
 STATUTORY INSTRUMENTS

1990 No. 2639 (S.224)
NATIONAL HEALTH SERVICE, SCOTLAND
The Health Education Board for Scotland Order 1990

Made - - - - - *20th December 1990*

Laid before Parliament *28th December 1990*

Coming into force in accordance with article 1

The Secretary of State, in exercise of the powers conferred on him by sections 2(1)(b), (1A), (1B) and (1C) and 105(7) of the National Health Service (Scotland) Act 1978(a), and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

- 1.—(1) This Order may be cited as the Health Education Board for Scotland Order 1990.
- (2) Subject to paragraph (3), this Order shall come into force on 1st April 1991.
- (3) The provisions of this Order shall come into force on 18th January 1991 for the purposes of—
 - (a) the provisions of article 3;
 - (b) the provisions of article 5(1) as to the application in relation to the Board of the following enactments specified in the Schedule:—
 - (i) in the provisions of the Act specified in Part I, section 101 and in Schedule 1 paragraphs 1, 2, 4, 5, 6, 7, 9 to 11 and 12 to 15 and in Schedule 5 paragraphs 7B and 7C;(b) and
 - (ii) the enactments specified in Part II except the Public Bodies (Admission to Meetings) Act 1960(c) and the Overseas Development and Co-operation Act 1980(d) and in Part III except the National Health Service (Vehicles) (Scotland) Order 1974(e) and the National Health Service (Food Premises) (Scotland) Regulations 1987(f).

Interpretation

- 2.—(1) For the purposes of this Order unless the context otherwise requires—

“the Act” means the National Health Service (Scotland) Act 1978;

“the Board” means the Special Health Board, to be known by the name of the Health Education Board for Scotland, which is constituted by this Order;

“enactment” includes order and regulation.

(a) 1978 c.29; section 2(1) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41) (“the 1983 Act”), Schedule 7, paragraph 1, and by the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), section 28 which inserted subsections (1)(b), (1A), (1B) and (1C); the relevant Commencement Order is S.I. 1990/1793; section 105(7) which was amended by the Health Services Act 1980 (c.53) (“the 1980 Act”), Schedule 6, paragraph 5(1) and Schedule 7, and by the 1983 Act, Schedule 9, paragraph 24, contains provisions relevant to the exercise of the powers under which this Order is made.

(b) See footnotes to Part I of the Schedule to this Order.

(c) 1960 c.67.

(d) 1980 c.63.

(e) S.I. 1974/1491.

(f) S.I. 1987/2.

(2) In this Order unless the context otherwise requires, a reference to an article or Schedule is to an article of, or the Schedule to, this Order and a reference to a paragraph is to a paragraph of the article in which the reference is made.

Constitution, name and area of the Board

3. There is hereby constituted a Special Health Board for the whole of Scotland to be known by the name of the Health Education Board for Scotland.

Functions of the Board

4.—(1) The Board shall exercise the following functions of the Secretary of State namely:—

- (a) functions in relation to health education conferred on him by the Act including, without prejudice to the foregoing generality, those specified in section 42 (health education), and
- (b) functions specified in paragraph (2) subject, however, to any limitations there specified.

(2) The functions specified in this paragraph are as follows:—

- (a) the power of the Secretary of State to assist voluntary organisations under section 16 of the Act(a);
- (b) the power of the Secretary of State to give financial assistance to voluntary organisations under section 16B of the Act(b) limited to assisting such organisations to which that section would apply if the expression “relevant service” within the meaning thereof were limited to the provision of health education services and the assistance were upon such terms and subject to such conditions as the Secretary of State, with the approval of the Treasury, might determine;
- (c) the powers of the Secretary of State under section 79(1) of the Act(c) to take on lease or to purchase moveable property and land which is required for the purposes of the Board and to use for those purposes and manage any heritable or moveable property so acquired;
- (d) the powers of the Secretary of State under section 79(1A) of the Act(d) to dispose of land no longer required for the purposes of the Board disregarding so much of that sub-section as relates to the function of the Secretary of State to authorise certain officers to execute instruments on his behalf;
- (e) the power of the Secretary of State under paragraph 4 of Schedule 1 to the Act(e), as applied in relation to the Board by article 5, to pay remuneration to the Chairman of the Board and to such other members thereof as may be prescribed so, however, that this sub-paragraph shall not be construed as extending to the power to determine the remuneration or to prescribe the members to whom it may be paid; and
- (f) the power of the Secretary of State under paragraph 13 of Schedule 1 to the Act, as applied in relation to the Board by article 5, to pay to members of the Board, and any Committees and sub-committees thereof, travelling and other allowances so, however, that this sub-paragraph shall not be construed as extending to the power to determine the amount of such allowances.

(3) In exercising any functions of the Secretary of State to acquire, use, manage or dispose of land the Board shall ensure—

- (a) that any instrument in connection with the exercise of those functions is in the name of the Secretary of State for Scotland and not that of the Board; and
- (b) that, where any such instrument requires to be executed on his behalf by the Secretary of State for Scotland and it is not executed in accordance with section 1(8) of the Reorganisation of Offices (Scotland) Act 1939(f), it is executed on his behalf in accordance with section 79(1A) of the Act(g).

(a) Section 16 was amended by the 1980 Act, Schedule 7.

(b) Section 16B was inserted by the 1983 Act, section 3.

(c) Section 79(1) was amended by the 1990 Act, Schedule 9 paragraph 19(15).

(d) Section 79(1A) was inserted by the 1983 Act, Schedule 7 paragraph 3.

(e) Paragraph 4 of Schedule 1 was amended by the 1990 Act, Schedule 5 paragraph 3.

(f) 1939 c.20.

(g) Section 79(1A) was inserted by the 1983 Act, Schedule 7, paragraph 3.

Application of enactments

5.—(1) Each of the enactments specified in column 1 of each part of the Schedule (the subject matter of which is described generally in column 2) shall apply in relation to the Board as it applies in relation to Health Boards subject, however, to the modifications and limitations (if any) specified opposite thereto in column 3 and to paragraph (2).

(2) The enactments which are applied in relation to the Board by virtue of paragraph (1) are so applied only for the purposes of the exercise by the Board of the functions conferred on it by this Order.

Saving for powers of the Secretary of State, Health Boards and the Agency

6. Nothing in this Order shall prevent the Secretary of State, a Health Board or the Common Services Agency for the Scottish Health Service from exercising any function conferred or imposed upon any one of them by or under any enactment or rule of law or affect or restrict the exercise of any such function by them or any one of them.

St Andrew's House, Edinburgh
20th December 1990

Michael B. Forsyth
Minister of State,
Scottish Office

Article 5(1)

SCHEDULE

ENACTMENTS APPLIED TO THE BOARD

PART I

Column 1 <i>Enactment</i>	Column 2 <i>Nature of Provision</i>	Column 3 <i>Modifications and Limitations (where applicable)</i>
In Part I		
In section 2–	Health Boards	
Subsection (3)	Variation of area and functions of Health Boards	
Subsection (4)	Provisions incidental to variation of area or functions of Health Boards	
Subsection (5)	Health Boards to act in accordance with regulations or directions(a)	
Subsection (8)	Health Board to act as principal	
In section 10–	Common Services Agency	
Subsection (4)	Power to provide that functions of Health Boards may be referred to the Agency	
Section 13	Co-operation between Health Boards and other Authorities	
In section 15–		
Subsection (1)(b)	Supply of goods to local and education authorities and other public bodies	
Subsection (1)(c)	Provision of services to local and education authorities(b)	
Subsection (1)(d)	Use of health service premises by local and education authorities	
Subsection (1)(e)	Use of health service vehicles etc by local and education authorities	
Subsection (2)	Arrangements with third parties for the supply of goods and materials	Applied so far as it relates to subsection (1)(b).
Section 17A	Power to enter into arrangements with NHS bodies for the provision of goods and services (“NHS contracts”)(c)	
In Part IV		
Section 77	Default powers	
In Part V		
In Section 79–		
Subsection (1A)	Power of Secretary of State to dispose of land and, where he has delegated any function relating to the acquisition, management or disposal of land, power to authorise any officer of a Health Board to execute any instrument on his behalf	

(a) Section 2(5) was amended by the 1990 Act, Schedule 9, paragraph 19(1).

(b) Section 15(1)(c) was amended by the 1980 Act, section 3(2).

(c) Section 17A was inserted by the 1990 Act, section 30.

Column 1 <i>Enactment</i>	Column 2 <i>Nature of Provision</i>	Column 3 <i>Modifications and Limitations (where applicable)</i>
Subsection (3)	Power to acquire moveable property on behalf of the Secretary of State	
In section 83– Subsection (1)	Power to hold property on trust	
Section 84	Power to trustees to make payments to Health Boards	
Section 84A	Power to raise money and property by appeals, collections and other similar activities(a)	
In section 85– Subsection (1)	Payment of expenses of certain bodies(b)	
Subsection (2A)	Power to make directions to bodies listed in subsection (1)(c)	
In section 85A– Subsection (1)	Duty of bodies referred to in section 85(1) as regards expenditure(d)	
Subsection (3)	Power to make directions in relation to duty under subsection (1)	
Subsection (4)	Disregard for the purposes of the section of certain trust funds	
Section 85B	Power to make provision for meeting losses and liabilities etc. of certain health service bodies(e)	
Section 86	Provisions in relation to the keeping and auditing of accounts, to their submission to the Secretary of State and to their summarisation by the Secretary of State(f)	
Section 87	Power to make regulations as to financial arrangements of health service bodies	
Part VI	Health Service Commissioner for Scotland	
In Part VIII– Section 101	Protection of Health Boards	
In Schedule 1–	Health Boards	
Paragraph 1	Health Boards to be bodies corporate and have a common seal	
Paragraph 2	Appointment of Chairman and members	
Paragraph 4	Payment of remuneration to the Chairman and such members of Health Boards as may be prescribed(g)	
Paragraph 5	Employment of officers and servants(h)	

(a) Section 84A was inserted by the 1980 Act, section 5(2).

(b) Section 85(1) was substituted by the 1980 Act, section 6(3).

(c) Section 85(2A) was inserted by the 1980 Act, section 6(3).

(d) Section 85A was inserted by the 1980 Act, section 6(4) and subsection (1) was amended by the Health and Medicines Act 1988 (c.49), section 16(4)(a).

(e) Section 85B was inserted by the 1990 Act, section 41.

(f) Section 86(1) was amended by the 1990 Act, section 36(2) and (3) and sub-sections (2) to (4) of section 86 were amended respectively by the 1990 Act, section 36, sub-sections (5) to (7).

(g) Paragraph 4 of Schedule 1 was amended by the 1990 Act, Schedule 5, paragraph 3.

(h) Paragraph 5 was amended by the 1980 Act, Schedule 6, paragraph 7(2) and Schedule 7.

Column 1 <i>Enactment</i>	Column 2 <i>Nature of Provision</i>	Column 3 <i>Modifications and Limitations (where applicable)</i>
Paragraph 6	Power to make regulations as to method of appointment, qualifications, remuneration and conditions of service of officers and servants	
Paragraph 7	Officers and servants employed in accordance with regulations and directions(a)	
Paragraph 7A	Power to make regulations providing for transfer of officers and servants(b)	
Paragraph 7B	Directions to Health Boards to place officers or servants at disposal of other bodies(c)	
Paragraph 9	Application of the seal of Health Boards	For the words "one member" there shall be substituted the words "two members" and the words after "member of the Board" to the end of the paragraph shall be omitted
Paragraph 10	Proof of instruments	
Paragraph 11	Power to make regulations as to appointments, committees and procedure(d)	
Paragraph 11A	Subscription to funds of other bodies(e)	
Paragraph 12	Proceedings not to be invalidated by vacancies	
Paragraph 13	Payment to members of a Health Board, the Committees and sub-committees thereof of travelling and other allowances, including compensation for loss of remunerative time	The words ", including compensation for loss of remunerative time," shall be omitted
Paragraph 14	Allowances not payable except in circumstances determined by the Secretary of State	
Paragraph 15	Time and method of payment of allowances	
In Schedule 5-	Common Services Agency	
Paragraph 7B	Power to make regulations providing for the transfer of officers and servants(f)	
Paragraph 7C	Power to make directions as to placing of staff with other bodies(g)	

(a) Paragraph 7 was amended by the 1980 Act, Schedule 6, paragraph 7(3).

(b) Paragraph 7A was inserted by the 1990 Act, Schedule 5, paragraph 5.

(c) Paragraph 7B was inserted by the 1990 Act, Schedule 5, paragraph 5.

(d) Paragraph 11 was amended by the 1980 Act Schedule 6, paragraph 7(4) and Schedule 7 and by the 1990 Act, Schedule 5, paragraph 7.

(e) Paragraph 11A was inserted by the 1980 Act, Schedule 6, paragraph 7(5).

(f) Paragraph 7B was inserted by the 1990 Act, Schedule 5, paragraph 11.

(g) Paragraph 7C was inserted by the 1990 Act, Schedule 5, paragraph 11.

PART II

Acts other than the Act

Column 1 <i>Enactment</i>	Column 2 <i>Nature of Provision</i>	Column 3 <i>Modifications and Limitations (where applicable)</i>
The Public Bodies (Admission to Meetings) Act 1960(a)	Admission of the public to meetings	
The House of Commons Disqualification Act 1975(b) –	Offices disqualifying for membership of the House of Commons	
In Schedule 1, Part III the entry relating to Chairman or any member, not being also an employee, of a Health Board(c)		
Overseas Development and Co-operation Act 1980(d) –	Powers of National Health Service bodies in Scotland to enter into and carry out agreements to furnish technical assistance outside the UK.	
In Section 2 Subsection (1)(a) and (c)		
Schedule 1	Statutory bodies with powers under section 2(1)	limited to the reference in Part IV to “A Health Board”

(a) 1960 c.67; paragraph 2 of the Schedule was amended by the National Health Service (Scotland) Act 1972 (c.58), Schedule 6, paragraph 118 and by paragraph 14 of Schedule 16 to the Act.

(b) 1975 c.24.

(c) Schedule 1, Part III was amended by the 1990 Act section 59(3).

(d) 1980 c.63.

PART III

Enactments other than Acts of Parliament

Column 1 <i>Enactments and provisions</i>	Column 2 <i>Nature of Provision</i>	Column 3 <i>Modifications and Limitations (where applicable)</i>
The National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1974(a)	The determination of remuneration and conditions of service of officers of Health Boards	
The National Health Service (Professions Supplementary to Medicine) (Scotland) Regulations 1974(b)	Prohibits employment for provision of services under the National Health Service of certain health professionals unless they are registered under the Professions Supplementary to Medicine Act 1960(c)	
The National Health Service (Financial Provisions) (Scotland) Regulations 1974(d)	Preparation of estimates of income and expenditure and accounts of Health Boards and related matters of a financial nature	Limited so as to exclude the application of any provisions relative to Local Health Councils or the Common Services Agency
The National Health Service (Vehicles) (Scotland) Order 1974(e)	Exemption from statutory requirements for vehicle excise duty and third party insurance of a National Health Service vehicle made available to a local authority, education authority or voluntary organisation	
The National Health Service (Appointment of Consultants and Community Medicine Specialists) (Scotland) Regulations 1986(f)	Appointment as an officer of a Health Board of any registered medical or dental practitioner to the post of consultant or of any registered medical practitioner to the post of community medicine specialist	
The National Health Service (Food Premises) (Scotland) Regulations 1987(g)	Health authorities (including Health Boards) to be treated for the purposes of food legislation (as defined in the Regulations) as both owners and occupiers of premises used by them	

(a) S.I. 1974/276.

(b) S.I. 1974/549.

(c) 1960 c.66.

(d) S.I. 1974/468.

(e) S.I. 1974/1491.

(f) S.I. 1986/944.

(g) S.I. 1987/2; amended by S.I. 1990/2625.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order constitutes, under article 3, a Special Health Board for the whole of Scotland to be known as the Health Education Board for Scotland. In accordance with article 1 the Order comes into force on 18th January 1991 for appointment and remuneration of Board Members and staff and for certain other purposes and on 1st April 1991 for all other purposes.

Article 4 of the Order confers on the new Board the function of providing health education in Scotland and it shall exercise powers of the Secretary of State under section 42 of the National Health Service (Scotland) Act 1978 (c.29) in so doing. This article also enables the Board to exercise, in connection with its function of providing health education, certain functions of the Secretary of State such as the giving of assistance to voluntary organisations and in connection with the acquisition, management and disposal of property.

By article 5 and the Schedule there are applied to the Board various provisions in enactments which apply to Health Boards in general. These include provisions as to the funding of Health Boards and the keeping and auditing of accounts, provisions in Schedule 1 to the 1978 Act including those for appointment and remuneration of Board members and staff and other provisions in statutory instruments relating to Health Boards.

Article 6 makes it clear that nothing in the Order affects the power of the Secretary of State, a Health Board or the Common Services Agency to exercise any function conferred on any one of them by or under the 1978 Act.