

## **DRAFT REGULATIONS RELATING TO PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014 – SET 1**

### *Introduction*

Working from a shared service perspective, Stirling and Clackmannanshire Councils are jointly responding to the draft regulations relating to the Public Bodies (Joint Working) (Scotland) Act 2014.

Both Councils have agreed with NHS Forth Valley, that one Health and Social Care Partnership will be established to cover the two local authority areas. This Partnership will be governed via a body corporate model, and will be closely aligned to the two Community Planning Partnerships – namely Stirling Community Planning Partnership and Clackmannanshire Alliance.

Councils are already working very closely with colleagues in NHS Forth Valley, particularly on reshaping older people's care. The benefits of closer joint working are evident to service users and to staff. The proposals in the Act to legislate for extended joint working across all adult health and social care functions are therefore broadly welcomed.

Elected Members are clear however, that the principles and practice of democratic governance must be adhered to within the new Health and Social Care Partnerships. Local accountability must be maintained, and Health and Social Care Partnerships must be flexible enough to respond to local needs and meet local outcomes, whilst at the same time delivering to national regulatory and performance requirements.

Our responses to the consultation questions should be read within this introductory context.

### *Specific consultation responses*

#### **Proposals for prescribed information to be included in the Integration Scheme relating to the Public Bodies (Joint Working) (Scotland) Act 2014**

The potential prescribed contents are those which local authorities would wish to cover in any event. We welcome prescription to help determine the broad topic areas of the scheme, and are happy that local partners retain the responsibility to provide the specific detail within these areas.

Partners are already working locally across five work-streams to deliver a draft integration scheme. These work-streams, although established ahead of the publication of the draft regulations, will provide sufficiently focussed content to meet the draft requirements.

Partners may also identify local topics which are not prescribed, but which are essential to a comprehensive integration scheme, and would wish to retain the ability to add to the prescribed list of information to be included, should there be local agreement to do so.

We recognise the importance of workforce development and are supportive of the need for Health and Social Care Partnerships to show due regard to this aspect of their work. However we are not convinced that prescription should apply to Health and Social Care Partnerships themselves. Workforce development responsibility should remain with the employing organisations- namely local authorities and Health Boards.

#### **Proposals for prescribed functions that must be delegated by local authorities relating to the Public Bodies (Joint Working) (Scotland) Act 2014**

On the whole we have no major issues with the services to be delegated. We will have some local practicalities to resolve, in that not all of the proposed services are currently shared across both Stirling and Clackmannanshire, and not all are solely adult services. However we recognise that Health and Social Care Partnerships will require to include these services in their strategic planning if they are to deliver on outcomes.

One exception to this general accord is in relation to the proposal to delegate 'housing support services, aids and adaptations'. Whilst we agree that the delegation of aids and adaptations is appropriate, we are not convinced that housing support services is sufficiently defined. As currently outlined in the draft regulations, we would not support the inclusion of housing support services within the Integration Partnerships.

The consultation documents highlights the social care functions relevant to the Act and the varied legislative framework in which these functions apply to local authorities. In particular, the Act highlights section 71 of Housing (Scotland) Act 2006, which relates to the Scheme of Assistance for Housing purposes and the provision of assistance, as a prescribed function which must be delegated.

The Schedule of the Public Bodies (Joint Working) (Scotland) Act given a list of functions as they relate to services for adults and specifically mentions aids and adaptations. However section 71 of the Housing (Scotland) Act 2006 does not solely relate to aids and adaptations, but also includes the provisions relating to the maintenance and conversion of properties, tackling below tolerable standard house conditions and assistance to home owners covering repairs.

Given therefore the wider scope of Section 71, it is felt inappropriate to include the whole of this Section in the must delegate list of prescribed functions. The only relevant items of Section 71 to designate as prescribed are s71 (2) (e&f), as these cover aids and adaptations.

The inclusion of Housing Support as a prescribed delegated function is of concern, against a backdrop of competing legislation and guidance, and aggregated service provision within local authorities. For example housing support services in Clackmannanshire have seen an 177% increase in referral from those at risk of homelessness, and over 60% of the Service's current open cases relate to tenancy sustainment. Homelessness is listed in the consultation documents as a 'may be' delegated function, whilst housing support is a must.

It is our conclusion that only aids and adaptations as they relate to adults should be prescribed as delegated. Housing support is a fundamental part of local authorities approach to the prevention of homelessness, and to improving tenancy sustainment. We would support the principle of integrated planning, assessment and commissioning as part of the Health and Social Care Partnerships community planning responsibilities, but do not support the mandatory delegation of housing support.

We would seek clarification on two further matters relating to housing:

- a) Will Housing Revenue Account (HRA) funded aids and adaptations, although potentially within the scope of delegation, remain subject to the Scottish Government Guidance on the operation of HRA finances? This would continue to place Council tenants and the Housing Regulator at the centre of accountability for decision making on Council housing.
- b) There is no mention of how aids and adaptations for children under 18 years. Is the budget for these to be retained within the local authorities, or is the expectation that the householder (adult) would be the service user and therefore the function and the budget would be delegated to the Health and Social Care Partnerships?

A further matter requiring clarification relates to the prescribed delegation of the function of council officer. Currently this can read either:

- That the functions of a council officer must be delegated to the new body and that staff employed by Health Boards *may* act as council officers (in which case it would be up to local agreement how can act as a council officer.

Or

- The function of the council officer must be delegated and health professionals *will* be council officers as long as they meet the other criteria (appropriately trained and experienced)

This requires clarification.

The Adult Support and Protection (Scotland) Act 2007 was part of a suite of protective powers held by local authorities which included the Mental Health (Care and Treatment) (Scotland) Act 2003 and

Adults with Incapacity (Scotland) Act 2000. The local authority's duties and powers under the latter two pieces of legislation are not prescribed functions that must be delegated. This could create a very confusing landscape for people with a mental disorder who require protection. Social workers and those health professional working in social care have an in depth knowledge of the "three Acts" and how they can be used to benefit at risk individuals.

The council officer function has been amended by subordinate legislation to *allow* local authorities to delegate the function. It allows for social workers and care managers who are qualified nurses and occupational therapists whose employment is transferred from the local authority to the NHS to be able to undertake council officer duties. However it must be for local agreement how Adult Support and Protection Services should be arranged according to the agreed model and what suits local circumstances.

### **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**

Again we are mostly supportive of the proposals in the consultation document. We welcome the inclusion of accident and emergency and unplanned in-patients functions, and the assurance given that all relevant care pathways will be within scope in policy terms. We await further guidance as to what this might mean in practice, particularly with regard to clinical specialties. We could argue for further specific delegation by regulation- for example cardiac nurses and public health. The latter we feel is particularly important with regard to community planning and the achievement of National outcomes 1 and 5.

We expect NHS Boards to be able to delegate prescribed functions to the level required by the individual Health and Social Care Partnerships in their area, and would seek reassurances from Government that this will be the case.

However our main critical concern is that Government retains a firm and clear focus on the extent of delegation and the movement of resources. We maintain that unless Health and Social Care Partnerships have sufficient control over a range of services and budgets, they will be unable to execute a meaningful shift to preventative services, and move financial and other resources to support early intervention.

There is undoubtedly room for local variation in implementation. Given that Forth Valley area will have two Health and Social Care Partnerships and has one major acute hospital and three community hospitals, we will seek reassurances that the delegation of functions, the transfer of resources, and the shift in spend from acute to primary is timely and transparent. We would also note here the added complexity of three prison settings in the Forth Valley area, and the consequent resource required to support prisoner healthcare.

In connection with services to be delegated from both integrating bodies, we would request clarification on why local authorities are compelled to delegate (*must* delegate) whilst NHS Boards retain an option not to delegate (*may or must* delegate.) We maintain that obligation to delegate services necessary for the delivery of outcomes must be equally placed on both integrating authorities. We are concerned that in our local situation, the option not to delegate services may be taken, particularly where we have 1 Board currently, with the expectation of 2 Health and Social Care Partnerships. It is essential that NHS Boards are statutorily required to delegate agreed necessary services and resources in the same manner as are local authorities.

### **Proposals for National Health and Wellbeing Outcomes relating to the Public Bodies (Joint Working) (Scotland) Act 2014**

In general we support the National outcomes. We note however that Health and Social Care Partnerships will also be expected to contribute to the achievement of local outcomes via the Single Outcome Agreement, and would welcome reassurance from Government that the complementary nature of local and National outcomes will be emphasised.

Specifically however, we would welcome an explanation of outcome 7 to emphasise that any interpretation of 'safe from harm' should be inclusive of duties under the Adult Support and Protection (Scotland) Act 2007, as well as delivery of care, prevention of falls etc.

The national outcomes could be reworded to promote the direction of travel towards people being active and equal partners in their own health and care provision, rather than more passive users of services.

#### **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**

Broadly supportive.

#### **Prescribed functions conferred on a local authority officer relating to the Public Bodies (Joint Working) (Scotland) Act 2014**

Clarification is required concerning complaints procedures. The draft regulations do not seem to require complaints handling provisions under the Social Work (Scotland) Act 1968 (S5B) to be delegated. This may potentially lead to the unhelpful separation of service provision and complaints management.

It is not clear whether NHS complaints procedures are also to be delegated. We note the need to include complaints handling in the prescribed contents of the Integration Scheme, however perhaps a read across from this aspect to other areas of the draft regulation would be helpful.

In general, we would ask that Government ensures that the statutory regulations relating the Public Bodies (Joint Working) (Scotland) Act 2014 are compatible with all other current relevant statutory responsibilities. There may still be anomalies in relation to 1968 Act, the Social Care (Self Directed Support) (Scotland) Act 2013 and the Adult Support and Protection (Scotland) Act 2007 where specific responsibilities are laid on local authorities. These responsibilities will transfer to the Health and Social Care Partnerships and therefore existing legislation may require amendment.

### **DRAFT REGULATIONS AND ORDERS RELATING TO PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014 – SET 2**

#### **Prescribed groups which must be consulted when preparing or revising Integration Schemes; preparing draft strategic plans; and when making decisions affecting localities relating to the Public Bodies (Joint working) (Scotland) Act 2014**

We would engage with these groups and others as a matter of course. Whilst we are not necessarily convinced that prescription is required to ensure consultation, we fully support the principle of equal participation of all appropriate groups in strategic and locality planning.

#### **Membership, powers and proceedings of Integration Joint Boards established under the Public Bodies (Joint Working) (Scotland) Act 2014**

We have no particular issues with the regulations here, and welcome the light touch approach from Government towards minimum prescription. We are clear that open and transparent democratic governance is most important and therefore support a minimum prescribed number of Elected Members on Integration Boards, with no prescription for maximum numbers. We recognise that larger numbers of Councillors may mean that Boards have difficulty in fielding Non Executive members, however democratic oversight must be maintained. We would not be against other Board members taking positions, but care must be taken to make sure that all Board decisions are taken in the pursuit of outcomes and not clinical priorities. We would anticipate local decisions being made on Elected Member representation reflecting the political balance of local authorities.

We would ask for clarification on Elected Members who cease to be Councillors being able to retain a position on the Joint Board, albeit in a non- voting capacity. We are not convinced that this should be the case.

We welcome the inclusion of the Chief Social Work Officer (CSWO) on the Joint Board, however we would welcome clarification on the inter-reaction of roles and responsibilities of the CSWO and the Chief Officer, particularly in relation to public protection and social welfare.

**Establishment, membership and proceedings of Integration Joint Monitoring Committees established under the Public Bodies (Joint Working) (Scotland) Act 2014**

No comment, as we have adopted a body corporate model.

**Prescribed membership of strategic planning groups established under the Public Bodies (Joint Working) (Scotland) Act 2014**

Again we are not convinced that prescription is required here, as local authorities would seek to involve all relevant stakeholders in strategic planning groups as a matter of course. Care will be required to ensure that all stakeholders are truly representative of and accountable to their wider networks, and that the views expressed in strategic planning groups are supported by the broader sector.

It should also be made clear that the function of strategic planning groups is to inform the decision making of the Joint Boards or Monitoring Committees. They are not decision making bodies in their own right.

We would envisage that the strategic planning group, although prescribed by regulation, would operate at the same level as other strategic planning groups within the community planning framework, and would seek reassurances from Government that this would be the case. We support a collaborative approach to strategic planning both within and across planning groups.

**Prescribed form and content of performance reports relating to the Public Bodies (Joint Working) (Scotland) Act 2014**

We would welcome support from Government to make sure that all the information required in the prescribed content of performance reports is available at a local authority level. This is particularly pertinent with regard to NHS functions and funding disaggregated from one Board to two or more Health and Social Care Partnerships.

We note the work ongoing in the Data and Intelligence project, and look forward to standardised data, indicators and measures being available at a local authority level. It is critical that this work moves forward at pace, and does not become 'stuck' in the manner of Integration Resource Framework activity.

We would also note here the importance of information sharing to make sure that the joint boards or monitoring committees have access to all the relevant data to enable them to agree appropriate performance measures.

Finally in relation to performance reporting, we would stress that in addition to the prescribed reports, Health and Social Care Partnerships should also be reminded of their role in SOA performance reporting. Government and the Improvement Service should work to revise the Menu of SOA Indicators to facilitate a read across both performance frameworks.

Document Control

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