



# Community Care and Health (Scotland) Act 2002

## 2002 asp 5

### PART 2

#### JOINT WORKING ETC.

#### **13 Payments by NHS bodies towards certain local authority expenditure**

- (1) An NHS body may, on such conditions as may be prescribed, after consulting the local authority in question, make payments to a local authority towards expenditure incurred, or to be incurred, by the authority in connection with the performance by them of such function of that authority as may be prescribed, being a function which, in the opinion of the body—
- (a) has an effect in relation to the health of individuals;
  - (b) has an effect in relation to, or is affected by, any function of that body; or
  - (c) is connected with any function of that body.
- (2) This section is without prejudice to section 16A of the 1978 Act (power to make payments towards expenditure on community services).

#### **14 Payments by local authorities towards expenditure by NHS bodies on prescribed functions**

A local authority may—

- (a) if, in their opinion, to do so would be likely to lead to an improvement in the way in which their functions are exercised; and
- (b) on such conditions as may be prescribed,

make payments to an NHS body towards expenditure incurred, or to be incurred, by the body in connection with the performance by it of such of its functions as may be prescribed.

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*Status: Point in time view as at 01/04/2014.*

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## **15 Delegation etc. between local authorities and NHS bodies**

- (1) Any number of local authorities and NHS bodies may, in accordance with regulations made by the Scottish Ministers, enter into arrangements for—
- (a) the delegation to—
    - (i) any of the NHS bodies of the exercise, in conjunction with functions mentioned in paragraph (b) of subsection (2) below, of functions mentioned in paragraph (a) of that subsection; and
    - (ii) any of the local authorities of the exercise, in conjunction with functions mentioned in paragraph (a) of that subsection, of functions mentioned in paragraph (b) of that subsection;
  - (b) the making of payments—
    - (i) by the local authority to the NHS body in connection with arrangements mentioned in paragraph (a)(i) above; and
    - (ii) by the NHS body to the local authority in connection with arrangements mentioned in paragraph (a)(ii) above; and
  - (c) for the purposes of paragraph (b) above and, if they so wish, also for the purpose of making payments towards expenditure incurred in exercising functions mentioned in subsection (2) below which are not delegated as mentioned in paragraph (a) above, the establishment and maintenance of a fund—
    - (i) which may be held by any of the local authorities or NHS bodies;
    - (ii) to which any of the authorities and bodies (a “contributor”) may make payments; and
    - (iii) out of which any contributor may make payments towards expenditure incurred by that contributor in exercising functions mentioned in subsection (2) below.
- (2) The functions are—
- (a) such functions of local authorities as may be prescribed; and
  - (b) such functions of NHS bodies as may be prescribed.
- (3) Arrangements mentioned in subsection (1) above may be entered into by a local authority or an NHS body only if, in their opinion, to do so would be likely to lead to an improvement in the way in which functions mentioned in subsection (2) above are exercised; and for this purpose the reference to an improvement in the way in which functions are exercised includes an improvement in the provision to any individuals of any services to which those functions relate.
- (4) Regulations under subsection (1) above may in particular make provision—
- (a) as to cases (or classes of case) as respects which a local authority or an NHS body may not enter into arrangements mentioned in that subsection;
  - (b) as respects consultation by local authorities and NHS bodies on proposals to enter into any such arrangements;
  - (c) as respects the provision of staff in connection with any such arrangements, including the transfer and secondment, and terms and conditions, of such staff;
  - (d) as respects the provision of goods, services or accommodation in connection with any such arrangements;
  - (e) requiring the approval of the Scottish Ministers to the entering into of any such arrangements or class of arrangements (including the circumstances in

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- which such approval is required, how it is to be sought, and the grant, with or without modification, or refusal, of approval);
- (f) for the variation or termination of any such arrangements, including variation or termination at the direction of the Scottish Ministers given after consultation with the local authorities and NHS bodies; <sup>F1</sup>...
  - (g) as to the monitoring and supervision by the local authorities and NHS bodies of arrangements entered into by virtue of subsection (1) above.
  - [<sup>F2</sup>(h) prohibiting the entering into of arrangements by virtue of subsection (1) for the delegation of such functions prescribed under subsection (2)(a) as may be specified unless the arrangements are also for the delegation of such functions under the Social Care (Self-directed Support) (Scotland) Act 2013 prescribed under subsection (2)(a) as may be specified.]
- (5) Arrangements entered into by virtue of subsection (1) above—
- (a) do not affect—
    - (i) the liability of a local authority in relation to the exercise of any of their functions;
    - (ii) the liability of an NHS body in relation to the exercise of any of its functions; or
    - (iii) any power or duty to recover sums in respect of services provided by such an authority or body in the exercise of any of their functions; and
  - (b) do not prevent any such authority or body from themselves, or itself, exercising—
    - (i) the delegated function; or
    - (ii) any power delegated with the function.

#### Textual Amendments

- F1** Word in s. 15(4) repealed (1.4.2014) by [Social Care \(Self-directed Support\) \(Scotland\) Act 2013 \(asp 1\)](#), **ss. 20(a)**, 28(2); S.S.I. 2014/32, art. 3
- F2** S. 15(4)(h) added (1.4.2014) by [Social Care \(Self-directed Support\) \(Scotland\) Act 2013 \(asp 1\)](#), **ss. 20(b)**, 28(2); S.S.I. 2014/32, art. 3

## 16 Transfer of staff

- (1) This section applies where, by virtue of section 15(4)(c) of this Act, a person is transferred from one entity (the “transferring authority”) to another (the “receiving authority”).
- (2) The contract of employment between the person and the receiving authority has effect from the date of transfer as if originally made between the person and the transferring authority.
- (3) Without prejudice to subsection (2) above—
  - (a) all the transferring authority’s rights, powers, duties and liabilities under or in connection with the contract transfer, by virtue of this paragraph, to the receiving authority on that date; and
  - (b) anything done before that date by or in relation to the transferring authority in respect of that contract or of the employee is deemed as from that date to have been done by or in relation to the receiving authority.

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- (4) Subsections (2) and (3) above are without prejudice to any right of the person to terminate the contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but change is not to be taken to have occurred by reason only of the fact that the employer is changed by virtue of section 15(4)(c) of this Act.
- (5) Where a person—
- (a) has, prior to the date of transfer, entered into a contract of employment with the transferring authority and that contract is to come into effect on or after that date; and
  - (b) would, if the contract had come into effect before that date, have been a person to whom this section applies,
- the person is treated as one to whom this section does apply.

## 17 **Scottish Ministers’ power to require delegation etc. between local authorities and NHS bodies**

- (1) Subject to subsection (4)(a) of section 15 of this Act, if in the opinion of the Scottish Ministers (formed after consultation with the local authority or NHS body in question) —
- (a) any function—
    - (i) which is mentioned in paragraph (a) of subsection (2) of that section or which may be prescribed is not being exercised adequately by a local authority; or
    - (ii) which is mentioned in paragraph (b) of subsection (2) of that section or which may be prescribed is not being exercised adequately by an NHS body; and
  - (b) it would be likely to lead to an improvement in the way in which the function is exercised if the authority or the body in question were to enter into—
    - (i) arrangements mentioned in subsection (1) of that section; or
    - (ii) such other arrangements as may be prescribed,
 as respects the function (the “principal function”),
 

the Scottish Ministers may direct the local authority or, as the case may be, the NHS body to enter into such arrangements as may be specified in the direction as respects the principal function and such other function as is mentioned in subsection (2) below.
- (2) The other function is any other function of the authority or body which the Scottish Ministers consider would, if it were exercised in accordance with the arrangements in question, be likely to contribute to an improvement in the exercise of the principal function.
- (3) Where the Scottish Ministers direct a local authority or NHS body to enter into arrangements mentioned in paragraph (b)(ii) of subsection (1) above, then if in the opinion of the Ministers (formed after consultation with the local authority or NHS body in question) it would be appropriate to do so, they may also direct—
- (a) the local authority to make under this section, on such conditions as are prescribed under paragraph (b) of section 14 of this Act and in accordance with the direction, such payments to an NHS body as are mentioned in that section, in connection with the performance by the NHS body of any function prescribed under paragraph (a)(ii) of subsection (1) above, if in the opinion of the Ministers, to make those payments would be likely to lead to an

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- improvement in the way in which the local authority's functions are exercised;  
or
- (b) the NHS body to make under this section, on such conditions as are prescribed under subsection (1) of section 13 of this Act and in accordance with the direction, such payments to a local authority as are mentioned in that subsection, in connection with the performance by the local authority of any function prescribed under paragraph (a)(i) of subsection (1) above which, in the opinion of the Ministers, satisfies any of the requirements mentioned in paragraphs (a) to (c) of subsection (1) of that section.
- (4) In this section, any reference to an improvement in the way in which functions are exercised is to be construed in the same way as in section 15 of this Act.
- (5) The Scottish Ministers, when giving a direction under subsection (1) above (a "principal direction"), may give a direction under this subsection (a "secondary direction") to such other local authority or NHS body as they consider appropriate, such secondary direction being for or in connection with securing that full effect is given to the principal direction.
- (6) Arrangements entered into in pursuance of a direction under this section must comply with such requirements, which in the case of arrangements mentioned in subsection (1) of section 15 of this Act are to be additional to those contained in regulations under subsection (4) of that section, as may be specified in that direction.

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