



# National Health Service and Community Care Act 1990

## 1990 CHAPTER 19

### PART II

#### THE NATIONAL HEALTH SERVICE: SCOTLAND

##### *Health Boards and other bodies*

#### **27 Health Boards, the Common Services Agency and state hospitals**

- (1) Subject to subsection (2) below, at the end of the day appointed for the coming into force of this subsection, any person who is a member of—
- (a) a Health Board;
  - (b) the management committee of the Common Services Agency for the Scottish Health Service; or
  - (c) a State Hospital Management Committee within the meaning of the Mental Health (Scotland) Act 1984,
- shall cease to be such a member.
- (2) Subsection (1) above does not apply to a person holding office as chairman of a Health Board or of a committee mentioned in subsection (1)(b) or (c) above.
- (3) Schedule 1 (Health Boards) and Schedule 5 (Common Services Agency) to the National Health Service (Scotland) Act 1978 (in this Part of this Act referred to as “the 1978 Act”) and Schedule 1 to the Mental Health (Scotland) Act 1984 (State Hospital Management Committees) shall be amended in accordance with Schedule 5 to this Act.

#### **28 Special Health Boards**

- In section 2 (Health Boards) of the 1978 Act—
- (a) in subsection (1)—

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- (i) after the words “Secretary of State” there shall be inserted the word “(a)”; and
- (ii) after the words “Health Boards” there shall be inserted—
  - “and
  - (b) subject to subsections (1A) and (1C), may by order constitute boards, either for the whole of Scotland or for such parts of Scotland as he may so determine, for the purpose of exercising such of his functions under this Act as he may so determine; and those boards shall, without prejudice to subsection (1B), be called Special Health Boards.”;
- (b) after subsection (1) there shall be inserted the following subsections—
  - “(1A) An order made under subsection (1)(b) may determine an area for a Special Health Board constituted under that subsection which is the same as the areas determined—
    - (a) for any other Special Health Board; or
    - (b) for any Health Board or Health Boards constituted by an order or orders made under subsection (1)(a).
  - (1B) An order under subsection (1)(b) may specify the name by which a board constituted by the order shall be known.
  - (1C) The Secretary of State may by order provide that such of the provisions of this Act or of any other enactment, or of any orders, regulations, schemes or directions made under or by virtue of this Act or of any other enactment, as apply in relation to Health Boards shall, subject to such modifications and limitations as may be specified in the order, so apply in relation to any Special Health Board so specified.”; and
- (c) in subsection (2), for the word “(1)” there shall be substituted the word “(1)(a)”.

## **29 Scottish advisory bodies**

- (1) Section 5 of the 1978 Act (Scottish Health Service Planning Council) shall cease to have effect.
- (2) Section 6 of that Act (national consultative committees) shall cease to have effect.
- (3) In section 7 of that Act (local health councils)—
  - (a) in subsection (2), the words from “by local authorities” to “and for the appointment” shall cease to have effect;
  - (b) in subsection (9)(d), after the words “Health Board” there shall be inserted “and from any NHS trust in their area or district”; and
  - (c) in subsection (9)(e), after the words “Health Board” there shall be inserted “and establishments in their area or district administered by NHS trusts”.
- (4) In section 8(1) of that Act (university liaison committees)—
  - (a) after the words “those Boards” where they first occur there shall be inserted “and any NHS trusts in the area or combined areas”;

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- (b) for the words “the area or combined” there shall be substituted “that area or those”; and
  - (c) after the words “those Boards” in the second place where they occur there shall be inserted “, any such NHS trust”.
- (5) In section 9 of that Act (local consultative committees)—
- (a) for the words from “after consultation” to “is representative” in each of subsections (1), (3) and (4) there shall be substituted “a Health Board is satisfied that a committee formed for its area is representative”;
  - (b) for the words “Secretary of State” in the second place where they occur in subsection (1) there shall be substituted “Health Board”; and
  - (c) for the word “he” in each of subsections (3) and (4) there shall be substituted “the Board”.

### **30 NHS contracts**

After section 17 of the 1978 Act there shall be inserted the following sections—

#### **“17A NHS contracts**

- (1) The persons or bodies mentioned in paragraphs (a) to (e) of subsection (2) may, for the purpose of carrying out their functions under any enactment, and without prejudice to any other power they may have in that regard, enter into arrangements for the provision of goods or services to or by them with—
- (a) one another; or
  - (b) any of the persons or bodies mentioned in paragraphs (f) to (m) of that subsection.
- (2) The persons and bodies referred to in subsection (1) are—
- (a) Health Boards;
  - (b) the Agency;
  - (c) the Scottish Dental Practice Board;
  - (d) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984;
  - (e) NHS trusts established under section 12A;
  - (f) health authorities within the meaning of section 128(1) (interpretation) of the National Health Service Act 1977;
  - (g) the Dental Practice Board;
  - (h) the Public Health Laboratory Service Board;
  - (i) Family Health Services Authorities within the meaning of section 10 of the National Health Service Act 1977;
  - (j) recognised fund-holding practices;
  - (k) NHS trusts established under section 5 of the National Health Service and Community Care Act 1990;
  - (l) Health and Social Services Boards constituted under the Health and Personal Social Services (Northern Ireland) Order 1972; and
  - (m) the Secretary of State.
- (3) In subsection (1)—
- (a) “goods” includes accommodation; and

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(b) “services” includes services of any description,  
and in this Act an arrangement falling within that subsection is referred to as  
an “NHS contract”.

(4) Whether or not an arrangement which constitutes an NHS contract would,  
apart from this subsection, be a contract in law, it shall not be regarded for  
any purpose as giving rise to contractual rights or liabilities, but if any dispute  
arises with respect to such an arrangement, either party may refer the matter  
to the Secretary of State for determination under the following provisions of  
this section.

(5) If, in the course of negotiations intending to lead to an arrangement which will  
be an NHS contract, it appears to either of the prospective parties that—

(a) the terms proposed by the other party are unfair by reason that that  
party is seeking to take advantage of its position as the only, or the only  
practicable, provider of the goods or services concerned or by reason  
of any other unequal bargaining position as between the prospective  
parties to the proposed arrangement; or

(b) for any other reason arising out of the relative bargaining positions of  
the prospective parties any of the terms of the proposed arrangements  
cannot be agreed,

that party may refer the terms of the proposed arrangement to the Secretary of  
State for determination under the following provisions of this section.

(6) Where a reference is made to the Secretary of State under subsection (4) or (5),  
the Secretary of State may determine the matter himself or, if he considers it  
appropriate, appoint a person to consider and determine it in accordance with  
regulations.

(7) By his determination of a reference under subsection (5), the Secretary of State  
or, as the case may be, the person appointed by him under subsection (6) may  
specify terms to be included in the proposed arrangement and may direct that  
it be proceeded with; and it shall be the duty of the prospective parties to the  
proposed arrangement to comply with any such directions.

(8) A determination of a reference under subsection (4) may contain such directions  
(including directions as to payment) as the Secretary of State or, as the case may  
be, the person appointed under subsection (6) considers appropriate to resolve  
the matter in dispute; and it shall be the duty of the parties to the NHS contract  
in question to comply with any such directions.

(9) Without prejudice to the generality of his powers on a reference under  
subsection (4), the Secretary of State or, as the case may be, the person  
appointed by him under subsection (6) may by his determination in relation to  
an arrangement constituting an NHS contract vary the terms of the arrangement  
or bring it to an end; and where the arrangement is so varied or brought to an  
end—

(a) subject to paragraph (b), the variation or termination shall be treated as  
being effected by agreement between the parties; and

(b) directions included in the determination by virtue of subsection (8)  
may contain such provisions as the Secretary of State or, as the case  
may be, the person appointed by him under subsection (6) considers

appropriate in order satisfactorily to give effect to the variation or to bring the arrangement to an end.

### **17B Reimbursement of Health Boards' costs**

- (1) Where a Health Board provide goods or services under this Act for an individual for whose health care it is not their function to provide by virtue of section 2(1), in circumstances where 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, that Health Board shall be remunerated in respect of that provision by the Health Board or Health and Social Services Board which has the function, or the District or Special Health Authority which has the primary functions, of providing those goods or services to that individual.
- (2) The rate of any remuneration payable by virtue of subsection (1) shall be calculated in such manner or on such basis as may be determined by the Secretary of State.
- (3) In any case where—
  - (a) a Health Board provide goods or services for the benefit of an individual; and
  - (b) the provision of those goods and services is not pursuant to an NHS contract; and
  - (c) the individual is resident outside the United Kingdom and is of a description (being a description associating the individual with another country) specified for the purposes of this subsection by a direction made by the Secretary of State,the Health Board shall be remunerated by the Secretary of State in respect of the provision of the goods or services at such rate or rates as he considers appropriate.
- (4) In subsection (1), “Health and Social Services Board” means such a Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972.”