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# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART I

#### ORGANISATION

##### *Trusts*

#### **11 Scottish Hospital Trust.**

- (1) The Secretary of State shall constitute a Scottish Hospital Trust (hereafter in this Act referred to as “the Hospital Trust”).
- (2) Schedule 6 shall have effect in relation to the Hospital Trust.
- (3) It shall be the duty of the Hospital Trust to hold and administer endowments which were transferred to the Hospital Trust under section 2 of the <sup>M1</sup>Hospital Endowments (Scotland) Act 1971.
- (4) References in this Act to a “relevant endowment” are references to an endowment such as is referred to in subsection (3).
- (5) The Hospital Trust shall cause proper accounts to be kept of the capital, income and expenditure vested in, received by, and expended by them, and shall [<sup>F1</sup>send the accounts to the Scottish Ministers by such time as they may direct].
- [<sup>F2</sup>(5A) The Scottish Ministers shall send the accounts to the Auditor General for Scotland for auditing.]
- (6) The Hospital Trust shall give to Health Boards reasonable access to the accounts above mentioned.

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- (7) The Hospital Trust shall make an annual report of their proceedings to the Secretary of State, which report shall include an abstract of the accounts; and the Secretary of State shall lay any such report annually before each House of Parliament.

#### Textual Amendments

- F1** Words in [S. 11\(5\)](#) substituted (1.4.2002) by [S.S.I. 2002/176](#), [art. 4\(a\)](#)  
**F2** [S. 11\(5A\)](#) inserted (1.4.2002) by [S.S.I. 2002/176](#), [art. 4\(b\)](#)

#### Marginal Citations

- M1** 1971 c. 8.

## 12 Scottish Hospital Endowments Research Trust.

- (1) The Secretary of State shall constitute a Scottish Hospital Endowments Research Trust (hereafter in this Act referred to as “the Research Trust”).
- (2) Schedule 7 shall have effect in relation to the Research Trust.
- (3) It shall be the duty of the Research Trust to hold and administer funds on trust for the purpose of assisting the conduct of research into any matters relating to the causation, prevention, diagnosis or treatment of illness or to the development of medical or surgical appliances, including hearing aids.
- (4) The Research Trust shall have power to accept, hold and administer, in accordance with Schedule 7, any property on trust for the purpose aforesaid.
- [<sup>F3</sup>(4A) The Research Trust shall have power to engage in activities intended to stimulate the giving of money or other property to assist them in carrying out the purpose aforesaid.
- (4B) Subject to any directions of the Secretary of State excluding specified activities or descriptions of activity, the activities authorised by subsection (4A) include public appeals or collections, and the soliciting of sponsorship, donations, legacies, bequests and gifts.]
- (5) Before deciding to give assistance in any particular case the Research Trust shall consult with any advisory committee on medical research which the Secretary of State may from time to time direct them to consult.
- (6) The Research Trust shall cause proper accounts to be kept of the capital, income and expenditure vested in, received by, and expended by them, and shall [<sup>F4</sup>send the accounts to the Scottish Ministers by such time as they may direct].
- [<sup>F5</sup>(6A) The Scottish Ministers shall send the accounts to the Auditor General for Scotland for auditing.]
- (7) The Research Trust shall make an annual report of their proceedings to the Secretary of State, which report shall include an abstract of the accounts; and the Secretary of State shall lay any such report annually before each House of Parliament.

#### Textual Amendments

- F3** [S. 12\(4A\)\(4B\)](#) inserted by [National Health Service and Community Care Act 1990](#) (c. 19, SIF 113:2), [s. 66\(1\)](#), [Sch. 9 para. 19\(3\)](#)

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- F4** Words in s. 12(6) substituted (1.4.2000) by 2000 asp 1, s. 26(1), **Sch. 4 para. 4(1)(2)(a)**; S.S.I. 2000/10, **art. 2(3)**
- F5** S. 12(6A) inserted (1.4.2000) by 2000 asp 1, s. 26(1), **Sch. 4 para. 4(1)(2)(b)**; S.S.I. 2000/10, **art. 2(3)**

## [<sup>F6</sup>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”) [<sup>F7</sup>to provide goods and services for the purposes of the health service]

(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—

[<sup>F8</sup>(a) shall be a body corporate having a board of directors consisting of a chairman who is not an employee of the trust, appointed by the Secretary of State; and, subject to paragraph 5(2) of Schedule 7A, executive directors (directors who, subject to subsection (5), are employees of the trust) and non-executive directors (directors who, subject to subsection (5), are not employees of the trust and who shall be known as “trustees”)]

(b) shall have the functions conferred on it by an order under subsection (1) and by Schedule 7A.

[ The functions which may be specified in an order under subsection (1) include a <sup>F9</sup>(4) duty to provide goods or services so specified at, from, or through a hospital or other establishment or facility so specified.]

[ The functions of an NHS trust also include power to provide services in accordance <sup>F10</sup>(4A) with section 17C arrangements, and to do so as a member of a qualifying body (within the meaning of section 17D).]

(5) Regulations may make general provision with respect to—

(a) the qualifications for and the tenure of office of the chairman [<sup>F11</sup>, directors and trustees] 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 [<sup>F12</sup>, trustees,] and any of the officers are to be appointed and the manner of their appointment;

(c) the maximum and minimum numbers of the directors [<sup>F13</sup>and trustees];

(d) the circumstances in which a person who is not an employee of the trust is nevertheless, on appointment as a director [<sup>F14</sup>trustee, to be regarded as an executive director rather than as a trustee];

(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

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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.]

#### Textual Amendments

- F6** Ss. 12A–12F inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 31
- F7** Words in s. 12A(1) substituted for s. 12A(1)(a)(b)(*retrospectively*) by 1999 c. 8, s. 46(1)(a)(8); S.S.I. 1999/90, art. 2(a), **Sch. 1**
- F8** S. 12A(3)(a) substituted (1.10.1999) by 1999 c. 8, s. 48; S.S.I. 1999/90, art. 2(a), **Sch. 1**
- F9** S. 12A(4) substituted (*retrospectively*) by 1999 c. 8, s. 46(1)(b)(8); S.S.I. 1999/90, art. 2(a), **Sch. 1**
- F10** S. 12A(4A) inserted (5.3.2001) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 34**; S.S.I. 2001/58, **art. 2**
- F11** Words in s. 12A(5)(a) substituted (1.10.1999) by 1999 c. 8, s. 65(1), Sch. 4 para. 45(a), **Sch. 1**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**
- F12** Word in s. 12A(5)(b) inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 45(b)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**
- F13** Words in s. 12A(5)(c) inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 45(c)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**
- F14** Words in s. 12A(5)(d) substituted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 45(d)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**

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

- C1** S12A(1) extended (*retrospectively*) by 1999 c. 8, s. 46(3)(b)(8); S.S.I. 1999/90, art. 2(a), **Sch. 1**

#### [<sup>F15</sup>12AA Additional functions of NHS trusts.

The Secretary of State may direct a Health Board to delegate to an NHS trust or NHS trusts some or all of their functions—

- (a) under section 2(1) of making arrangements on his behalf for the provision of services mentioned in Part II; or
- (b) relating to pilot schemes under Part I of the National Health Service (Primary Care) Act 1997; or
- (c) relating to arrangements under section 17C for the provision of personal medical services and personal dental services.]

#### Textual Amendments

- F15** S. 12AA inserted (1.10.1999) by 1999 c. 8 s. 47; S.S.I. 1999/90, art. 2(a), **Sch. 1**

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## [<sup>F16</sup>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—
  - (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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#### Textual Amendments

**F16** Ss. 12A–12F inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 31

#### [<sup>F17</sup>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;<sup>F18</sup> . . .
  - (d) . . . . .
- (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 [<sup>F19</sup>Part XI of the Employment Rights Act 1976] (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 [<sup>F20</sup>that Part of that Act.]

#### Textual Amendments

**F17** Ss. 12A–12F inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 31

**F18** S. 12C(2)(d) and word “and” immediately preceding it repealed (6.2.1995) by [S.I. 1995/31, reg. 6, Sch.](#)

**F19** Words in s. 12C(3) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, [Sch. 1 para. 13\(a\)](#) (with ss. 191-195, 202)

**F20** Words in s. 12C(3) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, [Sch. 1 para. 13\(b\)](#) (with ss. 191-195, 202)

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## [<sup>F21</sup>12CA] **Transfer of staff among health service bodies.**

- (1) This section applies to any person who is—
  - (a) employed by a health service body (the transferor authority) and is transferred to another health service body (the transferee authority) because a function of the transferor authority is transferred to the transferee authority; and
  - (b) designated for the purposes of this section by a scheme made by the transferor authority.
- (2) A scheme under this section shall not have effect unless approved by the Secretary of State.
- (3) The contract of employment between a person to whom this section applies and the transferor authority shall have effect from the transfer date as if originally made between him and the transferee authority.
- (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 transferee authority on the transfer date; and
  - (b) anything done before the transfer date by or in relation to the transferor authority in respect of that contract shall be deemed from that date to have been done by or in relation to the transferee authority.
- (5) 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.
- (6) A scheme under this section may designate a person either individually or as a member of a class or description of employees.
- (7) In this section—

a "health service body" is a body mentioned in section 17A(2); and  
the "transfer date" is the date on which the function is transferred from the transferor authority to the transferee authority.]

### **Textual Amendments**

**F21** S. 12CA inserted (1.10.1999) by 1999 c. 8, s. 50; S.S.I. 1999/90, art. 2(a), Sch. 1

## [<sup>F22</sup>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.]

#### Textual Amendments

**F22** Ss. 12A–12F inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 31

VALID FROM 01/12/2003

#### [<sup>F23</sup>12DA] Stamp duty land tax

- (1) A land transaction effected by virtue of an order under section 12D(1) is exempt from charge for the purposes of stamp duty land tax.
- (2) Relief under this section must be claimed in a land transaction return or an amendment of such a return.
- (3) In this section—
 

“land transaction” has the meaning given by section 43(1) of the Finance Act 2003;



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“land transaction return” has the meaning given by section 76(1) of that Act.]

#### Textual Amendments

**F23** S. 12DA inserted (1.12.2003) by The Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003 (S.I. 2003/2867), reg. 2, **Sch. para. 9(2)**

### [<sup>F24</sup>12E Originating capital debt of, and other financial provisions relating to NHS trusts.

- (1) Each NHS trust shall have an [<sup>F25</sup>originating capital] 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 [<sup>F25</sup>originating capital] 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 [<sup>F25</sup>originating capital] shall be deemed to have been issued out of moneys provided by Parliament and shall constitute an asset of the Consolidated Fund.

[ An NHS trust’s originating capital shall be public dividend capital.]

<sup>F26</sup>(4)

<sup>F27</sup>(5) .....

<sup>F27</sup>(6) .....

- (7) With the consent of the Treasury, the Secretary of State may determine
  - <sup>F28</sup>(a) [ the dividend which is to be payable at any time on any public dividend capital issued, or treated as issued, under this Act;
  - (b) the amount of any such public dividend capital which is to be repaid at any time;
  - (c) any other terms on which any public dividend capital is so issued, or treated as issued]
- (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.]

#### Textual Amendments

**F24** Ss. 12A–12F inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 31**

**F25** Words in s. 12E(1)–(3) substituted (1.10.1999) by 1999 c. 8, **s. 53(2)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

**F26** S. 12E(4) substituted (1.10.1999) by 1999 c. 8, **s. 53(3)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

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- F27** S. 12E(5)(6) repealed (1.10.1999) by 1999 c. 8, ss. 53(4), 65(2), **Sch. 5**
- F28** S. 12E(7)(a)-(c) substituted (1.10.1999) for words in s. 12E(7) by 1999 c. 8, **s. 53(5)**; S.S.I. 1999/90, art. 2(a), **Sch. 1**

### [<sup>F29</sup> 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.]

#### Textual Amendments

- F29** Ss. 12A–12F inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 31**

### [<sup>F30</sup> 12G Trust property of NHS trusts.

- (1) Subject to subsection (2), an NHS trust shall have power to accept, hold and administer any property on trust for purposes relating to any service which it is their function to make arrangements for, administer or provide.
- (2) The Secretary of State may by order make such provision as he thinks appropriate in relation to the appointment of trustees in respect of an NHS trust for the purpose of holding in trust any property which is to be so held on behalf of the trust; and any such order may include provision as to the persons by whom, the manner in which, the conditions on which and the time within which, such trustees are to be appointed.
- (3) Where—
  - (a) section 82 applies in relation to any endowment or property which is held on trust by a Health Board; and
  - (b) that endowment or property is, by virtue of an order under section 12D, transferred to an NHS trust,
 section 82 shall apply to the use of that endowment or property by the trust as it applied to the use thereof by the Health Board.
- (4) Trustees appointed by virtue of subsection (2) shall cause proper accounts to be kept of the capital, income and expenditure vested in, received by and expended by them; and shall cause such accounts to be audited and an abstract thereof to be published in such manner as the Secretary of State may approve.]

#### Textual Amendments

- F30** S. 12G inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), **s. 33**

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