
STATUTORY INSTRUMENTS

1995 No. 574 (S.43)

NATIONAL HEALTH SERVICE, SCOTLAND

The State Hospitals Board for Scotland Order 1995

<i>Made</i>	- - - -	<i>3rd March 1995</i>
<i>Laid before Parliament</i>		<i>10th March 1995</i>
<i>Coming into force</i>	- -	<i>1st April 1995</i>

The Secretary of State, in exercise of the powers conferred on him by sections 2(1)(b), (1A), (1B) and (1C) and 105(7) of the National Health Service (Scotland) Act 1978(1), as read with section 102(3) and (4)(b) of that Act(2), and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

- 1.—(1) This Order may be cited as the State Hospitals Board for Scotland Order 1995.
- (2) This Order shall come into force on 1st April 1995.

Interpretation

- 2.—(1) For the purposes of this Order unless the context otherwise requires—
 - “the Act” means the National Health Service (Scotland) Act 1978;
 - “the Board” means the Special Health Board, to be known by the name of the State Hospitals Board for Scotland, which is constituted by this Order;
 - “enactment” includes order and regulation.
- (2) In this Order unless the context otherwise requires, a reference to an article or Schedule is to an article of, or the Schedule to, this Order and a reference to a paragraph is to a paragraph of the article in which the reference is made.

(1) 1978 c. 29; section 2(1) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (“the 1983 Act”), Schedule 7, paragraph 1, and by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 28 which inserted subsections (1)(b), (1A), (1B) and (1C); section 105(7) which was amended by the Health Services Act 1980 (c. 53) (“the 1980 Act”), Schedule 6, paragraph 5(1) and Schedule 7, and by the 1983 Act, Schedule 9, paragraph 24, contains provisions relevant to the exercise of the powers under which this Order is made.

(2) Section 102(3) and (4)(b) which was substituted by the State Hospitals (Scotland) Act 1994 (c. 16), section 1, (“the 1994 Act”), contains provisions relevant to the exercise of the powers under which this Order is made; the relevant Commencement Order is S.I. 1995/576.

Constitution, name and area of the Board

3. There is hereby constituted a Special Health Board for the whole of Scotland to be known by the name of the State Hospitals Board for Scotland.

Functions of the Board

- 4.—(1) The Board shall exercise the following functions of the Secretary of State namely:—
- (a) functions in relation to state hospitals conferred on him by the Act including, without prejudice to the foregoing generality, those specified in subsections (1)(2) and (3) of section 102(3) (state hospitals) of the Act, and
 - (b) functions specified in paragraph (2) subject, however, to any limitations there specified.
- (2) The functions specified in this paragraph are as follows:—
- (a) the power of the Secretary of State to assist voluntary organisations under section 16 of the Act(4);
 - (b) the power of the Secretary of State under section 16B of the Act(5) to give financial assistance to voluntary organisations limited to assistance to such organisations whose activities consist in or include the provision of services similar to services provided by the Board or for the provision of which the Board is under a duty to make arrangements by virtue of the Act and the assistance so given is given on such terms and conditions as the Secretary of State with the approval of the Treasury might determine;
 - (c) the duty of the Secretary of State under section 36(1) of the Act to provide throughout Scotland, to such extent as the Board considers necessary to meet all necessary requirements for hospital accommodation and associated services at state hospitals;
 - (d) the duty of the Secretary of State under section 37 of the Act to make arrangements to such extent as the Board considers necessary for the purposes of the prevention of illness consisting of mental disorder, the care of persons suffering from such illness and the after-care of such persons;
 - (e) the power of the Secretary of State under section 42 of the Act to disseminate information relating to the promotion and maintenance of health and the prevention of illness insofar as relating to mental disorder;
 - (f) the duty of the Secretary of State under section 47 of the Act to make available such facilities as appear to the Board to be reasonably necessary for undergraduate and post-graduate clinical teaching and research and for the education and training of persons providing or intending to provide services at state hospitals and to conduct or assist by grants or otherwise under that section research into any matters relating to the causation, prevention, diagnosis or treatment of illness consisting of mental disorder, or into other matters relating to services at state hospitals;
 - (g) the power of the Secretary of State under section 48 of the Act to provide on such terms and conditions as may be agreed residential accommodation for officers employed for the purposes of any functions of the Board under this Order, including residential and practice accommodation for medical and dental practitioners;
 - (h) the powers of the Secretary of State under section 79(1) of the Act(6) to take on lease or to purchase moveable property and land which is required for the purposes of the Board and to use for those purposes and manage any heritable or moveable property so acquired;

(3) Section 102 was substituted by the 1994 Act, section 1.

(4) Section 16 was amended by the 1980 Act, Schedule 7 and by the Vehicle Excise and Registration Act 1994 (c. 22), Schedule 3, paragraph 13.

(5) Section 16B was inserted by the 1983 Act, section 3.

(6) Section 79(1) was amended by the 1990 Act, Schedule 9 paragraph 19(15).

- (i) the powers of the Secretary of State under subsection (1A) of section 79 of the Act⁽⁷⁾ to dispose of land no longer required for the purposes of the Board disregarding so much of that subsection as relates to the function of the Secretary of State to authorise certain officers to execute instruments on his behalf;
 - (j) the power of the Secretary of State under paragraph 4 of Schedule 1 to the Act⁽⁸⁾, as applied in relation to the Board by article 5, to pay remuneration to the Chairman of the Board and to such other members thereof as may be prescribed so, however, that this subparagraph shall not be construed as extending to the power to determine the remuneration or to prescribe the members to whom it may be paid; and
 - (k) the power of the Secretary of State under paragraph 13 of Schedule 1 to the Act, as applied in relation to the Board by article 5, to pay to members of the Board, and any committees and sub-committees thereof, travelling and other allowances so however, that this subparagraph shall not be construed as extending to the power to determine the amount of such allowances;
 - (l) the duty of the Secretary of State under paragraph 23 of Schedule 7A to the Act⁽⁹⁾ to remunerate an NHS trust in respect of the provision of goods and services in accordance with that paragraph, but not including the power of the Secretary of State to determine the rate or rates appropriate for such remuneration.
- (3) In exercising any functions of the Secretary of State to acquire, use, manage or dispose of land the Board shall ensure—
- (a) that any instrument in connection with the exercise of those functions is in the name of the Secretary of State for Scotland and not that of the Board; and
 - (b) that, where any such instrument requires to be executed on his behalf by the Secretary of State for Scotland and it is not executed in accordance with section 1⁽⁸⁾ of the Reorganisation of Offices (Scotland) Act 1939⁽¹⁰⁾, it is executed on his behalf in accordance with section 79(1A) of the Act.

Application of enactments

5.—(1) Each of the enactments specified in column 1 of each Part of the Schedule (the subject matter of which is described generally in column 2) shall apply in relation to the Board as it applies in relation to Health Boards subject, however, to the modifications and limitations (if any) specified opposite thereto in column 3 and to paragraph (2).

(2) The enactments which are applied in relation to the Board by virtue of paragraph (1) are so applied only for the purposes of the exercise by the Board of the functions conferred on it by this Order.

Saving for powers of the Secretary of State, Health Boards and the Agency

6. Nothing in this Order shall prevent the Secretary of State, a Health Board or the Common Services Agency for the Scottish Health Service from exercising any function conferred or imposed upon any one of them by or under any enactment or rule of law or affect or restrict the exercise of any such function by them or any one of them.

(7) Section 79(1A) was inserted by the 1983 Act, Schedule 7, paragraph 3.

(8) Paragraph 4 of Schedule 1 was amended by the 1990 Act, Schedule 5, paragraph 3.

(9) Schedule 7A was inserted by the 1990 Act, Schedule 6.

(10) 1939 c. 20.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

St Andrew's House,
Edinburgh
3rd March 1995

Fraser of Carmyllie
Minister of State, Scottish Office

SCHEDULE

Article 5(1)

ENACTMENTS APPLIED TO THE BOARD

PART I

The Act

Column 1 Enactment	Column 2 Nature of Provision	Column 3 Modifications and Limitations (where applicable)
In the Act—		
In Part I		
In Section 2—	Health Boards	
Subsection (3)	Variation of area and functions of Health Board	
Subsection (4)	Provisions incidental to variation of area or functions of Health Boards	
Subsection (5)	Health Boards to act in accordance with regulations or directions (11)	
Subsection (8)	Health Board to act as principal	
In Section 10—	Common Services Agency	
Subsection (4)	Power to provide that functions of Health Boards may be referred to the Agency (12)	
Section 13	Co-operation between Health Boards and other Authorities (13)	
In section 15—		
Subsection (1)(b)	Supply of goods to local and education authorities and other public bodies	
Subsection (1)(c)	Provision of services to local and education authorities (14)	

(11) Section 2(5) was amended by the 1990 Act, Schedule 9, paragraph 19(1).

(12) Section 10(4) was amended by the 1990 Act, Schedule 10.

(13) Section 13 was amended by the 1990 Act, Schedule 9, paragraph 19(4).

(14) Section 15(1)(c) was amended by the 1980 Act, section 3(2).

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Column 1 Enactment	Column 2 Nature of Provision	Column 3 Modifications and Limitations (where applicable)
Subsection (1)(d)	Use of health service premises by local and education authorities	
Subsection (1)(e)	Use of health service vehicles etc. by local and education authorities	
Subsection (2)	Arrangements with third parties for the supply of goods and materials	Applied so far as it relates to subsection (1)(b).
Section 16A	Power to make payments to local authority towards expenditure for social work, educational or housing functions ⁽¹⁵⁾	
Section 17A	Power to enter into arrangements with NHS bodies for the provision of goods and services (“NHS contracts”) ⁽¹⁶⁾	
In Part IV		
Section 77	Default powers ⁽¹⁷⁾	
In Part V		
In Section 79—		
Subsection (1A)	Power of Secretary of State to dispose of land and, where he has delegated any function relating to the acquisition, management or disposal of land, power to authorise any officer of a Health Board to execute any instrument on his behalf	
Subsection (3)	Power to acquire moveable property on behalf of the Secretary of State	
In section 83—		
Subsection (1)	Power to hold property on trust	

⁽¹⁵⁾ Section 16A was inserted by the 1983 Act, section 2 and amended by the Housing (Consequential Provisions) Act 1985 (c. 71), Schedule 2, paragraph 41.

⁽¹⁶⁾ Section 17A was inserted by the 1990 Act, section 30.

⁽¹⁷⁾ Section 77 was amended by the 1990 Act, Schedule 9, paragraph 19(14).

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Column 1 Enactment	Column 2 Nature of Provision	Column 3 Modifications and Limitations (where applicable)
Section 84	Power to trustees to make payments to Health Boards (18)	
Section 84A	Power to raise money and property by appeals, collections and other similar activities (19)	
In section 85—		
Subsection (1)	Payment of expenses of certain bodies (20)	
Subsection (2A)	Power to make directions to bodies listed in subsection (1) (21)	
In section 85A—		
Subsection (1)	Duty of bodies referred to in section 85(1) as regards expenditure (22)	
Subsection (3)	Power to make directions in relation to duty under subsection (1)	
Subsection (4)	Disregard for the purposes of the section of certain trust funds	
Section 85B	Power to make provision for meeting losses and liabilities etc. of certain health service bodies (23)	
Section 86	Provisions in relation to the keeping and auditing of accounts, to their submission to the Secretary of State (24)	
Section 87	Power to make regulations as to financial arrangements of health service bodies	
In Part VIII—		

(18) Section 84 was amended by the 1990 Act, Schedule 9, paragraph 19(10).

(19) Section 84A was inserted by the 1980 Act, section 5(2) and amended by the 1990 Act, Schedule 9, paragraph 19(17).

(20) Section 85(1) was substituted by the 1980 Act, section 6(3), amended by the Health and Social Security Act 1984 (c. 48), Schedule 8 and by the 1990 Act, Schedule 10.

(21) Section 85(2A) was inserted by the 1980 Act, section 6(3).

(22) Section 85A was inserted by the 1980 Act, section 6(4) and amended by the Health and Medicines Act 1988 (c. 49), section 16(4).

(23) Section 85B was inserted by the 1990 Act, section 41.

(24) Section 86 was amended by the 1990 Act, section 36(2) to (8).

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Column 1 Enactment	Column 2 Nature of Provision	Column 3 Modifications and Limitations (where applicable)
Section 101	Protection of Health Boards (25)	
In Schedule 1—	Health Boards	
Paragraph 1	Health Boards to be bodies corporate and have a common seal	
Paragraph 2	Appointment of Chairman and members	
Paragraph 4	Payment of remuneration to the Chairman and such members of Health Boards as may be prescribed (26)	
Paragraph 5	Employment of officers and servants (27)	
Paragraph 6	Power to make regulations as to method of appointment, qualifications, remuneration and conditions of service of officers and servants	
Paragraph 7	Officers and servants employed in accordance with regulations and directions (28)	
Paragraph 7A	Power to make regulations providing for transfer of officers and servants (29)	
Paragraph 7B	Directions to Health Boards to place officers or servants at disposal of other bodies (30)	
Paragraph 9	Application of the seal of Health Boards	For the words “one member” there shall be substituted the words “two members” and the words after “member of the Board” to the end of the paragraph shall be omitted
Paragraph 10	Proof of instruments	

(25) Section 101 was amended by the 1990 Act, Schedule 9, paragraph 19(9).

(26) Paragraph 4 of Schedule was amended by the 1990 Act, Schedule 5, paragraph 3.

(27) Paragraph 5 was amended by the 1980 Act, Schedule 6, paragraph 7(2) and Schedule 7.

(28) Paragraph 7 was amended by the 1980 Act, Schedule 6, paragraph 7(3).

(29) Paragraph 7A was inserted by the 1990 Act, Schedule 5, paragraph 5.

(30) Paragraph 7B was inserted by the 1990 Act, Schedule 5, paragraph 5.

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Column 1 Enactment	Column 2 Nature of Provision	Column 3 Modifications and Limitations (where applicable)
Paragraph 11	Power to make regulations as to appointment, committees and procedure (31)	
Paragraph 11A	Subscription to funds of other bodies (32)	
Paragraph 12	Proceedings not to be invalidated by vacancies	
Paragraph 13	Payment to members of a Health Board, the Committees and sub-committees thereof of travelling and other allowances, including compensation for loss of remunerative time	The words “, including compensation for loss of remunerative time,” shall be omitted
Paragraph 14	Allowances not payable except in circumstances determined by the Secretary of State	
Paragraph 15	Time and method of payment of allowances	
In Schedule 5—	Common Services Agency	
Paragraph 7B	Power to make regulations providing for the transfer of officers and servants (33)	
Paragraph 7C	Power to make directions as to placing of staff with other bodies (34)	

PART II

Acts other than the Act

Column 1 Enactment	Column 2 Nature of Provision	Column 3 Modifications and Limitations (where applicable)
The Public Bodies (Admission to Meetings) Act 1960 (35)	Admission of the public to meetings	

(31) Paragraph 11 was amended by the 1980 Act, Schedule 6, paragraph 7(4) and Schedule 7 and by the 1990 Act, Schedule 5, paragraph 7.

(32) Paragraph 11A was inserted by the 1980 Act, Schedule 6, paragraph 7(5).

(33) Paragraph 7B was inserted by the 1990 Act, Schedule 5, paragraph 11.

(34) Paragraph 7C was inserted by the 1990 Act, Schedule 5, paragraph 11.

(35) 1960 c. 67.

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Column 1 Enactment	Column 2 Nature of Provision	Column 3 Modifications and Limitations (where applicable)
The House of Commons Disqualification Act 1975(36)—	Offices disqualifying for membership of the House of Commons	
In Schedule 1, Part III the entry relating to Chairman or any member, not being also an employee, of a Health Board(37)		
Overseas Development and Co-operation Act 1980(38)—	Powers of National Health Service bodies in Scotland to enter into and carry out agreements to furnish technical assistance outside the UK.	
In Section 2 Subsection (1)(a) and (c)		
Schedule 1(39)	Statutory bodies with powers under section 2(1)	Limited to the reference in Part IV to “A Health Board”
Health Service Commissioners Act 1993(40)	Provisions for investigations by the Health Service Commissioner for Scotland	

PART III

Enactments other than Acts of Parliament

Column 1 Enactment	Column 2 Nature of Provision	Column 3 Modifications and Limitations (where applicable)
The National Health Service (Professions Supplementary to Medicine) (Scotland) Regulations 1974(41)	Prohibits employment for provision of services under the National Health Service of certain health professions unless they are registered under the Professions Supplementary to Medicine Act 1960(42)	

(36) 1975 c. 24.

(37) Schedule 1, Part III was amended by the 1990 Act, section 59(3).

(38) 1980 c. 63.

(39) Part IV of Schedule 1 was amended by the 1990 Act, Schedule 9, paragraph 21(c).

(40) 1993 c. 46.

(41) S.I. 1974/549.

(42) 1960 c. 66.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Column 1 Enactment	Column 2 Nature of Provision	Column 3 Modifications and Limitations (where applicable)
The National Health Service (Financial Provisions) (Scotland) Regulations 1974(43)	Preparation of estimates of income and expenditure and accounts of Health Boards and related matters of a financial nature	Limited so as to exclude the application of any provisions relative to Local Health Councils or the Common Services Agency
The National Health Service (Vehicles) (Scotland) Order 1974(44)	Exemption from statutory requirements for vehicle excise duty and third party insurance of a National Health Service vehicle made available to a local authority, education authority or voluntary organisation	
The National Health Service (Food Premises) (Scotland) Regulations 1987(45)	Health authorities (including Health Boards) to be treated for the purposes of food legislation (as defined in the Regulations) as both owners and occupiers of premises used by them	
The National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1991(46)	The determination of remuneration and conditions of service of officers of Health Boards	
The Health Boards (Membership and Procedure) (No.2) Regulations 1991(47)	Provision as to the membership and procedure to be applied by Health Boards	Limited so as to exclude application of regulation 6(1) (a), (b) and (c).
The National Health Service (Appointment of Consultants) (Scotland) Regulations 1993(48)	Appointment as an officer of a Health Board of any registered medical or dental practitioner to the post of consultant or of any registered medical practitioner to the post of community medicine specialist	

(43) S.I. 1974/468.

(44) S.I. 1974/1491.

(45) S.I. 1987/2; amended by S.I. 1990/2625.

(46) S.I. 1991/537.

(47) S.I. 1991/809; amended by S.I. 1993/1615.

(48) S.I. 1993/994.

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order constitutes, under article 3, a Special Health Board for the whole of Scotland to be known as the State Hospitals Board for Scotland. In accordance with article 1 the Order comes into force on 1st April 1995.

Article 4 of the Order confers on this new Board the duty to provide state hospitals with associated services for the mentally disordered detained under the Mental Health (Scotland) Act 1984 who require treatment under conditions of special security. The Board shall also carry out duties of the Secretary of State under the National Health Service (Scotland) Act 1978 (“the 1978 Act”), including the duty to make arrangements for the prevention of mental disorder and the care and aftercare of those suffering from mental disorder, and the duty to make available facilities for research and training at state hospitals. This article further enables the Board to exercise certain functions of the Secretary of State including the giving of assistance to voluntary organisations and the acquisition, management and disposal of property.

Article 5 and the Schedule apply to the Board various provisions in the 1978 Act which apply to Health Boards in general. These include provisions as to funding, the keeping and auditing of accounts and the appointment and remuneration of Board members and staff. Provisions in certain other Acts of Parliament relevant to Health Boards generally are also applied as are provisions in various sets of regulations.

Article 6 ensures that nothing in the Order affects the power of the Secretary of State or the power of other Health Service bodies to exercise any function conferred on any of them by or under the 1978 Act or any other enactment or rule of law.