National Health Service Reform (Scotland) Bill
[AS INTRODUCED]

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National Health Service Reform (Scotland)

Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision in relation to the organisation and operation of the National Health Service and the promotion of health improvement; and for connected purposes.

PART 1

ORGANISATION AND OPERATION OF NATIONAL HEALTH SERVICE

Organisation

1

Dissolution of National Health Service trusts: modification of enactments

In the National Health Service (Scotland) Act 1978 (c.29) (referred to in this Act as “the 1978 Act”), section 12A and Schedule 7A (establishment, functions, dissolution etc. of National Health Service trusts) are repealed.

2

Community health partnerships

After section 4 of the 1978 Act insert—

“Community health partnerships

4A

Community health partnerships

15

(1) Every Health Board shall, within such period as the Scottish Ministers may specify, submit to them a scheme for the establishment of—

(a) a community health partnership for the area of the Board, or

(b) two or more community health partnerships for districts which, taken together, cover the whole area of the Board.

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(2) The general function of a community health partnership is to co-ordinate, for its area or district, the planning, development and provision of the services which it is the function of its Health Board to provide, or secure the provision of, under or by virtue of this Act, with a view to improving those services.

(3) The Scottish Ministers may—
(a) approve (with or without modifications), or
(b) refuse to approve,
a scheme submitted to them under subsection (1) or (4).

(4) A Health Board—
(a) may, at any time,
(b) if so directed by the Scottish Ministers, must, within such period as they may specify,
submit to the Scottish Ministers a new scheme under this section.

(5) Regulations may make provision in relation to—
(a) the number of community health partnerships to be established for the area of a Health Board,
(b) the status, membership, procedures, staffing and expenses of a community health partnership,
(c) the form and content of, and the procedure in relation to, schemes under this section,
(d) the functions of a community health partnership and the exercise of those functions,
(e) such other matters with respect to community health partnerships as the Scottish Ministers think fit.

(6) Regulations made in pursuance of subsection (5)(d) may, in particular, include provision—
(a) specifying functions of a Health Board which are to be exercised on their behalf by a community health partnership,
(b) as to consideration by a community health partnership of matters relating to the planning, development and provision, in its area or district, of the services referred to in subsection (2),
(c) as to the submission by a community health partnership to its Health Board of—
   (i) advice and reports on the planning, development and provision, in its area or district, of such services,
   (ii) annual reports on its activities,
(d) as to consultation between a community health partnership and its Health Board,
(e) with a view to securing that persons to whom such services are being or may be provided, and other persons having an interest in the provision of such services, are involved in, and consulted on, the exercise by a community health partnership of its functions.”

Co-operation

3 Health Boards: duty of co-operation

Before section 13 of the 1978 Act insert—
“12I Health Boards: co-operation with other Health Boards, Special Health Boards and the Agency

(1) In exercising their functions in relation to the planning and provision of services which it is their function to provide, or secure the provision of, under or by virtue of this Act, Health Boards shall co-operate with one another, and with Special Health Boards and the Agency, with a view to securing and advancing the health of the people of Scotland.

(2) Where, in pursuance of subsection (1), a Health Board undertake to provide, or secure the provision of, services for individuals for whose health care it is not their function to provide by virtue of section 2(1), the Health Board may—

(a) enter into arrangements with another Health Board, a Special Health Board or the Agency in relation to the provision of such services,

(b) do anything in relation to the provision of such services which they could do for the purpose of providing, or securing the provision of, such services for individuals for whose care it is their function to provide by virtue of section 2(1).

(3) Subsection (2) is without prejudice to any other power which a Health Board may have.”

Powers of intervention

4 Powers of intervention in case of service failure

After section 78 of the 1978 Act insert—

“78A Powers in case of service failure

(1) This section applies where—

(a) it is a function of a body or person under or by virtue of this Act to provide, or secure the provision of, a service, and

(b) the Scottish Ministers consider that the body or person has failed, is failing or is likely to fail—

(i) to provide the service, or

(ii) to provide it to a standard which they regard as acceptable.

(2) The Scottish Ministers may, where they consider it necessary for the purpose of ensuring the provision of the service in question to a standard which they regard as acceptable, direct that specified functions of the body or person under or by virtue of this Act be performed, for a specified period and to a specified extent, by—

(a) a body falling within subsection (4), or

(b) one or more persons falling within subsection (5).

(3) In subsection (2), “specified” means specified in the direction.

(4) A body falls within this subsection if it is—

(a) a Health Board,

(b) a Special Health Board, or

(c) the Agency.
(5) A person falls within this subsection if the person is—

(a) an employee of a Health Board, a Special Health Board or the Agency, or

(b) a member of the staff of the Scottish Administration.

578B Relationship of sections 77, 78 and 78A

The powers conferred by each of sections 77, 78 and 78A are without prejudice to the powers conferred by the other two sections.”

Public involvement

After section 2A of the 1978 Act (inserted by section 7(2)) insert—

“2B Duty to encourage public involvement

(1) It is the duty of every Health Board and Special Health Board to take action with a view to securing, as respects services for which they are responsible, that persons to whom those services are being or may be provided are involved in, and consulted on—

(a) the planning and development, and

(b) decisions of the Health Board or Special Health Board affecting the operation, of those services.

(2) For the purposes of subsection (1) a Health Board or Special Health Board is responsible for services if they are services which it is the function of the Health Board or Special Health Board to provide, or secure the provision of, under or by virtue of this Act.”

6 Dissolution of local health councils

(1) Local health councils established by virtue of section 7 of the 1978 Act are dissolved on such date as the Scottish Ministers may by order made by statutory instrument specify.

(2) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

PART 2

PROMOTION OF HEALTH IMPROVEMENT

7 Duty to promote health improvement

(1) After section 1 of the 1978 Act insert—

“1A Duty of the Scottish Ministers to promote health improvement

(1) It is the duty of the Scottish Ministers to promote the improvement of the physical and mental health of the people of Scotland.

(2) The Scottish Ministers may do anything which they consider is likely to assist in discharging that duty including, in particular—
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Part 3—Supplementary

(a) giving financial assistance to any person,
(b) entering into arrangements or agreements with any person,
(c) co-operating with, or facilitating or co-ordinating the activities of, any person.

(3) Subsections (1) and (2) are without prejudice to section 1 and any other provision of this Act conferring or imposing functions on the Scottish Ministers.”

(2) After section 2 of that Act insert—

“2A Duty of Health Boards to promote health improvement

(1) It is the duty of every Health Board to promote the improvement of the physical and mental health of the people of Scotland.

(2) A Health Board may do anything which they consider is likely to assist in discharging that duty including, in particular—

(a) giving financial assistance to any person,
(b) entering into arrangements or agreements with any person,
(c) co-operating with, or facilitating or co-ordinating the activities of, any person.

(3) Subsections (1) and (2) are without prejudice to any other provision of this Act conferring or imposing functions on a Health Board.

(4) Anything done by a Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on the Health Board by the order under section 2(1)(a) which constituted the Board.”

PART 3

Supplementary

8 Ancillary provision

(1) The Scottish Ministers may by order made by statutory instrument make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act.

(2) An order under this section may—

(a) make different provision for different purposes,
(b) modify any enactment, instrument or document.

(3) A statutory instrument containing an order under this section (except where subsection (4) applies) is subject to annulment in pursuance of a resolution of the Parliament.

(4) No order under this section containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.
Modification of enactments

(1) Schedule 1 contains amendments consequential on the provisions of this Act.

(2) The enactments specified in column 1 of schedule 2 are repealed to the extent specified in column 2.

Commencement and short title

(1) The provisions of this Act, except section 8 and this section, come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(2) Different days may be appointed under this section for different purposes.

(3) This Act may be cited as the National Health Service Reform (Scotland) Act 2003.
SCHEDULE 1
(introduced by section 9)

CONSEQUENTIAL AMENDMENTS

National Health Service (Scotland) Act 1978 (c.29)

5 (1) The 1978 Act is amended as follows.
   (2) In section 12H(1) (duty of quality), for “, Special Health Board and NHS trust” substitute “and Special Health Board”.
   (3) In section 75A (remission and repayment of charges and payment of travelling expenses), in subsection (2), for “, (c) or (d)” substitute “or (c)”.
   (4) In section 86 (accounts), in each of subsections (3) and (4), for “to (c)” substitute “and (b)”.
   (5) In section 102 (State hospitals), in subsection (4)(b), for “, the Agency or an NHS trust” substitute “or the Agency” and for “, Agency or trust” substitute “or Agency”.
   (6) In section 105 (orders, regulations and directions), in subsection (4)(b), for the words from “12A(1)” to the end substitute “or 70(2)”.
   (7) In Schedule 1 (Health Boards), in paragraph 8A, for “, the Agency or an NHS trust” substitute “or the Agency”.
   (8) In Schedule 5 (Common Services Agency), in paragraph 8A, for “, a Health Board or an NHS trust” substitute “or a Health Board”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

2 (1) The Public Appointments and Public Bodies etc. (Scotland) Act 2003 is amended as follows.
   (2) In section 7 (investment and borrowing), in subsection (7), for “to (6)” substitute “or (4)”.
   (3) In section 9 (directions in relation to endowments), for the words “, and paragraph 6(1) of Schedule 7A to, the 1978 Act (which confer)” substitute “the 1978 Act (which confers)”.

SCHEDULE 2
(introduced by section 9)

REPEALS

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<thead>
<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
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<tbody>
<tr>
<td>National Health Service (Scotland) Act 1978 (c.29)</td>
<td>Section 7.</td>
</tr>
</tbody>
</table>

In section 8(1), the words “and any NHS trusts in the area or combined areas” and “, any such NHS trust”.

In section 9, in subsection (5), the words “and, where the Secretary of State so directs, an NHS trust”; and in subsection (7), the words “or, where
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<thead>
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<tr>
<td>the Secretary of State so directs, NHS trusts”.</td>
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<td>In section 10(4), the words “the NHS trusts”, “or of the NHS trusts” and “or NHS trusts”.</td>
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<tr>
<td>Sections 12AA to 12C.</td>
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<td>Sections 12D to 12G.</td>
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<td>In section 13, the words “NHS trusts,”.</td>
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<tr>
<td>Section 17A(2)(e).</td>
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<td>In section 17D, subsection (1)(a); and in subsection (2), paragraph (a) of the definition of “NHS employee”.</td>
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<td>In section 27(1)(b), the words “or by an NHS trust”.</td>
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<td>Section 35A.</td>
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<td>Section 73(c).</td>
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<td>Section 74(c) and the preceding “or”.</td>
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<td>Section 75A(1)(d) and the preceding “and”.</td>
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<tr>
<td>Section 77(1)(aa).</td>
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<td>In section 82(2A), the words “or 6(2)” .</td>
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<tr>
<td>Section 83(2).</td>
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<td>In section 84, in subsection (1), the words “or an NHS trust” and “or NHS trust”; in subsection (2), the words “or NHS trust” and “or NHS trusts”; and in subsection (3), the words “or an NHS trust”.</td>
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<tr>
<td>In section 84A, in subsection (1), the words “or NHS trust”; subsection (2); and in subsections (3) to (7), the words “, NHS trust or local health council”, “NHS trust or council” and “NHS trust or the council” in each place where they occur.</td>
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<tr>
<td>Section 85AA(7).</td>
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<td>Section 85(1)(f).</td>
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<td>In section 85A(4)(a), the words “or a local health council”.</td>
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<tr>
<td>In section 85B, subsection (2)(d); and, in each of subsections (3)(a) and (4)(b), the words “or NHS trust”.</td>
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<td>In section 86, subsection (1)(c) and the preceding “and”; and subsection (1B).</td>
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<td>In section 101, the words “, an NHS trust”.</td>
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<td>Section 105(1A).</td>
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<td>In section 108, in the definition of “health service hospital”, the words “or vested in an NHS trust”; and the definitions of “local health council”, “National Health Service trust” and “operational date”.</td>
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<td>Schedule 7B.</td>
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<td>In Schedule 6, paragraph 1.</td>
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<tr>
<td>National Health Service and Community Care Act 1990 (c.19)</td>
<td>Section 29(3) and (4)(a) and (c).</td>
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<td>Sections 31 to 33.</td>
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<td>Schedule 6.</td>
<td></td>
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<tr>
<td>In Schedule 9, in paragraph 19, sub-paragraphs (4), (7)(a)(ii), (11) to (14), (16), (17), (19), (21) and (22)(b) and (d).</td>
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<tr>
<td>Health Authorities Act 1995 (c.17)</td>
<td>In Schedule 1, paragraph 102(7).</td>
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<tr>
<td>National Health Service (Primary Care) Act 1997 (c.46)</td>
<td>Section 1(7).</td>
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<td>In section 3, subsection (2)(a); and in subsection (3), paragraph (a) of the definition of “NHS employee”.</td>
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<td>Health Act 1999 (c.8)</td>
<td>Sections 46 to 49.</td>
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<tr>
<td>Sections 53 to 55.</td>
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<td>In Schedule 4, paragraphs 44, 45, 62 and 63.</td>
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<td>In schedule 1, paragraph 2.</td>
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<tr>
<td>In section 18C, in subsection (1), the words “a National Health Service trust or”, “in either case” and “the trust or as the case may be”; and in subsection (3), the words “the trust or as the case</td>
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<td>Community Care and Health (Scotland) Act 2002 (asp 5)</td>
<td>In section 22(1), in the definition of “NHS body”, paragraph (c).</td>
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<tr>
<td>Scottish Public Services Ombudsman Act 2002 (asp 11)</td>
<td>In schedule 2, paragraph 4(c).</td>
</tr>
<tr>
<td>Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)</td>
<td>In section 5, in subsection (3), the words “and NHS trusts”; in subsection (5), the words from “(except” to “trust)”; and subsection (6). Section 6.</td>
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<td>In section 7, subsection (3)(b) and the preceding “or”; and subsections (5) and (6).</td>
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<td>In section 8, in each of subsections (1) and (2), the words “and NHS trusts”; and subsection (3)(b) and the preceding “and”.</td>
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<td>In section 9, the words “and NHS trusts” and the words “or trust” in both places where they occur.</td>
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<td>Section 10(1) and (3).</td>
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<td></td>
<td>In schedule 2, the entry “any National Health Service trust”.</td>
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<tr>
<td>Title Conditions (Scotland) Act 2003 (asp 9)</td>
<td>In section 46, in subsection (1), the words “a National Health Service trust, or of”; in subsection (2), the words “the trust or” in both places where those words occur, and the words “its or”; and in subsection (3), the words “the trust or” and “as the case may be”.</td>
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National Health Service Reform (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision in relation to the organisation and operation of the National Health Service and the promotion of health improvement; and for connected purposes.

Introduced by: Malcolm Chisholm
On: 26 June 2003
Supported by: Mr Tom McCabe
Bill type: Executive Bill

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