

SFT Guidance on powers of Scottish public bodies to generate/procure heat and electricity supplies, and to supply heat and electricity to third parties, and the constraints on those powers.

Appendix 4

Legislation referred to in the NHS Boards section.

NATIONAL HEALTH SERVICE (SCOTLAND) ACT 1978

Schedule 1, Paragraph 1

A Health Board shall be a body corporate and shall have a common seal.

2.— Health Boards.

(1) The Secretary of State

(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 such of his functions 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 , without prejudice to subsection (1B), be called Health Boards and

(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 relating to the health service as he may so determine and those boards shall, without prejudice to subsection (1B), be called Special Health Boards.

(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 (1) may specify the name by which a board constituted by the order shall be known.

(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 (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) and in exercising any function otherwise conferred on them by or under this 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, 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.

(9) ...

(10) Schedule 1 shall have effect in relation to the Boards constituted under this section.

(10A) ...

(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.

2A Duty of Health Board, Special Health Board, the Agency and HIS to promote health improvement

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

(2) A Health Board, a Special Health Board the Agency or HIS 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, a Special Health Board , the Agency or HIS .

(4) Anything done by a Health Board or Special 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—

- (a) the Health Board by the order under section 2(1)(a) which constituted the Board, or
- (b) the Special Health Board by the order under section 2(1)(b) which constituted the Board, as the case may be.

84B Joint ventures

(1) The Scottish Ministers may do any (or all) of the following—

- (a) form or participate in forming companies to provide facilities or services for persons or groups of persons exercising functions, or otherwise providing services, under this Act;
- (b) participate in companies providing facilities or services for persons or groups of persons falling within paragraph (a);
- (c) with a view to securing or facilitating the provision by companies of facilities or services for persons or groups of persons falling within paragraph (a)—
 - (i) invest in the companies (whether by acquiring assets, securities or rights or otherwise);
 - (ii) provide loans and guarantees and make other kinds of financial provision to or in respect of them.

(2) For the purpose of subsection (1), it is immaterial that the facilities or services provided or to be provided by a company are not provided or to be provided—

- (a) only to persons or groups of persons exercising functions, or otherwise providing services, under this Act; or

(b) to such persons or groups of persons only in that capacity.

(3) In this section—

“companies” means companies as defined in section 1(1) of the Companies Act 2006;

“facilities” includes the provision of (or the use of) premises, goods, equipment, materials, vehicles, plant or apparatus.

12J 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) In pursuance of subsection (1) a Health Board may—

(a) undertake to provide, or secure the provision of, services as respects the area of another Health Board, and the other Health Board may enter into arrangements with the first Health Board for that purpose,

(b) undertake with one or more other Health Boards to provide, or secure the provision of, services jointly as respects their areas.

(3) A Health Board undertaking to provide, or secure the provision of, services under subsection

(2) 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 as respects their area.

(4) This section is without prejudice to any other power which a Health Board may have.

85AA.— Means of meeting expenditure of Health Boards out of public funds.

(1) The Secretary of State shall pay to each Health Board sums equal to their general Part II expenditure.

(2) “General Part II expenditure” is expenditure which—

(a) is attributable to the payment of remuneration to persons providing services in pursuance of Part II; but

(b) does not fall within paragraphs (b) to (e) of subsection (4).

(3) The Secretary of State shall pay to each Health Board and to HIS , in respect of each financial year, sums not exceeding the amount allotted for that year by the Secretary of State to the

Board or, as the case may be, HIS towards meeting their main expenditure.

(4) In subsection (3) “main expenditure” means expenditure which is attributable to—

(a) the performance by the Board of their functions or, as the case may be, by HIS of its health service functions, in that year, but—

(i) is not general Part II expenditure; and

(ii) does not fall within paragraphs (b) or (c) ;

(b) the reimbursement of expenses of persons providing services in pursuance of Part II which are designated expenses incurred in connection with the provision of the services (or in giving instruction in matters relating to the services);

(c) remuneration which is paid to persons providing additional pharmaceutical services (in accordance with directions under section 27A) in respect of such of those services as are designated;

(d) ...

(e) remuneration which is referable to the cost of drugs for which the Health Board is accountable in that year (whether paid by it or by another Health Board).

(5) In paragraphs (b) to (e) of subsection (4), “designated” means designated in writing by the Secretary of State for the purposes of that paragraph and in relation to the allotment in question.

(6) An amount is allotted to a Health Board or to HIS for a year under this section when they are notified by the Secretary of State that it is allotted to them for that year; and the Secretary of State may make an allotment under this section increasing or reducing an allotment previously so made.

(7) Where the Secretary of State proposes to pay any sum to a Health Board, he may, with the consent of the Treasury, instead pay that sum to an NHS trust in discharge of the whole or any part of any liability of the Health Board to the NHS trust.

(8) The Secretary of State may give directions to a Health Board or to HIS with respect to the application of sums paid to them and a Board to whom directions have been given under this subsection and HIS, when directions are so given to it, shall comply with the directions.

(9) The expenditure of a University Liaison Committee shall, for the purposes of this section, be deemed to be the expenditure of the Health Board for whose area it is constituted, and, where a University Liaison Committee is constituted for the areas of more than one Health Board, its expenditure shall be apportioned between the Boards concerned in such manner as may be determined by the Secretary of State.

(10) Payments under this section shall be made at such times and in such manner, and subject to such conditions as to records, certificates or otherwise, as the Secretary of State may determine.

(11) In this section and section 85AB, “drugs” includes medicines and listed appliances (within the meaning of section 27).

84A.— Power to raise money, etc., by appeals, collections, etc.

(1) A Health Board or (in connection with the exercise of its health service functions only) HIS or NHS trust shall have power to engage in activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to assist them in providing or improving any services or any facilities or accommodation which is or are to be provided as part of the health service or to assist them in connection with their functions with respect to research.

(2) A local health council shall have power to engage in activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to assist them in carrying out any function conferred upon them by or under any enactment.

(3) Subject to any directions of the Secretary of State excluding specified descriptions of activity, the activities authorised by this section include public appeals or collections and competitions, entertainments, bazaars, sales of produce or other goods and other similar activities and the activities may involve the use of land, premises or other property held by or for the benefit of the Board, NHS trust or local health council exercising the power or, as the case may be, by or for the benefit of HIS, subject however to any restrictions on the purposes for which trust property may be used.

(4) Subject to subsections (5) and (6), the Health Board, NHS trust or local health council at whose instance property is given in pursuance of this section shall, after defraying out of it any expenses incurred in obtaining it, hold, administer and apply the property on trust for or for the purpose for which it was given.

(4A) Subsection (4) applies (subject to the subsections mentioned there) to HIS in respect of property given in pursuance of this section as it applies to a Health Board in respect of such property given at the instance of the Health Board.

(5) Where property held by a Health Board or by HIS, NHS trust or local health council under this section is more than sufficient to enable the purpose for which it was given to be fulfilled, the excess shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property comprising the excess was given, for such purposes connected with any of the functions of the Board, NHS trust or council as the Board, NHS trust or council think fit or, as the case may be, of HIS as HIS thinks fit.

(6) Where property held by a Health Board or by HIS, NHS trust or local health council under this section is insufficient to enable the purpose for which it was given to be fulfilled then—

(a) the Board or, as the case may be, HIS, NHS trust or the council may apply so much of the capital or income at their disposal as is needed to enable the purpose to be fulfilled subject, however, in the case of

trust property, to any restrictions on the purposes for which the trust property may be applied, and in the case of money paid or payable by the Secretary of State under section 85(1), to any directions he may give; but

(b) where the capital or income applicable under paragraph (a) is insufficient or is not applied to enable the purpose to be fulfilled, the property so held by the Board or by HIS, NHS trust or the council shall be applicable, in default of any provision for its application made by the trust or other instrument under or in accordance with which the property was given, for such purposes connected with any of the functions of the Board, NHS trust or council as the Board, NHS trust or council think fit or, as the case may be, any of the health service functions of HIS as HIS thinks fit.

(7) Where under subsections (5) or (6) property becomes applicable for purposes other than that for which it was given, the Health Board or, as the case may be, HIS, NHS trust or local health council shall have regard to the desirability of applying the property for a purpose similar to that for which it was given.

13. Co-operation between Health Boards and other authorities.

In exercising their respective functions, Health Boards, HIS (as respects its health service functions only), NHS trusts, local authorities and education authorities shall co-operate with one another in order to secure and advance the health of the people of Scotland.

4A Community health partnerships

(1) Every Health Board shall establish, in accordance with a scheme under section 4B approved by the Scottish Ministers (an “approved scheme”)–

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

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

(2) Community health partnerships shall be established as committees or sub-committees of a Health Board.

(3) Where the area or district of a community health partnership includes all or part of the areas of two or more Health Boards, the community health partnership (a “joint community health partnership”) shall be established jointly by those Boards in accordance with their approved schemes.

(4) Joint community health partnerships shall be established as joint committees of the Health Boards by which they are established.

(5) The functions of a community health partnership are–

(a) to co-ordinate, for its area or district, the planning, development and provision of–

(i) such of the services which it is the function of its Health Board to provide, or secure the provision of, as may be prescribed by regulations under section 4B(6) or specified in the approved scheme, and

(ii) such other of those services as its Health Board may specify, with a view to improving those services,

(b) to provide, or secure the provision of—

(i) such of the services which it is the function of its Health Board to provide, or secure the provision of, as may be prescribed by regulations under section 4B(6) or specified in the approved scheme, and

(ii) such other of those services as its Health Board may specify, and

(c) to exercise such other functions of its Health Board—

(i) as may be prescribed by regulations under section 4B(6),

(ii) as may be specified in the approved scheme,

(iii) as the Health Board may delegate to it.

(6) In this section, references to the Health Board of a joint community health partnership are to each of the Health Boards by which it was established. otherwise)

4B Community health partnerships: further provision

(1) Every Health Board shall, within such period as the Scottish Ministers may specify, prepare and submit to them a scheme for the establishment of one or more community health partnerships in pursuance of section 4A(1).

(2) In preparing a scheme under subsection (1) or (5) a Health Board shall—

(a) have regard to—

(i) any guidance issued under subsection (7),

(ii) community planning under section 15(1) of the Local Government in Scotland Act 2003 so far as relating to the area of the Board,

(b) consult—

(i) each local authority whose area includes all or part of the area or district of a community health partnership proposed by the scheme, and

(ii) any other person whom the Health Board think fit, and

(c) encourage the involvement of local authorities and other persons consulted under paragraph (b) in the preparation of the scheme.

(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 (5) or in pursuance of subsection (4).

(4) Where the Scottish Ministers refuse to approve a scheme, they must return it to the Health Board and may direct the Board to resubmit the scheme with—

(a) such modifications (if any) as the direction may specify, and

(b) any further modifications which the Board consider appropriate, by such time as the direction may specify.

(5) 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.

(6) Regulations may make provision in relation to—

(a) the membership of a community health partnership,

(b) the form and content of, and the procedure in relation to, schemes under this section,

(c) the functions of a community health partnership and the exercise of those functions,

(d) the application in relation to joint community health partnerships, with such modifications as may be specified, of the provisions of this Act, and any provision made under this Act, so far as applying in relation to community health partnerships,

(e) such other matters with respect to community health partnerships as the Scottish Ministers think fit.

(7) The Scottish Ministers may, after consulting such persons as they think fit, issue guidance about community health partnerships and shall publish such guidance.

(8) For the purposes of establishing a joint community health partnership in pursuance of section 4A(3), any power to appoint committees conferred on Health Boards by virtue of this Act shall include power for two or more Health Boards jointly to appoint joint committees.

(9) Nothing in section 4A or this section affects the extent of any power under this Act so far as relating to committees or sub-committees of Health Boards.

PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

1.— Integration schemes: same local authority and Health Board area

(1) Subsection (2) applies where the area of a local authority is the same as the area of a Health Board.

(2) The local authority and the Health Board must jointly prepare an integration scheme for the area of the local authority.

(3) An integration scheme is a scheme setting out—

(a) which integration model mentioned in subsection (4) is to apply,

(b) the functions that are to be delegated in accordance with that model,

(c) where functions are to be delegated in accordance with the model mentioned in subsection (4)(b), (c) or

(d), the functions of the person to whom functions are to be delegated which are to be carried out in conjunction with the delegated functions,

(d) in relation to any functions to which subsection (14) applies that are to be delegated, a method of determining amounts to be made available by the Health Board for use by the person to whom the functions are delegated in respect of those functions,

(e) in relation to any functions other than those mentioned in paragraph (d) that are to be delegated (including any functions mentioned in that paragraph but in relation to which the Health Board deems subsection (14) not to apply), a method of determining payments that are to be made in respect of the delegated functions by the person delegating the functions to the person to whom the functions are delegated,

(f) prescribed information about such other matters as may be prescribed.

(4) The integration models are—

(a) delegation of functions by the local authority to a body corporate that is to be established by order under section 9 (an “integration joint board”) and delegation of functions by the Health Board to the integration joint board,

(b) delegation of functions by the local authority to the Health Board,

(c) delegation of functions by the Health Board to the local authority,

(d) delegation of functions by the local authority to the Health Board and delegation of functions by the Health Board to the local authority.

(5) A local authority may delegate a function under an integration scheme only if the function is conferred—

(a) by an enactment listed in Part 1 of the schedule, or

(b) by virtue of an enactment listed in Part 2 of the schedule.

- (6) A Health Board may delegate a function under an integration scheme only if the function is prescribed.
- (7) The Scottish Ministers may by regulations prescribe which of the functions conferred by or by virtue of enactments listed in the schedule local authorities must delegate under an integration scheme so far as the functions are exercisable in relation to persons of at least 18 years of age where the integration model mentioned in subsection (4)(a) or (b) is to apply under the scheme.
- (8) The Scottish Ministers may by regulations prescribe functions of Health Boards which Health Boards must delegate under an integration scheme so far as the functions are exercisable in relation to persons of at least 18 years of age where the integration model mentioned in subsection (4)(a) or (c) is to apply under the scheme.
- (9) If the integration model mentioned in subsection (4)(d) is to apply under an integration scheme either—
- (a) the local authority must delegate the functions prescribed under subsection (7) so far as the functions are exercisable in relation to persons of at least 18 years of age, or
 - (b) the Health Board must delegate the functions prescribed under subsection (8) so far as the functions are exercisable in relation to persons of at least 18 years of age.
- (10) The Scottish Ministers may by regulations prescribe functions of Health Boards that a Health Board—
- (a) must delegate under an integration scheme other than in prescribed circumstances,
 - (b) may not delegate under an integration scheme in prescribed circumstances.
- (11) The Scottish Ministers may by regulations prescribe which of the functions conferred by or by virtue of enactments listed in the schedule local authorities may not delegate in prescribed circumstances.
- (12) The Scottish Ministers may by regulations remove an enactment from the schedule.
- (13) A function may not be set out under subsection (3)(c) if it is a function which may not be delegated under an integration scheme.
- (14) This subsection applies where functions that a Health Board proposes to delegate under an integration scheme—
- (a) are carried out in a hospital in the area of the Health Board, and
 - (b) are provided for the areas of two or more local authorities.
- (15) Regulations under subsection (3)(f) may include provision—
- (a) conferring discretion on local authorities and Health Boards,
 - (b) requiring local authorities and Health Boards to establish processes and procedures relating to prescribed matters,
 - (c) imposing requirements on local authorities and Health Boards about the disclosure of information,

(d) in relation to such other matters relating to integration schemes as the Scottish Ministers think fit.

(16) In this section, “*Health Board*” means a Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978.

12.— Integration joint boards: further provision

(1) The Scottish Ministers may by order make provision—

(a) about the membership of integration joint boards,

(b) about the proceedings of integration joint boards,

(c) giving integration joint boards general powers (such as powers to contract, acquire or dispose of property or rights or borrow money or incur other liabilities) in connection with the carrying out of functions conferred on them by or by virtue of this Act,

(d) about the supply of services or facilities to integration joint boards by a constituent authority,

(e) enabling integration joint boards to establish committees for any purpose,

(f) about such other matters relating to any such committee as the Scottish Ministers think fit,

(g) enabling an integration joint board to delegate to its chief officer, any other member of its staff or any such committee functions delegated to the integration joint board in pursuance of an integration scheme,

(h) about any other matter relating to the establishment or operation of integration joint boards that the Scottish Ministers think fit.

(2) Without prejudice to section 69(1)(a), an order under subsection (1) (other than an order containing provision of the type mentioned in paragraph (a) or (b) of that subsection) may—

(a) make provision in relation to only one integration joint board, or some integration joint boards,

(b) make different provision in relation to different integration joint boards.

(3) Before making an order under this section, the Scottish Ministers must consult—

(a) if the order relates to integration joint boards generally, each—

(i) local authority,

(ii) Health Board, and

(iii) integration joint board then established,

(b) if the order relates to one integration joint board, or some integration joint boards—

(i) the constituent authorities in relation to that or those boards, and

(ii) that or those boards, to the extent then established.

(4) The Scottish Ministers may by scheme make provision about the transfer to an integration joint board of staff, property, rights, liabilities or obligations of their constituent authorities.

(5) Before making a scheme under subsection (4), the Scottish Ministers must consult—

(a) the integration joint board to which the scheme relates, and

(b) the constituent authorities in relation to that board.

(6) Before making a scheme under subsection (4) in relation to staff, the Scottish Ministers must consult in respect of each group mentioned in subsection (7), such persons appearing to be representative of the group as the Scottish Ministers think fit.

(7) The groups mentioned in subsection (6) are—

(a) health professionals,

(b) social care professionals,

(c) such other groups of persons appearing to the Scottish Ministers to have an interest as may be prescribed.