

SCHEDULES

SCHEDULE 6

Section 32.

SCHEDULES TO BE INSERTED AFTER SCHEDULE 7 TO THE NATIONAL HEALTH SERVICE (SCOTLAND) ACT 1978

“SCHEDULE 7A

NATIONAL HEALTH SERVICE TRUSTS

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.
- 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 a subsequent order, the first order to be made in relation to any NHS trust shall specify—
 - (a) the name of the trust;
 - (b) the functions of the trust;
 - (c) the number of executive directors and non-executive directors;
 - (d) where the trust is to be regarded as having a significant teaching commitment, a provision to secure the inclusion in the non-executive directors referred to in paragraph (c) of a person appointed from a university with a medical or dental school specified in the order;
 - (e) 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
 - (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 assume responsibility for the ownership and management of 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.
- (3) In a case where the order contains a provision made by virtue of sub-paragraph (1)(d) and a person who is being considered for appointment by virtue of that provision—

- (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 non-executive director of the trust.
- (4) An order shall specify the accounting date of the trust.
- 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 provision 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.

PART II

DUTIES, POWERS AND STATUS OF NHS TRUSTS

Specific duties

- 6 (1) An NHS trust shall carry out effectively, efficiently and economically the functions for the time being conferred on it by an order under section 12A(1) and by the provisions of this Schedule and, with respect to the exercise of the powers conferred by an order under section 12A(8) or paragraphs 10 to 15, shall comply with any directions given to it by the Secretary of State, whether of a general or a particular nature.
- (2) An NHS trust shall comply with any directions given to it by the Secretary of State with respect to all or any of the following matters—
- (a) the qualifications of persons who may be appointed as officers of the trust;
 - (b) the employment, for the purpose of performing functions specified in the direction, of officers having qualifications or experience of a description so specified;
 - (c) the manner in which officers of the trust are to be appointed;

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- (d) prohibiting or restricting the disposal of, or of any interest in, any asset which, at the time the direction is given, the Secretary of State reasonably considers to have a value in excess of such sum as may be specified in an order under section 12A(1) and in respect of which the Secretary of State considers that the interests of the National Health Service require that the asset should not be disposed of;
 - (e) compliance with guidance or directions given (by circular or otherwise) to Health Boards or particular descriptions of Health Boards, or the Agency; and
 - (f) the implementation of awards relating to the distinction or merit of medical practitioners or dental practitioners or any class or classes of such practitioners.
- 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.
- 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 non-executive director 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.

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 1988 (extension of powers of Secretary of State for financing the Health Service).

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, which purposes shall include any purposes relating to a hospital or other establishment or facility which is provided or managed by the trust; and
 - (d) to employ staff on such terms as the trust thinks fit.
- 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

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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 or 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
 - (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 District Health Authority within the meaning of the National Health Service Act 1977,
- the trust shall be remunerated by that Board or Authority 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.

- 23 In any case where an NHS trust provides goods or services for the benefit of an individual and—
- (a) paragraph 22(1)(a) applies but paragraph 22(1)(c) does not apply; and
 - (b) 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 paragraph by a direction made by the Secretary of State,
- the trust shall be remunerated by the Secretary of State in respect of the provision of the goods or services in question at such rate or rates as he considers appropriate.

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

section 118 of the Town and Country Planning (Scotland) Act 1972 (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.

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.
- (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.
- 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.

SCHEDULE 7B

FINANCIAL PROVISIONS RELATING TO NHS TRUSTS

Borrowing

- 1
- (1) Subject to the provisions of this paragraph and to any limit imposed under the following provisions of this Schedule, for the purpose of its functions an NHS trust may borrow (both temporarily, by way of overdraft, and longer term) from the Secretary of State or from any other person.
 - (2) An NHS trust may not grant any security over any of its assets or in any other way use any of its assets as security for a loan.
 - (3) Except with the consent of the Secretary of State, an NHS trust may not borrow in any currency other than sterling; and the Secretary of State shall not give his consent to any such borrowing except with the approval of the Treasury.
 - (4) Interest on any sums borrowed from the Secretary of State by an NHS trust shall be paid at such variable or fixed rates and at such times as the Treasury may determine.
 - (5) A rate of interest under sub-paragraph (4) shall be determined as if section 5 of the National Loans Act 1968 had effect in respect of it and subsections (5) to (5B) of that section shall apply accordingly.
 - (6) Subject to sub-paragraphs (4) and (5), the terms on which any sums are borrowed from the Secretary of State by an NHS trust shall be such as he may determine; and, in the event of the early repayment of any sums so borrowed, such terms may require the payment of a premium or allow a discount.

Guarantees of borrowing

- 2
- (1) The Secretary of State may guarantee, in such manner and on such conditions as, with the approval of the Treasury, he considers appropriate, the repayments of the principal of and the payment of interest on any sums which an NHS trust borrows from a person other than the Secretary of State.
 - (2) Immediately after a guarantee is given under this paragraph, the Secretary of State shall lay a statement of the guarantee before each House of Parliament.
 - (3) Where any sum is issued for fulfilling a guarantee so given, the Secretary of State shall lay before each House of Parliament a statement relating to that sum as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.
 - (4) If any sums are issued in fulfilment of a guarantee given under this paragraph, the NHS trust concerned shall make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct,—
 - (a) payments of such amounts as the Secretary of State with the consent of the Treasury so directs in or towards repayment of the sums so issued; and
 - (b) payments of interest, at such rates as the Secretary of State with the consent of the Treasury so directs, on what is outstanding for the time being in respect of sums so issued.

Limits on indebtedness

- 3 (1) The aggregate of all sums borrowed by NHS trusts established to assume responsibility for the ownership and management of, or to provide and manage, hospitals or other establishments or facilities which are situated in Scotland shall not exceed £500 million or such other sum not exceeding £1,000 million as may be specified by order made by the Secretary of State with the consent of the Treasury.
- (2) The reference in sub-paragraph (1) to sums borrowed does not include a reference to the initial loan of NHS trusts.
- 4 Any power to make an order under paragraph 3 shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

Additional public dividend capital

- 5 (1) If the Secretary of State, with the consent of the Treasury, considers it appropriate to do so, he may, instead of making a loan to an NHS trust under paragraph 1, pay an amount to the trust as public dividend capital.
- (2) Section 12E shall apply to public dividend capital paid to an NHS trust under this paragraph as it applies to public dividend capital forming part of the trust's originating capital debt.

Surplus funds

- 6 If it appears to the Secretary of State that any amount standing in the reserves of an NHS trust is surplus to its foreseeable requirements, the trust shall, if the Secretary of State with the approval of the Treasury and after consultation with the trust so directs, pay that amount into the Consolidated Fund.

Investment

- 7 An NHS trust may not invest any money held by it except in securities of the Government of the United Kingdom or in such other manner as the Secretary of State may with the consent of the Treasury approve.”