



National Health Service (Scotland) Act 1972

1972 CHAPTER 58

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.

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- (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

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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.
- (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.