SCOTTISH STATUTORY INSTRUMENTS

2002 No. 103

NATIONAL HEALTH SERVICE

The NHS Education for Scotland Order 2002

Made - - - - 5th March 2002
Laid before the Scottish Parliament - - - - 8th March 2002
Coming into force in accordance with article 1(2) and (3)

The Scottish Ministers, in exercise of the powers conferred by sections 2(1)(b), (1A), (1B) and (1C) and 105(6) and (7) of the National Health Service (Scotland) Act 1978(**1**), and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and commencement

1.—(1) This Order may be cited as the NHS Education for Scotland Order 2002.

(2) This Order, except for article 7, shall come into force on 31st March 2002.

(3) Article 7 of this Order shall come into force on 1st April 2002.

Interpretation

2.—(1) For the purposes of this Order–

"the Act" means the National Health Service (Scotland) Act 1978;

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

"the Council" means the Scottish Council for Postgraduate Medical and Dental Education.

(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.

(**1**) 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 sub-sections (1)(b), (1A), (1B) and (1C); 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, by the 1983 Act, Schedule 9, paragraph 24, and by the Health Act 1999 (c. 8) ("the 1999 Act"), Schedule 4, paragraph 60, contains provisions relevant to the exercise of the powers under which this Order is made. See section 66(1) of the 1999 Act in relation to any provision of that Act being taken to be a pre-commencement enactment within the meaning of the Scotland Act 1998 (c. 46). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

Constitution, name and area of the Board

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

Functions of the Board

4.—(1) The Board shall exercise the following functions of the Scottish Ministers namely–

(a) functions in relation to providing, co-ordinating, developing, funding and advising on education and training for persons providing or intending to provide services under the Act in Scotland conferred by the Act including, without prejudice to the foregoing generality, those specified in section 47 of the Act (making available facilities for education, research and training); 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 Scottish Ministers under section 16(1) of the Act to assist any voluntary organisations whose activities include the provision of a service similar or related to a service provided by the Board under the Act;

(b) the power of the Scottish Ministers under section 16(B) of the Act(**2**) to give financial assistance to voluntary organisations limited to assistance to such organisations whose activities consist of or include the provision of services similar to services provided by the Board for the purpose of education and training, the co-ordination, developing and advising on or of education and training and the assistance so given is given on such terms and conditions as the Scottish Ministers might determine;

(c) the powers of the Scottish Ministers under section 79(1) of the Act(**3**) 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 power of the Scottish Ministers under paragraph 4 of Schedule 1 to the Act, as applied in relation to the Board by article 6, 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;

(e) the power of the Scottish Ministers under paragraph 13 of Schedule 1 to the Act, as applied in relation to the Board by article 6, 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 Scottish Ministers 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 Scottish Ministers and not that of the Board; and

(b) that, where any such instrument requires to be executed on behalf of the Scottish Ministers and it is not executed in accordance with section 1(8) of the Reorganisation of Offices (Scotland) Act 1939(**4**), it is executed on their behalf in accordance with paragraph 6 of Schedule 2 to the Requirements of Writing (Scotland) Act 1995(**5**).

(**2**) Section 16B was inserted by the 1983 Act, section 3.
(**3**) Section 79(1) was amended by the 1990 Act, Schedule 9, paragraph 19(15)(a).
(**4**) 1939 c. 20.
(**5**) 1995 c. 7.

(4) Nothing in this Order shall prevent or restrict any of the following from exercising any function conferred upon them by or under the Act–

(a) the Scottish Ministers;

(b) any Health Board;

(c) any other Special Health Board; or

(d) the Common Services Agency.

Transfer of property

5. On 31st March 2002, all property, whether heritable or moveable, together with any rights, liabilities and obligations related thereto, which is vested in the Council shall transfer to and vest in the Board.

Applications of enactments

6.—(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.

Revocation

7. The Scottish Council for Postgraduate Medical and Dental Education Order 1993(**6**) is hereby revoked.

St Andrew's House,
Edinburgh
5th March 2002

MALCOLM CHISHOLM
A member of the Scottish Executive

(**6**) S.I.1993/577.

SCHEDULE Article 6(1)

ENACTMENTS APPLIED TO THE BOARD

PART I

THE ACT

Column 1 *Enactment*	*Column 2* *Nature of Provision*	*Column 3* *Modifications and Limitations (where applicable)*
In the Act–		
In Part I		
In Section 2–	Health Boards	
Sub section (3)	Variation of area and functions of Health Board	
Sub section (4)	Provisions incidental to variation of area or functions of Health Boards	
Sub section (5)	Health Boards to act in accordance with regulations or directions(**7**)	
Sub section (8)	Health Board to act as principal	
In Section 10–	Common Services Agency	
Sub section (4)	Power to provide that functions of Health Boards may be referred to the Agency(**8**)	
Section 13	Co-operation between Health Boards and other Authorities(**9**)	
Section 13A	Co-operation in planning of services for disabled persons, the elderly and others(**10**)	
Section 17A	Power to enter into arrangements with NHS bodies for the provision of goods and services ("NHS contracts")(**11**)	

(**7**) Section 2(5) was amended by the 1990 Act, Schedule 9, paragraph 19(1).
(**8**) Section 10(4) was amended by the 1990 Act, Schedule 10 and by the 1999 Act, Schedule 4, paragraph 44.
(**9**) Section 13 was amended by the 1990 Act, Schedule 9, paragraph 19(4).
(**10**) Section 13A was inserted by the National Health Service (Amendment) Act 1986 (c. 66), section 5(1) and amended by the 1990 Act, Schedule 9, paragraph 19(5).
(**11**) Section 17A was inserted by the 1990 Act, section 30 and amended by the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 102 and amended by the 1999 Act, Schedule 4, paragraph 46.

Column 1 *Enactment*	*Column 2* *Nature of Provision*	*Column 3* *Modifications and Limitations (where applicable)*
In Part IV		
Section 77	Default powers(**12**)	
In Part V		
In Section 79–		
Sub section (1A)	Power of Scottish Ministers to dispose of land(**13**)	
Sub section (3)	Power to acquire moveable property on behalf of the Scottish Ministers	
In Section 83–		
Sub section (1)	Power to hold property on trust	
Section 84	Power to trustees to make payments to Health Boards(**14**)	
Section 84A	Power to raise money and property by appeals, collections and other similar activities(**15**)	
Section 85AA	Means of meeting expenditure of Health Boards out of public funds(**16**)	
In Section 85–	Expenses of certain bodies(**17**)	
Sub section (1)	Payment of expenses of certain bodies	
Sub section (2)	Date of allotment	
Sub section (3)	Power to make directions to bodies listed in sub section(1)	
Sub section (4)	Conditions subject to which payments shall be made	
In Section 85A–		
Sub section (1)	Duty of bodies referred to in section 85(1) as regards expenditure(**18**)	

(**12**) Section 77 was amended by the 1990 Act, Schedule 9, paragraph 19(14).
(**13**) Section 79(1A) was repealed in part by the Requirements of Writing (Scotland) Act 1995 (c. 7), section 14(2) and Schedule 5.
(**14**) Section 84 was amended by the 1990 Act, Schedule 9, paragraph 19(10).
(**15**) Section 84A was inserted by the 1980 Act, section 5(2) and amended by the 1990 Act, Schedule 9, paragraph 19(17).
(**16**) Section 85AA was inserted by the 1999 Act, section 52.
(**17**) Section 85 was substituted by the 1999 Act, section 52.
(**18**) Section 85A was inserted by the 1980 Act, section 6(4) and amended by the Health and Medicines Act 1988 (c. 49), section 16(4) and by the 1999 Act, Schedule 4, paragraph 55.