STATUTORY INSTRUMENTS

1981 No. 106 (S. 12)

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (Functions of Health Boards) (Scotland) Order 1981

Made - - - -	*28th January* 1981
Laid before Parliament	*9th February* 1981
Coming into Operation	*2nd March* 1981

In exercise of the powers conferred on me by section 2(1) of the National Health Service (Scotland) Act 1978(**a**) and of all other powers enabling me in that behalf, I hereby make the following order:—

Citation, commencement and interpretation

1.—(1) This order may be cited as the National Health Service (Functions of Health Boards) (Scotland) Order 1981 and shall come into operation on 2nd March 1981.

(2) In this order:—

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

"Board" means a Health Board constituted under section 2 of the Act.

Functions exercisable by Health Boards

2.—(1) Subject to and in accordance with the provisions of this order and any regulations, orders and directions which may be made or given by the Secretary of State in pursuance of the provisions of the Act, every Board shall exercise the functions with respect to the administration of the health services provided by him which are specified in this Article.

(2) Every Board shall exercise the functions conferred upon the Secretary of State by the provisions of the Act which are specified in the following sub-paragraphs of this paragraph, but only with respect to the matters and to the extent so specified, namely:—

(*a*) by section 50(1)(**b**) with respect to allowing persons to make use of any accommodation or services provided under the Act, deciding the terms upon which they may do so and providing such accommodation or services to an extent greater than otherwise necessary;

(*b*) by section 55(1) with respect to authorising hospital accommodation to be, and determining the extent to which it may be, made available to patients who undertake to pay such charges for part of the cost as are determined by the Secretary of State and the recovery of those charges;

(**a**) 1978 c. 29.

(**b**) Section 50 was amended by the Health Services Act 1980 (c. 53), section 10(2).

(*c*) by section 57(1)(**a**) with respect to the recovery of charges which are determined by the Secretary of State to be payable for accommodation and services authorised by him to be made available under that subsection;

(*d*) by section 57(2) with respect to allowing accommodation and services, to which an authorisation under section 57(1) relates, to be made available in connection with the treatment, in pursuance of arrangements made by medical or dental practitioners, of their private patients as resident patients;

(*e*) by section 58(1)(**a**) and (2) with respect to the determination of charges payable by non-resident private patients in respect of the accommodation and services which have been authorised by the Secretary of State to be made available under section 58(1) (but only to the extent that those charges are not so determined by the Secretary of State) and the recovery of all charges payable under those sub-sections; and

(*f*) by section 64 with respect to receiving and considering applications for permission to use health service accommodation or facilities for the purpose of providing services to non-resident private patients, granting or, with the consent of the Secretary of State, refusing the permission applied for and determining the terms of any grant of permission.

(3) In exercising, by virtue of article 2(2)(*a*) of this order, the powers conferred by section 50(1) of the Act, a Board shall exercise any function conferred upon the Secretary of State by sections 50(2) and 54 of that Act in relation to the exercise of those powers.

(4) In exercising, by virtue of article 2(2)(*c*),(*d*) and (*e*) of this order, the powers conferred by sections 57 and 58 of the Act, a Board shall exercise any functions conferred upon the Secretary of State by section 54, as read with section 58A(**b**), of that Act in relation to the exercise of those powers.

Revocations

3. In the National Health Service (Functions of Health Boards) (Scotland) Order 1974 (**c**)

(*a*) in Article 5, paragraphs (*c*) and (*f*) are hereby revoked; and

(*b*) in Article 6, paragraphs (*c*) and (*d*) are hereby revoked.

Savings

4. Nothing in this order shall affect the power of the Secretary of State to exercise any function conferred upon him by the provisions of the Act.

George Younger,
One of Her Majesty's Principal Secretaries of State.

New St. Andrew's House,
Edinburgh.
28th January 1981.

(**a**) Sections 57(1) and 58(1) were amended by the Health Services Act 1980, section 11(2) and (3).
(**b**) Section 58A of the Act was inserted by the Health Services Act 1980, section 11(2).
(**c**) S.I. 1974/466.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order specifies certain functions of the Secretary of State under the National Health Service (Scotland) Act 1978 ("the 1978 Act") which are to be exercised by Health Boards.

The functions specified in the Order are the functions conferred upon the Secretary of State by section 50 (use of services and accommodation), section 55 (hospital accommodation on part payment), section 57 (accommodation and services for private resident patients), section 58 (accommodation and services for private non-resident patients) and section 64 (permission for use of facilities in private practice), but only with respect to the matters and to the extent specified in article 2 of the Order. Article 2(3) and (4) also confer upon a Board the functions conferred upon the Secretary of State by sections 50(2) and 54 (which restrict the exercise of the powers conferred by *inter alia* section 50(1) and by section 54, as read with section 58A (which restrict the exercise of the powers conferred by sections 57 and 58) in relation to the exercise of those powers by a Board.

As a consequence of the provisions of the Order, articles 5(*c*) and (*f*) and 6(*d*) of the National Health Service (Functions of Health Boards) (Scotland) Order 1974 (which make provisions for Health Boards making available accommodation and services for private patients) are revoked. In addition, article 6(*c*) of the 1974 Order (which requires a Health Board to obtain the consent of the Secretary of State before providing residential and practice accommodation under section 48 of the 1978 Act) is also revoked by article 3(*b*) of this Order.

Article 4 of the Order contains a saving provision and provides that nothing in the Order affects the power of the Secretary of State to exercise any function conferred upon him by the 1978 Act.

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