



National Health Service (Scotland) Act 1978

1978 CHAPTER 29

PART IV

POWERS OF THE SECRETARY OF STATE

Inquiries, and default and emergency powers

[^{F1}78A Powers in case of service failure

- (1) This section applies where—
 - (a) it is a function of a body or person under or by virtue of this Act^[F2], or under or by virtue of the 2021 Act,] to provide, or secure the provision of, a service, and
 - (b) the Scottish Ministers consider that the body or person has failed, is failing or is likely to fail—
 - (i) to provide the service, or
 - (ii) to provide it to a standard which they regard as acceptable.
- (2) The Scottish Ministers may, where they consider it necessary for the purpose of ensuring the provision of the service in question to a standard which they regard as acceptable, direct that specified functions of the body or person under or by virtue of this Act [^{F3}or, as the case may be, under or by virtue of the 2021 Act] be performed, for a specified period and to a specified extent, by—
 - (a) a body falling within subsection (4), or
 - (b) one or more persons falling within subsection (5).
- (3) In subsection (2), “specified” means specified in the direction.
- (4) A body falls within this subsection if it is—
 - (a) a Health Board,
 - (b) a Special Health Board,^{F4} . . .
 - (c) the Agency [^{F5}, or

Changes to legislation: National Health Service (Scotland) Act 1978, Section 78A is up to date with all changes known to be in force on or before 13 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) View outstanding changes

- (d) HIS.]
- (5) A person falls within this subsection if the person is—
- (a) an employee of a Health Board, a Special Health Board [^{F6}, the Agency or HIS.],
 - (b) a member of the staff of the Scottish Administration, or
 - (c) an employee of a local authority.
- (6) A body or person appointed by a direction given under subsection (2) to perform functions of a body or person referred to in subsection (1) is referred to in this section as an “appointed person”.
- (7) An appointed person must comply with a direction given under subsection (2).
- (8) The remuneration and expenses of, and any other costs reasonably incurred by, an appointed person in performing the functions specified in the direction shall, unless otherwise specified in the direction, be paid by the body or person referred to in subsection (1).
- (9) Anything done or omitted by an appointed person in performing the functions specified in the direction is to be regarded as done or omitted by the body or person referred to in subsection (1).
- (10) A person dealing with an appointed person in good faith and for value is not concerned to inquire whether the appointed person is acting within the powers conferred by virtue of the direction.
- (11) The Scottish Ministers may vary or withdraw a direction given under subsection (2).]

Textual Amendments

- F1** Ss. 78A, 78B inserted (30.9.2004) by [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\)](#), ss. 6, 12(1); S.S.I. 2004/361, [art. 2\(b\)\(i\)](#)
- F2** Words in s. 78A(1)(a) inserted (1.4.2022) by [Forensic Medical Services \(Victims of Sexual Offences\) \(Scotland\) Act 2021 \(asp 3\)](#), s. 20(2), [sch. para. 1\(10\)\(a\)](#) (with s. 3); S.S.I. 2022/24, reg. 2
- F3** Words in s. 78A(2) inserted (1.4.2022) by [Forensic Medical Services \(Victims of Sexual Offences\) \(Scotland\) Act 2021 \(asp 3\)](#), s. 20(2), [sch. para. 1\(10\)\(b\)](#) (with s. 3); S.S.I. 2022/24, reg. 2
- F4** Word in s. 78A(4) repealed (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 17 para. 10\(a\)\(i\)](#); S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F5** S. 78A(4)(d) and word inserted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 17 para. 10\(a\)\(ii\)](#); S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F6** Words in s. 78A(5)(a) substituted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 17 para. 10\(b\)](#); S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.

Modifications etc. (not altering text)

- C1** S. 78A modified (1.4.2012) by [Patient Rights \(Scotland\) Act 2011 \(asp 5\)](#), ss. 21(1), 26(3) (with ss. 18(3), 20); S.S.I. 2012/35, art. 2(a)

Changes to legislation:

National Health Service (Scotland) Act 1978, Section 78A is up to date with all changes known to be in force on or before 13 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.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 16A(5) added by [2002 asp 5 Sch. 2 para. 2\(2\)](#)
- s. 19A(2)(b) words repealed by [2003 asp 4 sch. 4 para. 5\(4\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(a) words substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(b) substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(c) words substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(e) word substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 70A inserted by [1997 c. 46 s. 26\(2\)](#)
- s. 70A(2) word substituted by [2005 asp 13 s. 14\(3\)](#)
- s. 85AB(7) inserted by [2005 asp 13 sch. 2 para. 2\(18\)\(b\)](#)
- Sch. 11 para. 2(1A) inserted by [2005 asp 13 s. 14\(6\)\(a\)](#)