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à leurs contrôles, il nous paraît normal qu'en contrepartie ils en assument les véritables conséquences sur le plan de la responsabilité légale. Non seulement cette responsabilité se résume-t-elle alors à sauvegarder l'intérêt public en contrôlant les établissements hospitaliers, mais aussi doit-elle s'étendre à l'obligation de répondre légalement des fautes d'organisation dont l'intérêt public souffrirait si elles n'étaient réparées.

## **ANNEXE**

### **THE NATIONAL HEALTH SERVICE ACT 1946** (9 & 10 Geo. 6 c. 81)

#### **Art. 1. Duty of Minister**

(1) It shall be the duty of the Minister of Health (hereafter in this Act referred to as "the Minister") to promote the establishment in England and Wales of a comprehensive health service designed to secure improvement in the physical and mental health of the people of England and Wales and the prevention, diagnosis and treatment of illness, and for that purpose to provide or secure the effective provision of services in accordance with the following provisions of this Act.

#### **Art. 3. Provision of hospital and specialist services**

(1) As from the appointed day, it shall be the duty of the Minister to provide throughout England and Wales, to such extent as he considers necessary to meet all reasonable requirements, accommodation and services of the following descriptions, that is to say:

- (a) hospital accommodation;
- (b) medical, nursing and other services required at or for the purposes of hospitals;
- (c) the services of specialists, whether at a hospital, a health centre provided under Part III of this Act or a clinic or, if necessary on medical grounds, at the home of the patient;

and any accommodation and services provided under this section are in this Act referred to as "hospital and specialist services".

(2) Regulations may provide for the making and recovery by the Minister of such charges as may be prescribed:

- (a) in respect of the supply, as part of the hospital and specialist service, of any appliance which is, at the request of the person supplied, of a more expensive type than the prescribed type, or in respect of the replacement or repair of any such appliance; or
- (b) in respect of the replacement or repair of any appliance supplied as part of the services aforesaid, if it is determined in the prescribed manner that the replacement or repair is necessitated by [an act or omission of the

person supplied or (if it occurred when he was under sixteen years of age) of his or of the person having charge of him when it occurred].

(3) Regulations may provide for the payment by the Minister, in such cases as may be prescribed, of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred by persons for the purpose of availing themselves of hospital and specialist services.

**Art. 6. Transfer of hospitals to the Minister**

(1) Subject to the provisions of this Act, there shall, on the appointed day, be transferred to and vest in the Minister by virtue of this Act all interests in or attaching to premises forming part of a voluntary hospital or used for the purposes of a voluntary hospital, and in equipment, furniture or other movable property used in or in connection with such premises, being interests held immediately before the appointed day by the governing body of the hospital or by trustees solely for the purposes of that hospital, and all rights and liabilities to which any such governing body or trustees were entitled or subject immediately before the appointed day, being rights and liabilities acquired or incurred solely for the purposes of managing any such premises or property as aforesaid or otherwise carrying on the business of the hospital or any part thereof, but not including any endowment within the meaning of the next following section or any rights or liabilities transferred under that section.

(2) Subject to the provisions of this Act, there shall also, on the appointed day, be transferred to and vest in the Minister by virtue of this Act all hospitals vested in a local authority immediately before the appointed day, and all property and liabilities held by a local authority, or to which a local authority were subject, immediately before the appointed day, being property and liabilities held or incurred solely for the purposes of those hospitals or any of them or for the purpose of securing accommodation for persons in the area at any hospital not vested in the authority.

(3) If it appears to the Minister that, in the case of any hospital to which the foregoing provisions of this section apply, the transfer of the hospital or of the interests referred to in subsection (1) of this section will not be required for the purpose of providing hospital and specialist services, he may, at any time before the appointed day, serve a notice to that effect on the governing body of the hospital or, as the case may be, on the local authority in whom the hospital is vested, and thereupon the foregoing provisions of this section shall cease to apply to that hospital:

Provided that if the governing body or local authority, within such period (not being less than twenty-eight days from the service of the notice) as may be specified in the notice, serve a notice on the Minister stating that they wish the hospital or interests to be transferred to the Minister, the foregoing provisions of this section shall apply to the hospital.

(4) All property transferred to the Minister under this section shall vest in him free of any trust existing immediately before the appointed day, and the Minister may use any such property for the purpose of any of his functions under this Act, but shall so far as practicable secure that the objects for which any such property was used immediately before the appointed day are not prejudiced by the provisions of this section.

(5) Regulations may provide:

(a) for the apportionment, as between the Minister and the other persons concerned, of interests in premises used partly for the purposes of any

hospital to which this section applies and partly for other purposes and, in the case of a leasehold interest, for the severance thereof, and for vesting in the Minister and the other persons concerned the appropriate interests, and for the apportionment of rent payable in respect of any such severed lease;

- (b) for the apportionment, as between the Minister and the other persons concerned, of any other periodical sums payable in respect of any transferred property or liabilities;
- (c) for the apportionment, as between the Minister and the other persons concerned, of liabilities incurred partly for the purposes referred to in subsection (1) or subsection (2) of this section and partly for other purposes;
- (d) for the transfer to and vesting in the Minister of interests held solely for the purposes of two or more voluntary hospitals to which this section applies in premises used for the purposes of those hospitals, and of property and liabilities which would, if the interests were held and the premises used solely for the purposes of one such hospital, be transferred to the Minister under subsection (1) of this section or apportioned to him under the foregoing provisions of this subsection; and
- (e) for the determination by arbitration, in default of agreement, of any question arising as to any of the matters aforesaid.

(6) This section shall not apply to rights and liabilities arising under contracts for the rendering of personal services or to rights and liabilities arising under any enactment, scheme or contract providing for the payment of superannuation benefits, except superannuation benefits payable in respect of officers employed for the purposes of a voluntary hospital who have ceased to be so employed before the appointed day, but this subsection shall be without prejudice of the provisions of Part VI of this Act relating to the transfer and compensation of officers and the superannuation of officers.

**Art. 11 Regional Hospital Boards, Hospital Management Committees, and Boards of Governors of teaching hospitals**

(1) The Minister shall by order constitute, in accordance with Part I of the Third Schedule to this Act, boards, to be called Regional Hospital Boards, for such areas as he may by order determine, for the purpose of exercising functions with respect to the administration of hospital and specialist services in those areas; and the Minister shall secure, so far as practicable, that each area is such that the provision of the said services in the area can conveniently be associated with a university having a school of medicine or with two or more such universities.

(2) The order or orders made under the foregoing subsection determining the areas for which the Regional Hospital 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 Minister shall consult with such bodies and organisations as appear to him to be concerned.

(3) Every Regional Hospital Board shall, within such period as the Minister may by direction specify, submit to the Minister a scheme for the appointment by them of committees, to be called Hospital Management Committees, for the purpose of exercising functions with respect to the management and control of individual hospitals or groups of hospitals, other than teaching hospitals, providing hospital and specialist services in the area of the Board.

(4) The Minister may approve, with or without modifications, which may include additions or exceptions, any scheme submitted to him by a Regional Hospital Board under the last foregoing subsection, and it shall be the duty of the Board to give effect to the scheme as approved by the Minister.

(5) A Regional Hospital Board may at any time, and if directed by the Minister shall within such period as may be specified in the direction, submit a new scheme providing for the modification of the scheme in force under this section, and the last foregoing subsection shall apply to any such new scheme.

(6) A Hospital Management Committee shall be constituted in accordance with Part II of the Third Schedule to this Act.

(7) If a Regional Hospital Board fail to submit any scheme which they are required to submit within a period specified by direction of the Minister, the Minister may himself prepare a scheme and it shall have effect as if it had been submitted and approved under the foregoing provisions of this section.

(8) The Minister may, after consultation with the university concerned, by order designate as a teaching hospital any hospital or group of hospitals which appears to him to provide for any university facilities for undergraduate or post-graduate clinical teaching, and the Minister shall, in the case of any hospital or group so designated, by order constitute, in accordance with Part III of the Third Schedule to this Act, a Board of Governors for the purpose of exercising functions with respect to the administration of that hospital or group; and any group of hospitals so designated shall, as from the appointed day or the date of the designation (whichever last occurs), be deemed for the purposes of this Act to be a single hospital.

(9) Where after the appointed day :

- (a) any of the areas for which Regional Hospital Boards are constituted are varied, whether or not such variation involves the constitution of a new Board or the termination of the functions of an existing Board ;
- (b) a new scheme is made under subsection (5) of this section involving the appointment of a new Hospital Management Committee or the termination of the functions of an existing Committee or any variation in the grouping of hospitals managed by such Committees ; or
- (c) a new teaching hospital is designated or the designation of a teaching hospital is revoked, or any hospital is included in or excluded from a group of hospitals so designated ;

the Minister may by order make provision for any supplementary and incidental matters for which it appears to him to be necessary or expedient to provide, and in particular :

- (i) for the transfer... of officers, and the transfer of property and liabilities ;
- (ii) ..., and
- (iii) in a case to which paragraph (c) of this subsection applies, for requiring capital assets to be transferred from the said Fund to the Board of Governors of a teaching hospital, or, as the case may be, from any such Board to the said Fund.

(10) The supplementary provisions contained in Part IV of the Third Schedule to this Act shall have effect in relation to the various bodies constituted under this section.

#### Art. 12 Functions of Boards and Management Committees

(1) Subject to the exercise of functions by Hospital Management Committees in

accordance with the next following subsection, it shall be the duty of a Regional Hospital Board, subject to and in accordance with regulations and such directions as may be given by the Minister, generally to administer on behalf of the Minister the hospital and specialist services provided in their area, and in particular :

- (a) to appoint officers required to be employed at or for the purposes of any hospital providing such services, other than a teaching hospital ;
- (b) to maintain any premises forming part of or used in connection with any such hospital ;
- (c) to acquire on behalf of the Minister and to maintain equipment, furniture and other movable property required for the purposes of any such hospital.

(2) It shall be the duty of the Hospital Management Committee of any hospital or group of hospitals, subject to and in accordance with regulations and such directions as may be given by the Minister or the Regional Hospital Board, to control and manage that hospital or group of hospitals on behalf of the Board, and for that purpose to exercise on behalf of the Board such of the functions of the Board relating to that hospital or group of hospitals as may be prescribed.

(3) It shall be the duty of the Board of Governors of every teaching hospital, as from the appointed day, in accordance with regulations and such directions as may be given by the Minister, generally to manage and control the hospital on behalf of the Minister, and in particular :

- (a) to provide for the university with which the hospital is associated such facilities as appear to the Minister to be required for clinical teaching and research ;
- (b) to appoint officers required to be employed at or for the purposes of the hospital ;
- (c) to maintain any premises forming part of or used in connection with the hospital ;
- (d) to acquire on behalf of the Minister and to maintain equipment, furniture and other movable property required for the purposes of the hospital.

#### **Art. 13 Legal status of Boards and Management Committees**

(1) A Regional Hospital Board and the Board of Governors of a teaching hospital shall, notwithstanding that they are exercising functions on behalf of the Minister, and a Hospital Management Committee shall, notwithstanding that they may be exercising functions on behalf of the Regional Hospital Board, be entitled to enforce any rights acquired, and shall be liable in respect of any liabilities incurred (including liabilities in tort), in the exercise of those functions, in all respects as if the Board or Committee were acting as a principal, and all proceedings for the enforcement of such rights or liabilities, shall be brought by or against the Board or Committee in their own name.

(2) A Regional Hospital Board, Board of Governors or Hospital Management Committee shall not be entitled to claim in any proceedings any privilege of the Crown in respect of the discovery or production of documents, but this subsection shall be without prejudice to any right of the Crown to withhold or procure the withholding from production of any document on the ground that its disclosure would be contrary to the public interest.

**Art. 54 Payments to Regional Hospital Boards, Boards of Governors, Executive Councils and other bodies**

**(1) There shall be paid out of moneys provided by Parliament to :**

- (a) every Regional Hospital Board such sums as may be necessary to defray the expenditure of the Board (including expenditure incurred by a Hospital Management Committee in exercising functions on behalf of the Board), being expenditure approved by the Minister in the prescribed manner;
- (b) every Board of Governors of a teaching hospital such sums as may be necessary to defray the expenditure of the Board being expenditure approved as aforesaid.

[(2) All expenditure of a Hospital Management Committee approved, in the prescribed manner, by the Regional Hospital Board for the area in which the hospital or group of hospitals in question is situated shall be defrayed by that Board.]

(3) There shall be paid out of moneys provided by Parliament to every Executive Council such sums as the Minister may with the approval of the Treasury determine to have been incurred by the Council,... for the purpose of discharging their functions under this Act.

(4) There shall be paid out of moneys provided by Parliament such expenses incurred by the Central Council, any standing advisory committee constituted under section two of this Act, the Medical Practices Committee, the Tribunal constituted under section forty-two of this Act and the Dental Estimates Board as may be determined by the Minister with the approval of the Treasury.

(5) (Rep. by the Health Services and Public Health Act 1968, s. 78(2) and Sch. 4.)

(6) Payments made under this section shall be made in accordance with regulations made by the Minister and approved by the Treasury, and shall be made at such times and in such manner as the Treasury may direct, and subject to such conditions as to records, certificates, or otherwise as the Minister may with the approval of the Treasury determine.

### **THIRD SCHEDULE**

**Part IV — Supplementary provisions**

(1) Regional Hospital Boards and Boards of Governors of teaching hospitals and Hospital Management Committees shall be bodies corporate with perpetual succession and a common seal...

**(2) Regulations may make provision :**

- (a) with respect to the appointment, tenure of office and vacation of office of the members of the bodies constituted under the foregoing provisions of this Schedule;
- (b) with respect to the appointment of committees consisting wholly or partly of members of those bodies and the delegation of functions to such committees;
- (c) ...
- (d) with respect to the procedure of those bodies or committees;
- (e) for the payment by a Regional Hospital Board, Board of Governors of a teaching hospital or a Hospital Management Committee of such sums

as may be approved by the Minister, as subscriptions to the funds of any association whose objects are approved by the Minister for the purpose of this sub-paragraph.

(3) The proceedings of any body or committee constituted under the foregoing provisions of this Schedule shall not be invalidated by any vacancy in the membership of the body or committee or by any defect in the appointment or qualification of any member thereof.

(4) (Rep. by the House of Commons Disqualification Act 1957, s. 14(1) and Sch. 4, Part I.)

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