

Response to Consultation on Draft Regulations and Orders relating to Public Bodies (Joint Working) (Scotland) Act 2014 – Sets 1 and 2

By Audit Scotland on behalf of the Auditor
General for Scotland and the Accounts
Commission

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Introduction

The **Auditor General for Scotland** is responsible for investigating whether public spending bodies achieve the best possible value for money and adhere to the highest standards of financial management. The Auditor General is independent and not subject to the control of any member of the Scottish Government or the Parliament. The Auditor General is responsible for securing the audit of the Scottish Government and most other public sector bodies except local authorities.

The **Accounts Commission** is the public spending watchdog for local government. It holds councils in Scotland to account and help them improve. It operates impartially and independently of councils and of the Scottish Government, and meets and reports in public. The Commission expect councils to achieve the highest standards of governance and financial stewardship, and value for money in how they use their resources and provide their services.

Audit Scotland was created to support both the Accounts Commission and the Auditor General for Scotland in carrying out their work.

The Auditor General and the Accounts Commission welcome the opportunity to contribute to the consultation on the regulations underpinning the integration of adult health and social care in Scotland.

The Public Bodies (Joint Working) (Scotland) Act provides for Scottish Ministers to put in place a number of regulations and orders. The consultation paper sets out a number of questions and our response is in relation to those that are most relevant to our roles.

General comments - The Public Bodies (Joint Working) (Scotland) Act sets a clear direction for improved partnership working between health and care services to meet the needs of the people of Scotland. Given the increasing demands and pressures on these services, and the need to meet the health and care needs of people who are often quite vulnerable, it is essential that services are able to work well together to respond to needs whilst making the best use of existing resources and delivering high quality services.

Good governance is important and public bodies need to demonstrate that they have necessary arrangements in place. However, it is important that partners do not lose sight of the main purpose of integrating health and social care – to improve outcomes for people. Having the right organisational structures and processes in place is important but a strong relationship between partners built on trust and shared aims are vital to address the challenges ahead. The Accounts Commission and the Auditor General, supported by Audit Scotland, will have a role to play in relation to the new arrangements, to check that public money is spent properly, efficiently and effectively. We have highlighted in several reports the need for barriers to partnership working to be addressed. We submitted a response to the previous Scottish

Government consultation on health and social care integration in 2012, and some of the themes we raised in that submission are reflected in this paper.

The regulations set out further details about the practical steps partners must make in developing local arrangements. In implementing these significant changes, the Scottish Government and local partners need to be clear about how the new partnership arrangements fit with Community Planning Partnerships, other arrangements for local joint working, and existing roles and responsibilities. As we have highlighted in our previous work on Community Planning Partnerships, partnership working is now generally well established and is core business for public bodies across Scotland. There are many examples of joint working that are making a difference for specific communities and groups across Scotland. We will publish a further report on Community Planning in Scotland in November 2014, building on our recent audits of individual Community Planning Partnerships.

The Scottish Government, together with NHS boards and councils, must work to ensure there is minimum disruption to existing services and service users during the move to better integration. It is essential that NHS boards and councils work well together to respond to needs whilst making the best use of existing resources and delivering high quality services during this period of change.

Set One

Question 1 - Do you agree with the prescribed matters to be included in the Integration Scheme?

The Regulations helpfully set out the information to be included in the Integration Scheme. The information is useful to help partners understand the practical steps they will need to take to implement the new arrangements. There are a number of issues to highlight in response to the consultation.

1. The arrangements for appointing the Chairperson of the Integration Joint Board (IJB) are specified in the regulations. Whilst we recognise the intention to ensure there is parity of voting membership on the IJB from the Local Authority and the Health Board, we note that that the appointment of the Chairperson is critical as they have a casting vote. The casting vote of the Chairperson means that in practice there is an imbalance of power on the IJB. This imbalance would lead to control of the IJB, for accounting purposes, resting with the organisation from which the Chairperson was drawn. Where an organisation is deemed to have control over another entity it would be required to prepare consolidated financial statements. Where there is no casting vote, the Local Authority and Health Board may exert joint control over the IJB. The Health Board and Local Authority would both prepare consolidated financial statements. Removing the casting vote from the Chairperson would indicate that neither the Local Authority or the Health Board exert control over the IJB, and, in the spirit of joint working, partners would have to work together to avoid a situation where a casting vote was needed.

2. There is scope for different arrangements to be in place within a Health Board area, where there is more than one Local Authority. This brings the risks of additional complexity for the various local partners in ensuring that the needs of the local population are met. Where there is more than one Local Authority in the IJB, there is the potential for the Health Board to exert more influence than the individual Local Authorities, given the arrangements for IJB membership. The assessment of control would need to take cognisance of how the IJB operated in practice.
3. Under the regulations, partners are required to set out the governance arrangements for the carrying out of integrated functions. This needs to include details of how the members of the IJB will be involved in overseeing the carrying out of integration functions by the constituent authorities. Although this detail may not be necessary in the regulations, partners will need further information on how this will work in practice. Local Authorities and Health Boards must ensure that they are clear about how the IJB can carry out this function in detail. For example, it may be necessary to devolve responsibility for some of this to the partner bodies with the IJB asking for assurance. Our previous audits of Community Health Partnerships (CHPs) and Community Planning Partnerships (CPPs) highlight that roles and responsibilities need to be well defined and risks clearly identified and managed. In our recent audits of CHPs and CPPs, we highlighted the need for certain key principles to be applied to underpin successful partnership working (see **Appendix 1** for further details).¹ Accountability arrangements and processes also need to be clear. Our work has shown that these key principles have not been in place across all partnerships in Scotland to date.
4. The Integration Scheme must include information on performance targets, improvement measures and reporting arrangements that relate to integration functions. Our work on CPPs and CHPs and more recent work on Health Inequalities highlight the importance of partners being clear about their respective role in managing and reporting on performance.² Under the new arrangements there needs to be clear and transparent reporting of performance to the public and to key stakeholders. As Local Authority bodies, under section 106 of the Local Government Act, IJBs will have responsibilities for public performance reporting.
5. It would be helpful if the regulations made clearer references to IJBs' responsibilities through their designation as Local Authority bodies under section 106 of the Local Government Act, including duties of Best Value. Given this will be an important feature of the IJBs it is important that this feature is explicitly highlighted for the bodies concerned.
6. The Integration Scheme needs to be clear about Clinical and Care Governance arrangements of service provided in pursuance of integration functions. Further guidance for partners would be useful in this regard, specifically about how clinical and care governance will change under the new integrated arrangements, how IJBs will carry out

¹ *Review of community health partnerships*, June 2011; *The role of community planning partnerships in economic development*, November 2011. Reports are available at www.audit-scotland.gov.uk.

² *Health inequalities in Scotland*, December 2012.

their responsibilities and how this will fit with the similar responsibilities of the parent bodies. It is important that there is clarity about clinical and care governance, to ensure that the care and support people receive is safe and provided to a high standard. In order for the partnerships to be successful, respective roles and responsibilities must be clear for front line staff, managers and accountable officers, and so that the public are assured that transparent and rigorous arrangements are in place.

7. In setting out the role of the IJB in relation to clinical and care governance, complaints handling, workforce planning, risk and performance management, partners need to ensure that the new arrangements do not duplicate existing measures within the parent bodies.
8. The Integration Scheme must include a statement of which constituent authority will maintain financial ledgers for the purpose of recording the transactions of the IJB. The Integration Scheme must also include a statement of the arrangements that the Health Board and Local Authority have agreed will be made in relation to:
 - the preparation of annual accounts
 - the financial statement prepared under section 39 of the Act
 - the financial elements of the strategic plan
 - reporting on financial matters that the IJB may require in relation to the exercise of its functions.

Health Boards are required to prepare and submit financial statements to the Scottish Government by the 30 June each year, earlier than Local Authorities prepare their financial statements. The IJB will need to ensure specific arrangements are in place to provide the Health Board with the information it requires to prepare its financial statements.

9. The Act and the regulations refer to the Acute Hospital Notional fund. The Act intends that hospital resources will be affected by the new partnership arrangements. Given the challenges in changing how hospital resources are used and the importance of this aspect of the policy, more details on accountability arrangements for this notional fund are needed. There are potential implications for the accounts of the IJB and the Health Board where further information would be useful. For example, if the IJB can direct the Health Board to set aside funding to fulfil the objectives of the IJB, then these amounts may become part of the IJB accounts.
10. The Integration Scheme must set out the process for addressing variance in the spending of the integration authority, specifically the process to manage in-year or year-end underspend or overspend by the integration authority in relation to the amounts paid to it, or amounts set aside for use by it, for delivery of integration function. We know from the Lead Agency approach in Highland that variations in spend are a key risk and partners must pay due regard to this as they establish local arrangements.
11. The Integration Scheme must set out information on redetermination of payments to, and amounts set aside for the use of, the integration authority. Health Boards are required to remain within a resource limit, set by the Scottish Government each financial year. They are not permitted to maintain general reserves. It is unclear from the regulations whether Health Boards will be allowed to transfer funds at the financial year end to an IJB for the IJB to

maintain a reserve. This would have implications for the financial management and monitoring arrangements the Scottish Government currently use in NHSScotland. Further clarity on this issue is needed.

12. The use of capital assets in relation to integration functions must be set out in the Integration Scheme. It would be helpful to be clear about whether these will be transferred or subject to lease arrangements.
13. We welcome the requirement to include in the Integration Scheme details about the processes and arrangements for data sharing and handling between partners. We have noted in previous audit work that information sharing between partners needs to improve in order to develop genuine partnership working with a focus on improving outcomes for local people.
14. The regulations require that the Integration Scheme must set out the arrangements for the management and settlement of claims arising from the exercise of integration functions, and any arrangements that will be made for indemnity, between the Health Board and Local Authority, in relation to such claims. Further information is needed on whether the IJB will be legally liable for claims for any service provision it commissions and whether it will participate in the CNORIS.
15. Finally, the regulations require that the Integration Scheme must set out the procedure that will be used to resolve any dispute between the Local Authority and Health Board in relation to any of the matters provided for in the integration scheme or any of the duties or powers placed on them by the Act. We welcome this inclusion and although hope that dispute resolution is not needed, it is important that partners have a clear and agreed process for this situation as they establish their new working arrangements.

Question 2 - Do you agree with the list of Local Authority functions included here which must be delegated?

16. The regulations set out the Local Authority services to be delegated to the IJB and the various Acts that are affected by the integration of health and social care. It is important that existing functions and services for vulnerable people are not adversely affected by changes to the new partnership systems, particularly given the range and scope of functions affected.
17. We note that the IJBs will be able to establish committees, and the regulations require them to establish an Adult Protection Committee. Partners will need to ensure that they set out clearly how these committees will work in practice and how they will relate to the functions of the parent bodies.

Question 3 - Do you agree with the list of functions (Schedule 1) that may be delegated?

18. The regulations set out the Health Board services to be delegated to the IJB and those that cannot be delegated. The regulations also set out the other hospital functions and budgets that must be influenced by the work of the IJB. The changes envisaged by the Act can only be

achieved if existing health and social care services are subject to change. However, achieving shifts in the balance of care between institutional and community-based services has been challenging to date. The integration of health and social care brings a number of challenges in implementing these changes locally. This includes difficulties in separating out some of the services that 'must' be delegated to the integrated partnership. For example, separating services for adults from those for children, and separating planned services from emergency are likely to present challenges. Health Boards, Local Authorities and the integration authority will need to ensure that services are not adversely affected and that services do not become fragmented.

19. We would welcome further information on how the hospital acute budget will be affected by the changes set out in the Act and the regulations. If a hospital function is delegated to the IJB and it has the ability to direct the Health Board in relation to it then it would appear the IJB has control and should be accountable.

Question 4 - Do you agree with the prescribed National Health and Wellbeing Outcomes?

20. Decisions about services need to be made based on good evidence about costs, quality, outcomes and risks for users. We highlighted the importance of good outcomes in our response to the 2012 Scottish Government consultation on the plans for the integration of health and social care. We welcome the focus on achieving a clearer national focus on outcomes. We recognise that it is hard to specify and measure outcomes for individuals because they are personal and subjective, for example feeling safe, feeling valued, and having fulfilling social relationships. The national outcome measures must be transparently reported and available to the public and this information should be used to drive improvement.
21. National outcome measures are useful but partners must also have a mechanism for measuring the difference that specific services are making to the individual and good information about what constitutes improvement and a quality service. Without this information, it is very difficult to build a clear picture of relative performance and does not help the public or the Scottish Parliament to be assured about the quality and efficiency of health and care services. We have highlighted in many of our previous performance audit reports that there is a lack of key data in terms of activity and costs, especially for social care and community care services. This data is essential to know what impact these changes are having for people who need access to these services. Health Boards and Local Authorities need to know whether services are making a difference to people's independence and quality of life so that services are planned and procured on the basis of evidence of what works. As mentioned previously, it is important that the regulations clearly state IJB responsibilities, given their designation as Local Authority bodies under section 106 of the Local Government Act, including duties of Best Value. There is also a need for a clearer articulation of how these arrangements fit with Community Planning Partnerships, specifically how accountability and outcomes/performance management will be linked.

Set Two

22. Set two of the regulations specify the membership of the IJB. The need for parity of membership from the Local Authority and Health Board means that there is one professional representative for the social care service from the Local Authority and one professional representative for the range of NHS services from the Health Board. The Local Authorities and Health Board can add additional advisory members. We recognise that local partners will need to think about how best to ensure that key professional groups are able to influence the integration of health and social care in their area, specifically GPs and nursing staff given the central role that they play in delivering services and their professional role in ensuring quality.
23. The regulations set out that the Health Board must have at least two non-executive directors on each of the IJBs created within their geographical area. For those Health Boards with more than one Local Authority in their area, this will place significant demands on non-executives and other executive members, if they are required to be involved. It is important that non-executive directors and councillors are properly supported in carrying out their role within the new IJBs. It is also important that members of the IJB are clear about their roles and responsibilities, for example, that when members are carrying out their role on the IJB, they are responsible for representing the interests of the IJB, not the Local Authority or the Health Board.

Contact details

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Appendix 1: Good governance principles for partnership working

There are several key principles for successful partnership working.

Key principles	Features of partnerships when things are going well	Features of partnerships when things are not going well
Behaviours		
<p>Personal commitment from the partnership leaders and staff for the joint strategy</p> <p>Understand and respect differences in organisations' culture and practice</p>	<ul style="list-style-type: none"> • Leaders agree, own, promote and communicate the shared vision • Leaders are clearly visible and take a constructive part in resolving difficulties • Be willing to change what they do and how they do it • Behave openly and deal with conflict promptly and constructively • Adhere to agreed decision-making processes • Have meetings if required but focus of meetings is on getting things done 	<ul style="list-style-type: none"> • Lack of leader visibility in promoting partnership activities (both non-executive and executives) • Be inflexible and unwilling to change what they do and how they do it • Adopt a culture of blame, mistrust and criticism • Complain of barriers to joint working and do not focus on solutions • Take decisions without consulting with partners • Have numerous meetings where discussion is about process rather than getting things done
Processes		
<p>Need or drivers for the partnership are clear</p> <p>Clear vision and strategy</p> <p>Roles and responsibilities are clear</p> <p>Right people with right skills</p> <p>Risks associated with partnership working are identified and managed</p> <p>Clear decision-making and accountability structures and processes</p>	<ul style="list-style-type: none"> • Roles and responsibilities of each partner are agreed and understood • Strategies focus on outcomes for service users, based on analysis of need • Have clear decision-making and accountability processes • Acknowledge and have a system for identifying and managing risks associated with partnership working • Agree a policy for dealing with differences in employment terms and conditions for staff and apply this consistently to ensure fairness • Review partnership processes to assess whether they are efficient and effective 	<ul style="list-style-type: none"> • Roles and responsibilities of each partner are unclear • Unable to agree joint priorities and strategy • Lack of clarity on decision-making processes • Partnership decision-making and accountability processes are not fully applied or reviewed regularly • Risks are not well understood or managed through an agreed process • Deal with differences in employment terms and conditions for staff on an ad hoc basis

Key principles	Features of partnerships when things are going well	Features of partnerships when things are not going well
Performance measurement and management		
<p>Clearly defined outcomes for partnership activity</p> <p>Partners agree what success looks like and indicators for measuring progress</p> <p>Partners implement a system for managing and reporting on their performance</p>	<ul style="list-style-type: none"> • Understand the needs of their local communities and prioritise these • Have a clear picture of what success looks like and can articulate this • Have clearly defined outcomes, objectives, targets and milestones that they own collectively • Have a system in place to monitor, report to stakeholders and improve their performance • Demonstrate that the actions they carry out produce the intended outcomes and objectives 	<ul style="list-style-type: none"> • Prioritise their own objectives over those of the partnership • Unable to identify what success looks like • Fail to deliver on their partnership commitments • Do not have agreed indicators for measuring each partner's contribution and overall performance or do not use monitoring information to improve performance • Unable to demonstrate what difference they are making
Use of resources		
<p>Identify budgets and monitor the costs of partnership working</p> <p>Achieve efficiencies through sharing resources, including money, staff, premises and equipment</p> <p>Access specific initiative funding made available for joint working between health and social care</p>	<ul style="list-style-type: none"> • Integrate service, financial and workforce planning • Have clear delegated budgetary authority for partnership working • Identify, allocate and monitor resources used to administer the partnership • Understand their service costs and activity levels • Plan and allocate their combined resources to deliver more effective and efficient services • Assess the costs and benefits of a range of options for service delivery, including external procurement • Have stronger negotiating power on costs • Achieve better outcomes made possible only through working together 	<ul style="list-style-type: none"> • Do not integrate service, financial and workforce planning • Unable to identify the costs of administering the partnership • Deliver services in the same way or change how services are delivered without examining the costs and benefits of other options • Have duplicate services or have gaps in provision for some people • Plan, allocate and manage their resources separately • Fail to achieve efficiencies or other financial benefits • Unable to demonstrate what difference the partnership has made

Source: Audit Scotland, 2011