

COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002

EXPLANATORY NOTES

Part 2 – Joint Working, Etc.

53. The provisions of this Part of the Act provide for the expansion of joint resourcing and management of services relevant to health and community care between NHS Scotland and local authorities.

Section 13 - Payments by NHS bodies towards certain local authority expenditure

54. **Section 13** allows for an NHS body to make payments to a local authority towards certain of the local authority's functions. The payments must be in accordance with any conditions prescribed in regulations by the Scottish Ministers, such as requirements on accounting and auditing or requirements for associated outcome agreements. The relevant local authority functions are those which are prescribed in regulations and which, in the opinion of the NHS body, fall into categories specified in paragraph (a), (b) or (c) of subsection (1). Such payments can be towards revenue or capital expenditure and can only be paid after consultation with the local authority. "NHS body" and "local authority" are defined in section 22.
55. The powers which section 13 provides to NHS bodies have some similarity to those under section 16A of the 1978 Act. That section also allows for payments by NHS bodies to local authorities for certain functions, but the new powers can potentially apply to a broader range of functions. The new section 13 is not intended to replace or supersede powers under section 16A of the 1978 Act. It is one element of a package of measures put forward in this Act to remove barriers to joint working between NHS Scotland and local authorities.

Section 14 - Payments by local authorities towards expenditure by NHS bodies on prescribed functions

56. **Section 14** provides a reciprocal power to section 13. It allows for a local authority to make payments to an NHS body towards certain of the NHS body's functions. The payments must be in accordance with any conditions prescribed in regulations by the Scottish Ministers, such as requirements on accounting and auditing or requirements for associated outcome agreements. Payments can be made only if, in the opinion of the local authority, they would improve the way in which the local authority's functions are exercised. The NHS body functions towards which payment can be made are those functions which may be prescribed in regulations by the Scottish Ministers. Payments can be towards capital or revenue expenditure. "NHS body" and "local authority" are defined in section 22.

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. 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.

Section 16 - Transfer of staff

66. **Section 16** sets out the legal effect of any transfer of staff to the employment of another body under a partnership arrangement allowed under section 15 and provides employment protection for staff who are transferred. (Section 15(4)(c) allows for regulations to govern the provision, transfer and secondment of staff in a joint arrangement).
67. Subsection (2) provides that a person's contract of employment transfers with that person. Subsection (3) specifies that the rights, powers, duties and liabilities of the transferring authority transfer to the receiving authority. It also provides that any actions of the transferring authority in relation to the employee or his or her contract shall be deemed to be actions of the receiving authority. (The terms "transferring authority", for the current employer, and "receiving authority", for the new employer, are introduced by subsection (1)).
68. Subsection (4) qualifies subsections (2) and (3) to ensure that an employee's right to terminate his or her contract are protected.
69. Subsection (5) ensures that section 16 applies to people who have entered into contracts with the transferring authority which have not yet come into effect on the date of transfer.
70. Subsections (2) to (5) therefore ensure that staff contracts, terms and conditions are not adversely affected by such a transfer.

Section 17 - Scottish Ministers' power to require delegation etc. between local authorities and NHS bodies

71. **Section 17** provides power for the Scottish Ministers to direct a local authority or NHS body to enter into any of the joint arrangements set out in section 15 or other joint arrangements which may be prescribed in regulations made under section 17. "NHS body" and "local authority" are defined in section 22.
72. Subsection (1) provides that this power can be used by Ministers if, in their opinion (having consulted with the local organisation concerned):
 - (a) any function of the local organisation, which is either prescribed under section 15(2) as being within the scope of the joint working arrangements of section 15 or prescribed under section 17(1)(a), is not being exercised adequately; and
 - (b) the direction to use joint arrangements (under section 15 or prescribed under this section) would be likely to lead to an improvement in the exercise of that function.
73. The ability to require models of joint working other than those under section 15 recognises that delegation under section 15 is not the only way of working jointly to improve service delivery. The additional joint working arrangements permitted by section 17 will need to be prescribed in regulations before any direction requiring them can be made. The power to prescribe functions by regulation under section 17(1)(a) (in addition to those prescribed under section 15(2)) allows a direction to be made for the improvement of functions which are not suitable for delegation under section 15, but which are suitable for the other joint arrangements that may be prescribed.
74. The directions under subsection (1) can apply to the function which is not being exercised adequately as well as other functions as described by subsection (2). This enables the directions to specify other functions to be included in the joint arrangement where, in the opinion of the Scottish Ministers, their inclusion would lead to an improvement in the way in which the original function (mentioned in subsection (1)) is exercised.

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

75. Subsection (3) allows the Scottish Ministers to make a direction to require a local authority to make a payment (under section 14) to an NHS body or to require an NHS body to make a payment (under section 13) to a local authority. They may only give such a direction to a local authority or NHS body if they have given them a direction for such arrangements as may be prescribed under section 17(1)(b)(ii).
76. A direction under subsection (3) may only be given to a local authority if, in the opinion of the Scottish Ministers, making the payment would lead to an improvement in the way the local authority's functions are exercised. Payments from a local authority to an NHS body under section 14, which are the subject of such a direction will be subject to conditions prescribed under section 14(b) and subject to the direction.
77. Similarly, a direction under subsection (3) may only be given to an NHS body if, in the opinion of the Scottish Ministers, the payment would satisfy the requirements of section 13(1)(a) to (c). Those requirements are that it has an effect in relation to the health of individuals, has an effect in relation to, or is affected by, any function of the NHS body or is connected with any function of the NHS body. Payments from an NHS body to a local authority under section 13, which are the subject of such a direction will be subject to conditions prescribed under section 13(1) and subject to the direction.
78. Subsection (4) ensures that the term "improvement" has the same meaning in this section as in section 15. That means that improvement of the exercise of a function in this context is taken to include better outcomes for users of services.
79. Subsection (5) allows the Scottish Ministers to make a "secondary direction" to another local authority or NHS body where they consider it appropriate to make the joint arrangement work.
80. Subsection (6) ensures that any joint arrangements which are entered into because of a direction must comply with all the requirements of that direction. It also ensures that any section 15 arrangements which follow a direction must also comply with all requirements of regulations made under section 15(4).