

1974 No. 248

NATIONAL HEALTH SERVICE, ENGLAND AND WALES
**The National Health Service (Abolition of Authorities:
Consequential Provisions) Order 1974**

Made - - - - - 19th February 1974

Laid before Parliament 6th March 1974

Coming into Operation 1st April 1974

The Secretary of State for Social Services, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of powers conferred upon them by sections 14(2) and 54(2) and (5) of the National Health Service Reorganisation Act 1973(a) and of all other powers enabling them in that behalf, hereby make the following Order:—

Citation and commencement

1. This Order may be cited as the National Health Service (Abolition of Authorities: Consequential Provisions) Order 1974 and shall come into operation on 1st April 1974.

Interpretation

2.—(1) In this Order, unless the context otherwise requires:—

“abolished authority” means, as appropriate, a Regional Hospital Board, a Board of Governors of a teaching hospital (other than a preserved Board) and a Hospital Management Committee;

“the Act of 1946” means the National Health Service Act 1946(b);

“the Act of 1973” means the National Health Service Reorganisation Act 1973;

“the appointed day” means 1st April 1974;

“Area Authority” means an Area Health Authority;

“new health authority” means, as appropriate, a Regional Health Authority, Area Health Authority and special health authority;

“Regional Authority” means a Regional Health Authority;

and any other expression to which a meaning is assigned by the Act of 1946 has that meaning in this Order.

(2) References in this Order to any enactment, order or regulations include references to such enactment, order or regulations as amended by any subsequent enactment, order or regulations.

(a) 1973 c. 32.

(b) 1946 c. 81.

(3) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889^(a) shall apply for the purposes of the interpretation of this Order as they apply for the purposes of the interpretation of an Act of Parliament.

Enforceability of rights and liabilities

3.—(1) Subject to the following provisions of this Order any right or liability which was enforceable by or against an abolished authority shall be enforceable by or against the new health authority exercising, in place of that abolished authority, the function in respect of which such right or liability was acquired or incurred.

(2) Any right or liability which was enforceable by or against an abolished authority, in respect of the employment by such authority, of any person who transfers to the employment of a new health authority by virtue of an order made under section 18(1) of the Act of 1973, shall be enforceable by or against such new health authority.

(3) Any right or liability which was enforceable by or against an abolished authority in respect of any property shall be enforceable by or against the new health authority which, by virtue of directions given under section 7 of the Act of 1973, controls and manages such property on the appointed day.

(4) Any right of an abolished authority to secure payment of a debt due to that authority or under an undertaking to pay any charges, incurred before the appointed day, for accommodation or services, and any liability on the part of such an authority for payment of a debt, shall be enforceable by or against the new health authority directed, in accordance with Article 4 of this Order, to wind up the affairs of that abolished authority.

(5) Any right or liability which was enforceable by or against an abolished authority and which, by virtue of any of the foregoing provisions of this Article is not enforceable by or against any new health authority or is enforceable by or against more than one new health authority shall be enforceable, in England, by or against the Regional Authority within whose region is included—

(a) in the case of an abolished authority which is a Regional Hospital Board, all or the largest part of the area of that authority;

(b) in the case of an abolished authority which is a Hospital Management Committee or a Board of Governors of a teaching hospital, the address at which is situated, immediately before the appointed day, the office of the Secretary of the abolished authority;

and, in Wales, by or against the Welsh Health Technical Services Organisation^(b).

Winding up affairs of abolished authorities and other bodies

4.—(1) It shall be the duty of any new health authority so directed by the Secretary of State to take, in accordance with any such directions as aforesaid, such action as may be necessary for the winding up of any of the affairs of an abolished authority.

(2) It shall be the duty of any Area Authority or Family Practitioner Committee so directed by the Secretary of State to take, in accordance with such directions as aforesaid, any action which may be necessary for winding up any of the affairs of an Executive Council.

(a) 1889 c. 63.

(b) See S.I. 1973/1624 (1973 III, p. 5070).

(3) It shall be the duty of any Area Authority so directed by the Secretary of State, to take, in accordance with any such directions as aforesaid, any action which may be necessary for winding up any of the affairs of a local health authority, other than those relating to the duty, imposed by section 55(1) of the Act of 1946, to keep accounts.

(4) It shall be the duty of the Prescription Pricing Authority^(a) to take, in accordance with any directions that may be given by the Secretary of State, any action which may be necessary for winding up any of the affairs of the Joint Pricing Committee for England.

(5) It shall be the duty of the Welsh Health Technical Services Organisation to take, in accordance with any directions that may be given by the Secretary of State, any action which may be necessary for winding up any of the affairs of the Welsh Joint Pricing Committee.

Accounts of abolished authorities and other bodies

5.—(1) Where, on the appointed day, an abolished authority or an Executive Council has not performed, in respect of any period before the appointed day, any duty imposed upon that body by sub-section (2) or (3) of section 55 of the Act of 1946 it shall be the duty of any new health authority so directed by the Secretary of State to perform such duty in accordance with the provisions of the said section 55 as modified by section 14(2)(b) of the Act of 1973, with any regulations made under the said section 55 and with any directions that may be given by the Secretary of State.

(2) Where, on the appointed day, the Joint Pricing Committee for England has, as respects the period before the appointed day, not performed the duty imposed on that body by regulation 9 of the National Health Service (Executive Councils and Dental Estimates Board) Financial Regulations 1969^(b), as applied by Article 3 of the National Health Service (Joint Pricing Committee for England) Amendment Order 1969^(c), the duty so imposed shall be performed by the Prescription Pricing Authority in accordance with any directions that may be given by the Secretary of State.

(3) Where, on the appointed day, the Welsh Joint Pricing Committee has, as respects the period before the appointed day, not performed the duty imposed on that body by the regulation 9 referred to in the preceding paragraph of this Article as applied by Article 3 of the National Health Service (Welsh Joint Pricing Committee) (Amendment) Order 1969^(d), the duty so imposed shall be performed by the Welsh Health Technical Services Organisation in accordance with any directions that may be given by the Secretary of State.

Provision for continuity in exercise of functions

6.—(1) Anything duly done by, and any application duly made, or direction, authorisation or notice duly given, to,—

- (a) an abolished authority;
- (b) an Executive Council;
- (c) the Joint Pricing Committee for England;
- (d) the Welsh Joint Pricing Committee;
- (e) a local health authority;

^(a) See S.I. 1974/9 (1974 I, p. 14).
^(c) S.I. 1969/1781 (1969 III, p. 5577).

^(b) S.I. 1969/1581 (1969 III, p. 5047).
^(d) S.I. 1969/1774 (1969 III, p. 5569).

- (f) a local education authority;
- (g) a local authority within the meaning of section 41 of the Act of 1973; or
- (h) the Greater London Council;

in connection with the exercise, by such body, of any function which, by virtue of directions given under section 7 of the Act of 1973 or of any other provision of that Act, is a function exercisable by a new health authority or a Family Practitioner Committee, shall be deemed to have been duly done by, or made or given to, the body exercising such function on the appointed day in place of the body by which such thing was done, or to which such application was made or such direction, authorisation or notice was given.

(2) Any instrument made by any of the bodies specified in sub-paragraphs (a) to (h) of paragraph (1) of this Article, in so far as it was made in the exercise of any function referred to in that paragraph, shall continue in force until it is varied or revoked by the body exercising such function in place of the body by which such instrument was made.

(3) Any form supplied by any of the bodies specified in sub-paragraphs (a) to (h) of paragraph (1) of this Article in the exercise, by such body, of a function which, by virtue of any directions given under section 7 of the Act of 1973 or of any other provision of that Act, is a function exercisable by a new health authority or a Family Practitioner Committee, and any form supplied by the Secretary of State, shall continue to be a valid form in connection with the exercise of any function until it is cancelled or withdrawn by the Secretary of State or by the body exercising the function in place of the body by which the form was supplied, as if any reference contained in such a form to a body by which the function was exercisable before the appointed day was a reference to the body exercising that function on that day.

Modifications relating to joint user arrangements under the National Assistance Act

7. In Schedule 6 to the National Assistance Act 1948(a), paragraphs 6, 7 and 8, and any arrangements, agreements or determinations made under any of those paragraphs, shall have effect as if for any reference therein to a Regional Hospital Board there was substituted a reference to an Area Authority, as if the words "hospital and specialist" were omitted from any reference to hospital and specialist services, as if a reference to the Act of 1946 was a reference to the National Health Service Acts 1946 to 1973 and as if for sub-paragraph (5) of the said paragraph 7 there was substituted the following sub-paragraph:—

"(5) any expenditure of an Area Health Authority under head (b) of sub-paragraph (1) of this paragraph shall be deemed for the purposes of section 47(1) of the National Health Service Reorganisation Act 1973 to be expenditure of such an authority approved by the Secretary of State as mentioned in that section."

Provisions relating to admission of patients under the Mental Health Act

8. Without prejudice to the generality of the provision made by Article 6 of this Order, any approval of a medical practitioner for the purposes of section 28 of the Mental Health Act 1959(b) given under regulation 5 of the Mental Health (Hospital and Guardianship) Regulations 1960(c) for a period which includes the appointed day, shall be deemed to have been duly given by an Area Authority exercising, on behalf of the Secretary of State, his functions relating thereto in

(a) 1948 c. 29.

(b) 1959 c. 72.

(c) S.I. 1960/1241 (1960 II, p. 1903).

accordance with directions given under section 7 of the Act of 1973, and any recommendation required for the purposes of an application for the admission of a patient under Part IV of the said Act of 1959, given by a medical practitioner who has been approved by a local health authority, shall be deemed to have been given by a medical practitioner approved, in the exercise of the function on behalf of the Secretary of State, by an Area Authority.

Schemes relating to governing bodies of medical schools in London

9.—(1) In section 15(1) of the Act of 1946, for the words “the Board of Governors of the teaching hospital with which the school is associated” there shall be substituted the words “the Area Health Authority (Teaching) managing and controlling the hospital with which the school is associated” and in consequence thereof the governing body of any medical school, to which the said section 15(1) applies, shall forthwith prepare and submit, by a date not later than 30th September 1974, for approval by the governing body of the University of London in accordance with section 15(3) of the Act of 1946, a new scheme amending, in accordance with the said section 15(1) as modified by this Order, any scheme in effect immediately before the appointed day.

(2) Any person, included among the members of a governing body of a medical school to which the said section 15(1) applies as representing the Board of Governors of a teaching hospital, shall cease to be such a member upon the coming into operation of this Order but nothing in this Order shall preclude such a person from appointment as a member representing an Area Authority or in any other capacity for which provision is made in any scheme as amended in accordance with the provisions of this Order, and the proceedings of such governing body of a medical school shall not be invalidated by any vacancy in its membership by reason of not including among members persons representing the Board of Governors of the teaching hospital with which the school is associated, pending the coming into effect of an amending scheme prepared and submitted in accordance with the provisions of this Article.

Accommodation and services made available on payment of charges

10.—(1) To the extent that any accommodation is, immediately before the appointed day, approved by the Secretary of State in accordance with the National Health Service (Functions of Regional Hospital Boards, etc.) Regulations 1969(a), to be made available under section 4 of the Act of 1946, it shall be deemed to be authorised to be made available under that section, to the extent determined, on and after that day until such approval is varied or withdrawn by the Secretary of State.

(2) Without prejudice to the generality of the provision made by Article 6 of this Order, any authorisation for making available accommodation and services for private patients, given in exercise of functions under the regulations referred to in the preceding paragraph of this Article by a Regional Hospital Board or a Board of Governors of a teaching hospital other than a preserved Board, in respect of any hospital or group of hospitals, shall continue in force until varied or revoked, in Wales by the Secretary of State, and in England by the Regional Authority in the region of which is included the area of the Area Authority which, by virtue of directions given under section 7 of the Act of 1973, controls and manages such hospital or hospitals:

(a) S.I. 1969/297 (1969 I, p. 809).

Provided that any authorisation, given in relation to a hospital or group of hospitals in England of which control and management is, on the appointed day divided pursuant to such directions as aforesaid between the Area Authorities in two or more regions, shall continue in force until its replacement by separate authorisations has been agreed between both, or all, the relevant Regional Authorities or, in default of such agreement, has been directed by the Secretary of State.

Provisions relating to appointment of consultants

11.—(1) For the purpose of filling a vacancy in any office to which the National Health Service (Appointment of Consultants) Regulations 1969(a) apply immediately before the appointed day, any advertisement of such a vacancy, any constitution and proceedings of an Advisory Appointments Committee for the purpose of filling such a vacancy and any selection of a person or of persons considered by such committee to be suitable for appointment to fill the vacancy, done in accordance with the provisions of those regulations, shall be deemed to have been duly done in accordance with regulations made under paragraph 10(1) of Schedule 1 to the Act of 1973 with respect to an appointment made for the purpose of filling that vacancy for a period commencing on or after the appointed day by the new health authority.

(2) Where, before the appointed day, an appointment has been made by an abolished authority for the purpose of filling a vacancy to an office, to which the regulations referred to in the preceding paragraph of this Article apply, for a period commencing on or after the appointed day, such appointment shall be deemed to have been duly made, in accordance with any regulations made under paragraph 10(1) of Schedule 1 to the Act of 1973 by the Regional Authority or the Area Health Authority (Teaching) responsible, on the appointed day, for filling any vacancy in that office.

Continuance of family practitioner services

12.—(1) Each Family Practitioner Committee (hereafter in this Article referred to as a "Committee") shall draw up, for the area for which it is established, medical, pharmaceutical, dental and ophthalmic lists pursuant to section 33, 38, 40 and 41 respectively of the Act of 1946, containing the names of all practitioners whose names are included in the corresponding lists drawn up by an Executive Council (hereafter in this Article referred to as a "Council"), in consequence of which such practitioners had given undertakings, effective immediately before the appointed day, to provide general medical services, general dental services, general ophthalmic services, or pharmaceutical services in the area for which such Committee is established, and any practitioner who is included in the list by virtue of this Order shall be deemed to have been included pursuant to an application, for the provision of services in the area for which the Committee is established, made to such Committee:

Provided that nothing in this Order shall entitle any medical practitioner to provide services in any part of the area for which a Committee is established unless he was specifically entitled to provide services in such part immediately before the appointed day.

(a) S.I. 1969/163 (1969 I, p. 419).

(2) All arrangements for the provision of general medical services, general dental services, general ophthalmic services and pharmaceutical services made by a Council shall, so far as they relate to the area of any Area Authority, remain in full force and effect as if made by that Area Authority or as if made on behalf of that Area Authority by the Committee established by such authority, and any decision given before the appointed day by, or any reference in any instrument to, the Local Medical Committee, Local Dental Committee, Local Optical Committee or Local Pharmaceutical Committee for the area of a Council shall have effect as if it had been given by, or is a reference to, the Local Medical Committee, Local Dental Committee, Local Optical Committee or Local Pharmaceutical Committee for the area of such Area Authority or Committee.

(3) Any services provided as part of general medical services, general dental services, general ophthalmic services or pharmaceutical services which have been commenced in the area of a Council but not completed before the appointed day and any matters arising in consequence of such services completed before that day, may be continued with the substitution for the Council, as regards any responsibility for the administration (including payment) of those services, of the Committee established for the area in which such services are being provided or of such other Committee as the Secretary of State may direct.

(4) Any proceedings under Part II of the National Health Service (Service Committees and Tribunal) Regulations 1956(a), in relation to services provided before the appointed day in the area of a Council, may be instituted and carried on, or as the case may be, continued by or before the Committee established for the area within which is situated the place where it is alleged that the matters giving rise to the proceedings (whether consisting of provision of services or a failure to provide services) occurred.

(5) Any proceedings before a Council instituted before the appointed day for determining whether the replacement or repair of an appliance is necessitated—

(a) in the case of an optical appliance, by lack of care on the part of the person supplied; or

(b) in the case of a dental appliance, by an act or omission of the person supplied or (if it occurred when such person was under 16 years of age) of his, or of the person having charge of him when it occurred;

shall be continued with the substitution for the Council of the Committee established for the area which includes the address of the practice premises given on the application for the replacement or repair of the appliance.

Appointment to act on behalf of persons unable to act for themselves

13. Any appointment, made by the Secretary of State for the purposes of the Family Allowances Act 1965(b), the National Insurance Act 1965(c), the National Insurance (Industrial Injuries) Act 1965(d), the Social Security Act 1966(e), the Industrial Injuries and Diseases (Old Cases) Act 1967(f) or the Family Income Supplement Act 1970(g), of an abolished authority or of a person holding a specific office with an abolished authority to exercise, on behalf of a person unable to act by reason of mental or other incapacity, any

(a) S.I. 1956/1077 (1956 I, p. 1554).

(b) 1965 c. 53.

(e) 1966 c. 20.

(c) 1965 c. 51.

(f) 1967 c. 34.

(d) 1965 c. 52.

(g) 1970 c. 55.

right which such person may have under any of those Acts, shall continue to be a valid appointment as if any reference therein to the abolished authority or person holding the said office was a reference to the Area Authority which, by virtue of a direction under section 7 of the Act of 1973, controls and manages, on the appointed day, the hospital at which the person, on whose behalf the appointment to act has been made, is receiving treatment.

Keith Joseph,
Secretary of State for Social Services.

18th February 1974.

Peter Thomas,
Secretary of State for Wales.

19th February 1974.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes certain transitional and consequential provisions upon the abolition of the health authorities constituted under the National Health Service Act 1946 and their replacement by new health authorities established under the National Health Service Reorganisation Act 1973.

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