



# National Health Service and Community Care Act 1990

## 1990 CHAPTER 19

### PART II

#### THE NATIONAL HEALTH SERVICE: SCOTLAND

##### *National Health Service trusts*

### **31 National Health Service trusts.**

After section 12 of the 1978 Act there shall be inserted the following sections—

#### **“12A National Health Service trusts.**

- (1) Subject to subsection (2), the Secretary of State may by order establish bodies, to be known as National Health Service trusts (in this Act referred to as “NHS trusts”)—
  - (a) to assume responsibility, in accordance with this Act, for the ownership and management of hospitals or other establishments or facilities which were previously managed or provided by Health Boards or the Agency; or
  - (b) to provide and manage hospitals or other establishments or facilities.
- (2) The Secretary of State shall by regulations provide for such consultation as may be so prescribed to be carried out by a Health Board or the Agency, before he makes an order under subsection (1).
- (3) Every NHS trust—
  - (a) shall be a body corporate having a board of directors consisting of a chairman appointed by the Secretary of State and, subject to paragraph 5(2) of Schedule 7A, executive and non-executive directors (that is to

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- say, directors who, subject to subsection (5), respectively are and are not employees of the trust); and
- (b) shall have the functions conferred on it by an order under subsection (1) and by Schedule 7A.
- (4) The functions specified in an order under subsection (1) shall include such functions as the Secretary of State considers appropriate in relation to the provision of services by the trust for one or more of the following—
- (a) Health Boards; and
- (b) the Agency.
- (5) Regulations may make general provision with respect to—
- (a) the qualifications for and the tenure of office of the chairman and directors of an NHS trust (including the circumstances in which they shall cease to hold, or may be removed from, office or may be suspended from performing the functions of the office);
- (b) the persons by whom the directors and any of the officers are to be appointed and the manner of their appointment;
- (c) the maximum and minimum numbers of the directors;
- (d) the circumstances in which a person who is not an employee of the trust is nevertheless, on appointment as a director, to be regarded as an executive rather than as a non-executive director;
- (e) the proceedings of the trust (including the validation of proceedings in the event of a vacancy or defect in appointment);
- (f) the appointment, constitution and exercise of functions by committees and sub-committees of the trust (whether or not consisting of or including any members of the board); and
- (g) the application of the seal of the trust and the constitution and proof of instruments.
- (6) Part I of Schedule 7A shall have effect with respect to orders under subsection (1); Part II of that Schedule shall have effect, subject to subsection (7), with respect to the general duties and the powers and status of NHS trusts; the supplementary provisions of Part III of that Schedule shall have effect; and Part IV of that Schedule shall have effect with respect to the dissolution of NHS trusts.
- (7) The specific powers conferred by paragraphs 14 and 15 in Part II of Schedule 7A may be exercised only to the extent that the exercise will not—
- (a) interfere with the duty of the trust to comply with directions under paragraph 6 of that Schedule; and
- (b) to any significant extent interfere with the performance by the trust of its obligations under any NHS contract or any obligations imposed by an order under subsection (1).
- (8) The Secretary of State may by order confer on NHS trusts specific powers additional to those contained in paragraphs 10 to 15 of Schedule 7A.

### **12B Transfer of staff to NHS trusts.**

- (1) Subject to subsection (5), this section applies to any person who, immediately before an NHS trust's operational date—

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- (a) is employed by a Health Board or the Agency (in this section and section 12C referred to as a “transferor authority”) to work solely at, or for the purposes of, a hospital or other establishment or facility which is to become the responsibility of the trust; or
  - (b) is employed by a transferor authority to work at, or for the purposes of, any such hospital, establishment or facility and is designated for the purposes of this section by a scheme made by the body specified as mentioned in paragraph 3(1)(f) of Schedule 7A.
- (2) A scheme under this section shall not have effect unless approved by the Secretary of State.
- (3) Subject to section 12C, the contract of employment between a person to whom this section applies and the transferor authority shall have effect from the operational date as if originally made between him and the NHS trust.
- (4) Without prejudice to subsection (3)—
  - (a) all the transferor authority’s rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred to the NHS trust on its operational date; and
  - (b) anything done before that date by or in relation to the transferor authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the NHS trust.
- (5) In any case where—
  - (a) an order under section 12A(1) provides for the establishment of an NHS trust with effect from a date earlier than the operational date of the trust; and
  - (b) on or after that earlier date but before its operational date the NHS trust makes an offer of employment by the trust to a person who at that time is employed by a Health Board or the Agency to work, whether solely or otherwise, at, or for the purposes of, the hospital or other establishment or facility which is to become the responsibility of the trust; and
  - (c) as a result of the acceptance of the offer, the person to whom it was made becomes an employee of the NHS trust,subsections (3) and (4) shall have effect in relation to that person’s contract of employment as if he were a person to whom this section applies and any reference in those subsections to the operational date of the trust were a reference to the date on which he takes up employment with the trust.
- (6) Subsections (3) and (4) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only of the change in employer effected by this section.
- (7) A scheme under this section may designate a person either individually or as a member of a class or description of employees.

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### **12C Supplementary provisions as to transfer of staff.**

- (1) In the case of a person who falls within subsection (1)(b) of section 12B, a scheme under that section may provide that, with effect from the NHS trust's operational date, his contract of employment (in this section referred to as "his original contract") shall be treated in accordance with the scheme as divided so as to constitute—
  - (a) a contract of employment with the NHS trust; and
  - (b) a contract of employment with the transferor authority by whom he was employed before that date.
- (2) Where a scheme makes provision as mentioned in subsection (1)—
  - (a) the scheme shall secure that the benefits to the employee under the two contracts referred to in that subsection, when taken together, are not less favourable than the benefits under his original contract;
  - (b) section 12B shall apply in relation to the contract referred to in subsection (1)(a) as if it were a contract transferred under that section from the transferor authority to the NHS trust;
  - (c) so far as necessary to preserve any rights and obligations, the contract referred to in subsection (1)(b) shall be regarded as a continuation of the employee's original contract; and
  - (d) for the purposes of section 146 of and Schedule 13 to the Employment Protection (Consolidation) Act 1978, the number of hours normally worked, or, as the case may be, the hours for which the employee is employed in any week under either of those contracts shall be taken to be the total of the hours normally worked or, as the case may be, for which he is employed under the two contracts taken together.
- (3) Where, as a result of the provisions of section 12B, by virtue of his employment during any period after the NHS trust's operational date—
  - (a) an employee has contractual rights against an NHS trust to benefits in the event of his redundancy, and
  - (b) he also has statutory rights against the NHS trust under Part VI of the Employment Protection (Consolidation) Act 1978 (redundancy payments),
 any benefits provided to him by virtue of the contractual rights referred to in paragraph (a) shall be taken as satisfying his entitlement to benefits under Part VI of that Act.

### **12D Transfer of property rights and liabilities to NHS trusts.**

- (1) The Secretary of State may by order provide for the transfer to an NHS trust, with effect from such date as may be specified in the order, of such of the property, liabilities and obligations of a Health Board, the Agency or the Secretary of State as, in his opinion, need to be transferred to the NHS trust for the purpose of enabling it to carry out its functions.
- (2) An order under this section may create or impose, or provide for the creation or imposition of, such new rights, liabilities or obligations in respect of what is transferred or what is retained by a Health Board or the Agency as appear to the Secretary of State to be necessary or expedient.

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- (3) Nothing in this section affects the power of the Secretary of State or any power of a Health Board or the Agency to transfer property, liabilities or obligations to an NHS trust otherwise than under subsection (1).
- (4) Stamp duty shall not be chargeable in respect of any transfer to an NHS trust effected by virtue of an order under this section.
- (5) Where an order under this section provides for the transfer—
  - (a) of land held on lease from a third party, that is to say, a person other than the Secretary of State; or
  - (b) of any other asset leased or hired from a third party or in which a third party has an interest,the transfer shall be binding on the third party notwithstanding that, apart from this subsection, it would have required his consent or concurrence, or would have required to be intimated to him.
- (6) Any property, liabilities and obligations which are to be transferred to an NHS trust shall be identified by agreement between, on the one hand, the NHS trust and, on the other hand, a Health Board or the Agency; or, in default of agreement, by direction of the Secretary of State.
- (7) Where, for the purpose of a transfer pursuant to an order under this section, it becomes necessary to apportion any property, liabilities and obligations, the order may contain such provisions as appear to the Secretary of State to be appropriate for the purpose; and where any such property falls within subsection (5), the order shall contain such provisions as appear to the Secretary of State to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.
- (8) Without prejudice to section 105(7), an order under this section may include provision for matters to be settled by arbitration by a person determined in accordance with the order.

#### **12E Originating capital debt of, and other financial provisions relating to NHS trusts.**

- (1) Each NHS trust shall have an originating capital debt of an amount specified in an order made by the Secretary of State with the consent of the Treasury, being an amount representing, subject to subsection (2), the excess of the valuation of the assets which, on or in connection with the establishment of the trust, are or are to be transferred to it (whether before, on or after its operational date) over the amounts of the liabilities which are or are to be so transferred.
- (2) In determining the originating capital debt of an NHS trust, there shall be left out of account such assets or, as the case may be, such liabilities as are, or are of a class, determined for the purposes of this section by the Secretary of State, with the consent of the Treasury.
- (3) An NHS trust's originating capital debt shall be deemed to have been issued out of moneys provided by Parliament and shall constitute an asset of the Consolidated Fund.

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- (4) In accordance with an order under subsection (1), an NHS trust's originating capital debt shall be divided between—
  - (a) a loan on which interest shall be paid at such variable or fixed rates and at such times as the Treasury may determine; and
  - (b) public dividend capital.
- (5) The loan specified in subsection (4)(a) is in this Part of this Act referred to as an NHS trust's "initial loan" and a rate of interest on the initial loan shall be determined as if section 5 of the National Loans Act 1968 had effect in respect of it and subsections (5) to (5B) of that section shall apply accordingly.
- (6) Subject to subsections (4)(a) and (5), the terms of the initial loan shall be such as the Secretary of State, with the consent of the Treasury, may determine; and, in the event of the early repayment of the initial loan, the terms may require the payment of a premium or allow a discount.
- (7) With the consent of the Treasury, the Secretary of State may determine the terms on which any public dividend capital forming part of an NHS trust's originating capital debt is to be treated as having been issued, and, in particular, may determine the dividend which is to be payable at any time on any public dividend capital.
- (8) Schedule 7B shall have effect with respect to—
  - (a) borrowing by NHS trusts;
  - (b) the limits on their indebtedness;
  - (c) the payment of additional public dividend capital to them; and
  - (d) the application of any surplus funds of NHS trusts.

#### **12F Financial obligations of NHS trusts.**

- (1) Every NHS trust shall ensure that its revenue is not less than sufficient, taking one financial year with another, to meet outgoings properly chargeable to revenue account.
- (2) It shall be the duty of every NHS trust to achieve such financial objectives as may from time to time be set by the Secretary of State with the consent of the Treasury and as are applicable to it; and any such objectives may be made applicable to NHS trusts generally, or to a particular NHS trust or to NHS trusts of a particular description."

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