



National Health Service (Scotland) Act 1972

1972 CHAPTER 58

PART I

DUTIES AND POWERS OF SECRETARY OF STATE

1 General duty of Secretary of State

- (1) It shall be the duty of the Secretary of State so to exercise the powers and perform the duties conferred and imposed on him by the Health Service Acts as to provide or secure the effective provision of an integrated health service in Scotland.
- (2) In pursuance of that duty and of the duty imposed on him by section 1 of the Act of 1947, the Secretary of State shall have the powers and duties conferred on him by this Act.

2 Provision of accommodation and medical, etc., services

- (1) It shall be the duty of the Secretary of State to provide throughout Scotland, to such extent as he considers necessary to meet all reasonable requirements, accommodation and services of the following descriptions—
 - (a) hospital accommodation, including accommodation at State hospitals within the meaning of section 89 of the Mental Health (Scotland) Act 1960 ;
 - (b) premises other than hospitals at which facilities are available for any of the services provided under the Health Service Acts;
 - (c) medical, nursing and other services, whether in such accommodation or premises, in the home of the patient or elsewhere.
- (2) Where accommodation or premises provided under this section afford facilities for the provision of general medical, dental or ophthalmic services or of pharmaceutical services, they shall be made available for those services on such terms and conditions as the Secretary of State may determine.

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- (3) The Secretary of State may permit any person to whom this subsection applies to use the facilities available at accommodation or premises provided under this section for the purposes of private practice on such terms and conditions as the Secretary of State may determine.
- (4) The persons to whom subsection (3) above applies, being persons who provide services under the Health Service Acts, are as follows—
 - (a) medical practitioners;
 - (b) dental practitioners;
 - (c) pharmacists;
 - (d) ophthalmic and dispensing opticians ; and
 - (e) such other persons as the Secretary of State may determine.

3 Provision of medical, dental, etc., services

It shall be the duty of the Secretary of State to secure the provision of general medical, general dental, pharmaceutical and general ophthalmic services in accordance with the provisions of Part IV of the Act of 1947.

4 Prevention of illness, care and after-care

- (1) The Secretary of State shall make arrangements, to such extent as he considers necessary to meet all reasonable requirements, for the purposes of the prevention of illness, the care of persons suffering from illness or the after-care of such persons.
- (2) Regulations may provide for the recovery of such charges as may be prescribed, in respect of such services provided by the Secretary of State under this section, otherwise than in a hospital, as may be prescribed, and may provide for the remission of any such charge, in whole or in part, in such circumstances as may be prescribed.
- (3) In this section and in section 5 of this Act, " hospital" includes any maternity home, any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation, any institution for providing dental treatment and maintained in connection with a dental school, and clinics, dispensaries and out-patient departments maintained in connection with any hospital or such institution or home as aforesaid.

5 Care of mothers and young children

- (1) It shall be the duty of the Secretary of State to make arrangements, to such extent as he considers necessary, for the care, including in particular medical and dental care, of expectant mothers and nursing mothers and of young children.
- (2) Regulations may provide for the recovery of such charges as may be prescribed, in respect of such articles or services provided by the Secretary of State under this section, otherwise than in a hospital (not being a drug, a medicine or an appliance of a type normally supplied), as may be prescribed, and may provide for the remission of any such charge, in whole or in part, in such circumstances as may be prescribed.

6 Medical and dental inspection, supervision and treatment of pupils and young persons

- (1) It shall be the duty of the Secretary of State to provide for the medical and dental inspection, at appropriate intervals, and for the medical and dental supervision of all pupils in attendance at any school under the management of an education authority and of all young persons in attendance at any junior college or other educational establishment under such management.
- (2) It shall be the duty of the Secretary of State to make such arrangements as are necessary for securing that there are available for such pupils and young persons as aforesaid comprehensive facilities for free medical and dental treatment.
- (3) It shall be the duty of every education authority to make arrangements for encouraging and assisting pupils and young persons to take advantage of facilities for medical and dental treatment made available under subsection (2) above:

Provided that if the parent of any child or young person gives notice to the authority that he objects to the child or young person availing himself of the said facilities, the child or young person shall not be encouraged or assisted to do so.
- (4) It shall be the duty of every education authority to afford sufficient and suitable facilities for the medical and dental inspection, supervision and treatment, described in subsections (1) and (2) above.
- (5) Expressions used in this section have the same meanings as in the Education (Scotland) Act 1962.

7 Vaccination and immunisation

- (1) The Secretary of State shall have power to make arrangements with medical practitioners for the vaccination or immunisation of persons against any disease, either by medical practitioners or by persons acting under their direction and control.
- (2) In making arrangements under this section, the Secretary of State shall, in so far as is reasonably practicable, give every medical practitioner providing general medical services under Part IV of the Act of 1947 an opportunity to provide services under this section.
- (3) The Secretary of State may, either directly or by another person, supply free of charge to medical practitioners providing services under this section, vaccines, sera or other preparations for vaccinating or immunising persons against any disease.

8 Family planning

- (1) It shall be the duty of the Secretary of State to make arrangements, to such extent as he considers necessary, for the giving of advice on contraception, the medical examination of persons seeking advice on contraception, the treatment of such persons and the supply of contraceptive substances or appliances.
- (2) Regulations may provide for the recovery of charges from persons availing themselves of any service under the foregoing subsection (except advice on contraception), and may provide for the remission of any such charge, in whole or in part, in such circumstances as may be prescribed.

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9 Educational and research facilities

It shall be the duty of the Secretary of State to make available such facilities, in any premises provided by him under the Health Service Acts, as appear to him to be reasonably required for undergraduate and post-graduate clinical teaching and research and for the education and training of persons providing or intending to provide services under those Acts.

10 Health education

The Secretary of State shall have power to disseminate, by whatever means, information relating to the promotion and maintenance of health and the prevention of illness.

11 Residential and practice accommodation

- (1) The Secretary of State may provide, on such terms and conditions as may be agreed, residential accommodation for officers employed for the purposes of any of his functions under the Health Service Acts, or for officers employed by a voluntary organisation for the purposes of any service provided under this Part of this Act.
- (2) The Secretary of State may, in any case, in view of the special circumstances thereof, provide, on such terms and conditions as may be agreed.—
 - (a) residential accommodation for medical and dental practitioners providing services under Part IV of the Act of 1947 ;
 - (b) practice accommodation for such medical and dental practitioners and for such other persons providing services under the Health Service Acts as he thinks fit.
- (3) In subsection (2) above, " practice accommodation ", in relation to a person providing services of any kind, means accommodation suitable for the provision of services of that kind.

12 Amendments of Part II of the Act of 1947 and of Part I of the Act of 1968

- (1) The powers exercisable under sections 3(3), 3(4) and 4 of the Act of 1947 and under Part I of the Act of 1968 shall cease to be limited by the use of the term " hospital and specialist services " in those provisions.
- (2) In section 16 of the Act of 1947 (ambulances), at the end of subsection (1) there shall be added the words " or of other persons for whom such transport is reasonably required in order to avail themselves of any service under the National Health Service (Scotland) Acts 1947 to 1972 " , and subsection (2) shall cease to have effect.
- (3) In section 17 of the Act of 1947 (research), in subsection (1), for the words from " to the development" to the end there shall be substituted the words " into such other matters relating to the health service as he thinks fit " , and subsection (2) shall cease to have effect.
- (4) In section 18 of the Act of 1947 (bacteriological service), in subsection (1), the word " bacteriological" is hereby repealed, and subsection (2) shall cease to have effect.
- (5) In section 19 of the Act of 1947 (blood transfusion and other services), the words " in providing hospital and specialist services " are hereby repealed, and for the words "

local health authorities and medical practitioners " there shall be substituted the words " medical practitioners and other persons " .

PART II

HEALTH BOARDS, ETC.

13 Health Boards

- (1) The Secretary of State shall by order constitute, in accordance with Part I of Schedule 1 to this Act, boards to be called Health Boards, for such areas as he may by order determine, for the purpose of exercising functions with respect to the administration of such health services provided by him as he may by order determine, and for the purpose of making arrangements on his behalf for the provision of the services mentioned in Part IV of the Act of 1947.
- (2) The order or orders made under subsection (1) above determining the areas for which the Health Boards are to be constituted shall be separate from the order or orders constituting those Boards, and, before making any order determining such an area, the Secretary of State shall consult with such bodies and organisations as appear to him to be concerned.
- (3) The Secretary of State may by order vary the area of any Health Board, whether or not the variation involves the constitution of a new Board or the termination of the functions of an existing Board, and, before making such an order, the Secretary of State shall consult with such bodies and organisations as appear to him to be concerned.
- (4) Any order under subsection (3) above may make provision for any supplementary and incidental matters for which it appears to the Secretary of State to be necessary or expedient to provide, in particular for the transfer of officers and of property and liabilities.
- (5) In carrying out the purposes mentioned in subsection (1) above, each Health Board shall act subject to, and in accordance with, regulations and such directions as may be given by the Secretary of State, and such regulations and directions may be made or given generally or to meet the circumstances of a particular area or matter.
- (6) Regulations under subsection (5) above shall make provision requiring Health Boards to submit to the Secretary of State a scheme for the exercise of their functions, and enabling the Secretary of State to approve, with or without modifications, any such scheme and to make such a scheme in the event of the failure of any Health Board so to do.
- (7) A Health Board may at any time, and if directed by the Secretary of State shall, within such period as he may specify, submit a new scheme for the exercise of their functions, and regulations mentioned in subsection (6) above shall, with any necessary modifications, apply to any such scheme.
- (8) Where it appears to the Secretary of State to be expedient in the interests of efficiency that a joint committee should be established for the areas of two or more Health Boards for the purpose of exercising some but not all of their functions, the Secretary of State may by order constitute such a joint committee and provide for the exercise by that committee of such of those functions as may be specified in the order, and for the application, with such modifications as may be so specified, to that committee of any

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provisions of the Health Service Acts relating to those functions, and for any of the matters for which, in relation to a Health Board, provision is or may be made by or under Part III of Schedule 1 to this Act.

- (9) A Health Board shall, notwithstanding that it is exercising functions on behalf of the Secretary of State, be entitled to enforce any rights acquired, and shall be liable in respect of any liabilities incurred (including liability in damages for wrongful or negligent acts or omissions) in the exercise of those functions in all respects as if the Health Board were acting as a principal, and all proceedings for the enforcement of such rights or liabilities shall be brought by or against the Health Board in its own name.
- (10) A Health Board shall not be entitled to claim in any proceedings any privilege of the Crown in respect of the recovery or production of documents, but this subsection shall be without prejudice to any right of the Crown to withhold or procure the withholding from production of any document on the ground that its disclosure would be contrary to the public interest.
- (11) The supplementary provisions contained in Part III of Schedule 1 to this Act shall have effect in relation to the Boards constituted under this section.

14 Local health councils

- (1) Every Health Board shall, within such period as the Secretary of State may specify, submit to him a scheme for the establishment of a local health council or councils for their area or for such districts covering their whole area as the Board thinks fit, and it shall be the general function of any such council to represent the interests of the public in the health service in the area or district for which they have been established.
- (2) A scheme under subsection (1) above shall provide for the appointment by local authorities in or for the area or district concerned of such number of members of the local health council as may be prescribed, and for the appointment by the Health Board, after consultation with such other organisations as may be specified in the scheme, of such number of members as may be so specified.
- (3) The members of a local health council may appoint one of their own number as the chairman of the council.
- (4) The Secretary of State may approve, without or without modifications, any scheme submitted to him under subsection (1) above, or may refuse to approve it.
- (5) A Health Board may at any time, and if directed by the Secretary of State shall, within such period as he may specify, submit a new scheme under this section, and subsection (4) above shall apply to any such new scheme.
- (6) The Secretary of State shall pay to members of a local health council, the committees and sub-committees thereof such travelling and other allowances, including compensation for loss of remunerative time, as he may, with the approval of the Minister for the Civil Service, from time to time determine.
- (7) Allowances shall not be paid under subsection (6) above except in connection with the performance of such powers or duties, in such circumstances, as the Secretary of State may determine.
- (8) Health Boards shall consult with local health councils on such occasions and to such extent as may be prescribed.

- (9) Regulations may make provision—
- (a) enabling local health councils to consider questions relating to the health service in their area or district, whether at the request of their Health Board or otherwise, and to advise the Health Board thereon;
 - (b) enabling or requiring local health councils to submit reports to their Health Board on the operation of the health service in their area or district;
 - (c) requiring local health councils to submit annual reports on their activities to their Health Board and requiring Health Boards to transmit a copy of any such report to the Secretary of State ;
 - (d) enabling local health councils to obtain information from their Health Board on such subjects and subject to such conditions as may be prescribed;
 - (e) enabling or requiring members of a local health council to visit establishments administered by their Health Board, subject to such conditions as may be prescribed ;
 - (f) relating to the submission of schemes under subsection (1) above, and to the functions, procedures, staffing and expenses of local health councils.

15 University Liaison Committees

- (1) The Secretary of State may by order constitute, in accordance with Part II of Schedule 1 to this Act, for the area of a Health Board or for the combined areas of two or more Boards, a University Liaison Committee for the purpose of advising that Board or those Boards on the administration of the health service in the area or combined areas so far as relating to the provision of facilities for undergraduate or post-graduate clinical teaching or for research, and for the purpose of advising that Board or those Boards and the university or universities concerned on any matter of common interest to them.
- (2) The supplementary provisions contained in Part III of Schedule 1 to this Act shall have effect in relation to the Committees constituted under this section.

16 Local consultative committees

- (1) Where, after consultation with the Health Board concerned, the Secretary of State is satisfied that a committee formed for the area of the Board is representative—
- (a) of the medical practitioners of that area, or
 - (b) of the dental practitioners of that area, or
 - (c) of the nurses and midwives of that area, or
 - (d) of the pharmacists of that area, or
 - (e) of the ophthalmic and dispensing opticians of that area, the Secretary of State shall recognise that committee.
- (2) Any committee so recognised shall be called—
- (a) the area medical committee,
 - (b) the area dental committee,
 - (c) the area nursing and midwifery committee, (d) the area pharmaceutical committee, or
 - (e) the area optical committee,
- as the case may be, for the area concerned.

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- (3) Where, after consultation with the Health Board concerned, the Secretary of State is satisfied that a committee formed for the area of any Health Board is representative of any other profession engaged in the provision of care or treatment under the Health Service Acts, and that it is in the interests of the health service to recognise that committee for the purposes of those Acts, he may so recognise it.
- (4) Where, after consultation with the Health Board concerned, the Secretary of State is satisfied that a committee formed for the area of any Health Board is representative of two or more of the professions mentioned in subsection (1) or (3) above, and that it is in the interests of the health service to recognise that committee for the purposes of the Health Service Acts, he may so recognise it.
- (5) It shall be the general function of a committee recognised under this section to advise the Health Board for its area on the provision of services under the Health Service Acts with which that committee is concerned in that area, but, except in so far as regulations otherwise provide, in exercising functions conferred by or under this section, such a committee shall not concern itself with the remuneration and conditions of service of practitioners or other persons of whom it is representative.
- (6) In addition to any other functions which committees recognised under this section may exercise, they shall exercise such functions as may be prescribed.
- (7) In exercising their functions under the Health Service Acts, Health Boards shall consult with committees recognised under this section on such occasions and to such extent as may be prescribed.
- (8) Any committee recognised under this section may, with the approval of the Health Board for its area, delegate any of its functions, with or without restrictions or conditions, to subcommittees and may appoint to any sub-committee persons who are not members of the committee.
- (9) Health Boards shall defray the reasonable expenses of committees recognised under this section and shall pay to members of such committees and sub-committees thereof such travelling and other allowances, including compensation for loss of remunerative time, as the Secretary of State may, with the approval of the Minister for the Civil Service, from time to time determine, but payments under this subsection may only be made as respects the exercise of functions conferred by or under this section.

PART III

CENTRAL BODIES

17 Scottish Health Service Planning Council

- (1) There shall be constituted in accordance with Schedule 2 to this Act a Council, to be called the Scottish Health Service Planning Council, and it shall be the duty of that Council to advise the Secretary of State on the exercise of his functions under the Health Service Acts, whether at his request or on their own initiative.
- (2) For the purpose of performing that duty, the Council shall keep under review the development of the health service in Scotland as a whole and in the various parts of Scotland.

- (3) The Council shall make an annual report to the Secretary of State on their proceedings and on the proceedings of any committee appointed by them, and the Secretary of State shall lay that report before Parliament with such comments (if any) as he thinks fit.

18 National consultative committees

- (1) Where the Secretary of State is satisfied that a committee has been formed which is representative of any, some or all of the professions engaged in the provision of care or treatment under the Health Service Acts, and that it is in the interests of the health service to recognise the committee for the purposes of those Acts, he shall so recognise it, and any such committee shall be known as a national consultative committee.
- (2) The professional teaching interests in relation to any such profession shall be represented on the national consultative committee by such number of members, appointed in such manner, as may be prescribed.
- (3) Where the Secretary of State considers it necessary, he may, with the agreement of a national consultative committee, appoint additional persons to be members of that committee.
- (4) It shall be the general function of a national consultative committee to advise the Scottish Health Service Planning Council on the provision of services under the Health Service Acts with which that committee is concerned, but, except in so far as regulations otherwise provide, such a committee shall not concern itself with the remuneration and conditions of service of practitioners or other persons of whom it is representative.
- (5) In addition to any other functions which a national consultative committee may exercise, they shall exercise such functions as may be prescribed.
- (6) The Scottish Health Service Planning Council shall consult with the national consultative committees on such occasions and to such extent as may be prescribed, and may ask any such committee to undertake, on behalf of the Council, such investigation as the Council think fit.
- (7) A national consultative committee shall have power to appoint sub-committees, whether jointly with another national consultative committee or otherwise, and to appoint to any such sub-committee persons who are not members of the national consultative committee or committees concerned.
- (8) The Secretary of State shall defray the reasonable expenses of national consultative committees, and shall pay to members of such committees and sub-committees thereof such travelling and other allowances, including compensation for loss of remunerative time, as he may, with the approval of the Minister for the Civil Service, from time to time determine.

19 Common Services Agency

- (1) There shall be constituted in accordance with Schedule 3 to this Act a body, to be called the Common Services Agency for the Scottish Health Service (referred to in this Act as " the Agency ") which shall have the functions conferred on it by this section.
- (2) The Secretary of State may by order delegate to the Agency such of his functions under the Health Service Acts as he considers appropriate.

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- (3) Before the appointed day, after consultation with the bodies concerned and any other interests which appear to the Secretary of State to be concerned, the Secretary of State, where he considers it expedient for the efficient discharge of functions under the Health Service Acts by those bodies, may by order provide that the performance of such functions as he may determine shall stand referred to the Agency and be discharged by it.
- (4) Before the appointed day, after consultation with such bodies and interests as appear to him to be concerned, the Secretary of State, where he considers it expedient for the efficient discharge of the functions of the Health Boards on or after that day, may by order provide that the performance of such functions as he may determine shall stand referred to the Agency and be discharged by it on behalf of any or all of the Health Boards.
- (5) On and after the appointed day, after consultation with the Scottish Health Service Planning Council, the Health Boards and any other interests which appear to the Secretary of State to be concerned, the Secretary of State, where he considers it expedient for the efficient discharge of the functions of the Health Boards, may by order provide that the performance of such functions as he may determine shall stand referred to the Agency and be discharged by it on behalf of any or all of the Health Boards.
- (6) The Secretary of State may by order withdraw from the Agency any function delegated or referred to it under this section.
- (7) The Agency shall provide such services and carry out such tasks for bodies associated with the health service as the Secretary of State and those bodies may agree, and on such terms and conditions as may be agreed.
- (8) In carrying out its functions, the Agency shall act subject to and in accordance with such directions as may be given by the Secretary of State.
- (9) Subsections (9) and (10) of section 13 of this Act shall apply to the Agency as they apply to Health Boards, except that, in subsection (9), the reference to the Secretary of State shall include a reference to any other body associated with the health service.

PART IV

CO-OPERATION WITH LOCAL AUTHORITIES, ETC.

20 Co-operation between Health Boards and local authorities

In exercising their respective functions, Health Boards, local authorities and education authorities shall co-operate with one another in order to secure and advance the health of the people of Scotland.

21 Designated medical officers

- (1) Every Health Board shall, in accordance with regulations, designate a medical officer or officers of the Board for the purpose of exercising such functions on behalf of local authorities as may be assigned to him by or under any enactment and such other functions as local authorities may, with the agreement of the Health Board, assign to him.

- (2) Any such medical officer shall, in any enactment, be known as the " designated medical officer ".
- (3) A designated medical officer may exercise any powers conferred by any enactment on an authorised officer of a local authority if the local authority authorises him in writing so to do.
- (4) A designated medical officer may appoint one or more persons approved by the Board to act as his depute or deposes, and all things required or authorised by law to be done by or to the designated medical officer may be done by or to any depute so appointed by him, and any reference in any enactment or instrument made under any enactment to the designated medical officer shall, where the depute is acting for the officer, include a reference to the depute.

22 Supply of goods and services to local authorities, etc.

- (1) The Secretary of State, a Health Board or the Agency may—
 - (a) purchase and store and, on such terms and conditions as may be agreed, supply to persons providing general medical, general dental, pharmaceutical or general ophthalmic services under Part IV of the Act of 1947, such equipment, goods or materials as may be prescribed;
 - (b) purchase and store and, on such terms and conditions as may be agreed, supply to local authorities, education authorities, government departments and such public bodies or classes of public bodies as may be determined by the Secretary of State, any equipment, goods or materials of a kind used in the health service ;
 - (c) provide local authorities and education authorities, on such terms and conditions as may be agreed, with any administrative, professional or other services of persons employed by the Secretary of State, a Health Board or the Agency;
 - (d) permit local authorities and education authorities, on such terms and conditions as may be agreed, to use premises occupied for the purposes of the health service;
 - (e) permit local authorities and education authorities, on such terms and conditions as may be agreed, to use any vehicle, plant or apparatus belonging to a Health Board or the Agency ;
 - (f) permit education authorities, on such terms and conditions as may be agreed, and for the purpose of providing special education within the meaning of section 5 of the Education (Scotland) Act 1962, to use any premises or facilities provided under section 2 of this Act;
 - (g) carry out, on such terms and conditions as may be agreed, maintenance work in connection with land or buildings for the maintenance of which a local authority or education authority is responsible.
- (2) In paragraphs (a) and (b) of subsection (1) above, the power to supply equipment, goods and materials includes a power to make arrangements with third parties for the supply by them of those things.

23 Assistance to voluntary organisations

- (1) The Secretary of State may assist any voluntary organisation whose activities include the provision of a service similar or related to a service provided under the Health

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Service Acts by permitting them to use premises belonging to him on such terms as may be agreed, and by making available goods, materials, vehicles or equipment (whether by way of gift, loan or otherwise) and the services of any staff who are employed in connection with the premises or other things which he permits the organisation to use.

- (2) In this section, "voluntary organisation " means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority.

PART V

TRANSFER OF PROPERTY, RIGHTS, LIABILITIES AND STAFF

24 **Dissolution of Boards, etc.**

- (1) On the appointed day the following bodies shall be dissolved—
- (a) Regional Hospital Boards ;
 - (b) Boards of Management;
 - (c) Medical Education Committees;
 - (d) Executive Councils;
 - (e) the Scottish Health Services Council and standing advisory committees constituted under section 2(3) of the Act of 1947 ; and
 - (f) Joint Ophthalmic Services Committees.
- (2) The Secretary of State may make orders containing such provision as he considers necessary or expedient in connection with the dissolution of the aforesaid bodies and the winding up of their affairs, including provision for the completion of any proceedings of any such body or any committee associated with it and for securing that anything done by or to such a body or committee should have effect as if done by or to a body or committee constituted under this Act.
- (3) The Secretary of State shall prepare in respect of the last financial year of the bodies mentioned in subsection (1)(a), (b) and (d) above and in respect of any period between the end of that year and the appointed day, in such form as the Treasury may direct, summarised accounts of those bodies, and shall transmit them as soon as may be to the Comptroller and Auditor General who shall examine and certify them and lay copies of them together with his report thereon before both Houses of Parliament.

25 **Rights and liabilities of Regional Hospital Boards and Boards of Management**

The Secretary of State may by order make provision; for the transfer of rights and liabilities, to which a Regional Hospital Board or Board of Management are entitled or subject, to such Health Board as may be specified in the order or to the Agency.

26 **Transfer of property, rights and Liabilities, etc., of Executive Councils and the Scottish Dental Estimates Board**

- (1) All interests in property, heritable or moveable, held by Executive Councils or by a joint committee of those Councils immediately before the appointed day shall, on that day, be transferred to and vest in the Secretary of State.

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- (2) Subject to subsection (3) below, all rights and liabilities to which Executive Councils or joint committees were entitled or subject immediately before the appointed day shall, on that day, be transferred to the Secretary of State.
- (3) Notwithstanding subsection (2) above, the Secretary of State may by order provide that such of the rights and liabilities of an Executive Council or joint committee as may be specified in the order shall be enforceable by or against such Health Board as may be so specified or the Agency.
- (4) All interests in property, heritable or moveable, held by the Scottish Dental Estimates Board immediately before the appointed day shall, on that day, be transferred to and vest in the Secretary of State, and all rights and liabilities relating to that property to which the Board were entitled or subject immediately before that day shall, on that day, be transferred to the Secretary of State.
- (5) The Secretary of State may by order make provision for—
 - (a) the continuation of any arrangements made by an Executive Council or joint committee or the Scottish Dental Estimates Board;
 - (b) dealing with any applications, complaints or representations made to or by such Council, committee or Board which are pending on the appointed day;
 - (c) the transfer of persons from lists of Executive Councils and Joint Ophthalmic Services Committees to lists of Health Boards or the removal of persons from such lists in pursuance of a direction by the Tribunal under section 43 of the Act of 1947 made before the appointed day.

27 Transfer of property, rights and liabilities of local authorities

- (1) In this section, " health functions" means any functions exercised by a local health authority by virtue of section 15 and Part III of the Act of 1947, and sections 10, 11 and 15 of the Act of 1968, and " school health functions " means any functions exercised by an education authority by virtue of sections 58, 58A and 59 of the Education (Scotland) Act 1962.
- (2) Subject to the following provisions of this section, all interests in property, heritable or moveable (other than those to which section 39 of this Act relates), held by a local health authority or by an education authority immediately before the appointed day, wholly or mainly for the purposes of their health functions or school health functions, shall on that day be transferred to and vest in the Secretary of State.
- (3) Subject to the following provisions of this section, all rights and liabilities (other than those to which section 39 of this Act relates), to which a local health authority or an education authority were entitled or subject immediately before the appointed day, being rights or liabilities wholly or mainly acquired or incurred in the performance of their health functions or school health functions, shall on that day be transferred to the Secretary of State.
- (4) There shall not be transferred, by virtue of subsections (2) and (3) above, buildings or parts of buildings forming part of an educational establishment within the meaning of section 145(17) of the Education (Scotland) Act 1962 or any rights or liabilities acquired or incurred in connection with such buildings or parts of buildings.
- (5) The Secretary of State may by order provide—

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- (a) for the manner in which it is to be determined whether property, rights or liabilities were held, acquired or incurred wholly or mainly for the purposes of or in the performance of health functions or school health functions;
- (b) for the transfer of property to the Secretary of State where that property has undergone a change of use between 20th January 1972 and the appointed day, otherwise than in the ordinary course of business;
- (c) for exempting, either temporarily or otherwise, from the provisions of this section any property, for enabling the Secretary of State to use any property so exempted or for enabling a local authority or education authority to continue to use, on such terms as may be agreed, any property transferred under this section ;
- (d) for the determination of disputes arising under this section between the Secretary of State and a local health authority or education authority ;
- (e) that notwithstanding subsection (3) above, such of the rights and liabilities of a local health authority or an education authority as may be specified in the order shall be enforceable by or against such Health Board as may be so specified or the Agency.

28 Staff Commission

- (1) In this section, " old authorities " means Regional Hospital Boards, Boards of Management, Executive Councils, local authorities, local health authorities, port local authorities, education authorities, the Scottish Dental Estimates Board and the Drug Accounts Committee, and " new authorities " means the Health Boards and the Agency.
- (2) Not later than one month after the passing of this Act, the Secretary of State shall, after consultation with such bodies as appear to him to be concerned, including bodies representative of persons employed by the old authorities, appoint a commission, to be called the Scottish National Health Service Staff Commission (hereafter referred to as the Commission) which shall consist of such number of persons as the Secretary of State thinks fit.
- (3) The Commission shall have the following functions—
 - (a) to consider and keep under review the arrangements for the recruitment, appointment and promotion by the old and new authorities of staff likely to be affected by this Act, and to advise the Secretary of State and those authorities about such arrangements ;
 - (b) to consider and keep under review the arrangements for the transfer of staff from the old to the new authorities, and to advise the Secretary of State and those authorities about such arrangements ;
 - (c) to consider the steps necessary to safeguard the interests of persons employed by the old authorities and to advise the Secretary of State thereon;
 - (d) to consider such matters relating to persons employed by the old authorities as are likely to be affected by this Act as may be referred to the Commission by the Secretary of State and to advise him thereon ;
 - (e) to advise the Secretary of State on representations made to them under section 36 of this Act;
 - (f) to consider and keep under review arrangements for appointments to new posts in the new authorities which cannot be filled by transfer of persons from the old authorities.

- (4) The Secretary of State shall have power—
- (a) to give directions to the Commission as to their procedure;
 - (b) to give directions to the old and new authorities with respect to the furnishing of information requested from them by the Commission and with respect to the implementation by them of any advice given by the Commission;
 - (c) to pay the Chairman and members of the Commission such remuneration as he may, with the approval of the Minister for the Civil Service, from time to time determine;
 - (d) to pay the expenses incurred by the Commission in the performance of functions approved by the Secretary of State;
 - (e) to wind up the Commission at such time as he thinks fit.

29 Transfer of staff of Regional Hospital Boards and Boards of Management

- (1) Persons employed immediately before the appointed day by a Regional Hospital Board or Board of Management shall on that day be transferred—
- (a) if they were appointed by a Regional Hospital Board, to the employment of a Health Board or the Agency in accordance with a scheme made under this section ;
 - (b) if they were appointed by a Board of Management wholly or mainly for the purposes of a particular hospital or hospitals, to the employment of the Health Board which is responsible for the control of that hospital or those hospitals or of the Agency in accordance with a scheme made under this section;
 - (c) if they were appointed by a Board of Management wholly or mainly for the purposes of two or more hospitals for the control of which two or more Health Boards are responsible, to the employment of such one of the Health Boards or of the Agency as may be determined in accordance with a scheme made under this section.
- (2) The Secretary of State shall have power to make a direction requiring such Regional Hospital Board or Boards, as may be specified in the direction, to make a scheme, after consultation with such Health Board or Boards as may be so specified, and with the Agency, if so specified, providing for the transfer to the employment of such Health Board or Boards as may be named in the scheme, or to the employment of the Agency if so named, of persons employed by the Regional Hospital Board or Board of Management, for such purposes as may be specified in the direction or in such capacities or classes as may be so specified.

30 Transfer of staff of Executive Councils, etc.

- (1) Persons employed immediately before the appointed day by an Executive Council shall on that day be transferred to the employment of a Health Board or the Agency in accordance with a scheme made under this section.
- (2) The Secretary of State shall have power to make a direction requiring such Executive Council or Councils as may be specified in the direction to make a scheme, after consultation with such Health Boards as may be so specified, or with the Agency, if so specified, providing for the transfer of persons employed by them to the employment of such Health Board or Boards as may be named in the scheme, or of the Agency, if so named.

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- (3) Persons employed immediately before the appointed day by the Scottish Dental Estimates Board or the Drug Accounts Committee shall, on that day, be transferred to the employment of the Agency.

31 Transfer of staff of local health and education authorities

- (1) The Secretary of State shall have power by order to provide for the transfer of persons employed immediately before the appointed day, wholly or mainly for the purposes of the health functions of a local health authority or the school health functions of an education authority, to the employment of such Health Board as may be specified in the order or determined in accordance with a scheme made under this section, or of the Agency, if so specified or determined.
- (2) The Secretary of State shall have power to make an order requiring such local health authority or education authority as may be specified in the order to make a scheme, after consultation with such Health Board as may be so specified, or With the Agency, if so specified, providing for the transfer of persons employed by them, as mentioned in subsection (1) above, to the employment of such Health Board as may be named in the scheme, or of the Agency, if so named.
- (3) In this section, " health functions " and " school health functions" have the same meanings as in section 27(1) of this Act.

32 Transfer of staff employed for purposes of public health

- (1) The Secretary of State shall have power by order to provide for the transfer, on such date as may be specified in the order or as may be determined by the Secretary of State, of persons to whom this section applies to the employment of such Health Board as may be so specified, or of the Agency if so specified, or as may be determined in accordance with a scheme made under this section.
- (2) The Secretary of State shall have power to make an order requiring such local authority as may be specified in the order to make a scheme, after consultation with such Health Board as may be so specified or with the Agency if so specified, providing for the transfer of persons employed by the local authority, to whom this section applies, to the employment of such Health Board as may be named in the scheme, or of the Agency, if so named.
- (3) This section applies to the following persons—
- (a) medical practitioners registered under the Medical Acts 1956 to 1969;
 - (b) nurses registered or enrolled under the Nurses (Scotland) Acts 1951 to 1969;
 - (c) nursing auxiliaries; and
 - (d) persons registered under the Professions Supplementary to Medicine Act 1960,
- who are employed wholly or mainly for the purposes of the public health functions of a local authority.
- (4) Before making an order under section 31 of this Act or under this section, the Secretary of State shall consult with such bodies representative of local authorities as appear to him to be concerned and with any local authority with whom consultation appears to him to be desirable.

- (5) In this section, "public health functions" means the functions specified in Schedule 4 to this Act, and "local authority" means a county council, a town council or a port local authority.

33 Transfer of certain staff to the employment of the Agency

- (1) The Secretary of State shall have power by order to provide for the transfer of persons to whom this section applies to the employment of the Agency.
- (2) This section applies—
- (a) to persons employed before the appointed day in the exercise of functions to which an order made under section 19(3) of this Act relates ; and
 - (b) to such persons as may be specified in an order under subsection (1) above as are employed before the appointed day by bodies engaged in the provision of services to which section 16 or 19 of the Act of 1947 relates.

34 Transfer of other staff

- (1) The Secretary of State shall have power by order to provide for the transfer of persons to whom this section applies to the employment of such Health Board as may be specified in the order or of the Agency if so specified.
- (2) This section applies to any person who, immediately before the appointed day, was employed by—
- (a) a Regional Hospital Board;
 - (b) a Board of Management;
 - (c) an Executive Council;
 - (d) a local authority or education authority wholly or mainly for the purposes of their health or school health functions within the meaning of section 27 of this Act, or wholly or mainly for the purposes of their public health functions within the meaning of section 32 of this Act;
 - (e) a port local authority; or
 - (f) a body established by any board, council or authority as aforesaid acting jointly with any other such board, council or authority;
- and was not transferred by virtue of the foregoing provisions of this Part of this Act.

35 Supplementary order making powers

- (1) Any direction or order made under sections 29 to 34 of this Act may contain provision for the determination of any question which may arise as to whether a person is wholly or mainly employed for a particular purpose, or as to what capacity or class he is employed in, by such body or person as may be specified in the direction or order.
- (2) Any direction or order made under sections 29 to 34 of this Act may provide that, for the purposes of any enactment specified in the direction or order, there shall be deemed to have been no break in the employment of any person who is transferred by virtue of those sections from the employment of one body to that of another, and any such direction or order shall include such provision with respect to any such person so as to secure that—
- (a) so long as he continues in the employment of that other body by virtue of the transfer, and until he is served with a statement in writing referring to the

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direction or order and specifying new terms and conditions of employment, he enjoys terms and conditions of employment not less favourable, taken as a whole, than those which he enjoyed immediately before the date of transfer; and

- (b) the said new terms and conditions are such that—
- (i) so long as he is engaged in duties reasonably comparable to those in which he was engaged immediately before the date of transfer, the scale of his salary or remuneration, and
 - (ii) the other terms and conditions of his employment,
- are not less favourable, taken as a whole, than those which he enjoyed immediately before the date of transfer.

36 Representations to Staff Commission

Any person who objects to his transfer by virtue of sections 29 to 34 of this Act or any condition attaching thereto may make representations to the Commission established under section 28 of this Act, who, having considered those representations, may give such advice as they think fit to the Secretary of State.

PART VI

HOSPITAL ENDOWMENTS AND OTHER TRUST PROPERTY

37 Transfer of endowments and income held under section 7(1) or 58 of the Act of 1947

- (1) All endowments of a Board of Management or Regional Hospital Board and the accumulated income thereof, held by them by virtue of section 7(1) or 58 of the Act of 1947, being endowments or income held immediately before the appointed day, shall on that day be transferred to and vest in the Health Board which succeeds to the Board concerned, and shall vest in the Health Board free of any trust existing immediately before the appointed day.
- (2) Where the area of a Regional Hospital Board is divided between two or more Health Boards, or the hospitals managed by a Board of Management become the responsibility of two or more Health Boards, the division of endowments and income between the Health Boards shall be determined in accordance with an order made by the Secretary of State.
- (3) The endowments and income transferred under subsection (1) or (2) above shall be held by the Health Board on trust for such purposes relating to services provided under the Health Service Acts in or in relation to hospitals or to the functions of the Board with respect to research, as the Board may think fit, but the Board shall secure, so far as is reasonably practicable, that the objects of the endowment, and the observance of any conditions attaching thereto, including, in particular, conditions intended to preserve the memory of any person or class of persons, are not prejudiced by the exercise of the power hereby conferred.

38 Transfer of rights held under the Hospital Endowments (Scotland) Act 1971

- (1) All rights in relevant endowments within the meaning of the Hospital Endowments (Scotland) Act 1971, including the accumulated income thereof, held by Boards of Management and Regional Hospital Boards immediately before the appointed day, shall on that day be transferred to and vest in the Health Board which administers the services formerly provided by the Board concerned.
- (2) Where the area of a Regional Hospital Board is divided between two or more Health Boards, or the hospitals managed by a Board of Management become the responsibility of two or more Health Boards, the division of rights in relevant endowments and income between the Health Boards shall be determined in accordance with an order made by the Secretary of State.
- (3) In making a scheme under section 7 of the said Act of 1971 after the appointed day, the Secretary of State shall have regard to the arrangements for the distribution of income made under any such scheme in operation immediately before that day.
- (4) Any such scheme made after the appointed day may provide that any accumulated income held by a Health Board by virtue of section 2(2)(a) of the said Act of 1971 may only be used for such purposes as may be specified in the scheme.
- (5) In section 7 (3)(a) of the said Act of 1971, for the words from " hospital" to " 1947 " (where first occurring) there shall be substituted the words " services provided under the National Health Service (Scotland) Acts 1947 to 1972 in or in relation to hospitals ".

39 Transfer of property held on trust by local health authorities

- (1) All property, including the accumulated income thereof, held on trust immediately before the appointed day by a local health authority for the purposes of their health functions within the meaning of section 27(1) of this Act, shall on that day be transferred to and vest in the Health Board which administers the services formerly provided by the authority concerned, and shall vest in the Health Board free of any trust existing immediately before the appointed day.
- (2) Where the area of a local health authority is divided between two or more Health Boards, the division of the property and income mentioned in subsection (1) above between the Health Boards shall be determined in accordance with an order made by the Secretary of State.
- (3) The property and income transferred under subsection (1) or (2) above shall be held by the Health Board on trust for such purposes relating to services provided by them under the Health Service Acts or to the functions of the Board with respect to research, as the Board may think fit, but the Board shall secure, so far as is reasonably practicable, that the objects of the trust, and the observance of any conditions attaching thereto, including, in particular, conditions intended to preserve the memory of any person or class of persons, are not prejudiced by the exercise of the power hereby conferred.

40 Power of trustees to make payments to Health Boards

- (1) Where property, other than property transferred to the Secretary of State under Part V of this Act or to a Health Board under this Part of this Act, is held on trust immediately before the appointed day, and the terms of the trust instrument authorise or require the trustees, whether immediately or in the future, to apply any part of the capital or

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income of the trust property for the purposes of any hospital or service which is to be administered by a Health Board, the trust instrument shall be construed as authorising or, as the case may be, requiring the trustees to pay that capital or income to the Health Board concerned.

- (2) Where property so held in trust is, under the trust instrument, to be applied for the purposes of hospitals which are transferred to more than one Health Board, the trustees shall distribute the property between the Boards concerned, in such manner, having regard to the purposes of the trust, as the trustees may determine.
- (3) Any sums paid to a Health Board under this section shall, so far as practicable, be applied by them for the purposes specified in the trust deed.

41 Power of Health Boards and local health councils to hold property on trust

- (1) A Health Board shall have power to accept, hold and administer any property upon trust for purposes relating to any service which it is their function to make arrangements for, administer or provide, or to their functions with respect to research.
- (2) A local health council shall have power to accept, hold and administer any property upon trust for purposes relating to any function conferred upon them by or under any enactment.

PART VII

THE HEALTH SERVICE COMMISSIONER FOR SCOTLAND

42 Appointment of Commissioner and tenure of office

- (1) For the purpose of conducting investigations in accordance with the following provisions of this Part of this Act, there shall be appointed a Commissioner, to be known as the Health Service Commissioner for Scotland.
- (2) Her Majesty may, by Letters Patent, from time to time appoint a person to be the Commissioner, and any person so appointed shall, subject to subsection (3) below, hold office during good behaviour.
- (3) A person appointed to be the Commissioner may be relieved of office by Her Majesty at his own request, or may be removed from office by Her Majesty in consequence of Addresses from both Houses of Parliament, and shall in any case vacate office on completing the year of service in which he attains the age of sixty-five years.
- (4) The Commissioner shall not be a member of the House of Commons, or of the Senate or House of Commons of Northern Ireland, and accordingly—
 - (a) in Part III of Schedule 1 to the House of Commons Disqualification Act 1957, there shall be inserted, at the appropriate point in alphabetical order, the entry " The Health Service Commissioner for Scotland "; and
 - (b) the like amendment shall be made in the Part substituted for the said Part III by Schedule 3 to that Act in its application to the Senate and House of Commons of Northern Ireland.
- (5) The Commissioner shall not be a member of a body subject to investigation or any management committee thereof.

43 Salary and pension

- (1) Subject to the provisions of this section, there shall be paid to the holder of the office of Commissioner such salary as the House of Commons may, by resolution, from time to time determine, and any such resolution may take effect from the date on which it is passed or such other date as may be specified therein.
- (2) Subject to the provisions of this section, Schedule 1 to the Parliamentary Commissioner Act 1967 (pensions and other benefits) shall have effect with respect to persons who have held office as Commissioner as it has effect with respect to persons who have held office as Commissioner under that Act.
- (3) The salary payable to a holder of the office of Commissioner shall be abated by the amount of any pension payable to him in respect of any public office in the United Kingdom or elsewhere to which he had previously been appointed or elected; but any such abatement shall be disregarded in computing that salary for the purposes of the said Schedule 1.
- (4) If one person holds both the offices of Parliamentary Commissioner for Administration and Commissioner, he shall, so long as he does so, be entitled only to the salary, pension and other benefits pertaining to the former office.
- (5) Any salary, pension or other benefit payable by virtue of this section shall be charged on and issued out of the Consolidated Fund.

44 Administrative provisions, 45. Bodies and action subject to investigation

- (1) The Commissioner may appoint such officers as he may determine with the approval of the Minister for the Civil Service as to numbers and conditions of service.
- (2) Any function of the Commissioner under this Part of this Act may be performed by any officer of the Commissioner authorised for that purpose by the Commissioner or by any officer of the Parliamentary Commissioner for Administration so authorised.
- (3) To assist him in any investigation, the Commissioner may obtain advice from any person who in his opinion is qualified to give it, and such fees or allowances may be paid to such person by the Commissioner as he may, with the approval of the Minister for the Civil Service, determine.
- (4) The expenses of the Commissioner under this Part of this Act, to such amount as may be sanctioned by the Minister for the Civil Service, shall be defrayed out of moneys provided by Parliament.

45 Bodies and action subject to investigation.

- (1) In this Part of this Act, a " body subject to investigation " means any of the following bodies—
 - (a) Regional Hospital Boards ;
 - (b) Boards of Management;
 - (c) Executive Councils;
 - (d) Health Boards;
 - (e) the Agency.
- (2) Subject to the provisions of this section, the Commissioner may investigate any action taken by or on behalf of a body subject to investigation in any case where a complaint is

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duly made that a person claims to have sustained injustice or hardship in consequence of maladministration in connection with the action so taken, or in consequence of a failure in a service which was or ought to have been provided for him by or on behalf of the body subject to investigation, or in consequence of having been unfairly or unreasonably treated.

- (3) Except as hereinafter provided, the Commissioner shall not conduct an investigation under this Part of this Act in respect of any of the following matters—
- (a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative ;
 - (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that the Commissioner may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy, if satisfied that in the particular circumstances it is not reasonable to expect him to resort or have resorted to it.

- (4) Without prejudice to subsection (3) above, the Commissioner shall not conduct an investigation under this Part of this Act in respect of any such action as is described in Schedule 5 to this Act.
- (5) Her Majesty may, by Order in Council, amend the said Schedule so as to exclude from the provisions of that Schedule action described in paragraph 4 or 5 of that Schedule ; and any statutory instrument made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In determining whether to initiate, continue or discontinue an investigation under this Part of this Act, the Commissioner shall, subject to the foregoing provisions of this section, act in accordance with his own discretion; and any question whether a complaint is duly made under this Part of this Act shall be determined by the Commissioner.

46 Provisions relating to complaints

- (1) A complaint under this Part of this Act may be made by any individual or by any body of persons, whether incorporated or not, not being—
- (a) a local authority or other authority or body constituted for purposes of the public service or of local government or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking;
 - (b) any other authority or body whose members are appointed by Her Majesty or any Minister of the Crown or government department, or whose revenues consist wholly or mainly of moneys provided by Parliament.
- (2) Where the person by whom a complaint might have been made under the foregoing provisions of this Part of this Act has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him; but except as aforesaid a complaint shall not be entertained under this Act unless made by the person aggrieved himself.
- (3) A complaint shall not be entertained under this Part of this Act unless it is made in writing to the Commissioner by or on behalf of the person aggrieved not later than twelve months from the day on which the matters alleged in the complaint first came to

the notice of the person aggrieved; but the Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers proper to do so.

- (4) Before proceeding to investigate a complaint, the Commissioner shall satisfy himself that the complaint has been brought by or on behalf of the person aggrieved to the notice of the body subject to investigation and that that body has been afforded a reasonable opportunity to investigate and reply to the complaint.
- (5) Notwithstanding the foregoing provisions of this section, a body subject to investigation may itself refer to the Commissioner a complaint made against it by or on behalf of a person aggrieved, and the provisions of subsection (3) above regarding time limits shall apply to such a reference as it applies to a complaint.

47 Application of certain provisions of the Parliamentary Commissioner Act 1967

The following provisions of the Parliamentary Commissioner Act 1967 shall, with any necessary modifications, apply to the Commissioner, his officers and to a body subject to investigation as they apply to the Commissioner under that Act, his officers and to a department or authority concerned—

- (1) section 7 (procedure in respect of investigations);
- (2) section 8 (evidence), except subsection (4);
- (3) section 9 (obstruction and contempt);
- (4) section 11 (secrecy of information), except subsection (4).

48 Reports by Commissioner

- (1) In any case where the Commissioner conducts an investigation under this Part of this Act, he shall send a report of the results of his investigation to—
 - (a) the person who made the complaint;
 - (b) the body subject to investigation ;
 - (c) any person who is alleged in the complaint to have taken or authorised the action complained of ;
 - (d) the Secretary of State.
- (2) In any case where the Commissioner decides not to conduct an investigation under this Part of this Act, he shall send a statement of his reasons for doing so to the persons and bodies described in paragraphs (a) and (b) of subsection (1) above.
- (3) If, after conducting an investigation under this Part of this Act, it appears to the Commissioner that injustice or hardship has been caused to the person aggrieved in the circumstances described in section 45(2) of this Act, and that the injustice or hardship has not been or will not be remedied, he may, if he thinks fit, make a special report to the Secretary of State who shall, as soon as is reasonably practicable, lay before each House of Parliament a copy of the report.
- (4) The Commissioner shall annually make to the Secretary of State a general report on the performance of his functions under this Part of this Act, and may from time to time make to the Secretary of State such other reports with respect to those functions as the Commissioner thinks fit, and the Secretary of State shall lay a copy of any such report before each House of Parliament.

- (5) For the purpose of the law of defamation, any report or statement made, sent or laid in pursuance of this section, shall be absolutely privileged.

49 Transitional provisions

- (1) Notwithstanding the dissolution by this Act of any body subject to investigation, the Commissioner may continue any investigation in relation to such a body commenced by him before the date of dissolution, and may after that date commence an investigation under this Part of this Act in relation to such a body provided that the time limits mentioned in section 46(3) of this Act are observed.
- (2) As regards any investigation mentioned in subsection (1) above, the Commissioner may adopt such procedure in relation thereto, and to the report resulting therefrom, as in the circumstances he thinks fit.

50 Interpretation of Part VII

- (1) In this Part of this Act—
- " action " includes failure to act, and other expressions connoting action shall be construed accordingly;
 - " the Commissioner " means the Health Service Commissioner for Scotland;
 - " person aggrieved " means the person who claims or is alleged to have sustained such injustice or hardship as is mentioned in section 45(2) of this Act.
- (2) It is hereby declared that nothing in this Part of this Act authorises or requires the Commissioner to question the merits of a decision taken without maladministration by a body subject to investigation in the exercise of a discretion vested in that body.

PART VIII

MISCELLANEOUS AND GENERAL

Miscellaneous

51 State hospitals

- (1) The Secretary of State may provide for the management of a State hospital either by a committee constituted under section 90(2) of the Mental Health (Scotland) Act 1960 or by a Health Board or the Agency to the extent that power to do so is delegated to the Board or Agency by the Secretary of State.
- (2) The Secretary of State shall have power by order to dissolve any such committee as aforesaid, and any such order may contain such provision as he considers necessary or expedient in connection with the dissolution of the committee and the winding-up of their affairs.

52 The Mental Welfare Commission for Scotland

- (1) In section 2(2) of the Mental Health (Scotland) Act 1960 (constitution of Mental Welfare Commission), for the word " nine " there shall be substituted the word " eleven ".
- (2) For the purpose of any inquiry under section 4 (2) (a) of the said Act of 1960 (ill-treatment etc. of mentally disordered), the Mental Welfare Commission may, by notice in writing, require any person to attend at the time and place set forth in the notice to give evidence, but no person shall be required in obedience to such a notice to go more than ten miles from his place of residence unless the necessary expenses of his attendance are paid or tendered to him.
- (3) A person giving evidence at such an inquiry shall not be required to answer any question which he would be entitled, on the ground of privilege or confidentiality, to refuse to answer if the inquiry were a proceeding in a court of law.
- (4) The proceedings in any such inquiry shall have the privilege of a court of law.
- (5) The chairman of the inquiry may administer oaths to witnesses and examine witnesses on oath, and may accept, in lieu of evidence on oath by any person, evidence on affirmation or a statement in writing by that person.
- (6) Any person who refuses or wilfully neglects to attend in obedience to a notice under subsection (2) above or to give evidence shall be guilty of an offence and liable on summary conviction to a fine not exceeding £20.

53 Extension of definition of infectious disease

For section 7 of the Infectious Disease (Notification) Act 1889 (extension of definition of infectious disease) there shall be substituted the following section—

“7 Extension of definition of infectious disease.

- (1) The Secretary of State may direct, in respect of the area of any Health Board or of Scotland as a whole, in either case as may be specified in the direction, that this Act shall apply to any infectious disease so specified, other than a disease specifically mentioned in this Act, and any such direction may be permanent or for a specified period.
- (2) Before making any such direction, the Secretary of State shall consult, in the case of a direction which is to apply to a particular area, the Health Board concerned, and, in the case of a direction which is to apply to Scotland as a whole, the Scottish Health Service Planning Council.
- (3) The Secretary of State shall give public notice of any such direction in such manner as he thinks sufficient for giving information to all persons interested, and shall notify the terms of the direction to all registered medical practitioners practising or residing in the area affected by the direction.
- (4) A direction shall come into operation on such date as the Secretary of State may fix, being a date not earlier than one week from the first public notice given under subsection (3) above, or, in a case where the Secretary of State certifies that an emergency exists, a date not earlier than three days from the first public notice as aforesaid.

- (5) Any direction under this section may be revoked or varied by a subsequent direction made in the like manner.”

54 Power of Secretary of State in an emergency

If the Secretary of State is of the opinion that an emergency exists, and thinks it necessary in order to secure the effective continuance of any service under the Health Service Acts, he shall have power to direct that any function conferred by or under those Acts on any body or person shall, during the period of the emergency, be performed by such other body or person as he may specify in the direction.

55 Furnishing of overseas aid by Health Boards and the Agency

- (1) Any Health Board and the Agency shall each have power—
- (a) with the consent of the Secretary of State, to enter into, and carry out, agreements with the appropriate Minister whereunder they act, at the expense of that Minister, as the instrument by means whereof technical assistance is furnished by him in exercise of the power conferred on him by section 1(1) of the Overseas Aid Act 1966 ; and
 - (b) with the consent of the Secretary of State and the appropriate Minister, to enter into and carry out agreements under which they furnish technical or any other assistance, other than financial, for any purpose mentioned in the said section 1(1), to any authority or person outside the United Kingdom, on such terms as to payment as may be agreed.
- (2) In this section, " appropriate Minister " means the Minister for the time being discharging the functions expressed by the said Act of 1966 to be conferred on the Minister of Overseas Development.

56 Transfer of functions under Nursing Homes Registration (Scotland) Act 1938

The functions exercisable by local authorities under the Nursing Homes Registration (Scotland) Act 1938 shall henceforth be exercisable by Health Boards acting on behalf of the Secretary of State.

57 Accounts of Health Boards and the Agency

- (1) Every Health Board and the Agency shall keep, in such form as the Secretary of State may, with the approval of the Treasury, direct, accounts of all moneys received or paid out by them, and those accounts shall be audited by auditors appointed by the Secretary of State, and the Comptroller and Auditor General may examine all such accounts and any records relating thereto and any report of the auditor thereof.
- (2) Regulations may make provision generally with respect to the audit of accounts under subsection (1) above and, in particular, for conferring on the auditor of any of those accounts such rights of access to, and production of, books, accounts, vouchers or other documents as may be specified in the regulations, and such right in such conditions, as may be so specified, to require from any member or officer, or former member or officer, of a Health Board or the Agency, such information relating to the affairs of the Board or Agency as the Secretary of State may think necessary for the proper performance of the duty of the auditor.

- (3) Every Health Board and the Agency shall prepare and transmit to the Secretary of State, in respect of each financial year, accounts in such form as the Secretary of State may, with the approval of the Treasury, direct.
- (4) The Secretary of State shall prepare in respect of each financial year, in such form as the Treasury may direct, summarised accounts of Health Boards and the Agency, and shall transmit them on or before the 30th day of November in each year to the Comptroller and Auditor General, who shall examine and certify them and lay copies of them together with his report thereon before both Houses of Parliament.

General

58 Purchase of land and moveable property

- (1) The Secretary of State may purchase by agreement any moveable property and, by agreement or compulsorily, any land which he considers is required for the purposes of any service under the Health Service Acts, and may use for those purposes any property, heritable or moveable, acquired by him or on his behalf, under those Acts.
- (2) Where the Secretary of State acquires premises under the foregoing subsection, he may acquire compulsorily, in accordance with Schedule 3 to the Act of 1947, any equipment, furniture or other moveable property used in or in connection with the premises.
- (3) Any Health Board or the Agency may acquire on behalf of the Secretary of State any moveable property which may be required for the purposes aforesaid.
- (4) For the purpose of the purchase of land by agreement by the Secretary of State, the Lands Clauses Acts (except so much thereof as relates to the acquisition of land otherwise than by agreement, and the provisions relating to access to the special Act, and except sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845), and section 6 and sections 70 to 78 of the Railways Clauses Consolidation (Scotland) Act 1845 (as originally enacted and not as amended by section 15 of the Mines (Working Facilities and Support) Act 1923) are hereby incorporated with this section, and, in construing those Acts for the purposes of this section, this section shall be deemed to be the special Act and the Secretary of State shall be deemed to be the promoter of the undertaking.

59 Exemption from stamp duty

- (1) Stamp duty shall not be payable on any conveyance, agreement or assignation made, or instrument executed solely for the purpose of giving effect to any transfer of property, rights or liabilities by, or by an order made under, sections 13, 25 to 27, or 37 to 39 of this Act.
- (2) Section 12 of the Finance Act 1895 (which requires Acts to be stamped as conveyances on sale in certain cases) shall not apply to the transfer of property, rights or liabilities by, or by an order made under, sections 13 or 25 to 27 of this Act, and stamp duty shall not be payable on any such order.

60 Expenses

- (1) There shall be paid out of moneys provided by Parliament any sums payable by the Secretary of State in consequence of the provisions of this Act and any increase in the sums payable out of moneys so provided under any other enactment.
- (2) Any sums payable under or by virtue of this Act to the Secretary of State shall be paid into the Consolidated Fund.
- (3) There shall be paid by the Secretary of State such sums as may be necessary to defray the expenditure of the following bodies, being expenditure approved by him in the prescribed manner—
 - (a) the Scottish Health Service Planning Council;
 - (b) every Health Board ;
 - (c) the Agency;
 - (d) the Scottish Medical Practices Committee ;
 - (e) the Scottish Dental Estimates Board ;
 - (f) the Tribunal constituted under section 43 of the Act of 1947.
- (4) The expenditure of a local health council shall, for the purposes of this section, be deemed to be the expenditure of the Health Board within whose area it has been established.
- (5) The expenditure of a University Liaison Committee shall, for the purposes of this section, be deemed to be the expenditure of the Health Board for whose area it is constituted, and, where a University Liaison Committee is constituted for the areas of more than one Health Board, its expenditure shall be apportioned between the Boards concerned in such manner as may be determined by the Secretary of State.
- (6) Payments under subsection (3) above shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine.
- (7) Having regard to the relief obtained or likely to be obtained by local authorities in the year 1973-74 or in the year 1974-75 which is attributable to the coming into operation of any provision of this Act, the Secretary of State may redetermine for those years the amount and portion mentioned in section 2(2)(a) and (b) of the Local Government (Scotland) Act 1966, and by an order, made in the like manner and subject to the like provisions as a rate support grant order, reduce the amount fixed by the relevant rate support grant order as the aggregate amount of the rate support grants and any element of the grants for those years.
- (8) The provisions of sections 2 and 3 of the said Act of 1966, relating to consultation and to a report of the considerations leading to a determination under the said section 2, shall apply to a redetermination under subsection (7) above as they apply to a determination under that section.
- (9) Expressions used in subsections (7) and (8) above have the same meanings as in the said Act of 1966.

61 Supplementary and transitional

- (1) The Secretary of State may at any time, whether before or after the appointed day, by order make such incidental, consequential, transitional or supplementary provision as may appear to him to be necessary or proper for the general or any particular purposes

of this Act or in consequence of any of the provisions thereof or for giving full effect thereto, and nothing in any other provision of this Act shall be construed as prejudicing the generality of this subsection.

- (2) Any such order may in particular include provision for anything duly done before the appointed day by any authority or body in the exercise of functions which, on and after that day, become functions of some other authority or body to be deemed, as from that day, to have been duly done by that other authority or body, and for any instrument made before that day, in so far as it was made in the exercise of those functions, to continue in force on and after that day until varied or revoked by that other authority or body.
- (3) In so far as any apportionment, agreement, regulation or order made, or any notice, direction, consent or approval given under any enactment repealed by this Act, or proceedings instituted or other thing done under any such enactment could have been made, given, instituted or done under a corresponding provision of this Act, it shall not be invalidated by the repeals effected by this Act, but shall have effect as if it had been made, given, instituted or done under that corresponding provision and may be amended, varied, revoked or enforced accordingly, and in the case of any legal proceedings may be continued and appealed against as if this Act had not been passed.
- (4) Notwithstanding the repeal by this Act of section 67 of the Act of 1947, regulations made under paragraphs (c) to (e) of subsection (1) of that section shall continue to have effect until revoked by regulations under this Act.
- (5) The Secretary of State may, with any necessary modifications, by order apply any of the provisions of paragraph 1 of Schedule 9 to the Civil Aviation Act 1971 to the case of a person who enters the employment of a Health Board or the Agency after having been employed in employment to which the said paragraph 1 applies, and any such order may provide that for the purposes of any enactment specified in the order, or for any other purposes so specified, there shall be deemed to have been no break in the employment of any such person.

62 Regulations, orders and local enactments

- (1) Any power conferred by this Act on the Secretary of State to make regulations or orders shall be exercisable by statutory instrument.
- (2) All statutory instruments containing regulations made under this Act, and all statutory instruments containing orders referred to in subsection (3) below, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) The orders concerned are orders made under section 13 of this Act determining the area of a Health Board, orders made under subsection (3) of that section and orders made under sections 25, 26(3), 27(5), 31 to 35, 37(2), 38(2) and 39(2) of this Act and under subsections (8) and (9) of this section.
- (4) Any power under this Act to make regulations or orders may be exercised—
 - (a) either in relation to all cases to which the power extends, or in relation to those cases subject to exceptions, or in relation to any particular case or cases, and
 - (b) subject to such other exceptions or conditions as the Secretary of State thinks fit,

and shall include power to make such incidental or supplementary provision as appears to the Secretary of State to be expedient.

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

- (5) Any power to make regulations under this Act shall, if the Treasury so direct, not be exercisable except in conjunction with the Treasury.
- (6) Any order under this Act may be varied or revoked by a subsequent order made in the like manner and subject to the same provisions.
- (7) Subject to subsection (8) below, where any local enactment provides for any matter which is also provided for by any provision of this Act or of any order or regulations made thereunder, the provisions of this Act, or, as the case may be, of that order or those regulations, shall have effect in substitution for the local enactment, which shall cease to have effect.
- (8) The Secretary of State may by order except from the operation of subsection (7) above such local enactments as may be specified in the order and direct that the corresponding provisions of this Act or of any order or regulations made thereunder, as may be so specified, shall not have effect in the areas in which the specified local enactments have effect.
- (9) If it appears to the Secretary of State that any local enactment, not being an enactment which has ceased to have effect by virtue of subsection (7) above, is inconsistent with any provision of this Act or of any order or regulations made thereunder, or is no longer required, or requires to be amended, having regard to any provision of this Act or of any order or regulations made thereunder, he may by order repeal or amend the local enactment as he may consider appropriate.

63 Interpretation

- (1) Expressions used in this Act and the Act of 1947 have, unless the context otherwise requires, the same meanings as in that Act, and other expressions used in this Act shall, unless the context otherwise requires, have the following meanings:—
- " the Act of 1947 " means the National Health Service (Scotland) Act 1947;
 - " the Act of 1968 " means the Health Services and Public Health Act 1968 ;
 - " the Agency " means the Common Services Agency for the Scottish Health Service constituted under section 19 of this Act;
 - " the appointed day " has the meaning assigned to it by section 65 of this Act;
 - " designated medical officer " means a medical officer designated under section 21 of this Act;
 - " Health Board " means a board constituted under section 13 of this Act;
 - " the Health Service Acts " means the National Health Service (Scotland) Acts 1947 to 1972;
 - " local health council " means a council established by virtue of section 14 of this Act;
 - " prescribed " means prescribed by regulations ;
 - " regulations " means regulations made by the Secretary of State under this Act;
 - " Scottish Health Service Planning Council " means the Council constituted under section 17 of this Act;
 - " University Liaison Committee " means a committee constituted by virtue of section 15 of this Act.

- (2) Unless the context otherwise requires, any references in this Act to any enactment are references to that enactment as amended or extended by or under any other enactment, including this Act.

64 Minor and consequential amendments and repeals

- (1) The enactments mentioned in Schedule 6 to this Act shall have effect subject to the amendments respectively specified in that Schedule, being minor amendments or amendments consequential on the provisions of this Act.
- (2) The enactments set out in Schedule 7 to this Act are hereby repealed to the extent specified in column 3 of that Schedule.

65 Commencement, short title and extent

- (1) This Act (except this section) shall come into operation on the appointed day, being such day as the Secretary of State may by order appoint, and different days may be appointed under this subsection for different provisions of this Act or for different purposes, or for the purposes of the same provision in relation to different cases.
- (2) This Act may be cited as the National Health Service (Scotland) Act 1972, and the National Health Service (Scotland) Acts 1947 to 1968 and this Act may be cited together as the National Health Service (Scotland) Acts 1947 to 1972.
- (3) This Act, except in so far as it relates to the amendment of the House of Commons Disqualification Act 1957, extends to Scotland only.