

NATIONAL HEALTH SERVICE REFORM (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Organisation and Operation of National Health Service

Section 2 - Community health partnerships

13. [Section 2](#) inserts two new sections, 4A and 4B, into the 1978 Act, which provide for the establishment and operation of Community Health Partnerships (“CHPs”).
14. In new section 4A, subsection (1) requires every Health Board to establish either a single CHP to cover the whole of the Board’s area or two or more CHPs each covering a district which, when taken together, must cover the whole area of the Board. The new subsection also places a duty on Health Boards to establish the CHPs in accordance with a scheme of establishment approved by Scottish Ministers.
15. Subsection (2) sets out the status of CHPs by providing that they shall be committees or sub-committees of the Health Board which establishes them.
16. Subsection (3) provides for the establishment of joint CHPs where the geographical area to be covered by the CHP straddles 2 or more Health Board areas. Subsection (4) provides that joint CHPs shall be formed as joint committees of the Health Boards by which they are established.
17. Subsections (5) sets out the functions of CHPs. CHPs are to have two main functions as set out in paragraphs (a) and (b) of subsection (5). They may also exercise other functions prescribed in regulations, specified in the scheme of establishment or delegated to them by parent Health Boards under paragraph (c) of this subsection.
18. The first main function is that of co-ordinating the planning, development and provision of certain services in its area with a view to improving those services. The services to which this function applies are those prescribed in regulations or specified in the scheme of establishment or any other services specified by the parent Health Board.
19. The second main function is that of providing or securing the provision of, certain services. Those services are services which it is the function of its parent Health Board to provide or secure the provision of and which are prescribed in regulations, those which are delegated to it under the scheme of establishment or such other services as the parent Health Board may specify.
20. In new section 4B, subsection (1) puts every Health Board under a duty to prepare and submit to the Scottish Ministers a scheme of establishment for CHPs in their area. The Scottish Ministers have the power to specify a period of time by which the schemes must be submitted.
21. Subsection (2) requires Health Boards to take certain actions when preparing a scheme of establishment. These are, firstly, that Health Boards should have regard to any

guidance about CHPs issued by the Scottish Ministers under subsection (7) and to the community planning process provided for by section 15(1) of the Local Government in Scotland Act 2001 as it relates to the area of the CHP's parent Health Board. Secondly, Health Boards must consult each local authority whose area is included in whole or in part in the proposed CHP's area and any other person that the Health Board thinks it appropriate to consult. Finally, they shall encourage the local authorities and other persons who were consulted to be involved in preparing the scheme of establishment.

22. Subsection (3) allows the Scottish Ministers either to approve or reject a scheme of establishment submitted to them by a Health Board. The Scottish Ministers may modify a scheme before approving it. Subsection (4) provides that where the Scottish Ministers refuse to approve a scheme, they must return it to the Health Board and the Scottish Ministers may then direct the Board to resubmit the scheme by a specified date and they may specify the modifications that the Health Board is to make to the scheme. In addition to the modifications specified by the Scottish Ministers, the Board may make its own further modifications to the scheme.
23. Subsection (5) allows Health Boards to submit to the Scottish Ministers a new scheme for CHPs in their Board area whenever the Board thinks that it is appropriate so to do. It also places Health Boards under a duty to submit a new scheme within a particular timescale if directed to do so by the Scottish Ministers.
24. Subsection (6) allows the Scottish Ministers to make regulations on a number of matters relating to CHPs. Those matters are—
 - the membership of CHPs;
 - the procedures for submitting a scheme of establishment and the scheme's form and content;
 - the functions of CHPs and how those functions should be exercised;
 - the application of provisions of the 1978 Act and any provision made under the 1978 so far as applying to CHPs to joint CHPs with such modifications as may be necessary; and
 - any other matters relating to CHPs as Scottish Ministers think fit.
25. Under section 105 of the 1978 Act, regulations made under subsection (6) will be subject to negative resolution procedure before the Scottish Parliament.
26. Subsection (7) enables the Scottish Ministers to issue statutory guidance on CHPs but only after consulting such persons as they see fit. If the Scottish Ministers use this power, they are under a duty to publish the guidance.
27. Subsection (8) extends the power for Health Boards to appoint committees to include a power to appoint joint committees. Under this provision Health Boards may only form joint-committees for the purpose of establishing joint CHPs. Section 2(11) of the 1978 Act allows the Scottish Ministers to establish joint committees for the areas of two or more Health Boards but that power does not allow Health Boards to do so themselves.
28. Subsection (9) provides that sections 4A or 4B do not affect the extent of the general powers in the 1978 Act to establish and regulate committees and sub-committees of Health Boards.