



National Health Service (Scotland) Act 1978

1978 CHAPTER 29

PART I

ORGANISATION

Co-operation and assistance

[^{F1} 17A NHS contracts.

- (1) The persons or bodies mentioned in paragraphs (a) to (e) of subsection (2) may, for the purpose of carrying out their functions under any enactment [^{F2}(including the 2021 Act)], and without prejudice to any other power they may have in that regard, enter into arrangements for the provision of goods or services to or by them with—
- (a) one another; or
 - (b) any of the persons or bodies mentioned in [^{F3} paragraphs (f) to (^{F4}s)] of that subsection.
- (2) The persons and bodies referred to in subsection (1) are—
- (a) Health Boards;
[Special Health Boards]]
^{F5}(aa)
 - (b) the Agency;
 - [^{F6}(ba) HIS;]
 - (c) the Scottish Dental Practice Board;
 - [^{F7}(ca) the Scottish Ministers;]
 - ^{F8}(d)
 - (e) NHS trusts established under section 12A;
 - [^{F9}(f) Local Health Boards established under section 11 of the National Health Service (Wales) Act 2006;]

Status: Point in time view as at 01/04/2022. This version of this provision has been superseded.

Changes to legislation: National Health Service (Scotland) Act 1978, Section 17A is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- [^{F10}(fa) Special Health Authorities established under section 28 of the National Health Service Act 2006;
- (fb) Special Health Authorities established under section 22 of the National Health Service (Wales) Act 2006;]
- (g) ^{F11}
- (h) ^{F12}
- ^{F13}(i)
- ^{F8}(j)
- [^{F14}(ja) the National Health Service Commissioning Board;
- (jb) clinical commissioning groups established under section 14D of the National Health Service Act 2006;]
- (k) NHS trusts established under section 5 of the National Health Service and Community Care Act 1990;
- (ka) ^{F15}
- (l) Health and Social Services Boards constituted under the Health and Personal Social Services (Northern Ireland) Order ^{M1}1972; ^{F16} ...
- (m) the Secretary of State.
- [^{F17}(ma) the Welsh Ministers;]
- [^{F18}(n) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972;
- (o) special health and social services agencies established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990;
- (p) Health and Social Services trusts established under the Health and Personal Social Services (Northern Ireland) Order 1991; ^{F19} ...
- (q) the Department of Health and Social Services for Northern Ireland.] [^{F20} and in this Act “health service body” means any of those persons or bodies]
- [^{F21}(r) the National Institute for Health and Care Excellence; and
- (s) the Health and Social Care Information Centre,]
- (3) In subsection (1)—
- ^{F22}(a)
- (b) “services” includes services of any description,
- and in this Act an arrangement falling within that subsection is referred to as an “NHS contract”.
- (4) Whether or not an arrangement which constitutes an NHS contract would, apart from this subsection, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities, but if any dispute arises with respect to such an arrangement, either party may refer the matter to the Secretary of State for determination under the following provisions of this section.
- (5) If, in the course of negotiations intending to lead to an arrangement which will be an NHS contract, it appears to either of the prospective parties that—
- (a) the terms proposed by the other party are unfair by reason that that party is seeking to take advantage of its position as the only, or the only practicable, provider of the goods or services concerned or by reason of any other unequal bargaining position as between the prospective parties to the proposed arrangement; or

Status: Point in time view as at 01/04/2022. This version of this provision has been superseded.

Changes to legislation: National Health Service (Scotland) Act 1978, Section 17A is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) for any other reason arising out of the relative bargaining positions of the prospective parties any of the terms of the proposed arrangements cannot be agreed.

that party may refer the terms of the proposed arrangement to the Secretary of State for determination under the following provisions of this section.

- (6) Where a reference is made to the Secretary of State under subsection (4) or (5), the Secretary of State may determine the matter himself or, if he considers it appropriate, appoint a person to consider and determine it in accordance with regulations.
- (7) By his determination of a reference under subsection (5), the Secretary of State or, as the case may be, the person appointed by him under subsection (6) may specify terms to be included in the proposed arrangement and may direct that it be proceeded with; and it shall be the duty of the prospective parties to the proposed arrangement to comply with any such directions.
- (8) A determination of a reference under subsection (4) may contain such directions (including directions as to payment) as the Secretary of State or, as the case may be, the person appointed under subsection (6) considers appropriate to resolve the matter in dispute; and it shall be the duty of the parties to the NHS contract in question to comply with any such directions.
- (9) Without prejudice to the generality of his powers on a reference under subsection (4), the Secretary of State or, as the case may be, the person appointed by him under subsection (6) may by his determination in relation to an arrangement constituting an NHS contract vary the terms of the arrangement or bring it to an end; and where the arrangement is so varied or brought to an end—
- (a) subject to paragraph (b), the variation or termination shall be treated as being effected by agreement between the parties; and
 - (b) directions included in the determination by virtue of subsection (8) may contain such provisions as the Secretary of State or, as the case may be, the person appointed by him under subsection (6) considers appropriate in order satisfactorily to give effect to the variation or to bring the arrangement to an end.

[^{F23}(10) Where a body mentioned in subsection (2)(1), (n), (o), (p) or (q) is a party or prospective party to an arrangement or proposed arrangement which—

- (a) falls within subsection (1); and
- (b) also falls within the definition of HSS contract in Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991,

subsections (4) to (9) shall apply in relation to that arrangement or proposed arrangement with the substitution for references to the Secretary of State of references to the Secretary of State and the Department of Health and Social Services for Northern Ireland acting jointly.]

[^{F24}(11) Subsection (12) applies where a person mentioned in subsection (2)(fa), (ja), (jb), (m), (r) or (s) is a party or prospective party to an arrangement or proposed arrangement which—

- (a) falls within subsection (1); and
- (b) also falls within the definition of NHS contract in section 9 of the National Health Service Act 2006.

Status: Point in time view as at 01/04/2022. This version of this provision has been superseded.

Changes to legislation: National Health Service (Scotland) Act 1978, Section 17A is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (12) Subsections (4) to (9) shall apply in relation to that arrangement or proposed arrangement (except in so far as it relates to reserved matters within the meaning of the Scotland Act 1998) with the substitution for references to the Secretary of State of references to the Scottish Ministers and the Secretary of State acting jointly.
- (13) Subsection (14) applies where a person mentioned in subsection (2)(f), (fb), (k) or (ma) is a party or prospective party to an arrangement or proposed arrangement which—
- (a) falls within subsection (1); and
 - (b) also falls within the definition of NHS contract in section 7 of the National Health Service (Wales) Act 2006.
- (14) Subsections (4) to (9) shall apply in relation to that arrangement or proposed arrangement with the substitution for references to the Secretary of State—
- (a) in so far as the arrangement or proposed arrangement relates to reserved matters within the meaning of the Scotland Act 1998, of references to the Secretary of State and the Welsh Ministers acting jointly; and
 - (b) for all other purposes, of references to the Scottish Ministers and Welsh Ministers acting jointly.
- (15) Subsection (16) applies (and subsections (12) and (14) do not apply) where a cross-border Special Health Authority is a party or prospective party to an arrangement or proposed arrangement which—
- (a) falls within subsection (1); and
 - (b) also falls within the definition of NHS contract in section 9 of the National Health Service Act 2006 and the definition of NHS contract in section 7 of the National Health Service (Wales) Act 2006.
- (16) Subsections (4) to (9) shall apply in relation to that arrangement or proposed arrangement (except in so far as it relates to reserved matters within the meaning of the Scotland Act 1998) with the substitution for references to the Secretary of State—
- (a) where the cross-border Special Health Authority is exercising functions in relation to England only, of references to the Secretary of State and the Scottish Ministers acting jointly;
 - (b) where the Authority is exercising functions in relation to Wales only, of references to the Welsh Ministers and the Scottish Ministers acting jointly; and
 - (c) where the Authority is exercising functions in relation to England and Wales, of references to the Secretary of State and the Welsh Ministers acting concurrently with each other and jointly with the Scottish Ministers.
- (17) In subsections (15) and (16), “ cross-border Special Health Authority ” means a Special Health Authority which is established under the National Health Service Act 2006 and the National Health Service (Wales) Act 2006 by virtue of—
- (a) paragraph 1(2) of Schedule 2 to the National Health Service (Consequential Provisions) Act 2006, or
 - (b) the power under section 28 of the National Health Service Act 2006 and the power under section 22 of the National Health Service (Wales) Act 2006 being exercised together.]

Textual Amendments

- F1** Ss. 17A and 17B inserted (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), [s. 30](#); [S.I. 1990/1793](#), [art. 2\(4\)](#), [Sch. II](#)

Status: Point in time view as at 01/04/2022. This version of this provision has been superseded.

Changes to legislation: National Health Service (Scotland) Act 1978, Section 17A is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F2** Words in s. 17A(1) inserted (1.4.2022) by Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 (asp 3), s. 20(2), **sch. para. 1(5)** (with s. 3); S.S.I. 2022/24, reg. 2
- F3** Words in s. 17A(1)(b) substituted (1.4.1991) by S.I. 1991/195, **art. 4(2)**
- F4** Word in s. 17A(1)(b) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 2(2)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F5** S. 17A(2)(aa) inserted (1.10.1999) by 1999 c. 8, s. 65(1), **Sch. 4 para. 46(a)(i)**; S.S.I. 1999/90, art. 2(a)(b), **Sch. 1**
- F6** S. 17A(2)(ba) inserted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by Public Services Reform (Scotland) Act 2010 (asp 8), s. 134(7), **Sch. 17 para. 8**; S.S.I. 2010/321, art. 3, Sch.; S.S.I. 2011/122, art. 2, Sch.
- F7** S. 17A(2)(ca) inserted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 2(3)(a)**; S.I. 2012/2657, art. 2(4)
- F8** S. 17A(2)(d)(j) repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 46(a)(iii), **Sch. 5**; S.S.I. 1999/90, art. 2, Sch. 1, 2
- F9** S. 17A(2)(f) substituted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 2(3)(b)**; S.I. 2012/2657, art. 2(4)
- F10** S. 17A(2)(fa)(fb) substituted for (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 2(3)(c)**; S.I. 2012/2657, art. 2(4)
- F11** S. 17A(2)(g) repealed (1.4.2006) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 196, 199(1), **Sch. 14 Pt. 4**; S.I. 2005/2925, arts. 1(3), **11**
- F12** S. 17A(2)(h) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 2(3)(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F13** S. 17A(2)(i) repealed (28.6.1995 for certain purposes and 1.4.1996 for all other purposes) by 1995 c. 17, ss. 2(1), 2(3), **Sch. 1 Pt. III para. 102(2)(b)** (with Sch. 6 para. 6)
- F14** S. 17A(2)(ja)(jb) inserted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 2(3)(e)**; S.I. 2012/2657, art. 2(4)
- F15** S. 17A(2)(ka) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 2(3)(g)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F16** Word in s. 17A(2) repealed (1.4.1991) by S.I. 1991/195, **art. 4(3)**
- F17** S. 17A(2)(ma) inserted (1.2.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 2(3)(h)**; S.I. 2012/2657, art. 2(4)
- F18** S. 17A(2)(n)-(q) added (1.4.1991) by S.I. 1991/195, **art. 4(3)**
- F19** Word in s. 17A(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 2(3)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F20** Words in s. 17A(2) inserted (1.4.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 36**; S.I. 1998/631, art. 2, **Sch. 2**
- F21** S. 17A(2)(r)(s) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 2(3)(j)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F22** S. 17A(3)(a) and the word “and” following it repealed (1.10.1999) by 1999 c. 8, s. 65, Sch. 4 para. 46(b), **Sch. 5**; S.S.I. 1999/90, art. 2, Sch. 1, 2
- F23** S. 17A(10) added (1.4.1991) by S.I. 1991/195 art. 4(4)
- F24** S. 17A(11)-(17) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 2(4)**; S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Modifications etc. (not altering text)

- C1** Pt. 1 applied (7.12.2019) by The Public Health Scotland Order 2019 (S.S.I. 2019/336), art. 1(2), **sch. 1 Pt. 1** (with art. 4(4)(5))
- C2** S. 17A applied (1.4.1993) by S.I. 1993/577, art. 5(1)(2), **Sch. Pt. I**
S. 17A applied (1.4.1995) by S.I. 1995/574, art. 5(1)(2), **Sch. Pt. I**
S. 17A extended (30.10.1997 for certain purposes and 11.5.1998 for all other purposes) by 1997 c. 46, s. 16(5); S.I. 1997/2620, **art. 2(1)(b)**; S.I. 1998/631, **art. 2(2)**
S. 17A applied (1.4.1999) by S.I. 1999/686, art. 5(1)(2), **Sch. Pt. I**
S. 17A applied (1.4.1999) by S.I. 1999/726, art. 5(1)(2), **Sch. Pt. I**

Status: Point in time view as at 01/04/2022. This version of this provision has been superseded.

Changes to legislation: National Health Service (Scotland) Act 1978, Section 17A is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- S. 17A applied (1.4.2000) by S.S.I. 2000/47, art. 5(1)(2), **Sch. Pt. I**
- S. 17A applied (6.4.2001) by S.S.I. 2001/137, art. 5(1), **Sch. Pt. I**
- S. 17A applied (31.3.2002) by S.S.I. 2002/103, art. 6, **Sch. Pt. I** (with art. 4(4))
- S. 17A applied (27.6.2002) by S.S.I. 2002/305, art. 5(1), **Sch. Pt. I** (with art. 4(4))
- C3** S. 17A applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), **Sch. Pt. I**
- C4** S. 17A modified (1.4.2018) by The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018 (S.S.I. 2018/66), regs. 1, **13** (with reg. 2)
- C5** S. 17A modified (1.4.2018) by The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018 (S.S.I. 2018/67), regs. 1(2), **10** (with reg. 2)
- C6** S. 17A(8)(9) applied (1.4.2018) by The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018 (S.S.I. 2018/66), reg. 1, **sch. 6 para. 92(2)** (with regs. 2, 13(7)(d))

Marginal Citations

- M1** S.I. 1972/1265 (N.I. 14).

Status:

Point in time view as at 01/04/2022. This version of this provision has been superseded.

Changes to legislation:

National Health Service (Scotland) Act 1978, Section 17A is up to date with all changes known to be in force on or before 30 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.