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## SCHEDULES

### SCHEDULE 6

Section 11.

#### THE HOSPITAL TRUST

##### PART I

###### *Constitution*

- 1 The Hospital Trust (hereafter in this Schedule referred to as “the Trust”) shall consist of a chairman appointed by the Secretary of State and not more than 7 and not less than 5 other members so appointed.
- 2 The Trust shall be a body corporate.
- 3 The proceedings of the Trust shall not be invalidated by any vacancy in the membership thereof or by any defect in the appointment of a member.

##### PART II

###### *Powers*

- 4 The Trust shall have the following powers—
  - (a) the like powers in relation to their funds as trustees have in relation to their trust estate under section 4(1) of the <sup>M1</sup>Trusts (Scotland) Act 1921;
  - (b) power to purchase and lease land and to invest in any security in which trustees are authorised to invest under or in pursuance of the <sup>M2</sup>Trusts (Scotland) Act 1921 [<sup>F1</sup>and the Trustee Investments Act 1961] and—
    - (i) to retain any investment which they from time to time receive,
    - (ii) to make a narrower-range investment falling within Part II of Schedule 1 to the <sup>M3</sup>Trustee Investments Act 1961 without first obtaining advice as required by section 6 of that Act,
    - (iii) to invest in the units of a unit trust scheme or in participation certificates or in any form of participation under any trust or scheme having the effect of enabling persons to participate in the profits and income arising from the acquisition, holding, management or disposal of securities or of land;

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- (c) power to make loans to Health Boards [<sup>F2</sup>and NHS trusts] against their share in the capital of the Trust;
- (d) power to pay all the expenses of the constitution and administration of the Trust from their funds;
- (e) power to accept from any Health Board for investment and management on behalf of the Board any endowments or accumulated income thereof transferred to the Board under Part VI of the <sup>M4</sup>National Health Service (Scotland) Act 1972 and any endowments, or accumulated income thereof, otherwise held by a Health Board;
- [<sup>F3</sup>(ea) power to accept from any NHS trust for investment and management on behalf of the trust any property held on behalf of the trust by trustees appointed by virtue of section 12G(2), and any endowments or accumulated income otherwise held by the trust;]
- (f) power to accept, hold, administer and dispose of any property (other than a relevant endowment or such an endowment as is referred to in subparagraph (e) [<sup>F4</sup>or, as the case may be, paragraph (ea)]) on trust for purposes similar to those for which property is held by a Health Board [<sup>F5</sup>or, as the case may be, by an NHS Trust];
- (g) power to give advice to a Health Board relating to the investment or management of any such endowment or income as is referred to in subparagraph (e) and which is not transferred to the Trust under paragraph 16 of Schedule 1, and to recover from the Board concerned any expenses reasonably incurred by them in giving such advice. [<sup>F6</sup>It is hereby declared, for the avoidance of doubt, that the Trust has at all times had the power referred to in sub-paragraph (b) above to invest in any security in which trustees are authorised to invest under or in pursuance of the Trustee Investments Act 1961.]

#### Textual Amendments

- F1** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. 54(1)
- F2** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(24)(a)
- F3** Sch. 6 para. 4(ea) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(24)(b)
- F4** Words expressed to be inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(24)(c)(i)
- F5** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(24)(c)(ii)
- F6** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 39:1), s. 54(2)

#### Marginal Citations

- M1** 1921 c. 58.
- M2** 1921 c. 58.
- M3** 1961 c. 62.
- M4** 1972 c. 58.

- 5 (1) It shall be the duty of the Trust to obtain advice on the investment of any property held by them under this Act from a person whom the Trust reasonably believe to be

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qualified to give such advice by his ability in, and practical experience of, financial matters.

(2) For the purposes of sub-paragraph (1), the advice referred to therein may be obtained from a person other than an officer or servant of the Trust on such terms as may be agreed between the Trust and that person.

6 (1) Regulations may prescribe the method of calculating the capital value of relevant endowments transferred from Boards of Management and Regional Hospital Boards to the Trust under section 2(1) of the <sup>M5</sup>Hospital Endowments (Scotland) Act 1971 and the shares of Health Boards in the total endowments so transferred.

(2) Regulations may prescribe the terms and conditions on which sums may be borrowed from the Trust by Health Boards [<sup>F7</sup>or NHS trusts].

#### Textual Amendments

**F7** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 66\(1\), Sch. 9 para. 19\(24\)\(d\)](#)

#### Marginal Citations

**M5** 1971 c. 8.

7 (1) The Trust shall, at such date or dates in each year as the Secretary of State may determine, distribute the income from all relevant endowments transferred to them under section 2(1) of the <sup>M6</sup>Hospital Endowments (Scotland) Act 1971 and from property accepted by them in pursuance of paragraph 4(f), after deduction of such expenses as have been incurred under this Act or the said Act of 1971 or regulations made thereunder, among Health Boards [<sup>F8</sup>, NHS trusts] and state hospitals in accordance with schemes made from time to time by the Secretary of State by statutory instrument.

(2) Before making a scheme under this paragraph the Secretary of State shall give to Health Boards [<sup>F9</sup>, NHS trusts] and the bodies charged with the management of state hospitals an opportunity to make representations to him about the scheme.

(3) Such schemes shall provide for the income from such relevant endowments—

(a) in so far as it is distributed among Health Boards, being used by those Boards for purposes relating to services provided under this Act in or in relation to hospitals, or to research into any such matters as are mentioned in section 47(2), or for purposes intended to preserve the memory of any person or class of persons;

(b) in so far as it is distributed to a state hospital, being used by that hospital for any purpose for which the hospital was provided, including research in connection with any such purpose.

[<sup>F10</sup>(c) in so far as it is distributed among NHS trusts, being used by that trust for any purpose for which the trust was established.]

(4) In making a scheme under this paragraph the Secretary of State shall have regard to the arrangements for the distribution of income under any scheme, being a scheme

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made under section 7 of the said Act of 1971 and in operation immediately before 1st April 1974; and any scheme made under this paragraph may provide that any accumulated income held by a Health Board by virtue of section 2(2)(a) of the said Act of 1971 may be used only for such purposes as may be specified in the scheme.

- (5) No scheme shall be made under this paragraph unless a draft has been laid before Parliament and has been approved by a resolution of each House of Parliament.

#### Textual Amendments

- F8** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(24)(e)**
- F9** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(24)(f)**
- F10** Sch. 6 para. 7(3)(c) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 19(24)(g)**

#### Marginal Citations

- M6** 1971 c. 8.

- 8 The total annual expenses of administration of the Trust shall be limited to such maximum amount as the Secretary of State may from time to time determine.
- 9 Regulations may make provision in respect of any of the following matters—
- (a) the appointment, and tenure and vacation of office, of the members of the Trust;
  - (b) the procedure of the Trust;
  - (c) the appointment, remuneration and conditions of service of officers and servants of the Trust;
  - (d) the making of payments, not exceeding limits to be determined from time to time by the Secretary of State, from the funds of the Trust to the members thereof in respect of any loss of earnings they would otherwise have made or any additional expenses (including travelling and subsistence expenses) to which they would not otherwise have been subject, being loss or expenses necessarily suffered or incurred by them for the purpose of enabling them to perform duties as members of the Trust;
  - (e) any matters consequential on, or incidental to, any of the aforesaid matters.
- 10 (1) The accounts of the Trust shall be audited annually by an auditor appointed by the Trust.
- (2) No person shall be qualified to be appointed auditor under this paragraph unless he is a member of one or more of the following bodies:
- (a) the Institute of Chartered Accountants of Scotland;
  - (b) the Institute of Chartered Accountants in England and Wales;
  - (c) the Association of Certified and Corporate Accountants;
  - (d) the Institute of Chartered Accountants in Ireland;

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- (e) any other body of accountants established in the United Kingdom and for the time being recognised for the purposes of section 161(1)(a) of the <sup>M7</sup>Companies Act 1948 by the Secretary of State;  
but a Scottish firm may be so appointed if each of the partners therein is qualified to be so appointed.

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**Marginal Citations**

**M7** 1948 c. 38.

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