

NATIONAL HEALTH SERVICE REFORM AND HEALTH CARE PROFESSIONS ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – National Health Service, etc.

NHS bodies and their functions: England

Section 3: Directions: distribution of functions

36. *Section 3* amends section 16D of the 1977 Act to enable the Secretary of State to delegate directly to PCTs the exercise of any functions which are conferred on him by health legislation, for example, the duty to provide hospital accommodation under section 3 of the 1977 Act. These delegated functions are in addition to those directly conferred under *Schedule 2*. Under the existing section 16D, the Secretary of State can only delegate his functions directly to HAs and Special Health Authorities¹. Further delegation to PCTs has to be carried out by HAs under section 17A of the 1977 Act and is limited to certain functions (described in section 17A(2) as “delegable”). Certain other functions – described in section 17A(3) as “excepted” – cannot currently be delegated beyond HA level. *Section 3* simplifies this system.
37. *Subsection (3)* removes the concepts of “delegable” and “excepted” functions in the existing section 17A of the 1977 Act and inserts a new section 17A. This allows Strategic Health Authorities to direct PCTs, any part of whose area falls within their area, to exercise specified functions of theirs (except, in certain circumstances, functions relating to PMS or PDS where there is a need to maintain a distinction between commissioners and providers). The Secretary of State may direct Strategic Health Authorities to delegate specified functions to PCTs to be exercised by them alone or jointly with either other PCTs or the Strategic Health Authority.
38. *Subsection (4)* enables a Strategic Health Authority to direct a PCT about the exercise of any of its functions whether delegated to it by the Strategic Health Authority or not. *Subsection (5)* makes amendments to section 18 of the 1977 Act consequential on the new section 17A inserted by *subsection (3)*.

¹ See Annex A, paragraphs 204-209 for more information about Special Health Authorities