



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART V

#### PROPERTY AND FINANCE

##### *Trust property*

#### **82 Use and administration of certain endowments and other property held by Health Boards.**

- (1) All endowments vested in a Health Board by virtue of section 37 of the <sup>M1</sup>National Health Service (Scotland) Act 1972 are so vested free of any trust existing immediately before 1st April 1974 (hereafter in this section referred to in relation to any such endowment as “the original trust”); but all such endowments shall be held by the Health Board on trust for such purposes relating to services provided under this Act in or in relation to hospitals, or to the functions of the Board with respect to research, as the Board may think fit.
  - (2) All property vested in a Health Board by virtue of section 39 of the said Act of 1972 is so vested free of any trust existing immediately before the said 1st April (hereafter in this section referred to in relation to any such property as “the original trust”); but all such property shall be held by the Health Board on trust for such purposes relating to services provided by them under this Act, or to the functions of the Board with respect to research, as the Board may think fit.
- [<sup>F1</sup>(2A) All endowments and other property (including value in lieu of the property) vested in a Health Board by virtue of section 5 or 6(2) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4) is so vested free of any trust existing immediately before it is so vested (hereafter in this section referred to in relation to any such endowment or property as “the original trust”); but all such endowments and other property shall be held by the Health Board on trust for such purposes relating to

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services provided under this Act or in relation to hospitals, or to the functions of the Board with respect to research, as the Board may think fit.]

[<sup>F2</sup>(2B) All endowments and property held in trust transferred to a Health Board by an order under paragraph 26 of Schedule 7A (whenever made) are held by the Health Board free of any trust existing immediately before the transfer (hereafter in this section referred to in relation to any such endowment or property as “the original trust”); but all such endowments and property shall be held by the Health Board on trust for such purposes relating to services provided under this Act, or to the functions of the Board with respect to research, as the Board may think fit.]

- (3) In exercising the power conferred on them by this section in relation to any endowment or property a Health Board shall secure, so far as is reasonably practicable, that the objects of the original trust (including, in the case of an endowment, the objects of the endowment) and the observance of any conditions attaching thereto, including, in particular, conditions intended to preserve the memory of any person or class of persons, are not prejudiced by the exercise of the power.
- (4) Any reference in this section to an endowment or to any property includes a reference to the accumulated income thereof.

#### Textual Amendments

- F1** S. 82(2A) inserted (12.2.2004) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (asp 4), **ss. 10(2), 21(3)**; S.S.I. 2003/602, **art. 2(4)(c)**
- F2** S. 82(2B) inserted (30.9.2004) by [National Health Service Reform \(Scotland\) Act 2004](#) (asp 7), **ss. 1(2), 12(1)**; S.S.I. 2004/361, **art. 2(b)(i)**

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

- C1** S. 82 applied (1.4.1999) by [S.I. 1999/686](#), **art. 5(1)(2)**, **Sch. Pt. I**

#### Marginal Citations

- M1** 1972 c. 58.

### 83 Power of Health Boards and local health councils to hold property on trust.

- (1) A Health Board [<sup>F3</sup>, and HIS,] 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, or to their functions with respect to research.
- [<sup>F4</sup>(1ZA) Any reference in subsection (1) to a function of HIS is to be construed as a reference to that body's health service functions only.]
- [<sup>F5</sup>(1A) A Health Board shall have power to accept, hold and administer any property on trust for purposes relating to any service which it is the function of any NHS trust in the area of the Health Board to make arrangements for, administer or provide.]
- (2) A local health council shall have power to accept, hold and administer any property on trust for purposes relating to any function conferred upon them by or under any enactment.

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#### Textual Amendments

- F3** Words in s. 83(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. 12\(a\)](#); [S.S.I. 2010/321](#), art. 3, Sch.; [S.S.I. 2011/122](#), art. 2, Sch.
- F4** S. 83(1ZA) 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. 12\(b\)](#); [S.S.I. 2010/321](#), art. 3, Sch.; [S.S.I. 2011/122](#), art. 2, Sch.
- F5** S. 83(1A) inserted (12.2.2004) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), [ss. 10\(3\)](#), 21(3); [S.S.I. 2003/602](#), [art. 2\(4\)\(c\)](#)

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

- C2** S. 83(1) applied (1.4.1991) by [S.I. 1990/2639](#), art. 5(1)(2), [Sch. Pt. I](#)
- C3** S. 83(1) applied (1.4.1993) by [S.I. 1993/577](#), art. 5(1)(2), [Sch. Pt. I](#) (with art. 6)  
S. 83(1) applied (1.4.1995) by [S.I. 1995/574](#), art. 5(1)(2), [Sch. Pt. I](#) (with art. 6)  
S. 83(1) applied (1.4.1999) by [S.I. 1999/686](#), art. 5(1)(2), [Sch. Pt. I](#)  
S. 83(1) applied (1.4.1999) by [S.I. 1999/726](#), art. 5(1)(2), [Sch. Pt. I](#)  
S. 83(1) applied (1.4.2000) by [S.S.I. 2000/47](#), art. 5(1)(2), [Sch. Pt. I](#)  
S. 83(1) applied (6.4.2001) by [S.S.I. 2001/137](#), art. 5(1), [Sch. Pt. I](#)  
S. 83(1) applied (31.3.2002) by [S.S.I. 2002/103](#), art. 6, [Sch. Pt. I](#) (with art. 4(4))  
S. 83(1) applied (27.6.2002) by [S.S.I. 2002/305](#), art. 5(1), [Sch. Pt. I](#) (with art. 4(4))

## 84 Power of trustees to make payments to Health Boards.

- (1) Where property (other than property transferred to the Secretary of State under Part V of the <sup>M2</sup>National Health Service (Scotland) Act 1972 or to a Health Board under Part VI of that Act) was immediately before 1st April 1974, and is at any time after the commencement of this Act, held on trust under a trust instrument the terms of which authorise or require the trustees (whether immediately or in the future) to apply any part of the capital or income of the property for the purposes of any hospital or service which is administered by a Health Board [<sup>F6</sup>or (in connection with the exercise of its health service functions only) by HIS][<sup>F7</sup>or an NHS trust], the trust instrument shall be construed as authorising, or, as the case may be, requiring, the trustees to pay that capital or income to the Health Board [<sup>F8</sup>or NHS trust] concerned [<sup>F9</sup>or, as the case may be, to HIS].
- (2) Where property so held on trust is, under the trust instrument, to be applied for the purposes of hospitals which are administered by more than one Health Board [<sup>F10</sup>or NHS trust], the trustees shall distribute the property between the Boards [<sup>F11</sup>or NHS trusts] concerned, in such manner, having regard to the purposes of the trust, as the trustees may determine.
- (3) Any sums paid to a Health Board [<sup>F12</sup>or to HIS][<sup>F13</sup>or an NHS trust] under this section shall, so far as practicable, be applied by them for the purposes specified in the trust instrument.

#### Textual Amendments

- F6** Words in s. 84(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. 13\(a\)\(i\)](#); [S.S.I. 2010/321](#), art. 3, Sch.; [S.S.I. 2011/122](#), art. 2, Sch.

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- F7** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(16)(a)(i)**
- F8** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(16)(a)(ii)**
- F9** Words in s. 84(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. 13(a)(ii)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F10** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(16)(b)(i)**
- F11** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(16)(b)(ii)**
- F12** Words in s. 84(3) 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. 13(b)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F13** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(16)(c)**

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

- C4** S. 84 applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C5** S. 84 applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
 S. 84 applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
 S. 84 applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**  
 S. 84 applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**  
 S. 84 applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**  
 S. 84 applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**  
 S. 84 applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))  
 S. 84 applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))

#### Marginal Citations

- M2** 1972 c. 58.

### [<sup>F14</sup>84A Power to raise money, etc., by appeals, collections, etc.

- (1) A Health Board [<sup>F15</sup>or (in connection with the exercise of its health service functions only) HIS][<sup>F16</sup>or NHS trust] shall have power to engage in activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to assist them in providing or improving any services or any facilities or accommodation which is or are to be provided as part of the health service or to assist them in connection with their functions with respect to research.
- (2) A local health council shall have power to engage in activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to assist them in carrying out any function conferred upon them by or under any enactment.
- (3) Subject to any directions of the Secretary of State excluding specified descriptions of activity, the activities authorised by this section include public appeals or collections and competitions, entertainments, bazaars, sales of produce or other goods and other similar activities and the activities may involve the use of land, premises or other property held by or for the benefit of the Board [<sup>F17</sup>, NHS trust] or local health council exercising the power [<sup>F18</sup>or, as the case may be, by or for the benefit of HIS.] subject however to any restrictions on the purposes for which trust property may be used.

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(4) Subject to subsections (5) and (6), the Health Board [F17, NHS trust] or local health council at whose instance property is given in pursuance of this section shall, after defraying out of it any expenses incurred in obtaining it, hold, administer and apply the property on trust for or for the purpose for which it was given.

[ Subsection (4) applies (subject to the subsections mentioned there) to HIS in respect F19(4A) of property given in pursuance of this section as it applies to a Health Board in respect of such property given at the instance of the Health Board.]

(5) Where property held by a Health Board [F20 or by HIS] [F17, NHS trust] or local health council under this section is more than sufficient to enable the purpose for which it was given to be fulfilled, the excess shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property comprising the excess was given, for such purposes connected with any of the functions of the Board [F17, NHS trust] or council as the Board [F17, NHS trust] or council think fit [F21 or, as the case may be, of HIS as HIS thinks fit.].

(6) Where property held by a Health Board [F22 or by HIS] [F17, NHS trust] or local health council under this section is insufficient to enable the purpose for which it was given to be fulfilled then—

(a) the Board [F23 or, as the case may be, HIS] [F17, NHS trust] or the council may apply so much of the capital or income at their disposal as is needed to enable the purpose to be fulfilled subject, however, in the case of trust property, to any restrictions on the purposes for which the trust property may be applied, and in the case of money paid or payable by the Secretary of State under section 85(1), to any directions he may give; but

(b) where the capital or income applicable under paragraph (a) is insufficient or is not applied to enable the purpose to be fulfilled, the property so held by the Board [F24 or by HIS] [F17, NHS trust] or the council shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property was given, for such purposes connected with any of the functions of the Board [F17, NHS trust] or council as the Board [F17, NHS trust] or council think fit [F25 or, as the case may be, any of the health service functions of HIS as HIS thinks fit.].

(7) Where under subsections (5) or (6) property becomes applicable for purposes other than that for which it was given, the Health Board [F26 or, as the case may be, HIS] [F17, NHS trust] or local health council shall have regard to the desirability of applying the property for a purpose similar to that for which it was given.]

#### Textual Amendments

**F14** S. 84A inserted by [Health Services Act 1980 \(c. 53\)](#), [s. 5\(2\)](#)

**F15** Words in s. 84A(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. 14\(a\)](#); S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.

**F16** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(17\)\(a\)](#)

**F17** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(17\)\(b\)](#)

**F18** Words in s. 84A(3) 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. 14\(b\)](#); S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.

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- F19** S. 84A(4A) 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. 14(c)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F20** Words in s. 84A(5) 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. 14(d)(i)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F21** Words in s. 84A(5) 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. 14(d)(ii)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F22** Words in s. 84A(6) 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. 14(e)(i)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F23** Words in s. 84A(6)(a) 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. 14(e)(ii)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F24** Words in s. 84A(6)(b) 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. 14(e)(iii)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F25** Words in s. 84A(6) 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. 14(e)(iv)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F26** Words in s. 84A(7) 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. 14(f)**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.

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

- C6** S. 84A applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C7** S. 84A applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I** (with art. 6)  
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S. 84A applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**  
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