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# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART IV

#### POWERS OF THE SECRETARY OF STATE

##### *Inquiries, and default and emergency powers*

#### 76 Inquiries.

- (1) The Secretary of State may cause an inquiry to be held in any case where he deems it advisable to do so in connection with any matter arising under this Act [<sup>F1</sup>or under the 2021 Act].
- (2) The provisions of Schedule 12 shall have effect with regard to any inquiry which the Secretary of State is, under this Act, required or authorised to hold.

#### Textual Amendments

- F1** Words in s. 76(1) inserted (1.4.2022) by [Forensic Medical Services \(Victims of Sexual Offences\) \(Scotland\) Act 2021 \(asp 3\), s. 20\(2\), sch. para. 1\(7\)](#) (with s. 3); S.S.I. 2022/24, reg. 2

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

- C1** S. 76 modified (1.4.2012) by [Patient Rights \(Scotland\) Act 2011 \(asp 5\), ss. 21\(1\), 26\(3\)](#) (with ss. 18(3), 20); S.S.I. 2012/35, art. 2(a)

#### 77 Default powers.

- (1) Where the Secretary of State is of the opinion, on representations made to him or otherwise, that—
  - (a) any Health Board; <sup>F2</sup>...

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- [<sup>F3</sup>(aa) an NHS trust ]  
 (b) <sup>F4</sup> .....  
 (c) the Dental Estimates Board [<sup>F5</sup>; or  
 (d) HIS,]

have failed to carry out any functions conferred or imposed on them by or under this Act [<sup>F6</sup>or by or under the 2021 Act], or have in carrying out those functions failed to comply with any regulations, schemes, proposals or directions relating to those functions, he may after holding an inquiry make an order declaring them to be in default

- (2) When such an order is made, the members of the body shall forthwith vacate their office, and the order—  
 (a) shall provide for the appointment [<sup>F7</sup>or, as the case may be, election], in accordance with the provisions of this Act, of new members of the body; and  
 (b) may contain such provisions as seem to the Secretary of State expedient for authorising any person to act in the place of the body in question pending the appointment [<sup>F8</sup>or, as the case may be, election] of new members.
- (3) An order made under this section may contain such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient.

#### Textual Amendments

- F2** Word in s. 77(1) repealed (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch.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. 9\(a\)](#); S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F3** S. 77(1)(aa) inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(14\)](#)
- F4** S. 77(1)(b) repealed (1.4.2004) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), ss. 17, 21(2), [Sch. 4 para. 5\(11\)](#); S.S.I. 2004/148, [art. 2\(c\)](#)
- F5** S. 77(1)(d) and word 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. 9\(b\)](#); S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F6** Words in s. 77(1) inserted (1.4.2022) by [Forensic Medical Services \(Victims of Sexual Offences\) \(Scotland\) Act 2021 \(asp 3\)](#), s. 20(2), [sch. para. 1\(8\)](#) (with s. 3); S.S.I. 2022/24, [reg. 2](#)
- F7** Words in s. 77(2)(a) inserted (temp. from 24.6.2009 for certain purposes, otherwise prosp.) by [Health Boards \(Membership and Elections\) \(Scotland\) Act 2009 \(asp 5\)](#), [ss. 3\(a\)](#), 4, 6(2)(3), 7, 11(1); S.S.I. 2009/242, [art. 2](#)
- F8** Words in s. 77(2)(b) inserted (temp. from 24.6.2009 for certain purposes, otherwise prosp.) by [Health Boards \(Membership and Elections\) \(Scotland\) Act 2009 \(asp 5\)](#), [ss. 3\(b\)](#), 4, 6(2)(3), 7, 11(1); S.S.I. 2009/242, [art. 2](#)

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

- C2** S. 77 extended by [Mental Health \(Scotland\) Act 1984 \(c. 36, SIF 85\)](#), ss. 17(2), 91(2), [Sch. 1 para. 8\(a\)](#)
- C3** S. 77 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), [Sch. Pt. I](#)
- C4** S. 77 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), [Sch. Pt. I](#) (with art. 6)  
 S. 77 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), [Sch. Pt. I](#) (with art. 6)  
 S. 77 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), [Sch. Pt. I](#)  
 S. 77 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), [Sch. Pt. I](#)  
 S. 77 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), [Sch. Pt. I](#)  
 S. 77 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), [Sch. Pt. I](#)

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- S. 77 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))  
S. 77 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
- C5** S. 77 applied (1.4.2012) by Patient Rights (Scotland) Act 2011 (asp 5), **ss. 21(2)**, 26(3) (with ss. 18(3), 20); S.S.I. 2012/35, art. 2(a)
- C6** S. 77 modified (1.4.2012) by Patient Rights (Scotland) Act 2011 (asp 5), **ss. 21(1)**, 26(3) (with ss. 18(3), 20); S.S.I. 2012/35, art. 2(a)
- C7** S. 77 applied (7.12.2019) by The Public Health Scotland Order 2019 (S.S.I. 2019/336), art. 1(2), **sch. 1 Pt. 1** (with art. 4(4)(5))
- C8** S. 77 modified (15.8.1997) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I paras. 32, **51**; S.I. 1997/1780, art. 2(1), **Sch.**

## 78 Emergency powers.

If the Secretary of State is of the opinion that an emergency exists, and thinks it necessary in order to secure the effective continuance of any service under this Act [<sup>F9</sup>or under the 2021 Act], he shall have power to direct that any function conferred by or under this Act [<sup>F10</sup>, or by or under the 2021 Act.] on any body or person shall, during the period of the emergency, be performed by such other body or person as he may specify in the direction.

### Textual Amendments

- F9** Words in s. 78 inserted (1.4.2022) by Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (asp 3), s. 20(2), **sch. para. 1(9)(a)** (with s. 3); S.S.I. 2022/24, reg. 2
- F10** Words in s. 78 inserted (1.4.2022) by Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (asp 3), s. 20(2), **sch. para. 1(9)(b)** (with s. 3); S.S.I. 2022/24, reg. 2

### Modifications etc. (not altering text)

- C9** S. 78 extended by Mental Health (Scotland) Act 1984 (c. 36, SIF 85), ss. 17(2), 91(2), **Sch. 1 para. 8(b)**
- C10** S. 78 modified (1.10.1998) by 1997 c. 46, s. 41(10), Sch. Pt. I paras. 32, **52**; S.I. 1998/1998, **art. 2(2)(b) Sch. 2**
- C11** S. 78 modified (1.4.2012) by Patient Rights (Scotland) Act 2011 (asp 5), **ss. 21(1)**, 26(3) (with ss. 18(3), 20); S.S.I. 2012/35, art. 2(a)

## [<sup>F11</sup>78A Powers in case of service failure

- (1) This section applies where—
- it is a function of a body or person under or by virtue of this Act [<sup>F12</sup>, or under or by virtue of the 2021 Act.] to provide, or secure the provision of, a service, and
  - the Scottish Ministers consider that the body or person has failed, is failing or is likely to fail—
    - to provide the service, or
    - to provide it to a standard which they regard as acceptable.
- (2) The Scottish Ministers may, where they consider it necessary for the purpose of ensuring the provision of the service in question to a standard which they regard as acceptable, direct that specified functions of the body or person under or by virtue of this Act [<sup>F13</sup>or, as the case may be, under or by virtue of the 2021 Act] be performed, for a specified period and to a specified extent, by—
- a body falling within subsection (4), or

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- (b) one or more persons falling within subsection (5).
- (3) In subsection (2), “ specified ” means specified in the direction.
- (4) A body falls within this subsection if it is—
- (a) a Health Board,
  - (b) a Special Health Board, <sup>F14</sup> . . .
  - (c) the Agency [<sup>F15</sup>, or
  - (d) HIS.]
- (5) A person falls within this subsection if the person is—
- (a) an employee of a Health Board, a Special Health Board [<sup>F16</sup>, the Agency or HIS.],
  - (b) a member of the staff of the Scottish Administration, or
  - (c) an employee of a local authority.
- (6) A body or person appointed by a direction given under subsection (2) to perform functions of a body or person referred to in subsection (1) is referred to in this section as an “ appointed person ”.
- (7) An appointed person must comply with a direction given under subsection (2).
- (8) The remuneration and expenses of, and any other costs reasonably incurred by, an appointed person in performing the functions specified in the direction shall, unless otherwise specified in the direction, be paid by the body or person referred to in subsection (1).
- (9) Anything done or omitted by an appointed person in performing the functions specified in the direction is to be regarded as done or omitted by the body or person referred to in subsection (1).
- (10) A person dealing with an appointed person in good faith and for value is not concerned to inquire whether the appointed person is acting within the powers conferred by virtue of the direction.
- (11) The Scottish Ministers may vary or withdraw a direction given under subsection (2).

#### Textual Amendments

- F11** Ss. 78A, 78B inserted (30.9.2004) by [National Health Service Reform \(Scotland\) Act 2004](#) (asp 7), **ss. 6, 12(1)**; S.S.I. 2004/361, **art. 2(b)(i)**
- F12** Words in s. 78A(1)(a) inserted (1.4.2022) by [Forensic Medical Services \(Victims of Sexual Offences\) \(Scotland\) Act 2021](#) (asp 3), s. 20(2), **sch. para. 1(10)(a)** (with s. 3); S.S.I. 2022/24, reg. 2
- F13** Words in s. 78A(2) inserted (1.4.2022) by [Forensic Medical Services \(Victims of Sexual Offences\) \(Scotland\) Act 2021](#) (asp 3), s. 20(2), **sch. para. 1(10)(b)** (with s. 3); S.S.I. 2022/24, reg. 2
- F14** Word in s. 78A(4) repealed (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. 10(a)(i)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F15** S. 78A(4)(d) and word 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. 10(a)(ii)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F16** Words in s. 78A(5)(a) 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. 10(b)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.

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

**C12** S. 78A modified (1.4.2012) by Patient Rights (Scotland) Act 2011 (asp 5), **ss. 21(1), 26(3)** (with ss. 18(3), 20); S.S.I. 2012/35, art. 2(a)

**78B Relationship of sections 77, 78 and 78A**

The powers conferred by each of sections 77, 78 and 78A are without prejudice to the powers conferred by the other two sections.]

**Textual Amendments**

**F11** Ss. 78A, 78B inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), **ss. 6, 12(1)**; S.S.I. 2004/361, **art. 2(b)(i)**

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

**C13** S. 78B applied (7.12.2019) by The Public Health Scotland Order 2019 (S.S.I. 2019/336), art. 1(2), **sch. 1 Pt. 1** (with art. 4(4)(5))

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