



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART I

#### ORGANISATION

##### *Administrative bodies*

## 2 Health Boards.

### (1) The Secretary of State

<sup>F1</sup>(a) shall by order constitute in accordance with Part I of Schedule 1 boards for such areas as he may by order determine, for the purpose of exercising <sup>F2</sup>such of his functions <sup>F3</sup>[relating to the health service] as he may so determine], and for the purpose of making arrangements on his behalf for the provision of the services mentioned in Part II; and those boards shall <sup>F4</sup>, without prejudice to subsection (1B),] be called Health Boards <sup>F5</sup>and]

<sup>F5</sup>(b) subject to subsections (1A) and (1C), may by order constitute boards, either for the whole of Scotland or for such parts of Scotland as he may so determine, for the purpose of exercising such of his functions <sup>F3</sup>[relating to the health service] as he may so determine; and those boards shall, without prejudice to subsection (1B), be called Special Health Boards.

<sup>F6</sup>(1A) An order made under subsection (1)(b) may determine an area for a Special Health Board constituted under that subsection which is the same as the areas determined—

- (a) for any other Special Health Board; or
- (b) for any Health Board or Health Boards constituted by an order or orders made under subsection (1)(a).

(1B) An order under subsection <sup>F7</sup>[<sup>F7</sup>(1)] may specify the name by which a board constituted by the order shall be known.

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- (1C) The Secretary of State may by order provide that such of the provisions of this Act or of any other enactment, or of any orders, regulations, schemes or directions made under or by virtue of this Act or of any other enactment, as apply in relation to Health Boards shall, subject to such modifications and limitations as may be specified in the order, so apply in relation to any Special Health Board so specified.]
- (2) The order or orders made under subsection [F8(1)(a)] determining the areas for which the Health Boards are to be constituted shall be separate from the order or orders constituting those Boards; and, before making any order determining such an area, the Secretary of State shall consult with such bodies and organisations as appear to him to be concerned.
- (3) The Secretary of State may by order vary the area of any Health Board, whether or not the variation involves the constitution of a new Board, or the termination of the functions of an existing Board; and, before making such an order, the Secretary of State shall consult with such bodies and organisations as appear to him to be concerned.
- (4) Any order under subsection (3) may make provision for any supplementary and incidental matters for which it appears to the Secretary of State to be necessary or expedient to provide, in particular for the transfer of officers and of property and liabilities.
- (5) In carrying out the purposes mentioned in subsection (1) [F9 and in exercising any function otherwise conferred on them by or under this Act] each Health Board shall act subject to, and in accordance with, such regulations as may be made, and such directions as may be given, by the Secretary of State; and such regulations and directions may be made or given generally or to meet the circumstances of a particular area or matter.
- (6) Regulations under subsection (5) shall make provision requiring each Health Board to submit to the Secretary of State a scheme for the exercise of their functions, and enabling the Secretary of State to approve any such scheme with or without modifications, and to make such a scheme in the event of the failure of any Health Board to do so.
- (7) A Health Board may at any time, and if directed by the Secretary of State shall, within such period as he may specify, submit a new scheme for the exercise of their functions, and regulations making the provision mentioned in subsection (6) shall, with any necessary modifications, apply to any such scheme.
- (8) A Health Board shall, notwithstanding that it is exercising functions on behalf of the Secretary of State, be entitled to enforce any rights acquired, and shall be liable in respect of any liabilities incurred (including liability in damages for wrongful or negligent acts or omissions), in the exercise of those functions in all respects as if the Health Board were acting as a principal; and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the Health Board in its own name.
- [F10(9) A Health Board shall not be entitled to claim in any proceedings any privilege of the Crown in respect of the recovery or production of documents; but this subsection shall be without prejudice to any right of the Crown to withhold, or procure the withholding from production of, any document on the ground that its disclosure would be contrary to the public interest.]
- (10) Schedule 1 shall have effect in relation to the Boards constituted under this section.

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[<sup>F11</sup>(10A) Schedule 1A makes provision for the election of individuals to be members of Health Boards.]

- (11) Where it appears to the Secretary of State to be expedient in the interests of efficiency that a joint committee should be established for the areas of two or more Health Boards for the purpose of exercising some but not all of their functions, the Secretary of State may by order constitute such a joint committee and provide for the exercise by that committee or such of those functions as may be specified in the order, and for the application, with such modifications as may be so specified, to that committee of any provisions of this Act relating to those functions, and for any of the matters for which, in relation to a Health Board, provision is or may be made by or under Part II of Schedule 1.

#### Textual Amendments

- F1** "(a)" inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 28(a)(i)
- F2** Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 14(2), **Sch. 7 para. 1**
- F3** Words in s. 2(1)(a)(b) substituted (6.8.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(2), **Sch. 2 para. 2(2)**
- F4** Words in s. 2(1)(a) inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 11(1), 12(1), **Sch. 1 para. 1(2)(a)**; S.S.I. 2004/361, **art. 2(b)(iv)**
- F5** S. 2(1)(b) and word "and" preceding it inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 28(a)(ii)
- F6** S. 2(1A)–(1C) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 28(b)
- F7** Word in s. 2(1B) substituted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 11(1), 12(1), **Sch. 1 para. 1(2)(b)**; S.S.I. 2004/361, **art. 2(b)(iv)**
- F8** "1(a)" substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 28(c)
- F9** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(1)**
- F10** S. 2(9) repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), **Sch. 10**
- F11** S. 2(10A) 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(1), 4, 6(2)(3), 7, 11(1)**; S.S.I. 2009/242, **art. 2**

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

- C1** S. 2 modified (15.8.1997) by 1997 c. 46, s. 10(2); S.I. 1997/1780, art. 2(1), **Sch.**
- C2** S. 2(3)–(5), (8) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C3** S. 2(3)–(5), (8) applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
S. 2(3)(4)(5)(8) applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
S. 2(3)(4)(5)(8) applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**  
S. 2(3)(4)(5)(8) applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**  
S. 2(3)(4)(5)(8) applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**  
S. 2(3)(4)(5)(8) applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**  
S. 2(3)(4)(5)(8) applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))  
S. 2(3)(4)(5)(8) applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
- C4** S. 2(5) amended by Hospital Complaints Procedure Act 1985 (c. 42, SIF 113:2), s. 1(1)

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## **[<sup>F12</sup> 2A Duty of Health Board, Special Health Board [<sup>F13</sup>, the Agency and HIS] to promote health improvement**

- (1) It is the duty of every Health Board and Special Health Board and of [<sup>F14</sup>HIS and] the Agency to promote the improvement of the physical and mental health of the people of Scotland.
- (2) A Health Board, a Special Health Board [<sup>F15</sup>the Agency or HIS] may do anything which they consider is likely to assist in discharging that duty including, in particular—
  - (a) giving financial assistance to any person,
  - (b) entering into arrangements or agreements with any person,
  - (c) co-operating with, or facilitating or co-ordinating the activities of, any person.
- (3) Subsections (1) and (2) are without prejudice to any other provision of this Act conferring or imposing functions on a Health Board, a Special Health Board [<sup>F16</sup>, the Agency or HIS].
- (4) Anything done by a Health Board or Special Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on—
  - (a) the Health Board by the order under section 2(1)(a) which constituted the Board, or
  - (b) the Special Health Board by the order under section 2(1)(b) which constituted the Board,
 as the case may be.]

### **Textual Amendments**

- F12** S. 2A inserted (1.1.2005) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 9(2), 12(1)**; S.S.I. 2004/361, **art. 2(c)**
- F13** Words in s. 2A title 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. 3**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F14** Words in s. 2A(1) 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. 2(a)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F15** Words in s. 2A(2) 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. 2(b)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F16** Words in s. 2A(3) 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. 2(c)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.

## **[<sup>F17</sup> 2B Duty to encourage public involvement**

- (1) It is the duty of every body to which this section applies to take action with a view to securing, as respects health services for which it is responsible, that persons to whom those services are being or may be provided are involved in, and consulted on—
  - (a) the planning and development, and
  - (b) decisions to be made by the body significantly affecting the operation, of those services.

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- (2) This section applies to—
- (a) Health Boards,
  - (b) Special Health Boards, and
  - (c) the Agency.
- (3) For the purposes of subsection (1) a body is responsible for health services if they are health services—
- (a) which it is the function of the body to provide, or secure the provision of, and
  - (b) which are provided, or to be provided, to individuals by—
    - (i) the body, or
    - (ii) another person on the body's behalf, at the body's direction or in accordance with an agreement made by the body with that other person.]

#### Textual Amendments

**F17** S. 2B inserted after s. 2A (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 7, 12(1); S.S.I. 2004/361, art. 2(b)(i)

### [<sup>F18</sup>2C Functions of Health Boards: primary medical services

- (1) Every Health Board—
- (a) must, to the extent that they consider necessary to meet all reasonable requirements, provide or secure the provision of primary medical services as respects their area; and
  - (b) may, to such extent, provide or secure the provision of primary medical services as respects the area of another Health Board,
- and primary medical services provided, or the provision of which is secured, by a Health Board under or by virtue of this subsection may be performed outside their area.
- (2) For the purpose of securing the provision of primary medical services under subsection (1), a Health Board may make such arrangements for the provision of the services as they think fit <sup>F19</sup> . . . .

[ But any contractual arrangement which a Health Board makes in pursuance of <sup>F20</sup>(2A) subsection (2) (other than an NHS contract) must be an agreement under section 17C, a general medical services contract or a contract which meets the requirement in subsection (2B).

- (2B) The requirement is that, were the contract an agreement under section 17C, the parties to the contract (other than the Board) would be persons with whom the Board could enter into such an agreement by virtue of section 17CA.]
- (3) A Health Board must publish information about such matters as may be prescribed in relation to the primary medical services provided under this Part.
- (4) Without prejudice to [<sup>F21</sup>sections 12J and] 13, Health Boards must co-operate with one another in discharging their respective functions relating to the provision of primary medical services under this Part.
- (5) Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary medical services for the purposes of this Act.

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- (6) Such regulations may in particular describe services by reference to the manner or the circumstances in which they are provided.
- (7) <sup>F22</sup> .....
- (8) Anything done by a Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on the Health Board by an order under section 2(1)(a).]

#### Textual Amendments

- F18** S. 2C inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), **ss. 1(2)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.
- F19** Words in s. 2C(2) omitted (22.12.2010) by virtue of [Tobacco and Primary Medical Services \(Scotland\) Act 2010 \(asp 3\)](#), **ss. 37(a)**, 43(3); S.S.I. 2010/372, **art. 2(b)**, Sch. 2
- F20** S. 2C(2A)(2B) inserted (22.12.2010) by [Tobacco and Primary Medical Services \(Scotland\) Act 2010 \(asp 3\)](#), {ss. 37(b), 43(3)}; S.S.I. 2010/372, **art. 2(b)**, Sch. 2
- F21** Words in s. 2C(4) substituted (30.9.2004) by [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\)](#), ss. 11(1), 12(1), **Sch. 1 para. 1(3)**; S.S.I. 2004/361, **art. 2(b)(iv)**
- F22** S. 2C(7) repealed (7.7.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/283\)](#), **reg. 3(1)**

[<sup>F23</sup>2CA

#### Functions of Health Boards outside Scotland

- (1) Where it is the function of a Health Board to provide or to secure the provision of a service, the Health Board may secure the provision of that service outside Scotland.
- (2) For the purposes of securing the provision of any service referred to in subsection (1), a Health Board may make such arrangements for the provision of the service as they think fit (and may in particular make contractual arrangements with any person).
- (3) Anything done by a Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on the Health Board by an order under section 2(1)(a).]

#### Textual Amendments

- F23** S. 2CA inserted (7.7.2010) by [The National Health Service \(Reimbursement of the Cost of EEA Treatment\) \(Scotland\) Regulations 2010 \(S.S.I. 2010/283\)](#), **reg. 3(2)**

PROSPECTIVE

#### [<sup>F24</sup>2CB Functions of Health Boards: planning of pharmaceutical care services

- (1) Regulations may make provision requiring every Health Board, in accordance with the regulations, to—
- (a) prepare a plan for the discharge of their duty under section 2CA(1);
  - (b) keep a plan prepared under paragraph (a) under review;
  - (c) prepare a revised plan; and

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- (d) without prejudice to section 2CA(3), publish a plan so prepared or revised.
- (2) Regulations under subsection (1) may in particular make provision as to—
- (a) identification by a Health Board in any such plan prepared by them of—
    - (i) what pharmaceutical care services they consider are necessary in order to discharge their duty under section 2CA(1);
    - (ii) whether as respects their area there is convenient access (as regards location and opening hours) to pharmaceutical care services; and
    - (iii) any under-provision of pharmaceutical care services as respects their area;
  - (b) the period within which a plan is to be prepared and published;
  - (c) consultation which a Health Board must undertake in relation to the preparation of a plan;
  - (d) the duration of a plan;
  - (e) the frequency with which a plan must be reviewed and revised by a Health Board;
  - (f) the availability and accessibility of a plan to persons who are resident in a Health Board's area; and
  - (g) such other matters as the Scottish Ministers consider appropriate.
- (3) Regulations making provision as to a matter referred to in subsection (2)(a) may provide that the matter is to be identified in accordance with such criteria as may be specified in directions given by the Scottish Ministers.]

#### Textual Amendments

- F24** Ss. 2CA, 2CB inserted (prosp.) by virtue of [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), **ss. 20(2), 43(3)**

#### [<sup>F25</sup>2D Equal opportunities

- (1) Health Boards, Special Health Boards [<sup>F26</sup>, the Agency and (as respects its health service functions only) HIS] must discharge their functions in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (2) In this section “equal opportunities” and “equal opportunity requirements” have the same meaning as in Section L2 (equal opportunities) of Part II of Schedule 5 to the Scotland Act 1998 (c. 46). ]

#### Textual Amendments

- F25** S. 2D inserted (30.9.2004) by [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\)](#), **ss. 4, 12(1)**; [S.S.I. 2004/361](#), **art. 2(b)(i)**
- F26** Words in s. 2D(1) 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. 4**; [S.S.I. 2010/321](#), art. 3, Sch.; [S.S.I. 2011/122](#), art. 2, Sch.

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### 3 Scottish Medical Practices Committee.

F27

#### Textual Amendments

**F27** S. 3 repealed (1.4.2004) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), ss. 17, 21(2), **Sch. 4 para. 5(2)**; S.S.I. 2004/148, **art. 2(c)**

### 4 Scottish Dental Estimates Board.

- (1) For the purpose of carrying out such duties as may be prescribed with respect to . . .  
<sup>F28</sup> dental treatment and appliances, regulations shall make provision for constituting a board, to be called the Scottish Dental Estimates Board, (hereafter in this Act referred to as “the Dental Estimates Board”), of whom the chairman and a majority of members shall be dental practitioners.

<sup>F29</sup>(1A) Regulations may empower the Dental Practice Board—

- (a) to direct a dental practitioner [<sup>F30</sup>or body corporate entitled, by virtue of section 43 of the Dentists Act 1984 (c. 24), to carry on the business of dentistry to submit to the Board, in relation to treatment which he, or as the case may be, it] has carried out or contemplates carrying out or to a description of such treatment specified in the direction, such estimates and information and such radiographs, models or other items as may be prescribed; and
- (b) to direct a dental practitioner [<sup>F31</sup>or such a body corporate] not to carry out treatment, or a description of treatment specified in the direction, without first obtaining approval of an estimate from the Board.
- (1B) If regulations include any such provision as is mentioned in subsection (1A)(b) above, regulations shall confer on a dental practitioner [<sup>F32</sup>or body corporate] in whose case a direction such as is mentioned in that paragraph has been given a right of appeal against the direction to a prescribed person or body, but before making regulations conferring such a right the Secretary of State shall consult such organisations as appear to him to be representative of persons providing general dental services.
- (1C) Regulations may be made authorising or requiring the Dental Practice Board to carry on any such additional activity relating to the provision of general dental services as may be prescribed and, without prejudice to the generality of this subsection, to conduct or commission surveys or other research relating to the provision of such services.]
- (2) Regulations made in pursuance of this section shall include provision, in relation to the Dental Estimates Board, for any of the matters for which, in relation to a Health Board, provision is or may be made by or under Part II of Schedule 1.

#### Textual Amendments

**F28** Words repealed by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(2), **Sch. 3**

**F29** S. 4(1A)–(1C) inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 12(3)**

**F30** Words in s. 4(1A)(a) substituted (2.7.2010) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(3)(a)(i)**; S.S.I. 2010/185, **art. 3(b)**, Sch. 2

**F31** Words in s. 4(1A)(b) inserted (2.7.2010) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(3)(a)(ii)**; S.S.I. 2010/185, **art. 3(b)**, Sch. 2



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**F32** Words in s. 4(1B) inserted (2.7.2010) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(3), **Sch. 2 para. 2(3)(b)**; S.S.I. 2010/185, **art. 3(b)**, Sch. 2

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