SCOTTISH STATUTORY INSTRUMENTS

2004 No. 46

NATIONAL HEALTH SERVICE

The Scottish Hospital Trust (Transfer of Property) Regulations 2004

Made - - - -	*2nd February 2004*
Coming into force - -	*6th February 2004*

The Scottish Ministers in exercise of the powers conferred by sections 5(2) and 18(2) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003(**1**), and of all other powers enabling them in that behalf and after consultation with the Scottish Hospital Trust and all Health Boards and NHS trusts in accordance with section 5(3) of that Act, hereby make the following Regulations, a draft of which has, in accordance with section 18(4) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Scottish Hospital Trust (Transfer of Property) Regulations 2004 and shall come into force on 6th February 2004.

(2) In these Regulations–

"Health Board" has the same meaning as in section 108(1) (interpretation) of the National Health Service (Scotland) Act 1978(**2**);

"main transfer" means the transfer of Trust property, as described in regulation 2(1), on 12th February 2004;

"supplementary transfer" means the transfer of Trust property, as described in regulation 2(2), on 31st March 2004;

"the Trust" means the Scottish Hospital Trust constituted under section 11(1) (Scottish Hospital Trust) of the 1978 Act; and

"Trust property" has the same meaning as in section 5(1) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (property of the Scottish Hospital Trust).

(**1**) 2003 asp 4.
(**2**) 1978 c. 29. The definition of "Health Board" was amended by paragraph 19(22)(a) of Schedule 9 to the National Health Service and Community Care Act 1990 (c. 19).

Transfer to, and vesting in Health Boards, of Trust property

2.—(1) The property referred to in article 2(3) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Commencement No. 4) Order 2003 as being transferred to, and vested in, Health Boards in the main transfer of Trust property on 12th February 2004 comprises–

(a) property (except any endowment or other property (and accumulated income thereof) held by the Trust by virtue of paragraph 4(e) or (ea) of Schedule 6 (the Hospital Trust) to the 1978 Act) equal to the share of each Health Board as set out in regulation 4; but under deduction of the expenses of administration and liabilities of the Trust as at 31st March 2004 as estimated by the Trust;

(b) any endowments or accumulated income thereof held by the Trust by virtue of paragraph 4(e) of the said Schedule 6 and which are to be transferred back to the Health Board on behalf of which the Trust accepted the endowment or accumulated income thereof for investment and management; and

(c) any property, endowments or accumulated income held by the Trust by virtue of paragraph 4(ea) of the said Schedule 6 and which are to be transferred back to the Health Board for the area in which the NHS trust, on behalf of which the Trust accepted the property, endowments or accumulated income for investment and management, is located.

(2) Any balance remaining on 31st March 2004 shall be distributed, after payment by the Trust of the expenses of administration and liabilities of the Trust as at that date, to the Health Boards in accordance with regulation 4.

(3) Should the Trust acquire further property, or any reversionary interest be enlarged, after 6th February 2004 and before the dissolution of the Trust, that property shall be distributed as follows:

(a) if a condition is attached to any donation or bequest, in accordance with that condition; or

(b) if the acquisition takes the form of

(i) heritable property, to the Health Board in whose area the heritable property is situated; or

(ii) moveable property, to the Health Board in whose area the person making the donation or bequest to the Trust was ordinarily resident or last ordinarily resident; or

(c) in any other case, in accordance with the Schedule.

Transfer to, and vesting in Health Boards, of Trust property: supplementary

3.—(1) The Trust may realise for value any of the Trust property, including any heritable property, and allocate that value to a Health Board in lieu of that property as part of the main transfer.

(2) The Trust shall, on or before 12th February 2004, or as soon as practicable thereafter, realise for value any of the Trust property not transferred, or not to be transferred, as part of the main transfer, which is not already in the form of bank and cash balances.

(3) The Trust shall allocate any heritable property, which has not been realised for value in accordance with paragraph (1) and which is to form part of the main transfer in accordance with regulation 2(1)(a), to the Health Board for the area in which the heritable property is located, as part of the share of that Health Board in the capital value of the Trust property.

(4) The Trust may not, without the prior consent of the Scottish Ministers, incur any new liabilities after 12th February 2004.

(5) The Trust shall notify each Health Board in writing–

(a) on or before 12th February 2004–

(i) of the value of the share of that Health Board in the capital value of the Trust property, for the purposes of regulation 2(1)(a);

(ii) how the value of that share has been calculated; and

(iii) of the items of Trust property that will be allocated, and the form in which they will be allocated to that Board as part of the main transfer and the capital value of each, as calculated in accordance with regulation 5; and

(b) on or before 31st March 2004–

(i) of the value of the share of that Health Board in any remaining Trust property for the purposes of regulation 2(2); and

(ii) how the value of that share has been calculated.

Share of each Health Board in Trust Property

4.—(1) Subject to paragraph (2) the share of each Health Board specified in column 1 of the Schedule in the Trust property, except in any endowment or other property (and accumulated income thereof) held by the Trust by virtue of paragraph 4(e) or (ea) of Schedule 6 to the 1978 Act, shall be the percentage share specified in column 2 of the Schedule.

(2) The percentage share referred to in paragraph (1) shall be the percentage share of the capital value of the Trust property as at 6th February 2004 but expressed as a percentage share of the capital value of the Trust property taken as 100% and not as the capital value of the Trust property expressed in pounds Sterling.

(3) In the event that the capital value of the Trust property alters between the 6th February 2004 and the date of the main transfer or the supplementary transfer, the share of each Health Board shall be that same percentage, but the percentage shall be of the actual capital value of the Trust property when it is transferred.

(4) Should any capital be received prior to 6th February 2004 which requires to be added to one or more endowment or endowments, the percentage shares specified in column 2 of the Schedule shall be adjusted in proportion to the value which the additional capital bears to the total capital value of the Trust property, as at the financial month end immediately preceding the date of that addition.

Method of calculating capital value of Trust Property

5. The capital value of the Trust property shall be calculated as follows:–

(a) investments quoted on a Stock Exchange – at last official traded price at 6th February 2004;

(b) short term loans, bank and cash balances – at amounts outstanding or at credit at 6th February 2004;

(c) subject to paragraph (d), other property and rights of, or held by, the Trust (of whatever kind) at market valuation as at 6th February 2004, by a valuer appointed by the Trust; and

(d) any feudal superiority shall have a nil value.

Contribution by Health Boards to the expenses and liabilities of the Trust

6.—(1) In the event that, at any time after 12th February 2004 the remaining Trust property is insufficient to meet the expenses and liabilities of the Trust as at 31st March 2004 then the Trust shall so notify the Scottish Ministers.

(2) The notification to the Scottish Ministers referred to in paragraph (1) shall be in writing and contain the following information:–

(a) the sum that is required to meet the expenses and liabilities of the Trust as at 31st March 2004;

(b) the reasons why that sum is required and the request is being made; and