

*Status: Point in time view as at 01/04/2013.*

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## SCHEDULES

### [<sup>F1F2</sup>SCHEDULE 7A

#### NATIONAL HEALTH SERVICE TRUSTS

##### Textual Amendments

- F1** Schs. 7A, 7B inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\), s. 32, Sch. 6](#)
- F2** [Sch. 7A](#) repealed (1.9.2004 but only for the purpose stated in art. 2(a)(i) of the commencing S.S.I.) by [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\), ss. 1\(1\), 12\(1\), S.S.I. 2004/361, art. 2\(a\)\(i\)](#)

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

- C1** [Sch. 7A](#) applied in part (1.4.1999) by [S.I. 1999/686, art. 5\(1\)\(2\)](#)

### PART I

#### ORDERS ESTABLISHING NHS TRUSTS ETC.

- 1 Any reference in this Part of this Schedule to an order is a reference to an order under section 12A(1) establishing an NHS trust or any subsequent order under that provision amending or revoking a previous order.

##### Subordinate Legislation Made

- P1** [Sch. 7A para. 1](#): s. 12A(1)(4) (with Sch. 7A paras. 1, 3, 4, 5, 6(2)(d)) power exercised (18.12.1991) by [S.I. 1991/2898](#).  
[Sch. 7A para. 1](#): s. 12A(1)(4) (with Sch. 7A paras. 1, 3, 4, 5, 6(2)(d)) power exercised (18.12.1991) by [S.I. 1991/2899](#).

- 2 The provisions made by an order shall be in conformity with any general provision made by regulations under section 12A(5).
- 3 (1) Without prejudice to any amendment made by subsequent order, the first order to be made in relation to any NHS trust shall specify—
- the name of the trust;
  - the functions of the trust;
  - the number of executive directors and [<sup>F3</sup>trustees];
  - where the trust is to be regarded as having a significant teaching commitment, a provision to secure the inclusion in the [<sup>F3</sup>trustees] referred to in paragraph (c) of a person appointed from a university with a medical or dental school specified in the order;
  - the operational date of the trust, that is to say, the date on which the trust is to begin to undertake the whole of the functions conferred on it; and

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- (f) if a scheme is to be made under section 12B, the body (being a Health Board or the Agency) which is to make the scheme.
- (2) For the purposes of sub-paragraph (1)(d), an NHS trust is to be regarded as having a significant teaching commitment in the following cases—
- (a) if the trust is established to [<sup>F4</sup>provide services at] a hospital or other establishment or facility which, in the opinion of the Secretary of State, has a significant teaching and research commitment; and
- (b) in any other case, if the Secretary of State so provides in the order.
- (a) is employed by the university in question; and
- (b) would also, apart from this sub-paragraph, be regarded as employed by the trust,
- his employment by the trust shall be disregarded in determining whether, if appointed, he will be a [<sup>F3</sup>trustee] of the trust.
- (4) An order shall specify the accounting date of the trust.

#### Textual Amendments

- F3** Words in Sch. 7A para. 3(1)(c)(d), (3) substituted (1.10.1999) by virtue of 1999 c. 8, s. 65, Sch. 4 para. 62; S.S.I. 1999/90, art. 2(b), Sch. 1
- F4** Words in Sch. 7A para. 3(2)(a) substituted (*retrospectively*) by 1999 c. 8, s. 46(6)(8); S.S.I. 1999/90, art. 2(a), Sch. 1

- 4 (1) An order may require a Health Board and the Agency to make staff, premises and other facilities available to an NHS trust pending the transfer or appointment of staff to or by the trust and the transfer of premises or other facilities to the trust.
- (2) An order making provision under this paragraph may make provision with respect to the time when the Health Board's functions under the provision are to come to an end.
- 5 (1) An order may provide for the establishment of an NHS trust with effect from a date earlier than the operational date of the trust and, during the period between that earlier date and the operational date, the trust shall have such limited functions for the purposes of enabling it to begin to operate satisfactorily with effect from the operational date as may be specified in the order.
- (2) If an order makes the provision referred to in sub-paragraph (1), then, at any time during the period referred to in that sub-paragraph, the NHS trust shall be regarded as properly constituted (and may carry out its limited functions accordingly) notwithstanding that, at that time, all or any of the executive officers have not yet been appointed.
- (3) If an order makes the provisions referred to in sub-paragraph (1) above, the order may require a Health Board to discharge such liabilities of the NHS trust as—
- (a) may be incurred during the period referred to in that sub-paragraph; and
- (b) are of a description specified in the order.

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## PART II

### DUTIES, POWERS AND STATUS OF NHS TRUSTS

#### *Specific duties*

- 6 [ In carrying out the functions for the time being conferred on it an NHS trust shall  
<sup>F5</sup>(1) comply with any directions given to it by the Secretary of State, whether of a general or of a particular nature.]
- (2) .....

#### Textual Amendments

**F5** Sch. 7A para. 6(1) substituted (1.10.1999) by 1999 c. 8, s. 49(2); S.S.I. 1999/90, art. 2(a), Sch. 1

- 7 (1) For each accounting year an NHS trust shall prepare and send to the Secretary of State an annual report in such form as may be determined by the Secretary of State.
- (2) At such time or times as may be prescribed, an NHS trust shall hold a public meeting at which its audited accounts, its annual report, and such other documents as may be prescribed shall be presented.
- (3) In such circumstances and at such time or times as may be prescribed, an NHS trust shall hold a public meeting at which such documents as may be prescribed shall be presented.

#### Subordinate Legislation Made

**P2** Sch. 7A para. 7(2): S. 12A(5) (with ss. 105(7), 108(1) and Sch. 7A para. 7(2)) power exercised by S.I. 1991/535

- 8 An NHS trust shall furnish to the Secretary of State such reports, returns and other information, including information as to its forward planning as, and in such form as, he may require.
- 9 (1) An NHS trust shall be liable to pay—
- (a) to the chairman and any [<sup>F6</sup>trustee] of the trust—
- (i) remuneration of an amount determined by the Secretary of State, not exceeding such amount as may be approved by the Treasury; and
- (ii) such travelling and other allowances as may be determined by the Secretary of State with the approval of the Treasury; and
- (b) to any member of a committee or sub-committee of the trust who is not also a director such travelling and other allowances as may be so determined.
- (2) If an NHS trust so determines in the case of a person who is or has been a chairman of the trust, the trust shall be liable to pay such pension, allowances or gratuities to or in respect of him as may be determined by the Secretary of State with the approval of the Treasury.
- (3) Different determinations may be made under sub-paragraph (1) or (2) in relation to different cases or description of cases.

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### Textual Amendments

- F6** Words in s. 9(1)(a) substituted (1.10.1999) by virtue of 1999 c.8, s. 65, **Sch. 4 para. 62(a)**; S.I. 1999/90, art. 2(b), **Sch. 1**

### *Specific powers*

- 10 An NHS trust may enter into NHS contracts.
- 11 An NHS trust may undertake and commission research and make available staff and provide facilities for research by other persons.
- 12 An NHS trust may—
- (a) provide training for persons employed or likely to be employed by the trust or otherwise in the provision of services under this Act; and
  - (b) make facilities and staff available in connection with training by a university or any other body providing training in connection with the health service.
- 13 An NHS trust may enter into arrangements for the carrying out on such terms as seem to it to be appropriate, of any of its functions jointly with any Health Board, with the Agency, with another NHS trust or with any other body or individual.
- 14 According to the nature of its functions, an NHS trust may make accommodation or services or both available for patients who give undertakings (or for whom undertakings are given) to pay, in respect of the accommodation or services (or both) such charges as the trust may determine.
- 15 For the purpose of making additional income available in order better to perform its functions, an NHS trust shall have the powers specified in section 7(2) of the Health and Medicines Act <sup>M1</sup>1988 (extension of powers of Secretary of State for financing the Health Service).

### Marginal Citations

- M1** 1988 c.49(113:2).

### *General powers*

- 16 Subject to Schedule 7B, an NHS trust shall have power to do anything which appears to it to be necessary or expedient for the purpose of or in connection with the discharge of its functions, including in particular power—
- (a) to acquire and dispose of land and other property;
  - (b) to enter into such contracts as seem to the trust to be appropriate;
  - (c) to accept gifts of money, land or other property, including money, land or other property to be held on trust, for purposes relating to any service which it is their function to provide, administer, or make arrangements for <sup>F7</sup>. . . ; and
  - (d) to employ staff on such terms as the trust thinks fit.

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### Textual Amendments

**F7** Words in *Sch. 7A para. 16(c)* repealed (1.10.1999) by 1999 c. 8, s. 65, *Sch. 4 para. 62(b)*, **Sch. 5**; S.S.I. 1999/90, art. 2(a)-(c), *Schs. 1, 2*

- 17 In connection with arrangements relating to community care services (within the meaning of section 5A(4) (local authority plans for community care services) of the Social Work (Scotland) Act 1968), the Secretary of State may by regulations make provision with respect to—
- (a) the transfer to employment by a local authority of staff employed by an NHS trust; and
  - (b) the transfer to employment by a national Health Service body of staff transferred to employment by a local authority by virtue of this paragraph.
- and for the purposes of this paragraph “National Health Service body” means an NHS trust, a Health Board or the Agency.
- 18 Regulations made under paragraph 17 may make such incidental and consequential provision in relation to staff transferred by virtue of that paragraph as may be made in relation to officers and servants of a Health Board transferred by virtue of regulations made under paragraph 8A of Schedule 1.
- 19 Before making regulations under paragraph 17, the Secretary of State shall consult such bodies and organisations as appear to him to be concerned.
- 20 (1) Without prejudice to the generality of paragraph 16, to or in respect of such of its employees as it may determine, an NHS trust may make such arrangements for providing pensions, allowances or gratuities as it may determine; and such arrangements may include the establishment and administration, by the trust or otherwise, of one or more pension schemes.
- (2) The reference in sub-paragraph (1) to pensions, allowances or gratuities to or in respect of employees of an NHS trust includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the trust’s employees who suffer loss of office or employment or loss of diminution of emoluments.

### *Status*

- 21 An NHS trust shall not be regarded as the servant or agent of the Crown or, except as provided by this Act, as enjoying any status, immunity or privilege of the Crown; and an NHS trust’s property shall not be regarded as property of, or property held on behalf of, the Crown.

## PART III

### SUPPLEMENTARY PROVISIONS

#### *Reimbursement for health services work carried out otherwise than under contract*

- 22 (1) In any case where an NHS trust provides goods or services for the benefit of an individual and—
- (a) those goods or services are not provided pursuant to an NHS contract; and

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- (b) the condition of the individual is such that he needs those goods or services and, having regard to his condition, it is not practicable before providing them to enter into an NHS contract for their provision, and
- (c) the provision of those goods or services is a function of a Health Board or is within the primary functions of a [<sup>F8</sup>Health Authority established under section 8] of the National Health Service Act 1977, <sup>F9</sup> . . .

the trust shall be remunerated by that Board <sup>F10</sup> . . . [<sup>F11</sup>or Health and Social Services Board] in respect of the provision of the goods or services in question.

- (2) The rate of any remuneration payable by virtue of sub-paragraph (1) shall be calculated in such manner or on such basis as may be determined by the Secretary of State.

#### Textual Amendments

- F8** Words in Sch. 7A para. 22(1)(c) substituted (28.6.1995 for certain purposes and 1.4.1996 for all other purposes) by 1995 c. 17, ss. 2(1), 2(3), 8(1), Sch. 1 Pt. III para. 102(7)(b)(i) (with Sch. 2 para. 6)
- F9** Words in Sch. 7A para. 22(1)(c) repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 62(c), Sch. 5; S.S.I. 1999/90, art. 2(a)-(c), Schs. 1, 2
- F10** Words in Sch. 7A para. 22(1) repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 62(c), Sch. 5; S.S.I. 1999/90, art. 2(a)-(c), Schs. 1, 2
- F11** Words in Sch. 7A para. 22(1) inserted by S.I. 1991/195, art. 4(6)

<sup>F12</sup>23 . . . . .

#### Textual Amendments

- F12** Sch. 7A para. 23 repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 62(d), Sch. 5; S.S.I. 1999/90, art. 2(a)-(c), Schs. 1, 2

#### *Use and development of land used for religious purposes and burial grounds*

- 24 Where land consisting of a church or other building used or formerly used for religious worship, or the site thereof, or a burial ground, within the meaning of [<sup>F13</sup>section 197 of the Town and Country Planning (Scotland) Act 1997] (provisions as to churches and burial grounds), is held by an NHS trust for any of its purposes, that section applies to the land as if—
  - (a) the land had been acquired by the trust as mentioned in subsection (1) of that section; and
  - (b) the trust were a statutory undertaker, within the meaning of that Act.

#### Textual Amendments

- F13** Words in Sch. 7A para. 24 substituted (27.5.1997) by virtue of 1997 c. 11, ss. 4, 6(2), Sch. 2 para. 46(1)

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## PART IV

### DISSOLUTION

- 25 (1) The Secretary of State may by order dissolve an NHS trust.
- (2) An order under this paragraph may be made—
- (a) on the application of the NHS trust concerned; or
  - (b) if the Secretary of State considers it appropriate in the interests of the health service as a whole.
- (3) Except where it appears to the Secretary of State necessary to make an order under this paragraph as a matter of urgency, no such order shall be made until after the completion of such consultation as may be prescribed.
- 26 (1) If an NHS trust is dissolved under this Part of this Schedule, the Secretary of State may by order transfer or provide for the transfer to—
- (a) the Secretary of State, or
  - (b) a Health Board, or
  - (c) the Agency, or
  - (d) another NHS trust.
- of such of the property, rights and liabilities of the NHS trust which is dissolved as in his opinion is appropriate and any such order may include provisions corresponding to those of section 12D.
- [ For the avoidance of doubt, the reference to “property, rights and liabilities” in sub-<sup>F14</sup>(1A) paragraph (1) includes endowments and property held in trust.]
- (2) An order under this paragraph may make provision in connection with the transfer of staff employed by or for the purposes of the NHS trust which is dissolved; and such an order may include provisions corresponding to those of sections 12B and 12C, including provision for the making of a scheme by such body (being a Health Board or the Agency) as may be specified in the order.
- (3) No order shall be made under this paragraph until after completion of such consultation as may be prescribed.

#### Textual Amendments

**F14** Sch. 7A para. 26(1A) inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 1(3), 12(1); S.S.I. 2004/361, art. 2(b)(i)

- 27 If an NHS trust is dissolved under this Part of this Schedule, the Secretary of State or such other NHS trust or Health Board as he may direct or, if he so directs, the Agency shall undertake the responsibility for the continued payment of any such pension, allowances or gratuities as, by virtue of paragraph 9(2) or paragraph 20 above, would otherwise have been the responsibility of the trust which has been dissolved.
- 28 An NHS trust may not be dissolved or wound up except in accordance with this Part of this Schedule.]

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