



National Health Service Reform (Scotland) Act 2004

2004 asp 7

PART 1

ORGANISATION AND OPERATION OF NATIONAL HEALTH SERVICE

Powers of intervention

6 Powers of intervention in case of service failure

After section 78 of the 1978 Act insert—

“78A Powers in case of service failure

- (1) This section applies where—
 - (a) it is a function of a body or person under or by virtue of this Act to provide, or secure the provision of, a service, and
 - (b) the Scottish Ministers consider that the body or person has failed, is failing or is likely to fail—
 - (i) to provide the service, or
 - (ii) to provide it to a standard which they regard as acceptable.
- (2) The Scottish Ministers may, where they consider it necessary for the purpose of ensuring the provision of the service in question to a standard which they regard as acceptable, direct that specified functions of the body or person under or by virtue of this Act be performed, for a specified period and to a specified extent, by—
 - (a) a body falling within subsection (4), or
 - (b) one or more persons falling within subsection (5).
- (3) In subsection (2), “specified” means specified in the direction.
- (4) A body falls within this subsection if it is—
 - (a) a Health Board,

Status: This is the original version (as it was originally enacted).

- (b) a Special Health Board, or
 - (c) the Agency.
- (5) A person falls within this subsection if the person is—
- (a) an employee of a Health Board, a Special Health Board or the Agency,
 - (b) a member of the staff of the Scottish Administration, or
 - (c) an employee of a local authority.
- (6) A body or person appointed by a direction given under subsection (2) to perform functions of a body or person referred to in subsection (1) is referred to in this section as an “appointed person”.
- (7) An appointed person must comply with a direction given under subsection (2).
- (8) The remuneration and expenses of, and any other costs reasonably incurred by, an appointed person in performing the functions specified in the direction shall, unless otherwise specified in the direction, be paid by the body or person referred to in subsection (1).
- (9) Anything done or omitted by an appointed person in performing the functions specified in the direction is to be regarded as done or omitted by the body or person referred to in subsection (1).
- (10) A person dealing with an appointed person in good faith and for value is not concerned to inquire whether the appointed person is acting within the powers conferred by virtue of the direction.
- (11) The Scottish Ministers may vary or withdraw a direction given under subsection (2).

78B Relationship of sections 77, 78 and 78A

The powers conferred by each of sections 77, 78 and 78A are without prejudice to the powers conferred by the other two sections.”