

# HEALTH ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part I - the National Health Service

##### *Section 12: Directions*

139. This section restates the direction-giving powers conferred on the Secretary of State by sections 13 and 17 of the NHS Act 1977, expands section 17 to cover NHS trusts, and provides for a scheme of delegation under which Primary Care Trusts have their functions conferred upon them.
140. The new sections 16D to 17B provide a flexible structure under which the Secretary of State may arrange for the exercise of functions by Health Authorities, Special Health Authorities and Primary Care Trusts and determine the level to which functions are to be devolved while maintaining appropriate control over how those functions are to be exercised.
141. *New section 16D* restates section 13 of the 1977 Act. It enables the Secretary of State to delegate his functions in relation to the health service to Health Authorities and Special Health Authorities. In addition, it enables him to direct a Special Health Authority to exercise specified functions of Health Authorities or Primary Care Trusts. At present the Secretary of State delegates most of his functions to Health Authorities, and he will continue to do so. Schedule 1 to the [National Health Service \(Functions of Health Authorities and Administration Arrangements\) Regulations 1996 \(S.I. 1996/708\)](#) lists those functions which the Secretary of State has delegated to Health Authorities. For example, the Secretary of State currently delegates to Health Authorities the responsibility for securing the provision of hospital and community health services in their area (see section 3(1) of the 1977 Act).
142. In a similar way, the new section 17A enables Health Authorities to delegate their functions to Primary Care Trusts, subject to certain exceptions in subsection (3). Primarily, the functions exercised by a Primary Care Trust will consist of the commissioning, and in some cases the provision, of services under Part I of the 1977 Act for their local population. A Health Authority may delegate its Part I functions by directing Primary Care Trusts to exercise those functions. Such directions may encompass both functions delegated by the Secretary of State, and those conferred directly on Health Authorities by statute or by regulations. The Health Authority will be required to issue such directions where directed to do so by the Secretary of State. The Secretary of State will also be able to determine which functions may or may not be delegated to Primary Care Trusts (section 17A(4)), and the extent to which they may be delegated.
143. The practical effect of delegation under these provisions is that the function becomes the function of the Health Authority or Primary Care Trust to which it is delegated. Legal proceedings in relation to the exercise of the function will be brought by, or against, that body, rather than the person or body which made the delegation (see paragraph 13 of Schedule 5A to the 1977 Act as inserted by Schedule 1 of the Act and paragraph 15 of Schedule 5 to the 1977 Act as inserted by paragraph 39(5) of Schedule 4 to the Act).

144. The Act does not specify what services Primary Care Trusts will or will not commission. The intention is that responsibility for commissioning the majority of hospital and community health services will be delegated to Primary Care Trusts (with some exceptions such as some specialised services). With respect to the provision of services, it is envisaged that, initially, Primary Care Trusts will be able to provide and manage only community health services (i.e. those services which the Secretary of State has a duty to provide under sections 3(1)(d) and (e), 5(1) and (1A) and Schedule 1 to the 1977 Act). The Act does not restrict Primary Care Trusts to the provision of community health services, however. Any restrictions will be set out by the Secretary of State in directions or the order establishing a Primary Care Trust. This will provide the flexibility to change the functions of Primary Care Trusts where necessary.
145. Subsection (3) of the new section 17A prohibits the delegation to Primary Care Trusts of functions relating to high security psychiatric services, family health service functions under Part II of the 1977 Act other than general medical services functions, some functions in relation to PMS and PDS (see section 6) and certain other specified functions. A limited range of general medical services functions will be delegated to Primary Care Trusts. The delegation of such functions will be set out in regulations and will not affect GPs' independent status.
146. The Government intends to require Health Authorities to delegate to Primary Care Trusts the function of determining such GP remuneration as is to come from cash-limited funds. It will also consider requiring the delegation of certain other GMS functions: for example, making arrangements for the temporary provision of services where a GP retires or is suspended.
147. *New section 17* extends the current powers of direction under section 17 of the 1977 Act (which currently applies to Health Authorities and Special Health Authorities) to include Primary Care Trusts and NHS trusts. This allows the Secretary of State to give instructions to any of the bodies concerned about how they are to exercise their functions.
148. *New section 17B* provides that Health Authorities will also be able to direct Primary Care Trusts about the exercise of functions they have delegated to them. Any Secretary of State directions under section 17 will take precedence. It is not intended that Health Authorities should use their powers to seek to control the detailed day-to-day operation of Primary Care Trusts.
149. The current direction-giving powers in respect of NHS trusts are conferred by paragraph 6 of Schedule 2 to the 1990 Act and relate to a limited number of very specific matters. The new section 17 replaces these powers of direction with a general power, in line with that relating to Health Authorities and Primary Care Trusts, which enables directions to be given in relation to the full range of NHS trusts' functions.
150. *New sections 18(1) to (1B)* specify how directions under sections 16D to 17B of the 1977 Act are to be given. Any directions given by regulations are subject to parliamentary scrutiny. The existing section 18 (and the new section 18(1A)) provides that regulations must be used to give directions delegating the Secretary of State's functions relating to special hospitals (see section 41 for further provisions relating to special hospitals) and any directions about the Secretary of State's functions regarding the establishment of Community Health Councils (section 20(1) and (2) of the 1977 Act). The new section 18(1A) also applies to any directions specifying that Health Authorities may or may not delegate GMS functions to Primary Care Trusts.