



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART I

#### ORGANISATION

##### *Administrative bodies*

## 2 Health Boards.

### (1) The Secretary of State

<sup>F1</sup>(a) shall by order constitute in accordance with Part I of Schedule 1 boards for such areas as he may by order determine, for the purpose of exercising <sup>F2</sup>such of his functions <sup>F3</sup>[relating to the health service] as he may so determine], and for the purpose of making arrangements on his behalf for the provision of the services mentioned in Part II; and those boards shall <sup>F4</sup>, without prejudice to subsection (1B),] be called Health Boards <sup>F5</sup>and]

<sup>F5</sup>(b) subject to subsections (1A) and (1C), may by order constitute boards, either for the whole of Scotland or for such parts of Scotland as he may so determine, for the purpose of exercising such of his functions <sup>F3</sup>[relating to the health service] as he may so determine; and those boards shall, without prejudice to subsection (1B), be called Special Health Boards.

<sup>F6</sup>(1A) An order made under subsection (1)(b) may determine an area for a Special Health Board constituted under that subsection which is the same as the areas determined—

- (a) for any other Special Health Board; or
- (b) for any Health Board or Health Boards constituted by an order or orders made under subsection (1)(a).

(1B) An order under subsection <sup>F7</sup>(1) may specify the name by which a board constituted by the order shall be known.

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- (1C) The Secretary of State may by order provide that such of the provisions of this Act or of any other enactment, or of any orders, regulations, schemes or directions made under or by virtue of this Act or of any other enactment, as apply in relation to Health Boards shall, subject to such modifications and limitations as may be specified in the order, so apply in relation to any Special Health Board so specified.]
- (2) The order or orders made under subsection [F8(1)(a)] 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) 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) [F9 and in exercising any function otherwise conferred on them by or under this Act][F10 or by or under the 2021 Act] each Health Board shall act subject to, and in accordance with, such regulations as may be made, 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) shall make provision requiring each Health Board to submit to the Secretary of State a scheme for the exercise of their functions [F11 (other than functions conferred on them by or under the 2021 Act)], and enabling the Secretary of State to approve any such scheme with or without modifications, and to make such a scheme in the event of the failure of any Health Board to do so.
- (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 making the provision mentioned in subsection (6) shall, with any necessary modifications, apply to any such scheme.
- (8) 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.
- [F12(9) 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.]
- (10) Schedule 1 shall have effect in relation to the Boards constituted under this section.

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[<sup>F13</sup>(10A) Schedule 1A makes provision for the election of individuals to be members of Health Boards.]

(11) 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 or 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 provisions of this Act 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 II of Schedule 1.

#### Textual Amendments

- F1** "(a)" inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 28(a)(i)
- F2** Words substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 14(2), Sch. 7 para. 1
- F3** Words in s. 2(1)(a)(b) substituted (6.8.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), ss. 42(1), 43(2), Sch. 2 para. 2(2)
- F4** Words in s. 2(1)(a) inserted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 11(1), 12(1), Sch. 1 para. 1(2)(a); S.S.I. 2004/361, art. 2(b)(iv)
- F5** S. 2(1)(b) and word "and" preceding it inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 28(a)(ii)
- F6** S. 2(1A)–(1C) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 28(b)
- F7** Word in s. 2(1B) substituted (30.9.2004) by National Health Service Reform (Scotland) Act 2004 (asp 7), ss. 11(1), 12(1), Sch. 1 para. 1(2)(b); S.S.I. 2004/361, art. 2(b)(iv)
- F8** "1(a)" substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 28(c)
- F9** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 19(1)
- F10** Words in s. 2(5) inserted (1.4.2022) by Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (asp 3), s. 20(2), sch. para. 1(2)(a) (with s. 3); S.S.I. 2022/24, reg. 2
- F11** Words in s. 2(6) inserted (1.4.2022) by Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (asp 3), s. 20(2), sch. para. 1(2)(b) (with s. 3); S.S.I. 2022/24, reg. 2
- F12** S. 2(9) repealed (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(2), Sch. 10
- F13** S. 2(10A) inserted (temp. from 24.6.2009 for certain purposes and otherwise prosp.) by Health Boards (Membership and Elections) (Scotland) Act 2009 (asp 5), ss. 2(1), 4, 6(2)(3), 7, 11(1); S.S.I. 2009/242, art. 2

#### Modifications etc. (not altering text)

- C1** Pt. 1 applied (7.12.2019) by The Public Health Scotland Order 2019 (S.S.I. 2019/336), art. 1(2), sch. 1 Pt. 1 (with art. 4(4)(5))
- C2** S. 2 modified (15.8.1997) by 1997 c. 46, s. 10(2); S.I. 1997/1780, art. 2(1), Sch.
- C3** S. 2 applied in part (7.12.2019) by The Public Health Scotland Order 2019 (S.S.I. 2019/336), art. 1(2), sch. 1 Pt. 1 (with art. 4(4)(5))
- C4** S. 2(3)–(5), (8) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), Sch. Pt. I
- C5** S. 2(3)–(5), (8) applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), Sch. Pt. I (with art. 6)  
S. 2(3)(4)(5)(8) applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), Sch. Pt. I (with art. 6)  
S. 2(3)(4)(5)(8) applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), Sch. Pt. I

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S. 2(3)(4)(5)(8) applied (1.4.1999) by [S.I. 1999/726](#), art. 5(1)(2), **Sch. Pt. I**

S. 2(3)(4)(5)(8) applied (1.4.2000) by [S.S.I. 2000/47](#), art. 5(1)(2), **Sch. Pt. I**

S. 2(3)(4)(5)(8) applied (6.4.2001) by [S.S.I. 2001/137](#), art. 5(1), **Sch. Pt. I**

S. 2(3)(4)(5)(8) applied (31.3.2002) by [S.S.I. 2002/103](#), art. 6, **Sch. Pt. I** (with art. 4(4))

S. 2(3)(4)(5)(8) applied (27.6.2002) by [S.S.I. 2002/305](#), art. 5(1), **Sch. Pt. I** (with art. 4(4))

**C6** S. 2(5) amended by [Hospital Complaints Procedure Act 1985](#) (c. 42, SIF 113:2), **s. 1(1)**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 10C(3A) inserted by [2019 asp 6 s. 6\(3\)\(a\)](#)
- s. 10I(1)(b)(c) and word inserted by [2019 asp 6 s. 6\(4\)\(b\)](#)
- s. 16A(5) added by [2002 asp 5 Sch. 2 para. 2\(2\)](#)
- s. 19A(2)(b) words repealed by [2003 asp 4 sch. 4 para. 5\(4\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(a) words substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(b) substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(c) words substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(e) word substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 70A inserted by [1997 c. 46 s. 26\(2\)](#)
- s. 70A(2) word substituted by [2005 asp 13 s. 14\(3\)](#)
- s. 85AB(7) inserted by [2005 asp 13 sch. 2 para. 2\(18\)\(b\)](#)
- Sch. 11 para. 2(1A) inserted by [2005 asp 13 s. 14\(6\)\(a\)](#)