3. APPORTIONMENT AND TRANSFER

The National Health Service (Apportionment and Transfer) Regulations, 1948

1948 No. 888

Made - - - -	*27th April*, 1948
Laid before Parliament	*28th April*, 1948
Coming into Operation	*1st May*, 1948

107,607.

The Minister of Health, in exercise of the powers conferred upon him by sections 6(5), 7(9) and 9(8) of the National Health Service Act, 1946(a), and of all other powers enabling him in that behalf, hereby makes the following regulations:—

PART I

General

1. These regulations may be cited as the National Health Service (Apportionment and Transfer) Regulations, 1948, and shall come into operation on the first day of May, 1948.

2.—(1) In these regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them:—

" the Act " means the National Health Service Act, 1946(a);

" the appointed day " means the fifth day of July, 1948;

" the apportionment date " means the date of the agreement or of the award of the arbitrator under Part IV of these regulations;

and other expressions used in these regulations have the same meaning as in the Act.

(2) The Interpretation Act, 1889(b), applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

PART II

Provisions relating to the apportionment, transfer and vesting of property and liabilities under section 6 of the Act

3. Any interests in premises, other than workhouse premises, used partly for the purposes of any hospital to which section 6 of the Act applies and partly for other purposes shall be apportioned between the Minister and the other person or persons concerned according to the extent to which such premises are used for each of such purposes.

4. On the apportionment date or the appointed day, whichever shall be the later, the appropriate interests determined by the apportionment shall, without the necessity of any deed, transfer, assignment or other instrument (other than the agreement or the award of the arbitrator under these regulations), vest in the Minister and the other person or persons concerned.

(a) 9 & 10 Geo. 6. c. 81. (b) 52 & 53 Vict. c. 63.

5.—(1) On the apportionment under this part of these regulations of a leasehold interest, if the lease does not reserve separate rents for the several parts of the premises, the rent shall be apportioned between the apportioned parts of the premises according to their value and the covenants on the lessee's part and the conditions contained in the lease shall be severed.

(2) After the apportionment date or the appointed day, whichever shall be the later, the non-payment of rent or the breach of a covenant or condition by the person or persons (other than the Minister) to whom a part of the premises has been apportioned shall not give rise to any claim against the Minister or to any right or remedy against or in respect of the part of the premises apportioned to the Minister and the non-payment of rent or the breach of any covenant or condition by the Minister or his successors in title shall not give rise to any claim against, or to any right or remedy against or in respect of the part of the property apportioned to, such other person or persons.

(3) Save as aforesaid, nothing contained in these regulations shall prejudice or affect any of the rights, powers or remedies which under or by virtue of any such lease or otherwise are conferred on the lessor in respect of the rent reserved by or the premises comprised in the lease, and the same rights, powers and remedies shall continue in full force and shall extend and apply to the apportioned parts of the rent and of the premises as fully as they applied before the apportionment to the whole of the rent and of the premises respectively.

6. Any periodical sum (other than rent in respect of an apportioned leasehold interest) payable in respect of any property or liability which is apportioned between the Minister and the other person or persons concerned under this part of these regulations shall be apportioned between the Minister and such other person or persons in the same proportions as the property or liability in respect of which it is payable.

7.—(1) Any liability (other than a liability mentioned in sub-section (6) of section 6 of the Act) incurred partly for the purposes referred to in sub-section (1) or sub-section (2) of that section and partly for other purposes shall be apportioned between the Minister and the other person or persons concerned according to the extent to which it was incurred for each of such purposes.

(2) Where any liability which is apportioned under the preceding paragraph of this regulation is charged on any property nothing contained in that paragraph shall affect the person entitled to the benefit of such liability and accordingly any apportionment made under that paragraph, or under regulation 6 in respect of a periodical sum payable in respect of a liability apportioned under that paragraph, shall have effect only as between the Minister and the other person or persons concerned and so far as concerns the person entitled to the benefit of the liability (but without prejudice to the rights of the Minister and the other person or persons concerned as between themselves by reason of the apportionment under the preceding paragraph of this regulation or under regulation 6) the liability so charged as aforesaid and any periodical sums payable in respect of such liability shall be apportioned between the Minister and the other person or persons concerned in the same proportions as the property on which it is charged is apportioned under this part or under Part III of these regulations or, if such property is not apportioned under these regulations, shall remain charged thereon in the same manner as if the Act had not been passed.

(3) Where a liability which is charged on property is apportioned under the last preceding paragraph of this regulation then as from the apportionment date or the appointed day, whichever shall be the later—

(*a*) such part only of that liability as is apportioned to the Minister shall be charged on the share of the property apportioned to the Minister, and such part only of the liability as is apportioned to the other person or persons concerned shall be charged on the share of the property apportioned to such person or persons;

(*b*) the covenants and conditions contained in the deed or other document creating the liability or charging it on such property as aforesaid shall be severed so that no breach of any covenant or condition on the part of any other person or persons than the Minister shall give rise to any claim against the Minister or to the exercise of any right, power or remedy in respect of the liability or property apportioned to the Minister, and no breach of any covenant or condition on the part of the Minister shall give rise to any claim against such other person or persons or to the exercise of any right, power or remedy in respect of the liability or property apportioned to such person or persons;

(*c*) save as aforesaid, nothing contained in these regulations shall prejudice or affect any of the rights, powers or remedies which under or by virtue of any deed or document or otherwise are conferred on any person in respect of any liability apportioned under these regulations, and the same rights, powers and remedies shall continue in full force and apply to the apportioned parts of the liability and the apportioned parts of the property as fully as they applied before the apportionment to the whole of the liability and the whole of the property respectively.

8. Any apportionment made under this part of these regulations shall take effect on the apportionment date or the appointed day, whichever shall be the later, and shall save as is otherwise expressly provided be binding upon the person or persons entitled to the benefit of any liability which is apportioned.

9.—(1) There shall, on the appointed day, be transferred to and vested in the Minister without the necessity of any deed, transfer, assignment or other instrument, any interests held solely for the purposes of two or more voluntary hospitals to which section 6 of the Act applies in premises used for the purposes of those hospitals, and any 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 sub-section (1) of that section.

(2) Any interest in premises, and any rent, periodical sum or liability which is used or held or has been incurred partly for the purposes of two or more voluntary hospitals to which section 6 of the Act applies and partly for other purposes and which would be directed to be apportioned under this part of these regulations if it were used or held or had been incurred partly for the purpose of one such voluntary hospital and partly for other purposes shall be apportioned between the Minister and the other person or persons concerned in the same manner and with the like consequences as if it had been used, held or incurred partly for the purposes of one such voluntary hospital and partly for other purposes.

10. Any property transferred to the Minister under this part of these regulations 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 the 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 regulation.

11.—(1) Where any interests in premises fall to be apportioned under this part of these regulations and have not been apportioned before the appointed day, then as from that day (but without prejudice to any subsequent apportionment)—

(*a*) such parts of the premises as were immediately before the appointed day used mainly for hospital purposes shall, pending apportionment, be controlled and managed by the appropriate hospital authority as if those parts of the premises formed part of or were used for the purposes of a hospital transferred on the appointed day to the Minister by virtue of the Act, and the appropriate hospital authority may exercise in respect of those parts of the premises all such functions as would be exerciseable by them if those parts of the premises formed part of or were used for the purposes of a hospital transferred as aforesaid.

(*b*) such parts of the premises as were immediately before the appointed day used mainly for purposes other than hospital purposes shall, pending apportionment, be controlled and managed by the persons who, if the premises were used solely for purposes other than hospital purposes, would be entitled to the control and management thereof:

Provided that:

(i) in any case falling within sub-paragraph (*a*) of this paragraph the appropriate hospital authority shall, so far as practicable and to the satisfaction of the Minister, afford to the other person or persons concerned the like accommodation and facilities as were immediately before the appointed day available for purposes other than hospital purposes.

(ii) in any case falling within sub-paragraph (*b*) of this paragraph the other person or persons concerned shall, so far as practicable and to the satisfaction of the Minister, afford to the appropriate hospital authority such accommodation and facilities as were immediately before the appointed day available for hospital purposes.

(2) The question whether any part of any premises falls within sub-paragraph (*a*) or sub-paragraph (*b*) of the preceding paragraph of this regulation shall, in default of agreement between the appropriate hospital authority and the other person or persons concerned, be determined by the Minister.

(3) (*a*) Where it is agreed between the Minister and the other person or persons concerned that any premises were immediately before the appointed day used partly for the purposes of any hospital to which section 6 of the Act applies and partly for other purposes this regulation shall apply notwithstanding (but without prejudice to) any dispute which relates only to the extent of the interests to be vested, on apportionment, in the Minister and such other person or persons.

(*b*) This regulation shall not apply in respect of any premises if it is disputed that the interests in those premises fall to be apportioned under these regulations.

(4) The appropriate hospital authority who, by virtue of this regulation have the control and management of any parts of any premises shall, in respect of the period from the appointed day to the apportionment date, be responsible for the maintenance of those parts of those premises and for the payment of such proportion of any rent and other outgoings due in respect of the whole of the premises as may be agreed between the appropriate hospital authority and the other person or persons concerned or as may, in default of agreement, be determined by arbitration.

(5) For the purpose of this regulation, " appropriate hospital authority " means, in relation to a teaching hospital, the Board of Governors of that hospital, and in relation to a hospital other than a teaching hospital, the Regional Hospital Board for the area acting (to the extent specified in the National Health Service (Functions of Regional Hospital Boards, etc.) Regulations, 1948(a)) through the agency of the Hospital Management Committee for the hospital or for the group of hospitals of which the hospital forms part.

PART III

Provisions relating to the apportionment transfer and vesting of property and liabilities under section 7 of the Act

12. In this part of these regulations, unless the context otherwise requires,

" hospital authority " used in relation to any property or to any right or liability relating to property means the Minister or the Board of Governors of a teaching hospital or the Hospital Management Committee to whom the property would have been transferred if it had been an endowment within the meaning of the Act.

13. Any property held by the governing body of a voluntary hospital to which section 7 of the Act applies partly for the purposes of that hospital and partly for other purposes, being property which would, if it were held solely for the purposes of the hospital, constitute an endowment of that hospital shall, unless a direction requiring the disposal of such property is given by the Minister under regulation 21, be apportioned between the hospital authority and the other person or persons concerned according to the extent to which such property is held for each of such purposes.

14. On the apportionment date or the appointed day, whichever shall be the later, the appropriate shares determined by the apportionment shall, without the necessity of any deed, transfer, assignment or other instrument (other than the agreement or the award of the arbitrator under these regulations), vest in the hospital authority and the other person or persons concerned.

15. On an apportionment under this part of these regulations of the reversion expectant on the term granted by a lease the rent shall be apportioned in the same proportions as the reversionary estate in the land and from the apportionment date or the appointed day, whichever shall be the later, an apportioned part of the rent and the benefit of every covenant condition and provision relating to the subject matter of the lease (but in the case of the covenant for the payment of rent only to the extent of the apportioned rent) shall be annexed and incident to and go with the reversionary estate in each apportioned part of the land expectant on the term granted by the lease.

16. On the apportionment under this part of these regulations of any moneys secured by covenant the covenant shall after the apportionment date or the appointed day, whichever shall be the later, have effect as separate covenants relating to the shares into which the money is apportioned.

17.—(1) On the apportionment under this part of these regulations of a leasehold interest in property, if the lease does not reserve separate rents for the several parts of the property, the rent shall be apportioned between the apportioned parts of the property according to their value and the covenants on the lessee's part and the conditions contained in the lease shall be severed.

(2) After the apportionment date or the appointed day, whichever shall be the later, the non-payment of rent or the breach of a covenant or condition by the person or persons (other than the hospital authority) to whom a part of

(a) S.I. 1948 No. 60, p. 2201 below.

the property has been apportioned shall not give rise to any claim against the hospital authority or to any right or remedy against or in respect of the part of the property apportioned to the hospital authority, and the non-payment of rent or the breach of any covenant or condition by the hospital authority or their successors in title shall not give rise to any claim against, or to any right or remedy against or in respect of the part of the property apportioned to, such other person or persons.

(3) Save as aforesaid, nothing contained in these regulations shall prejudice or affect any of the rights, powers or remedies which under or by virtue of any such lease or otherwise are conferred on the lessor in respect of the rent reserved by or the property comprised in the lease, and the same rights, powers and remedies shall continue in full force and shall extend and apply to the apportioned parts of the rent and of the property as fully as they applied before the apportionment to the whole of the rent and of the property respectively.

18. Any periodical sum (other than rent in respect of an apportioned leasehold interest) payable in respect of any property which is apportioned between the hospital authority and the other person or persons concerned under this part of these regulations shall be apportioned between the hospital authority and the other person or persons concerned in the same proportions as the property in respect of which it is payable.

19.—(1) Any right or liability acquired or incurred for the purposes of managing any property which is apportioned between the hospital authority and the other person or persons concerned under this part of these regulations, shall, unless such liability is charged on such property, be apportioned between the hospital authority and the other person or persons concerned in the same proportions as the property for the management of which such right or liability was acquired or incurred.

(2) Any liability charged on any property which is apportioned between the hospital authority and the other person or persons concerned under this part of these regulations shall be apportioned between the hospital authority and the other person or persons concerned in the same proportions as the property on which it is charged.

(3) Where any liability which is charged on property is apportioned under the last preceding paragraph of this regulation then as from the apportionment date or the appointed day, whichever shall be the later—

(*a*) such part only of that liability as is apportioned to the hospital authority shall be charged on the share of the property apportioned to the hospital authority, and such part only of the liability as is apportioned to the other person or persons concerned shall be charged on the share of the property apportioned to such person or persons;

(*b*) the covenants and conditions contained in the deed or other document creating the liability or charging it on such property as aforesaid shall be severed so that no breach of any covenant or condition on the part of any other person or persons than the hospital authority shall give rise to any claim against the hospital authority or to the exercise of any right, power or remedy in respect of the liability or property apportioned to the hospital authority, and no breach of any covenant or condition on the part of the hospital authority shall give rise to any claim against such other person or persons or to the exercise of any right, power or remedy in respect of the liability or property apportioned to such other person or persons;

(*c*) save as aforesaid, nothing contained in these regulations shall prejudice or affect any of the rights, powers or remedies which under or by virtue of any deed or document or otherwise are conferred on any person

in respect of any liability apportioned under these regulations, and the same rights, powers and remedies shall continue in full force and apply to the apportioned parts of the liability and the apportioned parts of the property as fully as they applied before the apportionment to the whole of the liability and the whole of the property respectively.

20. Any apportionment made under this part of these regulations shall take effect on the apportionment date or the appointed day, whichever shall be the later, and shall be binding upon the person or persons entitled to the benefit of any liability which is apportioned.

21.—(1) In lieu of the apportionment of property to which this part of these regulations refers, the Minister may, by a direction given under this regulation, require the persons who, prior to the appointed day, were the governing body of a voluntary hospital to dispose of such property.

(2) Any such direction may require the persons to whom it is given—

(*a*) to sell the property, whether in consideration of a capital sum or of a rent charge or other similar periodical payment; or

(*b*) to exchange the property, either with or without receiving any money for equality of exchange;

and may contain such provisions incidental to or consequential on the requirement to dispose of the property as appear to the Minister to be necessary or expedient.

(3) The persons required to dispose of property by a direction given by the Minister under this regulation shall have power to dispose of such property as directed by the Minister notwithstanding that the property is held for charitable purposes, or is subject to a restraint on alienation, and without the necessity of obtaining any order, consent or approval which apart from these regulations would be necessary for the purposes of the transaction.

(4) When any property is disposed of pursuant to a direction given by the Minister under this regulation the proceeds (including any property taken in exchange), after deduction of any costs and expenses properly incurred in connection with the transaction, shall be apportioned between the hospital authority and the other person or persons concerned in the same proportions as the property would have been apportioned but for the direction under this regulation.

22.—(1) Any property (including the benefit of any rent or other periodical sum) apportioned—

(*a*) to the Minister, shall vest in him free of any trust existing immediately before the appointed day and shall be transferred by him to the Hospital Endowments Fund;

(*b*) to the Board of Governors of a teaching hospital, shall vest in the Board free of any trust existing immediately before the appointed day, and shall be held by the Board on trust for such purposes relating to hospital services or to the functions of the Board under Part II of the Act with respect to research as the Board think fit, and the Board may dispose of the whole or any part of such property and hold the proceeds thereof on trust for any of the said purposes;

(*c*) to a Hospital Management Committee, shall vest in that Committee free of any trust existing immediately before the appointed day, and shall be held by the Committee on trust for such purposes relating to hospital services or to the functions of the Committee under Part II of the Act with respect to research as the Committee think fit, and the Committee may dispose of the whole or any part of such property and hold the proceeds thereof on trust for any of the said purposes.

(2) Every Board of Governors and Hospital Management Committee shall, in the case of any property apportioned to them under these regulations, and the Minister shall, in the case of any property apportioned to him and transferred to the Hospital Endowments Fund under these regulations, secure, so far as is reasonably practicable, that the objects for which the property was held immediately before the appointed day and the observance of any conditions attaching to the property, including in particular conditions intended to preserve the memory of any person or class of persons, are not prejudiced by the provisions of this regulation.

PART IV

Methods of apportionment

23. Any apportionment directed to be made under Part II or Part III of these regulations shall be made—

(*a*) by agreement in writing between the Minister, the Board of Governors of the teaching hospital, or the Hospital Management Committee and the other person or persons concerned; or

(*b*) failing such agreement, by arbitration.

24.—(1) The Minister, the Board of Governors of a teaching hospital, a Hospital Management Committee and any other person or persons concerned shall have power to enter into agreements for the purposes of regulation 23, and, notwithstanding that the property to which such agreement relates is held for charitable purposes, or is subject to a restraint on alienation, any such agreement shall be valid without the necessity of obtaining any order, consent or approval which apart from these regulations would be necessary for the purposes of the transaction.

(2) Any such agreement may provide for the transfer or retention of any interest in premises or other property or of any rent liability or periodical or other sum or any part thereof with or without any conditions reservations exceptions or restrictions and for the joint use of any premises or other property and for the payment to or by any party of a capital or periodical sum and may include such other provisions as may be necessary or expedient for effecting the apportionment.

25. The arbitrator shall have power to determine any question arising as to any matters referred to in these regulations and to provide in his award for any matter for which an agreement might have provided and which the arbitrator considers fair and reasonable and necessary to give effect to the apportionment directed to be made by these regulations.

PART V

Supplementary and consequential provisions

26. The Minister may, in respect of any hospital which appears to him to be, or to be likely to be, within the provisions of Part II of the Act relating to the transfer of property and liabilities, require the governing body or trustees of that hospital, or the local authority in whom that hospital is vested, to deliver to him, or to such person or persons as he may specify, within such reasonable time as he may require, a statement setting out full particulars of all interests in or attaching to premises and of all property, endowments, rights and liabilities held used or incurred, whether solely or partly, for the purposes of that hospital, and may require such further information to be supplied (including plans, title deeds, securities, contracts and other documents) as may appear to him to be necessary in connexion with the said provisions relating to the transfer of property and liabilities.

27. In the construction and for the purposes of any Act of Parliament, judgment, decree, order, award, deed, contract or other document passed or made in relation to, but before the date of the vesting of, any property or liabilities transferred under Part II of the Act or under these regulations, the name of the Minister or the other person or persons to whom the property or liabilities is or are transferred, shall be deemed to be substituted, in respect of the transferred property or liabilities so transferred, for the name of the person or persons entitled or subject thereto immediately before such transfer.

28.—(1) Where any property vested in or transferred to the Minister or any other person or persons by virtue of the Act or under these regulations consists of any stock standing, immediately before the appointed day, in the books of a company in the name of a governing body of a voluntary hospital, or of trustees, or of a local authority, it shall be obligatory upon the company, on production to it of a certificate signed by the Minister, or by a person authorised to act on his behalf, to transfer the stock into the name of, and to pay the dividends in respect thereof to, the Minister, the Board of Governors, the Hospital Management Committee, or the other person or persons named in the certificate.

(2) In this regulation the expression:—

" company " includes the Bank of England and any company or person keeping books in which any stock is registered or inscribed;

" stock " includes any share annuity or other security.

29. Any proceedings affecting any property or liabilities transferred under the aforesaid provisions of Part II of the Act or under these regulations, and pending at the date of such transfer, shall not be prejudicially affected by reason of the Act or these regulations or of anything done thereunder, but any such proceedings may be amended in such manner as may appear necessary or proper for enabling them to be prosecuted and enforced by or against the Minister, the Board of Governors of a teaching hospital, the Hospital Management Committee or any other person or persons concerned as the case may be.

30. Any question as to whether any property or liability will be or has been transferred under the provisions of Part II of the Act relating to the transfer of property and liabilities, or as to whether any property or liability falls to be apportioned under these regulations or as to the person to whom it will be or has been transferred shall, in default of agreement, be determined by arbitration.

31.—(1) If after the appointed day an arbitration under the last preceding regulation is pending in relation to any property or liabilities then, while such arbitration is pending, such property shall be maintained and such liabilities as they fall due shall be discharged by the person or persons who maintained the property or discharged the liabilities immediately before the appointed day, but nothing in this provision shall prejudice the right of such person to recover the moneys so expended after the appointed day from the Minister, the Board of Governors of a teaching hospital, or the Hospital Management Committee or the other person or persons in or to whom the property or liabilities are by the award of the arbitrator held to have been vested or transferred on the appointed day.

(2) Except as provided in regulation 11, where any property or liabilities fall to be apportioned under these regulations then, pending apportionment, such property shall be maintained and such liabilities as they fall due shall be discharged by the person or persons who maintained the property or discharged the liabilities immediately before the appointed day.

32.—(1) For the purposes of the determination of any question which under these regulations is to be determined by arbitration, a panel of persons to act as arbitrators shall be appointed by the Lord Chancellor, and the Lord Chancellor shall nominate two members of the panel as chairman thereof and as deputy chairman respectively.

(2) Any such question as aforesaid shall be determined by the arbitration of such member of the panel as the chairman, or, in the event of the chairman's being temporarily absent or unable to act, the deputy chairman, may select.

33. Where, after the date on which any property or liability has, by virtue of the Act or under these regulations, been vested in or transferred to the Minister, the Board of Governors of a teaching hospital, a Hospital Management Committee or any such governing body as is referred to in section 8 of the Act, any person retains possession of any document relating to the title to, or to the control or management of, any such property, or relating to any such liability, he shall be deemed to have given to the Minister, the Board of Governors of the teaching hospital, the Hospital Management Committee or governing body concerned, as the case may be, an acknowledgment in writing of the right to production of that document and to delivery of copies thereof, and section 64 of the Law of Property Act, 1925(a) (which relates to the production and safe custody of documents) shall apply as if the acknowledgment had been given without any such expression of contrary intention as is referred to in sub-section (13) of that section.

Given under the official seal of the Minister of Health this twenty-seventh day of April, nineteen hundred and forty-eight.

(L.S.)

Aneurin Bevan,
Minister of Health.

EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

The regulations provide for the apportionment and vesting of interests in premises used partly for hospital purposes and partly for other purposes, and of property which, if held solely for the purposes of a single voluntary hospital, would constitute an "endowment" of that hospital; for the apportionment of rents and other periodical payments payable in respect of transferred property; and for the apportionment of liabilities incurred partly for hospital purposes and partly for other purposes. Provision is also made for the control and management of apportionable premises pending apportionment.

The regulations also provide for the transfer to the Minister of Health of interests in premises and of liabilities held or incurred for the purposes of two or more voluntary hospitals.

Part V of the regulations contains provisions supplementary to or consequential on the transfer and apportionment of property and liabilities, including a provision for arbitration in respect of disputed transfers.

(a) 15 & 16 Geo. 5. c. 20.