

2002 No. 534

NATIONAL HEALTH SERVICE

The NHS Quality Improvement Scotland Order 2002

Made 30th November 2002

Laid before the Scottish Parliament 2nd December 2002

Coming into force in accordance with article 1(2) and (3)

The Scottish Ministers, in exercise of the powers conferred by sections 2(1)(b), (1A), (1B) and (1C) and 105(6) and (7) of the National Health Service (Scotland) Act 1978(a), and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and Commencement

- 1.—(1) This Order may be cited as the NHS Quality Improvement Scotland Order 2002.
- (2) This Order, except for article 7, shall come into force 1st January 2003.
- (3) Article 7 of this Order shall come into force on 2nd January 2003.

Interpretation

2. For the purposes of this Order—
 - “the Act” means the National Health Service (Scotland) Act 1978;
 - “the Board” means the Special Health Board, to be known by the name of NHS Quality Improvement Scotland, which is constituted by this Order.

Constitution, name and area of the Board

3. There is hereby constituted a Special Health Board for the whole of Scotland to be known as NHS Quality Improvement Scotland.

Functions of the Board

- 4.—(1) The Board shall exercise the following functions of the Scottish Ministers:—
 - (a) functions in relation to—
 - (i) supporting, ensuring and monitoring the quality of healthcare provided by the National Health Service in Scotland including without prejudice to the foregoing generality, providing quality assurance and accreditation; and
 - (ii) the evaluation and provision of advice to the National Health Service in Scotland on the clinical and cost effectiveness of new and existing health technologies including drugs,

(a) 1978 c.29; section 2(1) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41) (“the 1983 Act”), Schedule 7, paragraph 1, and by the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), section 28 which inserted sub-sections (1)(b), (1A), (1B) and (1C); section 105(7) was amended by the Health Services Act 1980 (c.53) (“the 1980 Act”), Schedule 6, paragraph 5(1) and Schedule 7, the 1983 Act, Schedule 9, paragraph 24, and the Health Act 1999 (c.8) (“the 1999 Act”), Schedule 4, paragraph 60. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

- conferred on them by the Act including, without prejudice to the foregoing generality, those specified in section 1(1) of the Act; and
- (b) functions specified in paragraph (2) subject, however, to any limitations specified.
- (2) The functions specified in this paragraph are as follows:–
- (a) the power of the Scottish Ministers under section 16(1) of the Act to assist voluntary organisations whose activities include the provisions of a service similar or related to the functions of the Board;
- (b) the power of the Scottish Ministers under section 16B(a) of the Act to give financial assistance to voluntary organisations limited to assistance to such organisations whose activities consist of or include the provision of services similar to or related to the functions of the Board or for the provision of which the Board is under a duty to make arrangements and such assistance shall be given on such terms and conditions as the Scottish Ministers determine;
- (c) the power of the Scottish Ministers under section 42 of the Act to disseminate information relating to the promotion and maintenance of health and the prevention of illness;
- (d) the duty of the Scottish Ministers under section 47 of the Act to make available such facilities reasonably necessary for undergraduate and post-graduate clinical teaching and research and for the education and training of persons providing or intending to provide services under the Act and to conduct or assist by grants or otherwise under that section research into any matters relating to the functions of the Board;
- (e) the powers of the Scottish Ministers under section 79(1) of the Act(b) to take on lease or to purchase moveable property and land so far as required for the purposes of the Board and to use for those purposes and manage any heritable or moveable property so acquired;
- (f) the powers of the Scottish Ministers under sub-section (1A) of section 79 of the Act(c) to dispose of land no longer required for the purposes of the Board;
- (g) the power of the Scottish Ministers under paragraph 4 of Schedule 1(d) to the Act, as applied in relation to the Board by article 5, to pay remuneration to the Chairman of the Board and to such other members thereof as may be prescribed but excluding the power to determine the remuneration or to prescribe the members to whom it may be paid; and
- (h) the power of the Scottish Ministers under paragraph 13 of Schedule 1 to the Act, as applied in relation to the Board by article 5, to pay to members of the Board, and any committees and sub-committees thereof, travelling and other allowances but excluding the power to determine the amount of such allowances.
- (3) In exercising any functions of the Scottish Ministers to acquire, use, manage or dispose of land the Board shall ensure–
- (a) that any instrument in connection with the exercise of those functions is in the name of Scottish Ministers and not that of the Board; and
- (b) that, where any such instrument requires to be executed on behalf of the Scottish Ministers and it is not executed in accordance with section 1(8) of the Reorganisation of Offices (Scotland) Act 1939(e), it is executed on their behalf in accordance with paragraph 6 of Schedule 2 to the Requirements of Writing (Scotland) Act 1995(f).
- (4) Nothing in this Order shall prevent or restrict any of the following from exercising any function under the Act:–
- (a) the Scottish Ministers;
- (b) any Health Board;
- (c) any other Special Health Board; or
- (d) the Agency.

(a) Section 16B was inserted by the 1983 Act, section 3.

(b) Section 79(1) was amended by the 1990 Act, Schedule 9, paragraph 19(15)(a).

(c) Section 79(1A) was inserted by the 1983 Act, Schedule 7, paragraph 3, and repealed in part by the Requirements of Writing (Scotland) Act 1995 (“the 1995 Act”) (c.7), section 14(2) and Schedule 5.

(d) Paragraph 4 of Schedule 1 was amended by the 1990 Act, Schedule 5, paragraph 3.

(e) 1939 c.20; section 1(8) was amended by the 1995 Act, Schedule 5.

(f) 1995 c.7.

Applications of Enactments

5.—(1) Each of the enactments specified in column 1 of each Part of the Schedule (the subject matter of which is described generally in column 2) shall apply in relation to the Board as it applies in relation to Health Boards subject, however, to the modifications and limitations (if any) specified opposite thereto in column 3 and to paragraph (2).

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

Transfer of Property

6. On 1st January 2003, all property and liabilities vested in the Clinical Standards Board for Scotland(a) and the Health Technology Board for Scotland(b) shall transfer to and vest in the Board.

Dissolution and Revocation

7.—(1) The Clinical Standards Board for Scotland and the Health Technology Board for Scotland are hereby dissolved.

(2) The Clinical Standards Board for Scotland Order 1999(c) and the Health Technology Board for Scotland Order 2000(d) are hereby revoked.

MALCOLM CHISHOLM
A member of the Scottish Executive

St Andrew's House,
Edinburgh
30th November 2002

(a) Established by article 3 of the Clinical Standards Board for Scotland Order 1999 (S.I. 1999/726).
(b) Established by article 3 of the Health Technology Board for Scotland Order 2000 (S.S.I. 2000/47).
(c) S.I. 1999/726.
(d) S.S.I. 2000/47.

SCHEDULE
ENACTMENTS APPLIED TO THE BOARD

PART I
THE ACT

<i>Column 1 Enactment</i>	<i>Column 2 Nature of Provision</i>	<i>Column 3 Modifications and Limitations (where applicable)</i>
In the Act– In Part I		
In section 2–	Health Boards	
Sub-section (3)	Variation of area and functions of Health Board	
Sub-section (4)	Provisions incidental to variation of area or functions of Health Boards	
Sub-section (5)	Health Boards to act in accordance with regulations or directions(a)	
Sub-section (8)	Health Board to act as principal	
In section 10–	Common Services Agency	
Sub-section (4)	Power to provide that functions of Health Boards may be referred to the Agency(b)	
Section 13	Co-operation between Health Boards and other Authorities(c)	
Section 13A	Co-operation in planning of services for disabled persons, the elderly and others(d)	
Section 15–		
Sub-section (1)(b)	Supply of goods to local and education authorities and other public bodies	
Sub-section (1)(c)	Provision of services to local and education authorities(e)	
Sub-section (1)(d)	Use of health service premises by local and education authorities	
Sub-section (1)(e)	Use of health service vehicles etc. by local and education authorities	
Sub-section (2)	Arrangements with third parties for the supply of goods and materials	Applied so far as it relates to sub-section (1)(b)
Section 17A	Power to enter into arrangements with NHS bodies for the provision of goods and services (“NHS contracts”)(f)	

(a) Section 2(5) was amended by the 1990 Act, Schedule 9, paragraph 19(1).

(b) Section 10(4) was amended by the 1990 Act, Schedule 10 and by the 1999 Act, Schedule 4, paragraph 44.

(c) Section 13 was amended by the 1990 Act, Schedule 9, paragraph 19(4).

(d) Section 13A was inserted by the National Health Service (Amendment) Act 1986 (c.66) Section 5(1) and amended by the 1990 Act, Schedule 9, paragraph 19(5).

(e) Section 15 (1)(c) was amended by the 1980 Act, section 3(2).

(f) Section 17A was inserted by the 1990 Act, section 30 and amended by the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 102 and amended by the 1999 Act, Schedule 4, paragraph 46.

<i>Column 1 Enactment</i>	<i>Column 2 Nature of Provision</i>	<i>Column 3 Modifications and Limitations (where applicable)</i>
In Part IV Section 77	Default powers(a)	
In Part V In section 79–		
Sub-section (1A)	Power of the Scottish Ministers to dispose of land(b)	
Sub-section (3)	Power to acquire moveable property on behalf of the Scottish Ministers	
In section 83–		
Sub-section (1)	Power to hold property on trust	
Section 84	Power to trustees to make payments to Health Boards(c)	
Section 84A	Power to raise money and property by appeals, collections and other similar activities(d)	
Section 85AA	Means of meeting expenditure of Health Boards out of public funds(e)	
In section 85–	Expenses of certain bodies(f)	
Sub-section (1)	Payment of expenses of certain bodies	
Sub-section (2)	Date of allotment	
Sub-section (3)	Power to make directions to bodies listed in sub-section(1)	
Sub-section (4)	Conditions subject to which payments shall be made	
In section 85A–		
Sub-section (1)	Duty of bodies referred to in section 85(1) as regards expenditure(g)	
Sub-section (3)	Power to make directions in relation to duty under sub-section (1)	
Sub-section (4)	Disregard for the purposes of the section of certain trust funds	
Section 85B	Power to make provision for meeting losses and liabilities etc. of certain health service bodies(h)	
Section 86	Provision in relation to the keeping and auditing of accounts, to their submission to the Scottish Ministers(i)	

(a) Section 77 was amended by the 1990 Act, Schedule 9, paragraph 19(14).

(b) Section 79(1A) was inserted by section 14(2) and Schedule 7, paragraph 3 of the 1983 Act and was repealed in part by the 1995 Act, section 14(2) and Schedule 5.

(c) Section 84 was amended by the 1990 Act, Schedule 9, paragraph 19(10).

(d) Section 84A was inserted by the 1980 Act, section 5(2) and amended by the 1990 Act, Schedule 9, paragraph 19(17).

(e) Section 85AA was inserted by the 1999 Act, section 52.

(f) Section 85 was substituted by the 1999 Act, section 52.

(g) Section 85A was inserted by the 1980 Act, section 6(4) and amended by the Health and Medicines Act 1988 (c.49), section 16(4) and by the 1999 Act, Schedule 4, paragraph 55.

(h) Section 85B was inserted by the 1990 Act, section 41 and amended by the 1999 Act, Schedule 4, paragraph 56.

(i) Section 86 was amended by the 1990 Act, section 36(2) to (8) and amended by the 1999 Act, Schedule 4, paragraph 57.

<i>Column 1 Enactment</i>	<i>Column 2 Nature of Provision</i>	<i>Column 3 Modifications and Limitations (where applicable)</i>
Section 87	Power to make regulations as to financial arrangements of health service bodies	
In Part VII– Section 101	Protection of Health Boards(a)	
In Schedule 1– Paragraph 1	Health Boards Health Boards to be bodies corporate and have a common seal	
Paragraph 2	Appointment of Chairman and members	
Paragraph 4	Payment of remuneration to the Chairman and such members of Health Boards as may be prescribed(b)	
Paragraph 5	Employment of officers and servants(c)	
Paragraph 5A	Power to make regulations as to the date of appointment(d)	
Paragraph 6	Power to make regulations as to method of appointment, qualifications, remuneration and conditions of service of officers and servants	
Paragraph 7	Officers and servants employed in accordance with regulations and directions(e)	
Paragraph 7A	Power to make regulations providing for transfer of officers and servants(f)	
Paragraph 7B	Directions to Health Boards to place officers or servants at disposal of other bodies(g)	
Paragraph 11	Power to make regulations as to appointment, committees and procedure(h)	
Paragraph 11A	Subscription to funds of other bodies(i)	
Paragraph 12	Proceedings not to be invalidated by vacancies	
Paragraph 13	Payment to members of a Health Board, the committees and sub-committees thereof of travelling and other allowances, including compensation for loss of remunerative time	
Paragraph 14	Allowances not payable except in circumstances determined by the Scottish Ministers	
Paragraph 15	Time and method of payment of allowances	
In Schedule 5– Paragraph 7B	The Agency Power to make regulations providing for the transfer of officers and servants(j)	
Paragraph 7C	Power to make directions as to placing of staff with other bodies(k)	

(a) Section 101 was amended by the 1990 Act, Schedule 9, paragraph 19(19).

(b) Paragraph 4 was amended by the 1990 Act, Schedule 5, paragraph 3.

(c) Paragraph 5 was amended by the 1980 Act, Schedule 6, paragraph 7(2) and Schedule 7.

(d) Paragraph 5A was inserted by the 1983 Act, Schedule 7, paragraph 4 and amended by the 1990 Act, Schedule 5.

(e) Paragraph 7 was amended by the 1980 Act, Schedule 6, paragraph 7(3).

(f) Paragraph 7A was inserted by the 1990 Act, Schedule 5, paragraph 5.

(g) Paragraph 7B was inserted by the 1990 Act, Schedule 5, paragraph 5.

(h) Paragraph 11 was amended by the 1980 Act, Schedule 6, paragraph 7(4) and Schedule 7 and by the 1990 Act, Schedule 5, paragraph 7.

(i) Paragraph 11A was inserted by the 1980 Act, Schedule 6, paragraph 7(5).

(j) Paragraph 7B was inserted by the 1990 Act, Schedule 5, paragraph 11.

(k) Paragraph 7C was inserted by the 1990 Act, Schedule 5, paragraph 11.

PART II
ACTS OTHER THAN THE ACT

<i>Column 1 Enactment</i>	<i>Column 2 Nature of Provision</i>	<i>Column 3 Modifications and Limitations (where applicable)</i>
The Public Bodies (Admission to Meetings) Act 1960(a)	Admission of the public to meetings	
Health and Medicines Act 1988(b) section 7(1)-(8)	Extension of powers of Scottish Ministers for financing the Health Service	
Health Service Commissioners Act 1993(c)	Provisions for investigations by the Health Service Commissioner for Scotland	
Requirements of Writing (Scotland) Act 1995(d) Schedule 2, paragraph 6	Where they have delegated any function relating to the acquisition management or disposal of land, power of the Scottish Ministers to authorise any officer of a Health Board to execute an instrument on their behalf	

(a) 1960 c.67.
(b) 1988 c.49.
(c) 1993 c.46.
(d) 1995 c.7.

PART III
ENACTMENTS OTHER THAN ACTS OF PARLIAMENT

<i>Column 1 Enactment</i>	<i>Column 2 Nature of Provision</i>	<i>Column 3 Modifications and Limitations (where Applicable)</i>
The National Health Service (Professions Supplementary to Medicine) (Scotland) Regulations 1974(a)	Prohibits employment for provision of services under the National Health Service of certain health professions unless they are registered under the Professions Supplementary to Medicine Act 1960(b)	
The National Health Service (Financial Provisions) (Scotland) Regulations 1974(c)	Preparation of estimates of income and expenditure and accounts of Health Boards and related matters of a financial nature	Limited so as to exclude the application of any provisions relative to Local Health Councils or the Agency
The National Health Service (Food Premises) (Scotland) Regulations 1987(d)	Health Authorities (including Health Boards) to be treated for the purpose of food legislation (as defined in the Regulations) as both owners and occupiers of premises used by them	
The National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1991(e)	The determination of remuneration and conditions of service of officers of Health Boards	
The National Health Service (Appointment of Consultants) (Scotland) Regulations 1993(f)	Appointment as an officer of a Health Board of any registered medical or dental practitioner to the post of consultant or of any registered medical practitioner to the post of community medicine specialist	
The Health Boards (Membership and Procedure) (Scotland) Regulations 2001(g)	Provision as to the membership and procedure to be applied by Health Boards	Limited so as to exclude the application of the provisions of regulation 6(1)(e) and the provisions of regulation 7(1) in so far as regulation 7(1) prohibits the appointment of those also holding certain positions within Health Boards or National Health Service Trusts.

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- (a) S.I. 1974/549.
(b) 1960 c.66.
(c) S.I. 1974/468.
(d) S.I. 1987/2, amended by S.I. 1990/2625.
(e) S.I. 1991/537.
(f) S.I. 1993/994.
(g) S.I. 2001/302.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order constitutes from 1st January 2003 a Special Health Board for the whole of Scotland to be known as NHS Quality Improvement Scotland (“the Board”).

Article 4 of the Order confers on the Board functions including functions in relation to the quality of healthcare in the National Health Service in Scotland and the evaluation and provision of advice to the National Health Service in Scotland on the clinical and cost effectiveness of health technologies.

As part of its functions the Board will carry out the functions previously carried out by the Clinical Standards Board for Scotland and the Health Technology Board for Scotland, both Special Health Boards, which are dissolved on 2nd January 2003 by article 7.

Article 5 and the Schedule apply to the Board various provisions in enactments which apply to Health Boards in general. These include provisions as to funding, the keeping and auditing of accounts and the appointment and remuneration of Board members and staff. Provisions in certain other Acts of Parliament relevant to Health Boards are also applied as are certain provisions in subordinate legislation.

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