

*Status: Point in time view as at 01/10/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Health Act 1999, SCHEDULE 1. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Section 2.

#### PRIMARY CARE TRUSTS

##### Commencement Information

- II** Sch. 1 partly in force; Sch. 1 not in force at Royal Assent see s. 67(1); Sch. 1 in force for certain purposes (E.) at 8.9.1999 by S.I. 1999/2342, art. 2(2); Sch. 1 in force for certain purposes (E.) at 4.1.2000 by S.I. 1999/2342, art. 2(3)(a), Sch. 2; Sch. 1 in force for certain purposes (E.) at 1.4.2000 by S.I. 1999/2342, art. 2(4)(a), Sch. 3

After Schedule 5 to the 1977 Act (Health Authorities and Special Health Authorities), there is inserted—

#### “SCHEDULE 5A

#### PRIMARY CARE TRUSTS

##### PART I

##### PCT ORDERS

- 1 (1) A PCT order shall specify—
  - (a) the name of the trust, and
  - (b) the operational date of the trust.
- (2) The operational date of a Primary Care Trust is the date on which the functions exercisable by it may be undertaken fully by the trust.
- 2 (1) A PCT order may provide for the establishment of a Primary Care Trust with effect from a date earlier than the operational date.
- (2) During the period beginning with that earlier date and ending with the day immediately preceding the operational date (referred to in this Schedule as the preparatory period), the exercise of any functions by the trust shall be limited to such exercise as may be specified in the PCT order for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date.
- (3) A PCT order may require the Health Authority in whose area a Primary Care Trust is established to meet the costs of the trust performing its functions during the preparatory period by doing either or both of the following—
  - (a) discharging such liabilities of the trust as may be incurred during the preparatory period and are of a description specified in the order,
  - (b) paying the trust sums to enable it to meet expenditure of a description specified in the order.

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- (4) A PCT order may require the Health Authority in whose area a Primary Care Trust is established or an NHS trust to make available to the Primary Care Trust during the preparatory period—
- (a) premises and other facilities of the authority or NHS trust,
  - (b) officers of the authority,
  - (c) staff of the NHS trust.

## PART II

### CONSTITUTION AND MEMBERSHIP

#### *Corporate status*

- 3 Every Primary Care Trust shall be a body corporate.

#### *Membership*

- 4 The members of a Primary Care Trust shall be—
- (a) a chairman appointed by the Secretary of State,
  - (b) officers of the trust, and
  - (c) a number of persons who are not officers of the trust.
- 5 (1) Regulations may make provision about—
- (a) the appointment of the chairman and other members of a Primary Care Trust (including any conditions to be fulfilled for appointment),
  - (b) the tenure of office of the chairman and other members of a trust (including the circumstances in which they cease to hold office or may be removed or suspended from office),
  - (c) how many persons may be appointed as members of a trust and how many of those members may be officers (a minimum and maximum number may be specified for both purposes),
  - (d) the appointment and constitution of any committees of a trust (which may include or consist of persons who are not members of the trust),
  - (e) the appointment and tenure of office of the members of any committees of a trust,
  - (f) the procedure to be followed by a trust, and by any committee of the trust, in the exercise of its functions,
  - (g) the circumstances in which a person who is not an officer of the trust is to be treated as if he were such an officer.
- (2) The power to make provision under paragraphs (c) and (f) of sub-paragraph (1) above includes power to make regulations about the number of persons who may be appointed and the procedure to be followed during the preparatory period.
- (3) Any regulations under this paragraph may, in particular, make provision to deal with cases where the post of any officer of a Primary Care Trust is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.

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- 6 Any reference in this Part of this Schedule to a committee of a Primary Care Trust includes a reference to sub-committees of, and joint committees and joint sub-committees including, the trust.
- 7 The validity of any proceedings of a Primary Care Trust, or of any of its committees, shall not be affected by any vacancy among the members or by any defect in the appointment of any member.

#### *Staff*

- 8 A Primary Care Trust may employ officers, and on such terms and conditions, as it thinks fit.
- 9 (1) Without prejudice to the generality of section 17 above the Secretary of State may direct a Primary Care Trust—
- (a) to make the services of any of its officers available to another Primary Care Trust, or
  - (b) to employ any person who is or was employed by another Primary Care Trust and is specified in the direction.
- (2) Before he gives a direction under sub-paragraph (1) above the Secretary of State shall—
- (a) consult the person whose services are to be made available or who is to be employed,
  - (b) satisfy himself that the trust has consulted that person, or
  - (c) consult such body as he may recognise as representing that person.
- (3) Sub-paragraph (2) above does not apply in relation to a direction under sub-paragraph (1)(a) above if the Secretary of State—
- (a) considers it necessary to give the direction for the purpose of dealing temporarily with an emergency, and
  - (b) has previously consulted bodies recognised by him as representing the person whose services are to be made available about the giving of directions for that purpose.
- 10 In addition to making provision in relation to Health Authorities and Special Health Authorities, regulations under paragraph 10(2) of Schedule 5 to this Act may also provide—
- (a) for the transfer of officers from one Primary Care Trust to another, and
  - (b) for arrangements under which the services of officers of a Primary Care Trust are placed at the disposal of another Primary Care Trust or a local authority.

#### *Remuneration, pensions etc*

- 11 (1) A Primary Care Trust may pay the chairman and any other members of the trust such remuneration and such travelling and other allowances as may be determined by the Secretary of State.
- (2) A trust may pay its officers such remuneration and allowances as it may determine.
- (3) A trust may pay the chairman or any person who has been chairman of the trust such pension, allowance or gratuity as may be determined by the Secretary of State.
- (4) A trust may pay the members of any committee of a trust such travelling and other allowances as may be determined by the Secretary of State.

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- (5) If, when a person ceases to be chairman of a trust, the Secretary of State determines that there are special circumstances which make it right that that person should receive compensation, the trust shall pay to him a sum by way of compensation of such amount as the Secretary of State may determine.

### PART III

#### POWERS AND DUTIES

##### *General powers*

- 12 (1) A Primary Care Trust may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of its functions.
- (2) That includes, in particular—
- (a) acquiring and disposing of land and other property,
  - (b) entering into contracts,
  - (c) accepting gifts of money, land and other property, including money, land or other property held on trust, either for the general or any specific purposes of the Primary Care Trust or for all or any purposes relating to the health service.
- 13 (1) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a Primary Care Trust of any function exercisable by it by virtue of section 16B or 17A above are enforceable by or (as the case may be) against that trust (and no other health service body).
- (2) This paragraph does not apply in relation to the joint exercise of any functions by a Primary Care Trust with another body under section 16B(2)(c) above.

##### *Specific powers*

- 14 (1) A Primary Care Trust may conduct, commission or assist the conduct of research.
- (2) A trust may, in particular, make officers available or provide facilities under subparagraph (1) above.
- 15 A Primary Care Trust may—
- (a) make officers available in connection with any instruction provided under section 63 of the <sup>M1</sup>Health Services and Public Health Act 1968,
  - (b) make officers and facilities available in connection with training by a university or any other body providing training in connection with the health service.

##### *Specific duties*

- 16 (1) As soon as is practicable after the end of each financial year every Primary Care Trust shall prepare a report on the trust's activities during that year and shall send a copy of the report to the Health Authority within whose area the trust's area falls and to the Secretary of State.
- (2) The report shall give details of the measures the trust has taken to promote economy, efficiency and effectiveness in using its resources for the exercise of its functions.

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- (3) A Primary Care Trust shall prepare and send such other reports, and supply such information, to the Health Authority within whose area the trust's area falls or to the Secretary of State as they or, as the case may be, he require.
- 17 Provision must be made by regulations requiring Primary Care Trusts to publicise—
- (a) the trust's audited accounts,
  - (b) the trust's annual reports prepared under paragraph 16 above,
  - (c) any report on the trust's accounts made pursuant to section 8 of the <sup>M2</sup>Audit Commission Act 1998 (report of auditor on matter of public interest), and
  - (d) any other document as may be prescribed,
- by taking such steps as may be specified in the regulations.

#### *Status*

- 18 A Primary Care Trust is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and a Primary Care Trust's property is not to be regarded as property of, or property held on behalf of, the Crown.

#### *Compulsory acquisition*

- 19 (1) A Primary Care Trust may be authorised to purchase land compulsorily for the purposes of its functions by means of an order made by the trust and confirmed by the Secretary of State.
- (2) The <sup>M3</sup>Acquisition of Land Act 1981 applies to the compulsory purchase of land under this paragraph.
- (3) No order is to be made by a Primary Care Trust under Part II of the Acquisition of Land Act 1981 in respect of any land unless the proposal to acquire the land compulsorily—
- (a) has been submitted to the Secretary of State in the form, and with the information, required by him, and
  - (b) has been approved by him.

#### *Dissolution*

- 20 (1) The Secretary of State may, if a Primary Care Trust is dissolved, by order transfer (or provide for the transfer) to himself or to a Health Authority, a Special Health Authority, an NHS trust or another Primary Care Trust any property, rights or liabilities of the dissolved trust.
- (2) If any consultation requirements apply, they must be complied with before the order is made.
- (3) In this paragraph, "consultation requirements" means requirements about consultation contained in regulations.

### **PART IV**

#### **TRANSFER OF PROPERTY**

- 21 (1) The Secretary of State may by order (referred to in this paragraph and paragraph 22 below as a transfer order)—

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- (a) transfer (or provide for the transfer of) any of the property, rights and liabilities of a health service authority to a Primary Care Trust,
  - (b) create or impose (or provide for the creation or imposition of) new rights or liabilities in respect of property transferred or retained.
- (2) Any property, rights and liabilities which—
- (a) belong to a health service authority other than the Secretary of State or are used or managed by a Health Authority, and
  - (b) are to be transferred to a Primary Care Trust by or under a transfer order,
- must be identified by agreement between the health service authority (or Health Authority) and the Primary Care Trust or, in default of agreement, by direction of the Secretary of State.
- (3) Where a transfer order transfers (or provides for the transfer of)—
- (a) land held on lease from a third party, or
  - (b) any other asset leased or hired from a third party or in which a third party has an interest,
- the transfer is binding on the third party despite the fact that, apart from this sub-paragraph, the transfer would have required the third party's consent or concurrence.
- (4) In sub-paragraph (3) above, "third party" means a person other than a health service authority.
- (5) In this paragraph and paragraph 22 below, "health service authority" means the Secretary of State, a Health Authority, a Primary Care Trust or an NHS trust.
- 22 (1) Stamp duty is not chargeable in respect of any transfer to a Primary Care Trust effected by or under a transfer order.
- (2) Where it becomes necessary, for the purpose of a transfer by or under a transfer order, to apportion any property, rights or liabilities, the order may contain such provisions as appear to the Secretary of State to be appropriate for the purpose.
- (3) Where a transfer order transfers (or provides for the transfer of) any property or rights to which paragraph 21(3) above applies, the order must contain such provisions as appear to the Secretary of State to be appropriate to safeguard the interests of third parties (within the meaning of that sub-paragraph), including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.
- (4) A certificate issued by the Secretary of State that—
- (a) any specified property,
  - (b) any specified interest in or right over any property, or
  - (c) any specified right or liability,
- has been vested in a Primary Care Trust by or under a transfer order is conclusive evidence of that fact for all purposes.
- In this sub-paragraph, "specified" means specified in the certificate.
- (5) A transfer order may include provision for matters to be settled by arbitration by a person determined in accordance with the order.
- (6) Paragraph 21 above and this paragraph do not prejudice—
- (a) any existing power of a health service authority to transfer property, rights or liabilities to a Primary Care Trust,

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- (b) the extent of the power conferred by section 126(4) above.

## PART V

### TRANSFER OF STAFF

- 23 (1) The Secretary of State may by order transfer to a Primary Care Trust any specified description of employees to which this paragraph applies.
- (2) This paragraph applies to employees of—
- (a) a Health Authority,
  - (b) an NHS trust,
  - (c) a Primary Care Trust.
- (3) An order may be made under this paragraph only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred.
- 24 (1) The contract of employment of an employee transferred under paragraph 23 above—
- (a) is not terminated by the transfer, and
  - (b) has effect from the date of the transfer as if originally made between the employee and the Primary Care Trust to which he is transferred.
- (2) Without prejudice to sub-paragraph (1) above—
- (a) all the rights, powers, duties and liabilities of the body from which an employee is transferred under paragraph 23 above under or in connection with his contract of employment shall by virtue of this sub-paragraph be transferred to the Primary Care Trust to which the employee is transferred under that paragraph, and
  - (b) anything done before the date of the transfer by or in relation to the body from which he is so transferred in respect of the employee or the contract of employment shall be deemed from that date to have been done by or in relation to the Primary Care Trust to which he is transferred.
- (3) Sub-paragraphs (1) and (2) above do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the body from which they would be transferred, or the Primary Care Trust to which they would be transferred, that he objects to the transfer.
- (4) Where an employee objects as mentioned in sub-paragraph (3) above his contract of employment with the body from which he would be transferred shall be terminated immediately before the date on which the transfer would occur; but he shall not be treated, for any purpose, as having been dismissed by that body.
- (5) This paragraph is without prejudice to any right of an employee to which paragraph 23 above applies to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only that, under this paragraph, the identity of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.
- 25 (1) Where an employee is to be transferred by an order under paragraph 23 above but is to continue to be employed for certain purposes by the transferor, the order may provide that the contract of employment of the employee shall, on the date on which the employee is transferred, be divided so as to constitute two separate contracts of

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employment between the employee and the transferor and the employee and the Primary Care Trust in question.

- (2) Where an employee's contract of employment is divided as provided under subparagraph (1) above, the order shall provide for paragraph 24 above to have effect in the case of the employee and his contract of employment subject to appropriate modifications.
- 26 Where a Primary Care Trust is dissolved, an order under paragraph 20 above includes power to transfer employees of the trust and the order may make any provision in relation to the transfer of those employees which is or may be made in relation to the transfer of employees under paragraph 23 above.”

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**Marginal Citations**

**M1** 1968 c.46.

**M2** 1998 c.18.

**M3** 1981 c.67.



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