

NATIONAL HEALTH SERVICE REFORM (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Organisation and Operation of National Health Service

Section 1 – Dissolution of National Health Service trusts: modifications of enactments

7. Section 1(1) of the Act repeals section 12A of, and Schedule 7A to, the 1978 Act. Section 12A contains the power enabling the Scottish Ministers to establish NHS Trusts. Schedule 7A contains the provisions regulating the establishment and functions and operation of NHS Trusts. The effect of the repeal is that the power to establish NHS Trusts ceases to exist.
8. [Section 1\(2\)](#) inserts a new subsection (2B) into section 82 of the 1978 Act. Section 82 provides for the transfer of certain trust and endowment property to Health Boards. New subsection (2B) applies to property of an NHS Trust which is subject to an endowment or trust which is transferred to a Health Board upon dissolution of that NHS Trust. New subsection (2B) provides that the property shall transfer to the Health Board free of the endowment or trust terms which existed prior to the transfer, but that the Health Board which receives the property shall hold it on trust for purposes relating either to services provided under the 1978 Act or to research, as the Board thinks fit. New subsection (2B) is subject to existing section 82(3) of the 1978 Act. The effect of section 82(3) is to impose a duty on the Board which acquires the trust or endowment property to ensure that the objects of the original trust or endowment are not prejudiced by the exercise of their power to decide the purposes to which the property will be put.
9. [Section 1\(3\)](#) inserts a new sub-paragraph (1A) into paragraph 26 of Schedule 7A to the 1978 Act. Paragraph 26 applies where an NHS Trust is dissolved. Sub-paragraph (1) of paragraph 26 enables the Scottish Ministers to transfer or provide for the transfer of the property, rights and liabilities of dissolved NHS Trusts to themselves, Health Boards, the Common Services Agency or another NHS Trust.
10. New sub-paragraph (1A) puts it beyond doubt that the power in sub-paragraph (1) applies to endowments and property held in trust.
11. New sub-paragraph (1A) has effect until the coming in to force of section 1(1) of the Act, which repeals Schedule 7A to the 1978 Act in its entirety.
12. [Schedules 1](#) and [2](#) contain minor amendments, repeals and amendments consequential on the provisions of section 1. Paragraph 1(6) of Schedule 1 inserts a new subsection (2A) into section 79 of the 1978 Act. This subsection makes it clear that the powers conferred on Scottish Ministers (and therefore Health Boards, to whom such powers may be delegated) by subsections (1) and (1A) of section 79 to use and dispose of land include power to grant a lease over land.