

COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002

EXPLANATORY NOTES

Part 2 – Joint Working, Etc.

Section 15 - Delegation etc. between local authorities and NHS bodies

57. **Section 15** allows NHS Scotland and local authorities to work together in new ways by enabling them to delegate functions and make payments to one another and to pool their resources so that a single body can provide both health and local authority services. In so doing, it removes legal barriers to joint working which currently exist. The measures set out in this section are intended to allow NHS bodies and local authorities to agree jointly who is best placed to carry out their functions and how resources might be used more efficiently.
58. **Section 15** removes some of the barriers to joint working by allowing:
- NHS bodies and local authorities to delegate functions to one another, to allow, for example, one of the partner bodies to provide all mental health or learning disability services locally. This will allow services to be more effective and efficient.
 - NHS bodies and local authorities to pool resources; enabling staff from either agency to develop packages of care suited to particular individuals irrespective of whether health or local authority money is used.
59. Subsection (1) allows both NHS bodies and local authorities to enter into arrangements to delegate some of their functions to the other partner (paragraph (a)) and to transfer resources in connection with the delegation arrangement (paragraph (b)). Paragraph (c) allows for the creation of a pooled budget in connection with these arrangements. Subsection (1) also provides for the Scottish Ministers to make regulations setting out how and in what circumstances these powers can be used. “NHS body” and “local authority” are defined in section 22.
60. Subsection (2) provides that only functions prescribed in regulations by the Scottish Ministers can be delegated.
61. Subsection (3) ensures that a NHS body or local authority may enter into such arrangements only if, in its opinion, doing so would lead to an improvement in the way its functions (prescribed by regulations under subsection (2)) are exercised. It makes clear that “improvement” in this context includes better outcomes for users of services.
62. Subsection (4) gives examples of provisions which may be included in regulations which the Scottish Ministers can make under subsection (1), setting out how and in what circumstances these arrangements can be made.
63. Subsection (4)(c) allows for regulations to govern the staffing arrangements which partners can make under section 15, including the transfer and secondment of staff.

*These notes relate to the Community Care and Health (Scotland)
Act 2002 (asp 5) which received Royal Assent on 12 March 2002*

Section 16 of the Act sets out the legal effect of staff transfers and provides employment protection for staff who transfer.

64. Subsection (4)(g) allows for regulations to make provision as to the monitoring and supervision of the joint arrangements. Regulations may, for example include requirements on accounting and auditing, associated outcome agreements or reporting lines and committees.
65. Subsection (5) ensures that delegation arrangements do not relieve a delegating NHS body or local authority from liability, e.g. for negligence, in relation to the exercise of the delegated functions by the delegate. It also provides that the NHS body or local authority which has delegated functions is not thereby prevented from exercising the functions itself. It may need to do so to protect itself from such potential liability. The subsection also ensures that although a joint service (hosted by one partner) may collect charges on behalf of one of the other partner organisations, those charges remain payable to the latter partner who must ultimately receive the funds.