



National Health Service in Scotland
Management Executive

St. Andrew's House
Edinburgh EH1 3DG

Dear Colleague

**NHS TRUSTS: ESTABLISHMENT OF SEPARATE
LEGAL ENTITIES**

Summary

1. This letter sets out the Management Executive's views on the establishment of separate legal entities by NHS Trusts.

Other Information

2. A number of queries have been raised by NHS Trusts in the south whether they can legally establish separate legal entities to run certain services.

3. The advice which they have received is that NHS Trusts do not have the power in law to establish separate legal entities. The NHS Management Executive in England is aware that legal opinions differ in relation to NHS Trusts' ability to establish companies limited by guarantee. However, they consider that this issue remains untested in the courts and therefore must be open to serious doubt. The NHSME in England has made it clear to Trusts in the south that they would not wish to see them invest time, effort and resources in setting up a separate company which a court subsequently decided was illegal. The NHSME sees no advantage to the Exchequer from Trusts pursuing proposals to set up separate legal entities.

4. In case any NHS Trust in Scotland is considering the establishment of a separate legal entity, they should be aware that the Management Executive for the NHS in Scotland takes a similar view to that expressed by NHSME and would not support any proposal for such a body. The appropriate approach for Trusts trying to improve the efficiency of their non-core activities is market testing.

10 August 1993

Addressees

For action:
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For information:
General Managers,
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Action

5. This guidance should be brought to the attention of Trust Boards and senior staff.

Yours sincerely



MICHAEL H COLLIER
Director of Finance