e) of subsection (1) of that section shall continue to have effect until revoked by regulations under this Act.

#### **Marginal Citations**

**M26** 1972 c. 58.

### *Vehicles under section 33 of the Health Services and Public Health Act 1968*

- 9 The provision of vehicles as mentioned in section 33 of the <sup>M27</sup>Health Services and Public Health Act 1968, and the taking of any such action as is mentioned in subsection (2) of that section, shall for the purposes of the <sup>M28</sup>National Health Service (Scotland) Act 1947 be treated as having been included among hospital and specialist services provided under Part II of that Act of 1947 as from its commencement.

#### **Marginal Citations**

**M27** 1968 c. 46.

**M28** 1947 c. 27.

### *Saving of amendments*

- 10 Notwithstanding the repeal by this Act of sections 53 and 74 and Part I of Schedule 11 to the National Health Service (Scotland) Act 1947, and section 64(1) and Schedule 6 to the National Health Service (Scotland) Act 1972 and section 57(1) and Schedule 4 to the <sup>M29</sup>National Health Service Reorganisation Act 1973—
- (a) the amendments made by Part I of Schedule 11 to that Act of 1947 to the <sup>M30</sup>Public Health (Scotland) Act 1897, and
  - (b) the amendments made by section 53 and paragraphs 37 to 77, [F<sup>99</sup>82], 83(a), 84 to 93, 94(b), 95 to 97, 101, [F<sup>100</sup>102], 104 to 107(a), 108 to 115, 117, 119 to 122, F<sup>101</sup> 129, 135(a) to (c), 136(b), 138 to 140, 150, 152(b), [F<sup>102</sup>155] to 156A of Schedule 6 to that Act of 1972, and
  - (c) the amendments made by paragraphs F<sup>103</sup> 69(2), 82, 96, 102, 106, 109, 123, 128, 130, 133, 134, 140 and 141 of Schedule 4 to that Act of 1973,
- shall continue to have the same effect as they had immediately before the coming into force of this Act, subject to any amendments made under this Act.

#### **Textual Amendments**

**F99** “82” repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**

**F100** “102” repealed by Mental Health Act 1983 (c. 20, SIF 85), ss. 131(1), 148(3), **Sch. 6**

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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)*

- F101** Words repealed by [Education \(Scotland\) Act 1980 \(c. 44\), Sch. 5](#)  
**F102** Word substituted by [Education \(Scotland\) Act 1980 \(c. 44\), Sch. 4 para. 19](#)  
**F103** Word repealed by [Reserve Forces Act 1980 \(c. 9\), Sch. 10 Pt. II](#)

**Marginal Citations**

- M29** [1973 c. 32.](#)  
**M30** [1897 c. 38.](#)

*Transfer of property of voluntary organisations*

- 11 Notwithstanding the repeal by this Act of section 23(2) of the <sup>M31</sup>National Health Service (Amendment) Act 1949, section 23(1) of that Act shall be deemed to have had effect as from 5th July 1948.

**Marginal Citations**

- M31** [1949 c. 93.](#)

*Investigations by the Health Service Commissioner for Scotland*

- 12 Notwithstanding the dissolution by the <sup>M32</sup>National Health Service (Scotland) Act 1972 of any body subject to investigation by the Commissioner under Part VII of that Act, the Commissioner may in accordance with Part VI, commence an investigation under that Part in relation to such a body provided that the time limits mentioned in section 94(3) are observed.

**Marginal Citations**

- M32** [1972 c. 58.](#)

*Permission deemed to have been granted under section 9(5) of the Health Services Act 1976*

- 13 Where under any arrangements terminated by virtue of section 9(5) of the <sup>M33</sup>Health Services Act 1976—
- (a) a person was deemed to have been granted under that section permission to use accommodation and facilities to the same extent and for the same purposes as were covered by those arrangements, then
  - (b) that person shall be deemed to have been granted under section 64 of [<sup>F104</sup>this Act] the like permission (and the provisions of that section shall apply accordingly).

**Textual Amendments**

- F104** Words inserted by [Health Services Act 1980 \(c. 53\), Sch. 6 para. 10](#)

**Marginal Citations**

- M33** [1976 c. 83.](#)

*Status: Point in time view as at 01/02/1991.*

**Changes to legislation:** National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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)

*Borrowing from the Hospital Trust by Boards of Management and Regional Hospital Boards*

- 14 Notwithstanding the repeal by this Act of the provisions of section 6(2) and (3) of the <sup>M34</sup>Hospital Endowments (Scotland) Act 1971 relating to borrowings from relevant endowments by Boards of Management and Regional Hospital Boards, regulations made under that section shall continue to have effect until revoked by regulations under this Act.

**Marginal Citations**

**M34** 1971 c. 8.

*Health functions of local authorities*

- [<sup>F105</sup>15 Notwithstanding the repeal by this Act of section 27 of the <sup>M35</sup>National Health Service (Scotland) Act 1947 (functions of local authorities relating to the prevention of illness, care and after-care), that section shall continue to have the same effect for the purposes of section 1(4) of the <sup>M36</sup>Social Work (Scotland) Act 1968 as it had immediately before the coming into force of this Act.]

**Textual Amendments**

**F105** Sch. 15 para. 15 repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), Sch. 10

**Marginal Citations**

**M35** 1947 c. 27.

**M36** 1968 c. 49.

SCHEDULE 16

CONSEQUENTIAL AMENDMENTS OF ENACTMENTS

**Modifications etc. (not altering text)**

**C49** The text of Sch. 16 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

*The <sup>M37</sup>Polish Resettlement Act 1947*

**Marginal Citations**

**M37** 1947 c. 19.



*Status: Point in time view as at 01/02/1991.*

**Changes to legislation:** National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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)

- 1 In section 11(3)(b) (application to Scotland), for the words “the National Health Service (Scotland) Acts 1947 to 1972” substitute the words “the National Health Service (Scotland) Act 1978”.

*The<sup>M38</sup> Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947*

**Marginal Citations**

**M38** 1947 c. 42.

- 2 In section 1(1)(d) (compulsory purchase of land by the Secretary of State), for the words “:58 of the National Health Service (Scotland) Act 1972” substitute the words “79 of the National Health Service (Scotland) Act 1978”.

*The<sup>M39</sup> National Assistance Act 1948*

**Marginal Citations**

**M39** 1948 c. 29.

- 3 (1) In section 47 (removal of persons in need of care)—
- (a) in subsection (8), for the words “Acts 1947 to 1972” substitute the words “Act 1978”;
  - (b) in subsection (10), for the words “section sixteen of the National Health Service (Scotland) Act 1947” substitute the words “section 45 of the National Health Service (Scotland) Act 1978” and for the word “sixteen” substitute the word “45”.
- (2) In section 64 (interpretation), in the definition of “hospital”, for the words “eighty” and “1947” substitute the words “108” and “1978” respectively;
- (3) In Schedule 6, in paragraph 9(3)(c), for the words “sixty-seven and eighty” and “1947” substitute the words “108 and paragraph 8 of Schedule 15” and “1978” respectively.

*The<sup>M40</sup> Law Reform (Personal Injuries) Act 1948*

**Marginal Citations**

**M40** 1948 c. 41.

- 4 In section 2(4) (measure of damages), for the words “National Health Service (Scotland) Act 1947” substitute the words “National Health Service (Scotland) Act 1978”.

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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 <sup>M41</sup> Children Act 1948*

**Marginal Citations**

**M41** 1948 c. 43.

- 5 In section 59(1) (interpretation), in the definition of “hospital”, for the words “section eighty of the National Health Service (Scotland) Act 1948” substitute the words “section 108(1) of the National Health Service (Scotland) Act 1978”.

*The <sup>M42</sup> Nurseries and Child Minders Regulation Act 1948*

**Marginal Citations**

**M42** 1948 c. 53.

- 6 In section 13(2) (interpretation), in the definition of “hospital”, for the words “section eighty of the National Health Service (Scotland) Act 1948” substitute the words “section 108(1) of the National Health Service (Scotland) Act 1978”.

*The <sup>M43</sup> Nurses (Scotland) Act 1951*

**Marginal Citations**

**M43** 1951 c. 55.

- 7 In section 22 (expenditure of training nurses), in subsection (1), for the words “section 60 of the National Health Service (Scotland) Act 1972” substitute the words “section 85 of the National Health Service (Scotland) Act 1978”.

*The <sup>M44</sup> Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951*

**Marginal Citations**

**M44** 1951 c. 65.

- 8 In Schedule 2 (relevant service), in item 15, for the words “Acts 1947 to 1972” substitute the words “Act 1978”.

9 ..... **F106**

**Textual Amendments**

**F106** Sch. 16 para. 9 repealed by [Medical Act 1983 \(c. 54, SIF 83:1\)](#), ss. 54, 56(2), [Sch. 7 Pt. I](#)

*Status: Point in time view as at 01/02/1991.*

**Changes to legislation:** National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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)

10 ..... F107

**Textual Amendments**

F107 Sch. 16 para. 10 repealed by Dentists Act 1984 (c. 24, SIF 83:1), s. 54(2)(3), Sch. 6 Pt. I

11 ..... F108

**Textual Amendments**

F108 Sch. 16 para. 11 repealed by Opticians Act 1989 (c. 44, SIF 83:1), s. 37(4), Sch. 2

12, 13. .... F109

**Textual Amendments**

F109 Sch. 16 paras. 12, 13 repealed by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), ss. 17(2), 127(1)(2), Sch. 4 para. 4, Sch. 5

*The<sup>M45</sup> Public Bodies (Admission to Meetings) Act 1960*

**Marginal Citations**

M45 1960 c. 67.

14 In paragraph (2) of the Schedule (bodies to which Act applies), in sub-paragraph (d), for the words “1972” substitute the words “ 1978”.

15—18. .... F110

**Textual Amendments**

F110 Sch. 16 paras. 15–18 repealed by Education (Scotland) Act 1980 (c. 44), Sch. 5

19 ..... F111

**Textual Amendments**

F111 Sch. 16 para. 19 repealed by Statute Law (Repeals) Act 1986 (c. 12) s. 1(1), Sch. 1 Pt. VIII

*The<sup>M46</sup> Redundancy Payments Act 1965*

**Marginal Citations**

M46 1965 c. 62.

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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)*

- 20 In Schedule 3 (National Health Service Employers), in paragraph 7, for the words “section 13(8) of the National Health Service (Scotland) Act 1972” substitute the words “section 2(11) of the National Health Service (Scotland) Act 1978”.

*The <sup>M47</sup> National Health Service 1966*

**Marginal Citations**

**M47** 1966 c. 8.

- 21 ..... **F112**

**Textual Amendments**

**F112** Sch. 16 para. 21 repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

- 22 In section 10—
- (a) in subsection (1), for words “Part IV” and “1947” substitute the words “Part II” and “1978” respectively, and for the words “44” substitute the words “33”;
  - (b) for subsection (3) substitute the words—
    - “(3) Section 19(3) of the National Health Service (Scotland) Act 1978 shall cease to have effect on the coming into operation of this section.”
- 23 In section 11, for words “1947” substitute the words “1978”.

*The <sup>M48</sup> Superannuation (Miscellaneous Provisions) Act 1967*

**Marginal Citations**

**M48** 1967 c. 28.

- 24 In section 7(5) (superannuation provisions of the National Health Service Acts), for the words “Acts 1947 to 1972” substitute the words “Act 1978”.
- 25 ..... **F113**

**Textual Amendments**

**F113** Ss. 16(3), 20(2), 51, 52, 59–63, 65–68, 96(2), Sch. 16 paras. 25, 43 repealed by Health Services Act 1980 (c. 53), **Sch. 7**

*Status:* Point in time view as at 01/02/1991.

**Changes to legislation:** National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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<sup>M49</sup> Health Services and Public Health Act 1968*

**Marginal Citations**

**M49** 1968 c. 46.

- 26 (1) In section 59(2) (extension of power), for the words “IV” and “1947” substitute the words “II” and “1978” respectively.
- (2) In section 63 (provision of instruction for employees)—
- (a) in subsection 2(d), for the words “IV” and “1947” substitute the words “II” and “1978” respectively;
- (b) in subsection (8), in paragraph (b) of the definition of “the relevant enactments”, for the words “section 6 of the National Health Service (Scotland) Act 1972” substitute the words “section 39 of the National Health Service (Scotland) Act 1978”.
- 27 In section 64 (financial assistance to voluntary organisations)—
- (a) in subsection (4)(a), for the words “1972” substitute the words “1978”;
- (b) in subsection (4)(b), for the words “IV” and “1947” substitute the words “II” and “1978”.
- 28 In section 65(6) (assistance by local authorities to voluntary organisations), in paragraph (c) of the substituted subsection (2B), for the words “1947 to 1972” substitute the words “1978”.

*The<sup>M50</sup> Social Work (Scotland) Act 1968*

**Marginal Citations**

**M50** 1968 c. 49.

- 29 (1) In section 60(1)(f) (control of certain establishments), for the words “1947 or the National Health Service (Scotland) Act 1972” substitute the words “1978”.
- (2) In section 86(3) for the words “Part II of the [National Health Service (Scotland) Act 1947” substitute the words “Part II of the National Health Service (Scotland) Act 1978”.
- (3) In section 94(1), in the definition of “hospital”, for the words “1947” substitute the words “1978”.

*The<sup>M51</sup> Medicines Act 1968*

**Marginal Citations**

**M51** 1968 c. 67.

- 30 In section 131(5) (meaning of certain expressions), for the words “Acts 1947 to 1972” substitute the words “Act 1978”.

*Status: Point in time view as at 01/02/1991.*

**Changes to legislation:** National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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)

- 31 In section 132(1) (interpretation), in the definition of “health centre”, for the words “section 2 of the National Health Service (Scotland) Act 1972” substitute the words “section 36 of the National Health Service (Scotland) Act 1978”.

*The <sup>M52</sup> Post Office Act 1969*

**Marginal Citations**

**M52** 1969 c. 48.

- 32 In section 86(1) (interpretation), in paragraph (b) of the definition of “national health service authority”, for the words “1972” substitute the words “1978”.

*The <sup>M53</sup> Chronically Sick and Disabled Persons Act 1970*

**Marginal Citations**

**M53** 1970 c. 44.

- 33 In section 17(1) (separation of younger from older patients), for the words “1972” substitute the words “1978”.

- 34 ..... **F114**

**Textual Amendments**

**F114** Sch. 16 para. 34 repealed by Finance Act 1980 (c. 48), Sch. 20 Pt. III

*The <sup>M54</sup> Tribunals and Inquiries Act 1971*

**Marginal Citations**

**M54** 1971 c. 62.

- 35 In paragraph 41 of Part II of Schedule 1 (tribunals supervised by Scottish Committee),—
- (a) in sub-paragraph (a), for the words “13 of the National Health Service (Scotland) Act 1978”;
  - (b) in sub-paragraph (b), for the words “section 43 of the National Health Service (Scotland) Act 1947 (c. 27)” substitute the words “section 29 of the National Health Service (Scotland) Act 1978”;
  - (c) in sub-paragraph (c), for the words “Acts 1947 to 1972” substitute the words “Act 1978”.

*Status: Point in time view as at 01/02/1991.*

**Changes to legislation:** National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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 <sup>M55</sup> Finance Act 1971*

#### **Marginal Citations**

**M55** 1971 c. 68.

36 In Schedule 13 (health service agreement) in paragraph 1(1) for the words “1947” substitute the words “1978”.

37 ..... **F115**

#### **Textual Amendments**

**F115** Sch. 16 para. 37 repealed by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844(4), **Sch. 31**

### *The <sup>M56</sup> Local Government (Scotland) Act 1973*

#### **Marginal Citations**

**M56** 1973 c. 65.

38 In section 197 (inspection of documents) for the words “1972” substitute the words “1978”.

### *The <sup>M57</sup> Trade Union and Labour Relations Act 1974*

#### **Marginal Citations**

**M57** 1974 c. 52.

39 In section 30(2) (interpretation), in paragraph (a), for the words “section 34, section 39, section 40 or section 42 of the National Health Service (Scotland) Act 1947” substitute the words “sections 19, 25, 26 and 27 of the National Health Service (Scotland) Act 1978”.

### *The <sup>M58</sup> Social Security Act 1975*

#### **Marginal Citations**

**M58** 1975 c. 14.

40 In section 37A(6) (mobility allowance), in paragraph (a) for the words “section 33 of the Health Services and Public Health Act 1968” substitute the words “section 46 of the National Health Service (Scotland) Act 1978”.

*Status: Point in time view as at 01/02/1991.*

**Changes to legislation:** *National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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<sup>M59</sup> Criminal Procedure (Scotland) Act 1975*

**Marginal Citations**

**M59** 1975 c. 21.

- 41 In section 462 (interpretation), in the definition of “hospital”, for the words “1947” substitute the words “1978”.

*The<sup>M60</sup> House of Commons Disqualification Act 1975*

**Marginal Citations**

**M60** 1975 c. 24.

- 42 In Schedule 1 in Part II (bodies of which all members are disqualified), in the entry relating to the Medical Practices Committee for the words “section 35 of the National Health Service (Scotland) Act 1947” substitute the words “section 3 of the National Health Service (Scotland) Act 1978”.

- 43 ..... **F116**

**Textual Amendments**

**F116** Ss. 16(3), 20(2), 51, 52, 59–63, 65–68, 96(2), Sch. 16 paras. 25, 43 repealed by Health Services Act 1980 (c. 53), Sch. 7

- 44 ..... **F117**

**Textual Amendments**

**F117** Sch. 16 para. 44 repealed by Social Security Act 1990 (c. 27, SIF 113:1), s. 21(1)(2), Sch. 6 para. 14, Sch. 7

*The<sup>M61</sup> Patents Act 1977*

**Marginal Citations**

**M61** 1977 c. 37.

- 45 In section 56(4), in paragraph (a), for the words “Part IV of the National Health Service (Scotland) Act 1947” substitute the words “Part II of the National Health Service (Scotland) Act 1978”



*Status: Point in time view as at 01/02/1991.*

**Changes to legislation:** National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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)

## SCHEDULE 17

### REPEALS

#### Modifications etc. (not altering text)

**C50** The text of Sch. 17 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Chapter	Short Title	Extent of Repeal
10 & 11 Geo. 6. c. 27.	The National Health Service (Scotland) Act 1947.	The whole Act.
12, 13 & 14 Geo. 6. c. 93.	The National Health Service (Amendment) Act 1949.	Section 8.  Sections 10 and 11. Sections 14 to 18. Sections 20(1), (3) and 21. Sections 23 and 28. In section 32(1), the words “and this Act” where they second occur to “1947 and 1949”. In the Schedule, Part II.
14 & 15 Geo. 6. c. 31.	The National Health Service Act 1951.	The whole Act.
15 & 16 Geo. 6 & 1 Eliz. 2. c. 25.	The National Health Service Act 1952.	The whole Act.
1 & 2 Eliz. 2. c. 41.	The Hospital Endowments (Scotland) Act 1953.	The whole Act.
9 & 10 Eliz. 2. c. 19.	The National Health Service Act 1961.	The whole Act.
1964 c. 60	The Emergency Laws (Re-enactments and Repeals) Act 1964.	Section 5.  In section 15, the words “the National Health Service (Scotland) Acts 1947 to 1972”.
1966 c. 8.	The National Health Service Act 1966.	In section 12(2), from the words “so far as” where they second occur to the end.
1968 c. 46.	The National Health Services and Public Health Act 1968.	In section 63(8), in paragraph (b) of “the relevant

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*Status: Point in time view as at 01/02/1991.*

**Changes to legislation:** *National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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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		enactments", the words "the 1947 Act".
		In section 64(4), in the substituted paragraph (a), the words "the National Health Service (Scotland) Act 1947".
		In section 79(1), from the words "and the" where they second occur to the words "1947 to 1968".
		In Schedule 2, Part II.
		In Schedule 3, Part I.
1968 c. 67.	The Medicines Act 1968.	In Schedule 5, paragraph 12.
1971 c. 8.	The Hospital Endowments (Scotland) Act 1971.	The whole Act.
1972 c. 58.	The National Health Service (Scotland) Act 1972.	The whole Act except sections 24(2), 26 to 28, 32 to 36, 52, 53, 61(1)-(3), and Schedule 4.
1973 c. 32.	The National Health Service Reorganisation Act 1973.	The whole Act.
1976 c. 48	The Parliamentary and other Pensions and Salaries Act 1976.	Section 7.
1976 c. 59.	The National Health Service (Vocational Training) Act 1976.	The whole Act.
1976 c. 83.	The Health Services Act 1976.	Section 2.
		Sections 4 and 5.
		Sections 7 to 11.
		In section 23 subsections (3) and (4).
		In Schedule 1, Part VI.
		Schedule 3.
		In Schedule 4, Part II.

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**Status:**

Point in time view as at 01/02/1991.

**Changes to legislation:**

National Health Service (Scotland) Act 1978 is up to date with all changes known to be in force on or before 15 June 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.