

*Draft Regulations laid before the Scottish Parliament under section 69(2) of the Public Bodies (Joint Working) (Scotland) Act 2014, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2014 No.**

**PUBLIC HEALTH  
SOCIAL CARE**

**The Public Bodies (Joint Working) (Prescribed  
Health Board Functions) (Scotland) Regulations 2014**

*Made - - - -*

*Coming into force in accordance with Regulation 1(1)*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1(6), 1(8) and 69(1) of the Public Bodies (Joint Working) (Scotland) Act 2014<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 69(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Public Bodies (Joint Working) (Prescribed Health Board Functions) (Scotland) Regulations 2014 and come into force on the day after the day on which they are made.

(2) In these Regulations, “the Act” means the Public Bodies (Joint Working) (Scotland) Act 2014.

**Prescribed functions (Section 1(6))**

2.—(1) The functions listed in column A of Schedule 1 are prescribed for the purposes of section 1(6) of the Act.

(2) Each function listed in column A of Schedule 1 is prescribed subject to the exceptions in column B.

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(1) 2014 asp 9. Section 68(1) contains a definition of “prescribed” relevant to the exercise of the statutory powers under which these Regulations are made.

**Prescribed functions (Section 1(8))**

3.—(1) The functions listed in column A of Schedule 2 are prescribed for the purposes of section 1(8) of the Act.

(2) Each function listed in column A of Schedule 2 is prescribed subject to the exceptions in column B.

(3) Each function prescribed for the purposes of section 1(8) is prescribed for that purpose to the extent that—

- (a) the function is exercisable in relation to persons of at least 18 years of age;
- (b) the function is exercisable in relation to care or treatment provided by health professionals for the purpose of the health care services listed in Part 2 of Schedule 3; and
- (c) the function is exercisable in relation to the health care services listed in Part 3 of Schedule 3.

St Andrew's House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

SCHEDULE 1

Regulation 2

**Functions prescribed for the purposes of section 1(6) of the Act**

| <i>Column A</i>  | <i>Column B</i>   |
|--|---|
| <b>The National Health Service (Scotland) Act 1978(2)</b>  |   |
| All functions of Health Boards conferred by, or by virtue of, the National Health Service (Scotland) Act 1978. | Except functions conferred by or by virtue of—<br>section 2(7) (Health Boards);<br><br>section 9(3) (local consultative committees);<br>section 17A(4) (NHS contracts);<br>section 17C(5) (personal medical or dental services);<br>section 17J(6) (Health Boards’ power to enter into general medical services contracts);<br>section 28A(7) (remuneration for Part II services);<br>section 48(8) (residential and practice accommodation);<br>section 57(9) (accommodation and services for private patients);<br>section 64(10) (permission for use of facilities in private practice);<br>section 79(11) (purchase of land and moveable property);<br>section 86(12) (accounts of Health Boards and the Agency); |

- (2) **1978 c.29.**
- (3) As relevantly amended by the National Health Service and Community Care Act 1990 (c.19), section 29(5) and the Health Act 1999 (c.8), Schedule 4.
- (4) Section 17A was inserted by the National Health Service and Community Care Act 1990 (c.19) and was relevantly amended by the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2; the Health Act 1999 (c.8), Schedules 4 and 5; the Health and Social Care (Community Health and Standards) Act 2003 (c.43), Schedule 14; the Public Services Reform (Scotland) Act 2010 (asp 8), schedule 17; and the Health and Social Care Act 2012 (c.7), Schedule 21.
- (5) Section 17C was inserted by the National Health Service (Primary Care) Act 1997 (c.46), section 21 and relevantly amended by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 2.
- (6) Section 17J was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 4.
- (7) Section 28A was inserted by the Health Act 1999 (c.8), section 57.
- (8) The functions of the Secretary of State under section 48 are conferred on Health Boards by virtue of S.I. 1991/570.
- (9) Section 57 was substituted by the Health and Medicines Act 1988 (c.49), section 7(9), and relevantly amended by the National Health Service and Community Care Act 1990 (c.19), Schedules 9 and 10. The functions of the Secretary of State under section 57 are conferred on Health Boards by virtue of S.I. 1991/570.
- (10) The functions of the Secretary of State under section 64 are conferred on Health Boards by virtue of S.I. 1991/570.
- (11) As relevantly amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 7. National Health Service and Community Care Act 1990 (c.19), Schedule 9, the Requirements of Writing (Scotland) Act 1995 (c.7), Schedule 5 and the National Health Service Reform (Scotland) Act 2004 (asp 7), schedule 1. The functions of the Secretary of State under section 79 are conferred on Health Boards by virtue of S.I. 1991/570.
- (12) As relevantly amended by the National Health Service and Community Care Act 1990 (c.19), section 36(6) and the Public Finance and Accountability (Scotland) Act 2000 (asp 1), schedule 4.

**Draft Legislation:** This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, *The Public Bodies (Joint Working) (Prescribed Health Board Functions) (Scotland) Regulations 2014* ISBN 978-0-11-102465-2

| <i>Column A</i> | <i>Column B</i>   |
|-----------------|---|
|                 | <p>section 88(13) (payment of allowances and remuneration to members of certain bodies connected with the health services);</p> <p>paragraphs 4, 5, 11A and 13 of Schedule 1(14) (Health Boards);</p> <p>and functions conferred by—</p> <p>The National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000(15);</p> <p>The Health Boards (Membership and Procedure) (Scotland) Regulations 2001(16),</p> <p>The National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004(17);</p> <p>The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004 (18)</p> <p>The National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006(19);</p> <p>The National Health Service (Discipline Committees) (Scotland) Regulations 2006(20);</p> <p>The National Health Service (Appointment of Consultants) (Scotland) Regulations 2009(21);</p> <p>The National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009(22); and</p> <p>The National Health Service (General Dental Services) (Scotland) Regulations 2010(23).</p> |

## **Disabled Persons (Services, Consultation and Representation) Act 1986(24)**

### Section 7

(persons discharged from hospital)

- (13) The functions of the Secretary of State under section 88(1)(e) and (2)(d) are conferred on Health Boards by virtue of S.I. 1991/570. There are no amendments to section 88 relevant to the exercise of these functions by a Health Board.
- (14) Paragraph 4 of Schedule 4 was substituted by the Health Boards (Membership and Elections) (Scotland) Act 2009 (asp 5), schedule 1. Paragraph 5 of Schedule 1 was amended, and paragraph 11A of Schedule 1 inserted, by the Health Services Act 1980 (c.53), Schedule 6.
- (15) S.S.I. 2000/54; to which there are amendments not relevant to the exercise of a Health Board's functions .
- (16) S.S.I. 2001/302; to which there are amendments not relevant to the exercise of a Health Board's functions.
- (17) S.S.I. 2004/114; as relevantly amended by S.S.I. 2004/216; S.S.I. 2006/138; S.S.I. 2007/207 and S.S.I. 2011/392.
- (18) S.S.I. 2004/116; as relevantly amended by S.S.I. 2004/217; S.S.I. 2010/395; and S.S.I. 2011/55.
- (19) S.S.I. 2006/135; as relevantly amended by S.S.I. 2007/193; S.S.I. 2010/86; S.S.I. 2010/378 and S.S.I. 2013/355.
- (20) S.S.I. 2006/330; amended by S.S.I. 2009/183; S.S.I. 2009/308; S.S.I. 2010/226; S.S.I. 2010/231 and S.S.I. 2012/36.
- (21) S.S.I. 2009/166; to which there are amendments not relevant to the exercise of a Health Board's functions.
- (22) S.S.I. 2009/183; as relevantly amended by S.S.I. 2009/209; S.S.I. 2011/32; and S.S.I. 2014/148.
- (23) S.S.I. 2010/208, as relevantly amended by S.S.I. 2004/292 and S.S.I. 2010/378.
- (24) 1986 c.86; section 7 is relevantly amended by S.I. 2013/2341.

| <i>Column A</i>  | <i>Column B</i>  |
|--|--|
| <b>Community Care and Health (Scotland) Act 2002(25)</b>   |  |
| All functions of Health Boards conferred by, or by virtue of, the Community Care and Health (Scotland) Act 2002.   |  |
| <b>Mental Health (Care and Treatment) (Scotland) Act 2003(26)</b>  |  |
| All functions of Health Boards conferred by, Except functions conferred by section 22 or by virtue of, the Mental Health (Care and Treatment) (Scotland) Act 2003. | section 22 (approved medical practitioners).   |
| <b>Education (Additional Support for Learning) (Scotland) Act 2004(27)</b>   |  |
| Section 23   |  |
| (other agencies etc. to help in exercise of functions under this Act)  |  |
| <b>Public Health etc. (Scotland) Act 2008(28)</b>  |  |
| Section 2  |  |
| (duty of Health Boards to protect public health)   |  |
| Section 7  |  |
| (joint public health protection plans)   |  |
| <b>Public Services Reform (Scotland) Act 2010(29)</b>  |  |
| All functions of Health Boards conferred by, or by virtue of, the Public Services Reform (Scotland) Act 2010.  | Except functions conferred by—<br>section 31(Public functions: duties to provide information on certain expenditure etc.); and<br>section 32 (Public functions: duty to provide information on exercise of functions). |
| <b>Patient Rights (Scotland) Act 2011(30)</b>  |  |
| All functions of Health Boards conferred by, or by virtue of, the Patient Rights (Scotland) Act 2011.  |  |

SCHEDULE 2

Regulation 3

**Functions prescribed for the purposes of section 1(8) of the Act**

| <i>Column A</i>  | <i>Column B</i> |
|--|-----------------|
| <b>The National Health Service (Scotland) Act 1978</b> |                 |

- (25) 2002 asp 5.
- (26) 2003 asp 13.
- (27) 2004 asp 4.
- (28) 2008 asp 5.
- (29) 2010 asp 8.
- (30) 2011 asp 5.

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| <i>Column A</i>   | <i>Column B</i>  |
|---|--|
| All functions of Health Boards conferred by, or by virtue of, the National Health Service (Scotland) Act 1978 | <p>Except functions conferred by or by virtue of—</p> <p>section 2(7) (Health Boards);</p> <p>section 2CA(31) (functions of Health Boards outside Scotland);</p> <p>section 9 (local consultative committees);</p> <p>section 17A (NHS contracts);</p> <p>section 17C (personal medical or dental services);</p> <p>section 17I(32) (use of accommodation);</p> <p>section 17J (Health Boards' power to enter into general medical services contracts);</p> <p>section 28A (remuneration for Part II services);</p> <p>section 38(33) (care of mothers and young children);</p> <p>section 38A(34) (breastfeeding);</p> <p>section 39(35) (medical and dental inspection, supervision and treatment of pupils and young persons);</p> <p>section 48 (residential and practice accommodation);</p> <p>section 55(36) (hospital accommodation on part payment);</p> <p>section 57 (accommodation and services for private patients);</p> <p>section 64 (permission for use of facilities in private practice);</p> <p>section 75A(37) (remission and repayment of charges and payment of travelling expenses);</p> |

(31) Section 2CA was inserted by [S.S.I. 2010/283](#), regulation 3(2).

(32) Section 17I was inserted by the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2 and amended by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 4. The functions of the Scottish Ministers under section 17I are conferred on Health Boards by virtue of [S.I. 1991/570](#), as amended by [S.S.I. 2006/132](#).

(33) The functions of the Secretary of State under section 38 are conferred on Health Boards by virtue of [S.I. 1991/570](#).

(34) Section 38A was inserted by the Breastfeeding etc. (Scotland) Act 2005 (asp 1), section 4. The functions of the Scottish Ministers under section 38A are conferred on Health Boards by virtue of [S.I. 1991/570](#) as amended by [S.S.I. 2006/132](#).

(35) Section 39 was relevantly amended by the Self Governing Schools etc. (Scotland) Act 1989 (c.39) Schedule 11; the Health and Medicines Act 1988 (c.49) section 10 and Schedule 3, and the Standards in Scotland's Schools Act 2000 (asp 6), schedule 3.

(36) Section 55 was amended by the Health and Medicines Act 1988 (c.49), section 7(9) and Schedule 3 and the National Health Service and Community Care Act 1990 (c.19), Schedule 9. The functions of the Secretary of State under section 55 are conferred on Health Boards by virtue of [S.I. 1991/570](#).

(37) Section 75A was inserted by the Social Security Act 1988 (c.7), section 14, and relevantly amended by [S.S.I. 2010/283](#). The functions of the Scottish Ministers in respect of the payment of expenses under section 75A are conferred on Health Boards by [S.S.I. 1991/570](#).

| <i>Column A</i> | <i>Column B</i>   |
|-----------------|---|
|                 | section 75B <b>(38)</b> (reimbursement of the cost of services provided in another EEA state);  |
|                 | section 75BA <b>(39)</b> (reimbursement of the cost of services provided in another EEA state where expenditure is incurred on or after 25th October 2013); |
|                 | section 79 (purchase of land and moveable property);  |
|                 | section 82 <b>(40)</b> use and administration of certain endowments and other property held by Health Boards);  |
|                 | section 83 <b>(41)</b> (power of Health Boards and local health councils to hold property on trust);  |
|                 | section 84A <b>(42)</b> (power to raise money, etc., by appeals, collections etc.);   |
|                 | section 86 (accounts of Health Boards and the Agency);  |
|                 | section 88 (payment of allowances and remuneration to members of certain bodies connected with the health services);  |
|                 | section 98 <b>(43)</b> (charges in respect of non-residents); and   |
|                 | paragraphs 4, 5, 11A and 13 of Schedule 1 to the Act (Health Boards);   |
|                 | and functions conferred by—   |
|                 | The National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989 <b>(44)</b> ;  |
|                 | <a href="#">The Health Boards (Membership and Procedure) (Scotland) Regulations 2001/302</a> ;  |
|                 | The National Health Service (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000;   |

**(38)** Section 75B was inserted by [S.S.I. 2010/283](#), regulation 3(3) and amended by [S.S.I. 2013/177](#).

**(39)** Section 75BA was inserted by [S.S.I. 2013/292](#), regulation 8(4).

**(40)** Section 82 was amended by the Public Appointments and Public Bodies etc. (Scotland) Act 2003 ([asp 7](#)), section 1(2) and the National Health Service Reform (Scotland) Act 2004 ([asp 7](#)), schedule 2.

**(41)** There are amendments to section 83 not relevant to the exercise of a Health Board's functions under that section.

**(42)** Section 84A was inserted by the Health Services Act 1980 ([c.53](#)), section 5(2). There are no amendments to section 84A which are relevant to the exercise of a Health Board's functions.

**(43)** Section 98 was amended by the Health and Medicines Act 1988 ([c.49](#)), section 7. The functions of the Secretary of State under section 98 in respect of the making, recovering, determination and calculation of charges in accordance with regulations made under that section is conferred on Health Boards by virtue of [S.S.I. 1991/570](#).

**(44)** [S.I. 1989/364](#); as amended by [S.I. 1992/411](#); [S.I. 1994/1770](#); [S.S.I. 2004/369](#); [S.S.I. 2005/455](#); [S.S.I. 2005/572](#); [S.S.I. 2006/141](#); [S.S.I. 2008/290](#); [S.S.I. 2011/25](#) and [S.S.I. 2013/177](#).

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| <i>Column A</i> | <i>Column B</i>   |
|-----------------|---|
|                 | The National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004;                  |
|                 | The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004;            |
|                 | The National Health Service (Discipline Committees) (Scotland) Regulations 2006;                                      |
|                 | The National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006;                                |
|                 | The National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009;                                    |
|                 | The National Health Service (General Dental Services) (Scotland) Regulations 2010; and                                |
|                 | The National Health Service (Free Prescription and Charges for Drugs and Appliances) (Scotland) Regulations 2011(45). |

**Disabled Persons (Services, Consultation and Representation) Act 1986**

Section 7

(persons discharged from hospital)

**Community Care and Health (Scotland) Act 2002**

All functions of Health Boards conferred by, or by virtue of, the Community Care and Health (Scotland) Act 2002.

**Mental Health (Care and Treatment) (Scotland) Act 2003**

All functions of Health Boards conferred by, or by virtue of, the Mental Health (Care and Treatment) (Scotland) Act 2003.

Except functions conferred by—  
 section 22 (approved medical practitioners);  
 section 34 (inquiries under section 33: co-operation)(46);  
 section 38 (duties on hospital managers: examination, notification etc.)(47);  
 section 46 (hospital managers’ duties: notification)(48);  
 section 124 (transfer to other hospital);

(45) S.S.I. 2011/55; to which there are amendments not relevant to the exercise of a Health Board’s functions.  
 (46) There are amendments to section 34 not relevant to the exercise of a Health Board’s functions under that section.  
 (47) Section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) provides a definition of “managers” relevant to the functions of Health Boards under that Act.  
 (48) Section 46 is amended by S.S.I. 2005/465.



| <i>Column A</i> | <i>Column B</i>   |
|-----------------|---|
|                 | section 228 (request for assessment of needs: duty on local authorities and Health Boards);   |
|                 | section 230 (appointment of patient's responsible medical officer);   |
|                 | section 260 (provision of information to patient);  |
|                 | section 264 (detention in conditions of excessive security: state hospitals);   |
|                 | section 267 (orders under sections 264 to 266: recall);   |
|                 | section 281(49) (correspondence of certain persons detained in hospital);   |
|                 | and functions conferred by—   |
|                 | The Mental Health (Safety and Security) (Scotland) Regulations 2005(50);  |
|                 | The Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005(51);      |
|                 | The Mental Health (Use of Telephones) (Scotland) Regulations 2005(52); and  |
|                 | The Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008(53). |

### **Education (Additional Support for Learning) (Scotland) Act 2004**

#### Section 23

(other agencies etc. to help in exercise of functions under this Act)

### **Public Services Reform (Scotland) Act 2010**

All functions of Health Boards conferred by, or by virtue of, the Public Services Reform (Scotland) Act 2010

Except functions conferred by—

section 31(public functions: duties to provide information on certain expenditure etc.); and

section 32 (public functions: duty to provide information on exercise of functions).

### **Patient Rights (Scotland) Act 2011**

(49) Section 281 is amended by S.S.I. 2011/211.

(50) S.S.I. 2005/464; to which there are amendments not relevant to the exercise of the functions of a Health Board. Section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 provides a definition of “managers” relevant to the functions of Health Boards.

(51) S.S.I. 2005/467. Section 329(1) of the 2003 Act provides a definition of “managers” relevant to the functions of Health Boards.

(52) S.S.I. 2005/468. Section 329(1) of the 2003 Act provides a definition of “managers” relevant to the functions of Health Boards.

(53) S.S.I. 2008/356. Section 329(1) of the 2003 Act provides a definition of “managers” relevant to the functions of Health Boards.

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| <i>Column A</i>  | <i>Column B</i>   |
|--|---|
| All functions of Health Boards conferred by, or by virtue of, the Patient Rights (Scotland) Act 2011 | Except functions conferred by <a href="#">The Patient Rights (complaints and Consequential Provisions) (Scotland) Regulations 2012/36</a> (54). |

## SCHEDULE 3

Regulation 3

## PART 1

**Interpretation of Schedule 3****1.** In this schedule—

“Allied Health Professional” means a person registered as an allied health professional with the Health Professions Council;

“general medical practitioner” means a medical practitioner whose name is included in the General Practitioner Register kept by the General Medical Council;

“general medical services contract” means a contract under section 17J of the National Health Service (Scotland) Act 1978;

“hospital” has the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978;

“inpatient hospital services” means any health care service provided to a patient who has been admitted to a hospital and is required to remain in that hospital overnight, but does not include any secure forensic mental health services;

“out of hours period” has the same meaning as in regulation 2 of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(55); and

“the public dental service” means services provided by dentists and dental staff employed by a health board under the public dental service contract.

## PART 2

**2.** The health care services listed for the purpose of regulation 3(3)(b) are—

- (a) accident and emergency services provided in a hospital;
- (b) inpatient hospital services relating to the following branches of medicine—
  - (i) general medicine;
  - (ii) geriatric medicine;
  - (iii) rehabilitation medicine;
  - (iv) respiratory medicine; and
  - (v) psychiatry of learning disability,
- (c) palliative care services provided in a hospital;

(54) [S.S.I. 2012/36](#). Section 5(2) of the Patient Rights (Scotland) Act 2011 ([asp 5](#)) provides a definition of “relevant NHS body” relevant to the exercise of a Health Board’s functions.

(55) [S.S.I. 2004/115](#).

- (d) inpatient hospital services provided by general medical practitioners;
- (e) services provided in a hospital in relation to an addiction or dependence on any substance;
- (f) mental health services provided in a hospital, except secure forensic mental health services.

## PART 3

3. The health care services listed for the purpose of regulation 3(3)(c) are—
- (a) district nursing services;
  - (b) services provided outwith a hospital in relation to an addiction or dependence on any substance;
  - (c) services provided by allied health professionals in an outpatient department, clinic, or outwith a hospital;
  - (d) the public dental service;
  - (e) primary medical services provided under a general medical services contract, and arrangements for the provision of services made under section 17C of the National Health Service (Scotland) Act 1978, or an arrangement made in pursuance of section 2C(2) of the National Health Service (Scotland) Act 1978<sup>(56)</sup>;
  - (f) general dental services provided under arrangements made in pursuance of section 25 of the National Health (Scotland) Act 1978<sup>(57)</sup>;
  - (g) ophthalmic services provided under arrangements made in pursuance of section 17AA or section 26 of the National Health Service (Scotland) Act 1978<sup>(58)</sup>;
  - (h) pharmaceutical services and additional pharmaceutical services provided under arrangements made in pursuance of sections 27 and 27A of the National Health Service (Scotland) Act 1978<sup>(59)</sup>;
  - (i) services providing primary medical services to patients during the out-of-hours period;
  - (j) services provided outwith a hospital in relation to geriatric medicine;
  - (k) palliative care services provided outwith a hospital;
  - (l) community learning disability services;
  - (m) mental health services provided outwith a hospital;
  - (n) continence services provided outwith a hospital;
  - (o) kidney dialysis services provided outwith a hospital;
  - (p) services provided by health professionals that aim to promote public health.

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<sup>(56)</sup> Section 2C was inserted by the Primary Medical Services (Scotland) Act 2004 ([asp 1](#)), section 1(2) and relevantly amended by the National Health Service Reform (Scotland) Act 2004 ([asp 7](#)), schedule 1, and the Tobacco and Primary Medical Services (Scotland) Act 2010 ([asp 3](#)), section 37.

<sup>(57)</sup> Section 25 was relevantly amended by the Smoking, Health and Social Care (Scotland) Act 2005 ([asp 13](#)), section 15.

<sup>(58)</sup> Section 17AA was inserted by the National Health Service (Primary Care) Act 1997 ([c.46](#)), section 31(2) and relevantly amended by the Smoking, Health and Social Care (Scotland) Act 2005 ([asp 13](#)), section 25. Section 26 was relevantly amended by the Health and Social Security Act 1984 ([c.48](#)), Schedule 1, and the Smoking, Health and Social Care (Scotland) Act 2005 ([asp 13](#)), section 13.

<sup>(59)</sup> Section 27 was relevantly amended by the Health Services Act 1990 ([c.53](#)), section 20; the National Health Service and Community Care Act 1990 ([c.19](#)), Schedule 9; the Medicinal Products: Prescription by Nurses etc. Act 1992 ([c.28](#)), section 3; the National Health Service and Community Care Act 1997 ([c.46](#)), Schedule 2 and the Health and Social Care Act 2001 ([c.15](#)), section 44.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe certain functions of Health Boards for the purpose of section 1(6) and (8) of the Public Bodies (Joint Working) (Scotland) Act 2014 (“the Act”).

The Act requires Health Boards and local authorities to agree arrangements for joint working in their area in relation to certain of their statutory functions. This will have the effect that adult health and social care services are provided, in all local authority areas, in a way which is integrated from the point of view of a person using those services. These joint working arrangements will involve the delegation of functions by the local authority, or by the Health Board, or both.

Regulation 2, with Schedule 1, sets out the functions prescribed for the purpose of section 1(6) of the Act. These functions may be included in the joint working arrangements made under the Act. Schedule 1 lists, in column A, prescribed enactments that confer functions on Health Boards. The section heading for each enactment is provided for illustrative purposes. Column B of Schedule 1 sets out certain functions which are not prescribed, and so which may not be delegated by a Health Board.

Regulation 3, with Schedules 2 and 3, sets out a narrower list of functions which are prescribed for the purpose of section 1(8) of the 2014 Act in so far as they are exercisable in relation to persons over 18 and in relation to certain services provided by Health Boards. Functions prescribed for the purpose of section 1(8) must be included in the joint working arrangements that are made under the Act.

Schedule 2 lists, in column A, certain enactments that confer functions on Health Boards. The section heading for each enactment is provided for illustrative purposes. Column B of Schedule 2 sets out certain functions which are not prescribed for the purpose of section 1(8). Schedule 3 sets out two lists of services provided by Health Boards. Each of these services is provided under the prescribed functions. However, the statutory functions of Health Boards are broad and do not, in general, relate to a single service or narrow category of service. The functions listed in Schedule 2 are prescribed only to the extent that those functions relate to the provision of care and treatment by health professionals in relation to the services listed in Part 2 of Schedule 3, and in relation to the provision of the services listed in Part 3 of Schedule 3.

Services listed in Part 2 of Schedule 3 are all provided in a hospital. Regulation 3(3)(b) makes clear that aspects of these services that are not provided by health professionals are not required to be integrated. For example, functions must be included in integration arrangements to the extent that they relate to medical, nursing, pharmaceutical and other clinical aspects of the listed services. In relation to the services in Part 3 of Schedule 3, which are all provided outwith a hospital, all aspects of the service must be included.

For the purpose of these Regulations, the term “health professionals” has the meaning set out in section 68(1) of the Act.

When functions are delegated in accordance with these Regulations, section 25(3) of the Act means that the person to whom the functions are delegated also has the powers and duties applying in connection with the carrying out of those functions.