



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART V

#### PROPERTY AND FINANCE

##### *Finance and accounts*

#### **[<sup>F1</sup> 85B Schemes for meeting losses and liabilities etc. of certain health service bodies.**

(1) The Secretary of State may by regulations made with the consent of the Treasury establish a scheme whereby any of the bodies mentioned in subsection (2) may make provision to meet—

- (a) expenses arising from any loss of or damage to their property; and
- (b) liabilities to third parties for loss, damage (including solatium) or injury arising out of the carrying out of the functions of the bodies concerned.

(2) The bodies referred to in subsection (1) are—

- (a) Health Boards;
- (b) the Agency;
- (c) <sup>F2</sup> .....
- (d) NHS trusts <sup>F3</sup>[<sup>F4</sup> ...
- (e) Special Health Boards][<sup>F5</sup>;  
[ HIS;]<sup>F7</sup>...
- <sup>F6</sup>(ea) (f) the Mental Welfare Commission for Scotland],  
[ local authorities; and
- <sup>F8</sup>(g) (h) integration joint boards established by order under section 9(2) of the 2014 Act,]

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but a scheme under this section may limit the class or description of bodies which are eligible to participate in it.

[ The reference—

- <sup>F9</sup>(2A) (a) in paragraph (a) of subsection (1) to property of HIS is to be construed as a reference to property held by HIS in connection with the exercise of its health service functions;
- (b) in paragraph (b) of that subsection to the functions of HIS is to be construed as a reference to the health service functions of that body.]

[ The reference—

- <sup>F10</sup>(2B) (a) in paragraph (a) of subsection (1) to property of a local authority is to be construed as a reference to property held by a local authority in connection with the exercise of its relevant functions;
- (b) in paragraph (b) of that subsection to the functions of a local authority is to be construed as a reference to the relevant functions of a local authority.

(2C) In subsection (2B), “relevant functions” means—

- (a) integration functions; and
- (b) such other functions as the Scottish Ministers may by order specify.

(2D) In subsection (2C)(a), “integration functions” means functions which in pursuance of an integration scheme under the 2014 Act are—

- (a) delegated to the authority;
- (b) to be carried out in conjunction with functions delegated to the authority (that is, functions set out in the integration scheme in pursuance of section 1(3)(c) of that Act); or
- (c) to be carried out by the authority by virtue of a direction under section 26 of the 2014 Act.]

(3) Without prejudice to the generality of the power conferred by subsection (1), a scheme under this section may-

- (a) provide for the scheme to be administered by the Secretary of State, the Agency [<sup>F11</sup> HIS ], or a Health Board or NHS trust specified in the scheme;
- (b) require any body which participates in the scheme to make payments in accordance with the scheme; and
- (c) provide for the making of payments for the purposes of the scheme by the Secretary of State.

(4) Without prejudice to any other power of direction conferred on the Secretary of State,-

- (a) if the Secretary of State so directs, any body which is eligible to participate in a scheme shall do so; and
- (b) where a scheme provides for it to be administered by the Secretary of State, the Agency [<sup>F12</sup> , HIS ] or a Health Board or NHS trust shall carry out such functions in connection with the administration of the scheme as the Secretary of State may direct.

[ Subsection (4)(a) does not apply in relation to a local authority.]

<sup>F13</sup>(4A)

(5) Neither the Secretary of State nor any body administering a scheme under this section shall, by virtue of their activities under the scheme, be regarded as [<sup>F14</sup>effecting or

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carrying out contracts of insurance for the purposes of the Financial Services and Markets Act 2000].]

[<sup>F15</sup>(6) In this section, “the 2014 Act” means the Public Bodies (Joint Working) (Scotland) Act 2014.]

#### Textual Amendments

- F1** S. 85B inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 41**
- F2** S. 85B(2)(c) repealed (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), arts. 1, 3, **Sch. 2**
- F3** Word in s. 85B(2) repealed (13.5.2002) by 2002 asp 5, **s.21(a)**; S.S.I. 2002/170, **art. 2**
- F4** S. 85B(2)(e) and the word preceding it inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 56(b)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**
- F5** S. 85B(2)(f) and the word preceding it inserted (13.5.2002) by 2002 asp 5, **s. 21(b)**; S.S.I. 2002/170, **art. 2(2)**
- F6** S. 85B(2)(ea) 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. 18(a)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F7** Word in s. 85B(2) repealed (25.2.2015) by Public Bodies (Joint Working) (Scotland) Act 2014 (asp 9), **ss. 65(2)(a), 72(2)**; S.S.I. 2014/231, art. 2A (as amended (25.2.2015) by S.S.I. 2015/44, art. 2)
- F8** S. 85B(2)(g)(h) added (25.2.2015) by Public Bodies (Joint Working) (Scotland) Act 2014 (asp 9), **ss. 65(2)(b), 72(2)**; S.S.I. 2014/231, art. 2A (as amended (25.2.2015) by S.S.I. 2015/44, art. 2)
- F9** S. 85B(2A) 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. 18(b)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F10** Ss. 85B(2B)-(2D) inserted (25.2.2015) by Public Bodies (Joint Working) (Scotland) Act 2014 (asp 9), **ss. 65(3), 72(2)**; S.S.I. 2014/231, art. 2A (as amended (25.2.2015) by S.S.I. 2015/44, art. 2)
- F11** Word in s. 85B(3)(a) 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. 18(c)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F12** Words in s. 85B(4)(b) 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. 18(d)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F13** S. 85B(4A) inserted (25.2.2015) by Public Bodies (Joint Working) (Scotland) Act 2014 (asp 9), **ss. 65(4), 72(2)**; S.S.I. 2014/231, art. 2A (as amended (25.2.2015) by S.S.I. 2015/44, art. 2)
- F14** Words in s. 85B(5) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 221**
- F15** S. 85B(6) inserted (25.2.2015) by Public Bodies (Joint Working) (Scotland) Act 2014 (asp 9), **ss. 65(5), 72(2)**; S.S.I. 2014/231, art. 2A (as amended (25.2.2015) by S.S.I. 2015/44, art. 2)

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

- C1** Ss. 85B, 86 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C2** S. 85B applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
- S. 85B applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)
- S. 85B applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
- S. 85B applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**
- S. 85B applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
- S. 85B applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
- S. 85B applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
- S. 85B applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))

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**Changes and effects yet to be applied to :**

- s. 85B(2) word repealed by [2002 asp 5 s. 21\(a\)](#)
- s. 85B(2)(d) repealed by [2004 asp 7 sch. 2](#)
- s. 85B(2)(f) and word inserted by [2002 asp 5 s. 21\(b\)](#)
- s. 85B(3)(a) words repealed by [2004 asp 7 sch. 2](#)
- s. 85B(4)(b) words repealed by [2004 asp 7 sch. 2](#)

**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\(6\)\(a\)](#)