

# Draft Regulations relating to the Public Bodies (Joint Working) Scotland Act 2015/ Set 1.

## Annex 1C

### 1. Organisation Name

Scotland's Commissioner for Children and Young People  
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### 3. Permissions

I am happy for my response to be shared internally with other Scottish Government policy teams and to be contacted again in relation to this consultation exercise.

I am happy to my response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)

I am happy to make my response, name and address all available

### 4. I am responding as Scotland's Commissioner for Children and Young People

#### Opening comments

I am supportive of the need to develop closer links between health and social care services. The benefits are clear - the removal of organisational barriers, better collaboration between and within disciplines, a shared vision and a focus on common goals. An overhaul of the system is necessary to move towards a more streamlined provision of health and social care in order to achieve better person centred outcomes for all, including children and young people.

Under the Public Bodies (Joint Working) (Scotland) Act 2014, the main focus is on the integration of adult health and social care, with local decision makers having the discretion of integrating children's services. Whilst I appreciate that number of local authorities integrating children's services will only become apparent once integration schemes are submitted for approval, there is little or no reference in the draft regulations to suggest that this is even being considered. As such, the rights and needs of children and young people become sidelined in the process.

I also have concerns about the dangers of a confusing and fragmented landscape that may result and the effect this may have on some of our most vulnerable young people e.g. children in transition moving from children's services to adult services, looked after children and care leavers, vulnerable children in families of adult service users and young carers. These four groups have been flagged up in a recent report undertaken by CELCIS and Children in Scotland and commissioned by ADSW (now Social Work Scotland)<sup>1</sup> as being impacted upon as a result of adult health and social care.

Greater consideration therefore needs to be given to the long-term vision of services which could potentially include children and the regulations should reflect this.

I also feel that there is a need to consider the wider legislative and policy framework, particularly the implementation of the Children and Young People (Scotland) Act 2014, the Social Care (Self Directed Support) Scotland Act 2013 and the forthcoming Community Empowerment (Scotland Bill) as well as the upcoming review of the National Care Standards and how these interface with the outlined proposals. Of particular relevance are the duties on public bodies to work together to design, plan and deliver jointly their services to focus on children and young people's wellbeing;

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<sup>1</sup> Welch, V, McCormack, M, Stephen, J and Lepinierere, J (2014) Integrating Health and Social Care in Scotland: Potential Impact on Children's Services, Report 1: Review of the Literature

duties on public authorities to report on children's rights and the duties of corporate parents which include both health and social care.

## Annex 1D

### PROPOSALS FOR PRESCRIBED INFORMATION TO BE INCLUDED IN THE INTEGRATION SCHEME RELATING TO THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

#### CONSULTATION QUESTIONS

**1. Do you agree with the prescribed matters to be included in the Integration Scheme?**

Yes. These seem wholly appropriate. However, consideration should be given to the interface between adult and children's services and the need for coherence around the various policies and planning duties that will impact upon children's services.

2. N/A

**3. Are there any additional matters that should be included within the regulations?**

Yes

**4. If yes, please suggest**

Regardless of the model adopted, whether this be through an 'Integration Joint Board' to which the health board and local authority delegate responsibility or whether through the lead agency model, governance arrangements need to be carefully considered. If children's services are delegated, there needs to be appropriate representation on the Integration Joint Board to reflect this. Likewise, if children's services are integrated, consideration needs to be given to how children's best interests are taken account of within these structures and who best represents them.

Furthermore, there is a need for coherence with other legislation and planning duties. For example, Part 3 of the Children and Young People (Scotland) Act 2014 covers children's services planning. Consideration should be given to how will this fit with the requirement for strategic planning by integration authorities and how will these duties be taken forward if children's services are integrated into adult health and social care and - if they remain separate, how will service plans coordinate to manage the transition between children and adult services. If this is not prescribed in regulation, guidance should detail the relationship between different legislative duties and how they will relate to each other.

I am pleased to see consideration given to data sharing protocols and possible data sharing accords as well as a recognition of the importance of having effective complaints systems and mediation, although here I would urge consideration to be given to the development of a single point of entry to the complaints system to avoid service users from having to negotiate a complex and unmanageable landscape. Again, there will be specific considerations relating to children and young people such as age appropriate mechanisms and the evolving capacities of the child (in terms of the information to be shared).

**5. Are there any further comments you would like to offer on these draft Regulations?**

The recognition of stakeholder and public engagement is extremely important. The Act sets out key principles where the views and rights of service users are respected and taken into account for local service planning. Recognition should be made of the need to involve young people in decisions affecting them - as appropriate and with the appropriate participation and engagement structures (including child friendly processes). The regulations are adult-focused as it stands and there may be unintended consequences as a result e.g. the side-lining of children's issues vis a vis funding allocations.

I look forward to seeing more detail in forthcoming guidance.

## Annex 2 D

### PROPOSALS FOR PRESCRIBED FUNCTIONS THAT MUST BE DELEGATED BY LOCAL AUTHORITIES RELATING TO THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

#### CONSULTATION QUESTIONS

1. Do you agree with the list of Local Authority functions included here which must be delegated?

In part

2. If no, please explain why

This applies to young people over the age of 18, yet does not reference other legislative frameworks. For example, the Children and Young People (Scotland) Act 2014 places new duties on public bodies relating to young people in care up to the age of 26. These should be taken into account. The guidance should provide more detail on the types of services which fall within the remit of the integration authority. There will of course be areas (e.g. disability) which already has established effective partnerships, but development work will need to be done where this is not the case.

3. Are there any further comments you would like to offer on these draft regulations?

I recognise the wide range of functions of local authorities to be delegated, but I am concerned that this could potentially have a negative effect on services which have more of a focus on social care services. Some services with a strong social care component and less of a health element may be at risk of being overlooked.

## Annex 3 D

### PROPOSALS FOR REGULATIONS PRESCRIBING FUNCTIONS THAT MAY OR THAT MUST BE DELEGATED BY A HEALTH BOARD UNDER THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

#### CONSULTATION QUESTIONS

1. Do you agree with the list of functions (Schedule 1) that may be delegated?

There are concerns across the children's sector that the inclusion of Health Visitors may result in unintended consequences. Health Visitors exercise a very different role in the early years from their role to elderly people in the community. Health Visitors play an essential role in the early years - underlined by the fact that they have been identified as 'named persons' for pre school children. As it stands, including them within services that **must** be integrated is far too prescriptive. It is noted in the regulations that inclusion of Health Visiting in integration arrangements, as far as it applies to children, is left to the discretion of local partners. However this makes for a confusing picture as it is difficult to separate out services provided to the family and services provided to the child and therefore requires further consideration.

2. Do you agree with the list of services (Schedule 2) that must be delegated as set out in regulations?

In part.

The list of services is comprehensive and may cover children and young people (e.g. emergency treatment, GPs, women's health and family planning services). More thought is therefore required as to how the integration of these services will impact on children and young people, including with respect to full definitions of who can access these services (e.g. age limits).

3. Are you clear what is meant by the services listed in Schedule 2 (as described in Annex A)?

The list of services set out in Schedule 2 covers both universal services (GPs) to more targeted / specific services and is extensive, but it would be useful to have further information on what is in and why. There are some services which are omitted from the schedule and should be included e.g. sexual health services.

As discussed above, the consideration of children and young people in these services must be recognised at some level. It is important that those adult services which impact directly on vulnerable children are recognised and cognisance given of potential ramifications e.g. addiction services. As referred to earlier, children in transition moving from children's services to adult services, looked after children and care leavers, vulnerable children in families of adult service users and young carers are among those who will be clearly impacted by adult integration of health and social care and their unique needs should be taken into account.

4. Are there any further comments you would like to offer on these draft regulations?

#### Annex 4 D

### PROPOSALS FOR NATIONAL HEALTH AND WELLBEING OUTCOMES RELATING TO THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

#### CONSULTATION QUESTIONS

1. Do you agree with the prescribed National Health and Wellbeing Outcomes?

No.

As they stand, I do not feel that they are particularly applicable to children and young people and do not take into account children's rights, despite my understanding being that they will apply to *all* health and social care services, not just those being integrated. Nor do they fully reflect the principles of the Christie Commission which underlined the principles of prevention, personalisation and prevention.

These important outcomes will set the parameters for planning and reporting and will frame the development of health and social care provision for Scotland. They should also set the context for a rights-based focus on health and social care which is person centred, rather than one which is process and systems driven and needs led, similar to what has been initiated by the self-directed support legislation. In my earlier response, I underlined the needs for a rights-based approach to health and social care standards. Whilst I support some of the standards, overall I feel that they fall short of this approach and certainly do not suggest that children and young people have been considered to any degree. The outcomes are clearly missing the voice of the service user, including children and young people, and amending them to ensure that they are rights-focused will be vital to ensure that they are fully effective.

I would be interested to know if children and young people were involved at any stage in the development of these outcomes or if there is any intention to involve them at a later stage.

I am also interested to know how they link in the wellbeing SHANNARI outcomes, now enshrined in Part 18. S.96 of the Act and integral to the GIRFEC Framework, as well as their relationship with the National Care Standards and other relevant indicators, standards and outcomes. It is clear that these Health and Wellbeing Outcomes are being developed in a complex landscape and it is essential to ensure clear alignment with these separate but important developments.

I support the approach outlined by the Scottish Human Rights Commission (SHRC) in their response to the proposals for National Health and Wellbeing Outcomes (July 2014) and would reiterate the point that these outcomes provide an opportunity to ensure that human rights measures and indicators are built into the joint objectives of the integration authority. They also have a key role in ensuring that the integration agenda moves towards the cultural shift required within health and social care from a focus on needs to a focus on rights.

Specifically, I would call for the following amendments:

- All outcomes should recognise the rights and specific needs of children and young people.
- All outcomes should move away from the focus being placed solely on the individual, giving a clear sense of a partnership between service user and service provider, where service users, including children and young people, are supported and enabled to take ownership of their own health and to make safe, healthy and positive choices. This would much better reflect the requirement to protect, respect and fulfil the right to health as detailed in Article 12 of the International Covenant on Economic Social and Cultural Rights.
- A recognition and understanding of the evolving capacities of the child and how children and young people can be informed and supported to live in good health for longer should also be considered throughout.
- Consideration should be given to where outcomes could be better aligned with other relevant outcomes and indicators, including the National Care Standards.
- I align myself with the SHRC and support their view that as it stands, outcome 2 falls short of the definition of independent living enshrined in article 19 of the UN Convention on the Rights of Persons With Disabilities, and feel that the phrase 'as far as is reasonably practicable' is potentially restrictive and does not fall within the spirit of the Convention. I would also urge careful consideration of how this outcome could be developed appropriately, particularly with regard to young disabled people moving from children's services to adult services. The principle of the best interests of the child should be an important consideration in this regard.
- All outcomes should provide reference to the *quality* of care, where relevant.
- The importance of listening to children and young people and facilitating their involvement in appropriate ways should be further considered, including in relation to the role of independent advocacy.
- I welcome a separate outcome with respect to reducing health inequalities, although I would like to see much further detail here.
- Outcome 6 should include specific recognition of young carers, the impact that caring has on all aspects of their lives and the importance of upholding their rights in other aspects e.g. the right to education, to play and have friends etc. The outcome as it stands is also somewhat negative and focuses solely on the caring role.
- In terms of Outcome 7, there is a danger that a focus on risk of harm could preclude the taking of risks so essential to building independence for disabled children and young people. Over protective risk averse practices can themselves cause harm impact on a child's dignity, development and autonomy. Our report on the moving and handling of disabled children and young people - 'Handle With Care' provides much evidence of this. A proportionate balance is required and should be factored into risk assessments.
- I am also pleased to see a focus on providing support for those working in health and social care in Outcome 8. A motivated and supported workforce is key to the delivery of quality services.

- Although I agree that resources should be used effectively, the focus of Outcome 9 should be on the quality of care to ensure that interventions are person centred.

I look forward to seeing the indicators which will sit beside the outcomes and how the data will be collected and monitored. All of this will help to identify progress to date and more importantly illustrate how public bodies can be held to account. I hope that consideration is given to children and young people as these are being developed and would be interested to hear how this is being taken forward and who will be involved in shaping and developing these further.

**3. Do you agree that they cover the right areas?**

No

**4. If not, which additional areas do you think should be covered by the Outcomes?**

Refer to my answer to question 1. I would be keen to understand how these outcomes have been developed with different groups who benefit from health and social care services. There should also be some mention of advocacy services within this section - in terms of supporting participation and engagement and also in the complaints system. The tone of the current outcomes still suggests that people are recipients of services having things done to them rather than for them - far from the spirit of the Christie Commission. The Scottish Government has stated that it is keen to 'make rights real' for children and young people in Scotland - this needs to be made explicit in these outcomes.

**4. Do you think that the National Health and Wellbeing Outcomes will be understood by users of services, as well as those planning and delivering them?**

No

**5. If not, why not?**

As discussed above, the outcomes should be developed with people, rather for them. Many of the nine Health and Wellbeing Outcomes are less focused on service users' 'personal outcomes' or experiences and more concerned with service planning and delivery.

In current format, these outcomes do not consider children and young people or their rights. This is a significant oversight given that the majority of boards are planning to integrate children's services.

**6. Are there any further comments you would like to offer on these draft Regulations?**

No

**Annex 5 D**

**PROPOSALS FOR INTERPRETATION OF WHAT IS MEANT BY THE TERMS HEALTH AND SOCIAL CARE PROFESSIONALS RELATING TO THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014**

**CONSULTATION QUESTIONS**

1. N/A
2. N/A
3. Do you agree that identifying Social Workers and Social Service Workers through registration with the Scottish Social Services Commission is the most appropriate way of defining Social Care Professionals, for the purposes of the Act?

Yes

4. N/A

5. **Are there any further comments you would like to offer on these draft Regulations?**

#### Annex 6D

#### PRESCRIBED FUNCTIONS CONFERRED ON A LOCAL AUTHORITY OFFICER RELATING TO THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

#### CONSULTATION QUESTIONS

1. **Do you believe that the draft Regulations will effectively achieve the policy intention of the Act?**

As, in their current format, the regulate do not take into account the fact that some local authorities may be planning to integrate children's services, or may do so in the future, they are not sufficient to achieve their policy intention.

There is also a separate issue concerning legislation for children and young people not being considered and a range of new governance arrangements which need to take account how the best interests of the child are considered.

2. **If not, which part of the draft Regulations do you believe may not effectively achieve the policy intention of the Act, and why?**

Refer to my answers above.

3. **Are there any further comments you would like to offer on these draft Regulations?**

Yes. I feel that many of the potentially problematic areas outlined in my response could have been flagged up and addressed through the use of a Children's Rights Impact Assessment (CRIA). I would urge the Scottish Government to consider undertaking this even at this stage.