

NATIONAL HEALTH SERVICE REFORM (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Organisation and Operation of National Health Service

Section 6 - Powers of intervention in case of service failure

34. **Section 6** inserts two new sections into the 1978 Act: sections 78A and 78B. New section 78A gives the Scottish Ministers power, in the case of a failure or anticipated failure by a body or person to provide a service under the 1978 Act or a failure or anticipated failure to provide it to an acceptable standard, to direct that the relevant functions to which that service relates, should be performed by another body or person.
35. Under subsections (2) of new section 78A the Scottish Ministers may direct that another body, person or persons may perform the functions of the body or person being intervened on that the Scottish Ministers specify. The Scottish Ministers may only do this if they think it is necessary to ensure the provision of the service in question to a standard that they consider to be acceptable. The direction may specify the extent to which those functions are to be performed by the alternative body or person and the duration of the intervention.
36. Subsection (4) lists the bodies which may be identified in a direction made under subsection (2) (specifically a Health Board, a Special Health Board or the Common Services Agency). This restricts the bodies that may be directed by the Scottish Ministers to take on the functions of the failing body or person to one of these three types of body.
37. Subsection (5) lists the persons who may be identified in a direction made under subsection (2). The subsection states that only persons who are: employees of the bodies listed in subsection (4); a member of staff of the Scottish Administration; or an employee of a local authority may be identified in the direction.
38. Subsection (6) states that the body or person appointed in the direction made under subsection (2) will be known as the “appointed person”.
39. Subsection (7) places a duty on the appointed person to comply with the terms of the direction under which the person is appointed.
40. Subsection (8) provides that the body being intervened upon will be liable for the remuneration and expenses of, and any other costs reasonably incurred by, the appointed person when performing the functions specified in the direction. Subsection (9) provides that anything done or omitted by the appointed person when performing the functions in the direction is to be regarded as being done by the body being intervened upon. Subsection (10) makes it clear that third parties dealing with an appointed person in good faith can assume that the appointed person is acting within the powers conferred by virtue of the direction.

*These notes relate to the National Health Service Reform (Scotland)
Act 2004 (asp 7) which received Royal Assent on 11 June 2004*

41. New section 78B makes it clear that the power in section 78A is additional to those in sections 77 and 78 of the 1978 Act, and that the powers in those sections are not restricted by those in section 78A.