

# COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002

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## EXPLANATORY NOTES

### **Part 2 – Joint Working, Etc.**

#### ***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.
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).

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

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).