

# Corporate Policy and Strategy Committee

10am, Tuesday, 5 August 2014

## Health and Social Care Integration – Responses to Draft Regulations relating to Public Bodies (Joint Working) (Scotland) Act 2014

**Item number**

**Report number**

**Executive/routine**

**Wards** ALL

### **Executive summary**

The Public Bodies (Joint Working) Scotland Act 2014 provides for Scottish Ministers to put in place a number of Regulations and Orders and during its passage through Parliament Scottish Ministers committed to consult on these. Draft Scottish Statutory Instruments to accompany the Public Bodies (Joint Working) (Scotland) Act 2014 were developed in collaboration with stakeholders and were published for consultation in two sets. This report sets out a proposed Council response to the Draft Regulations highlighting implications for Council governance and functions.

### **Links**

**Coalition pledges** P12 and P43

**Council outcomes** CO10, CO11, CO12, CO13, CO14, CO15

**Single Outcome Agreement** SO2

# Report

## Health and Social Care Integration – Responses to Draft Regulations relating to Public Bodies (Joint Working) (Scotland) Act 2014

### Recommendations

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- 1.1 Note that a copy of the response to the Draft Regulations – Set 1, marked ‘draft subject to Committee approval’, was shared with the Scottish Government on 1 August 2014 in line with their response timeline;
- 1.2 Approve the response to the Draft Regulations – Set 1 as final;
- 1.3 Approve the response to the Draft Regulations – Set 2 as final; and
- 1.4 Note that, subject to approval of recommendations 2 and 3 of this report, the responses to both sets of draft Regulations will be submitted to the Scottish Government by no later than 6 and 18 August 2014 respectively.

### Background

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- 2.1 The Public Bodies (Joint Working) Scotland Act 2014 received Royal Assent on 1 April 2014. The Act aims to provide better connected, coordinated services for adults in Scotland through integration of health and social care services currently provided by local authorities and health boards.
- 2.2 The Act requires that the parent bodies (NHS and the Council) establish an Integration Scheme to establish an Integration Authority. The Integration Authorities must be established and in place by April 2016. It is anticipated that the Draft Integration Scheme for Edinburgh will be submitted to full Council in December 2014 for approval, subject to publication of Scottish Government regulations and guidance.
- 2.3 The Scottish Government is currently consulting on Draft Regulations which specify which local authority functions should be delegated to the Integration Authority.
- 2.4 This report sets out a proposed Council response to the Draft Regulations – Sets 1 and 2.

## Main report

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- 3.1 The Public Bodies (Joint Working) Scotland Act 2014 provides for Scottish Ministers to put in place a number of Regulations and Orders and during its passage through Parliament Scottish Ministers committed to consult on these.
- 3.2 Draft Scottish Statutory Instruments to accompany the Public Bodies (Joint Working) (Scotland) Act 2014 were developed in collaboration with stakeholders and were published for consultation in two sets.
- 3.3 Consultation on the first set of draft Regulations ran for twelve weeks from Monday 12 May 2014 – Friday 1 August 2014 and covers draft Regulations relating to:
  - Prescribed information to be included in the Integration Scheme
  - Prescribed functions that must be delegated by Local Authorities
    - i. (Note: functions that *may* be delegated by Local Authorities are included within the Act itself and cover all adult social care services as well as a range of functions relating to homelessness, access to housing and housing advice and support. Inclusion of these is at the Council's discretion)
  - Prescribed functions that may or that must be delegated by a Health Board
  - Prescribed National Health and Wellbeing Outcomes
  - Interpretation of what is meant by the terms health and social care professionals
  - Prescribed functions conferred on a Local Authority officer
- 3.4 Consultation on the second set of draft Regulations runs for twelve weeks from Tuesday 27 May 2014 – Monday 18 August 2014 and covers draft Regulations and Orders relating to:
  - Establishment, membership and proceedings of the joint monitoring committee in lead agency arrangements
  - Membership, powers and proceedings of integration joint boards in body corporate arrangements
  - Prescribed groups which must be consulted when drafting integration schemes, prescribed consultees for draft strategic plans, prescribed consultees for localities, prescribed consultees for revised integration schemes
  - Prescribed membership of strategic planning groups
  - Prescribed form and content of performance reports
- 3.5 It should be noted that the draft Regulations cover all integration models that Local Authorities and Health Boards may agree to establish under the Act. Not all annexes of the draft Regulations will therefore ultimately be relevant to the Council following the decision on the 'Health and Social Care Integration: Technical Options Analysis of Integration Models' report to this Committee but

for completeness a response is provided within this report to all parts of the draft Regulations.

- 3.6 A more detailed summary of the content of the draft Regulations is contained with the report ‘Summary of the Regulations to support the Public Bodies (Joint Working) Scotland) Act 2014’ to this committee.
- 3.7 This report sets out the proposed Council response to the consultation on the draft Regulations. The following services have had specific input to the response:
  - Health and Social Care;
  - Children and Families, via the Council’s Chief Social Work Officer;
  - Services for Communities, specifically Housing and Regeneration and Corporate Property; and
  - Corporate Governance, specifically Legal, Risk and Compliance from both Council governance and legal perspectives.

### **3.8 Response to Draft Regulations Set 1**

- 3.9 The proposed Council response to Draft Regulations – Set 1 is set out in appendix one using the required Scottish Government response format.
- 3.10 As noted in paragraph 3.3 above, the consultation period for this set of draft Regulations ran until 1 August 2014. The response in appendix one was shared with the Scottish Government on 1 August marked as ‘draft subject to Committee approval’.
- 3.11 The following specific implications for the Council in the Draft Regulations – Set 1 are highlighted:
  - Annex 2(d):
    - i. A number of Housing and property functions are included on the list of Local Authority functions within the Regulations which ‘must’ be delegated to the integration authority. It is felt that a number of these should not be delegated for the reasons set out in the response at appendix one. It is unclear how delegation of some of these functions supports the Act’s policy intention. Delegation of these functions would also have significant repercussions on the effective delivery of remaining Council services in these areas.
  - Annex 4(d):
    - i. Clarity is requested on the relationship of performance outcomes within the Regulations to other NHS and Council performance frameworks and measures.

- Annex 5(d)
  - i. The response emphasises the need for explicit reference to the importance of links with children's services. The response makes clear that the Council is not, however, suggesting that children's services need to be included within the integration body.
- Annex 6(d)
  - i. The response seeks further clarification on the policy intention of the Act in relation to creating a statutory role for the "council officer".
  - ii. Greater clarity is requested on the relationship between the draft Regulations and Mental Health legislation and policy, particularly where it relates to compulsory treatment and/or detention. Current practice ensures an effective balance between clinical decision making and human rights and the implications for this of delegation of functions to an integrated body requires clarification.

### **3.12 Response to Draft Regulations Set 2**

- 3.13 The proposed Council response to Draft Regulations – Set 1 is set out in appendix two.
- 3.14 As noted in paragraph 3.4 above, the consultation period for this set of draft Regulations runs until 18 August 2014. The response in appendix two has therefore not yet been submitted to the Scottish Government.
- 3.15 The following specific implications for the Council in the Draft Regulations – Set 2 are highlighted:
- Generally:
    - i. The response notes the need for greater clarity on the distinction between groups to be consulted on and groups to be involved in decision making.
    - ii. The need to include involvement of the local authority Housing Service (and other housing providers) and Children's Services is referenced throughout the responses to this set of draft Regulations.
  - Annex 2(d)
    - i. The response notes that if a decision is taken to include staff-side representatives in the voting membership of the Integration Joint Board (as requested by other bodies responding to the consultation) the Council would support this. Justification for who /

what groups are accorded voting status would require to be clearly set out in the Regulations.

- Annex 3(d)
  - i. The response proposes that membership of the Integration Joint Monitoring Committee (IJMC) should be independent from executive management of both Health Board and Local Authority and that all officer posts should be removed from the regulations (i.e. chief social work officer, director of finance). The list of IJMC members should be reduced to NHS Board members, Councillors, and any co-opted individuals who are not employees of the Health Board or Council.
  - ii. If the proposal at point (i) above is not adopted, the response proposes that the minimum membership in terms of Finance representatives should require that the Finance representative of the *delegating* authority is represented and not just the representative of the Integration Authority as stated. This is important given the Integration Joint Monitoring Committee's role to provide assurance and hold the bodies to which the functions are delegated to account.
  - iii. The response states that it would be preferable for the chairperson of the Integration Joint Monitoring Committee to be from the authority who was not the lead authority. This would ensure an additional independence from those officers delivering the service. The draft Regulations leave this to the discretion of the Local Authority and Health Board to agree.
- Annex 5(d)
  - i. The response recommends that performance reports should include spend data in relation to self-directed support options in addition to other matters for which spend is to be reported.
  - ii. In order to ensure that those using health and social care services have a voice in the monitoring and evaluation of performance, reporting should include an element of feedback from people using health and social care services.

3.16 Following the completion of consultation on both sets of draft Regulations an analysis of written responses will be published by the Scottish Government. Scottish Ministers and officials have committed to continue to work collaboratively with key stakeholders to consider the consultation responses. Consequently, the Regulations and Orders may be amended after this consultation.

- 3.17 The final versions of each instrument will be laid before Parliament from late September 2014, before coming in to force by the end of 2014.

## Measures of success

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- 4.1 The Scottish Government have issued draft National Outcomes for the delivery of integrated Health and Social Care as part of the Set 1 Regulations.
- 4.2 The Strategic (Commissioning) Plan work stream is tasked with planning for the delivery of these outcomes for the services in scope. The Programme Sub Group on Performance and Quality is tasked with establishing local outcomes for measuring the success of the new Health and Social Care Partnership in relation to the national outcomes. A joint baseline has been developed and work is continuing on a joint framework for the future.

## Financial impact

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- 5.1 It is estimated that the new Health and Social Care Partnership will encompass a combined budget of around £4-500 million. This brings together existing budgets from the Health and Social Care Service in the Council as well as those from NHS Lothian's Community Health Partnership. These budgets will be delegated to the Integration Joint Board for governance, planning and resourcing purposes. The Strategic (Commissioning) Plan will identify how the resources are to be spent to deliver on the national outcomes and how the balance of care will be shifted from institutional to community-based settings.

## Risk, policy, compliance and governance impact

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- 6.1 A detailed risk log is maintained for the integration programme and reported through the status reporting process to the Shadow Health and Social Care Partnership and through the CPO Major Projects reporting procedure.
- 6.2 Enterprise level risks for integration are also identified on Corporate Management Team, Health and Social Care and NHS Lothian risk registers.
- 6.3 The absence of agreement on the Joint Leadership Group poses a new risk currently to progress of the programme as there is, currently, no route for escalation and joint resolution of major issues.
- 6.4 The lack of clarity in the draft Regulations in terms of functions which must be delegated to the integration authority is a risk. Through this response and other representations, the Council will seek clarity from the Scottish Government as these draft regulations are developed further.

## **Equalities impact**

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- 7.1 The integration of health and social care services aims to overcome some of the current ‘disconnects’ within and between existing health and social care services for adults, to improve pathways of care, and to improve outcomes.
- 7.2 Furthermore, the intention is to improve access to the most appropriate health treatments and care. This is in line with the human right to health.
- 7.3 Work is in progress to develop a combined EqHRIA procedure between NHS Lothian and Health and Social Care Services. This will be used for all EqHR impact assessments as required across the joint service once the Integrated Joint Board is fully established.

## **Sustainability impact**

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- 8.1 The proposals in this report will help achieve a sustainable Edinburgh because:
  - joint health and social care resources will be used more effectively to meet and manage the demand for health and care services;
  - they will promote personal wellbeing of older people and other adults in needs of health and social care services; and
  - they will promote social inclusion of and care for a range of vulnerable individuals.

## **Consultation and engagement**

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- 9.1 Consultation and engagement form a key work stream in the programme. A number of events have taken place and mechanisms are being established to ensure the Shadow Health and Social Care Partnership is engaging at all levels. This includes the recruitment of service users and carers as members of the Shadow Health and Social Care Partnership with the express purpose of bringing their own perspective to the discussions.
- 9.2 A comprehensive engagement programme is also underway to engage with a range of staff and practitioners across health and social care services, including the Professional Advisory Committee (whose Chair and Vice Chair are voting members of the Partnership). Finally, the Strategic Commissioning Plan process will adopt a co-production approach to developments to ensure timely and productive engagement with key stakeholders.

## **Background reading/external references**

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[Draft Regulations Relating to Public Bodies \(Joint Working\) \(Scotland\) Act 2014 Set 1.](#)

[Draft Regulations Relating to Public Bodies \(Joint Working\) \(Scotland\) Act 2014 Set 2.](#)

Corporate Policy and Strategy Committee, 5 August 2014 - Health and Social Care Integration: Technical Options Analysis of Integration Models

Summary of the Regulations to support the Public Bodies (Joint Working) Scotland) Act 2014

Corporate Policy and Strategy Committee - 13 May 2014, Health and Social Care Integration Update (TBC).

Finance and Resources Committee - 7 May 2014, Health and Social Care Integration Update (TBC).

Corporate Policy and Strategy Committee – 6 August 2013 – City of Edinburgh Council proposed Response to Public Bodies (Joint Working) (Scotland) Bill.

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## **Links**

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<b>Coalition pledges</b>	Ensuring Edinburgh and its residents are well cared for.
<b>Council outcomes</b>	Health and Wellbeing are improved in Edinburgh and there is a high quality of care and protection for those who need it.
<b>Single Outcome Agreement</b>	Edinburgh's citizens experience improved health and wellbeing, with reduced inequalities in health
<b>Appendices</b>	<ol style="list-style-type: none"><li>1. Response to Draft Regulations: Set 1</li><li>2. Response to Draft Regulations: Set 2</li></ol>

## **Appendix One – Response to Draft Regulations: Set 1**

### **ANNEX 1(D)**

#### **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**  Y

**No**

2. If no, please explain why:

N/A

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

**Yes**  Y

**No**

4. If yes, please suggest:

#### **General**

The Council would expect to see inclusion of following areas:

- Equalities
- Sustainability
- Data Protection
- Freedom of Information
- Health and Safety

Furthermore, while the draft regulations include staffing and financial resources they do not include other infrastructure resources such as ICT or property. The Integration Scheme should make clear who is responsible for the maintenance and support of ICT and property assets.

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

**General**

The regulations should make more explicit the requirement to set out in the Scheme how the statutory functions of the Chief Social Work Officer will be discharged for those services delegated to the integration body.

The Council welcomes the clarification that the 'Integration Joint Board (IJB) – Chief Financial Officer Role' document (CFO Role post June IRAG -final July 2014.doc) provides on the execution of the Regulations regarding Financial management of an integration joint board.

## 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?

Yes

No  Y

2. If no, please explain why:

#### Schedule

The proposal for prescribed functions that must be delegated, as set out in the schedule need to be more specific. In particular, the regulations should be explicit that functions are only being delegated as they relate to adults with social care needs.

Some of the functions proposed for delegation go beyond the remit/scope of Health and Social Care integration. For example, Section 92 of the Housing (Scotland) Act 2001 relates to the provision of assistance for housing purposes. Whilst this includes assistance relating to adaptations, it also includes powers to promote the formation and development of registered social landlords and provide assistance to individuals in connection with acquisition, construction, repair or maintenance of housing.

Similarly, whilst Section 71 of the Housing (Scotland) Act 2006 does include powers to provide assistance in relation to adapting properties, it also includes the powers under which local authorities provide advice and assistance to homeowners relating to repairs and maintenance of their properties.

#### The Housing (Scotland) Act 2001 Section 92

In the explanatory note of the draft regulation concerned, it states that “*the prescribed functions include social work services .....housing support service and health improvement services*”. However there is neither reference to the definition of housing support service, nor the Housing (Scotland) Act 2001 (Housing Support Services) Regulations 2002 – which prescribed the 21 housing support tasks – in the Public Bodies (Joint Working) Act or in the draft regulations.

**Services which are universal and include users both with and without care needs, for example, housing support services in sheltered housing**

## **developments, should not be designated as “must be delegated”.**

Although Part II of the Housing (Scotland) Scotland Act 1987 is not in the scope of the current consultation of draft regulations, it is of concern that the housing support duty for homeless households under Section 32(B) of the 1987 Act – as inserted by the Housing (Scotland) Act 2010 – may be affected by the delegation of any housing support services. This could have significant implications on local authorities' ability to deliver effective homelessness prevention strategies, which are increasingly focused (in line with Scottish Government strategy) on prevention and provision of housing options service.

Many households who access local authority homelessness services have no health or social care need – they just need a house. The most effective homelessness strategies focus on preventing homelessness through low level and short term support. **The Council does not believe that such services should be delegated to the integration authorities.**

## **The Housing (Scotland) Act 2006 Section 71**

Section 71 of the Housing (Scotland) Act 2006 relates to Scheme of Assistance for Housing Purposes.

**As stated above, it is suggested that the Regulations are explicit that these powers, only as they relate to adults with social care needs, are delegated.**

It is important to note that while the Scheme of Assistance only applies to the private sector, adaptations are currently funded through three funding sources for people in different housing tenures:

- Revenue raised from renting homes to Council tenants and held on the Housing Revenue Account.
- Stage 3 funding scheme as part of Scottish Government's Affordable Housing Supply Programme for registered social landlord tenants
- Council's General Fund (previously Private Sector Housing Grant) for homeowners and private tenants.

**If the adaptations function is to be delegated, it is unclear whether only the service and relevant funding for homeowners and private tenants are to be delegated, or adaptation services and funding for all tenures are to be delegated.** If it is the former, there is a risk of different levels of service and assessment criteria for customers in different tenures. If it is the latter, the integration authority will need to ensure that the funding for Council and RSL tenants complies with the Scottish Government's Guidance on the operation of Housing Revenue Account and Affordable Housing Supply Programme funding requirements.

## **General**

It would be helpful if explicit reference was made to services for people with sensory impairments.

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

**Schedule**

The draft regulations include the delegation of the power to charge for non-residential social care services (Section 87 of the Social Work (Scotland) Act 1968) which has the potential to create problems in view of the fact that the NHS has a duty to provide services that are 'free at the point of delivery'. This potential conflict in terms of providing integrated services needs further consideration.

## **ANNEX 3(D)**

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### **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?

**Yes**  Y

**No**

If no, please explain why:

N/A

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

**Yes**  Y

**No**

If no (i.e. you do not think they include or exclude the right services for Integration Authorities), please explain why:

N/A

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

**Yes**  Y

**No**

If not, we would welcome your feedback below to ensure we can provide the best description possible of these services, where they may not be applied consistently in practice.

N/A

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

**General**

In general the Council is of the view that the inclusion of functions within these draft regulations will support the objective to shift the balance of care from acute hospital setting to preventative care within the community.

The Council acknowledges however that delegation of some of these functions will pose a challenge for NHS Lothian. Nonetheless, the Council's view is that it is right that they are included.

## **ANNEX 4(D)**

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### **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?

**Yes**  Y

**No**

If no, please explain why:

N/A

2. Do you agree that they cover the right areas?

**Yes**

**No**  Y

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

#### **Schedule**

The focus in Outcome 5 is too narrow, centred as it is on health inequalities, rather than on inequalities more generally. A key role for social work services is the promotion of inclusion, social justice and tackling inequalities. There is no reference in the regulations or any of the narrative surrounding them to this aspect of social work (rather than social care), and no indication of where this important responsibility will lie.

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?

Yes

No  Y

5. If not, why not?

**General**

The performance landscape is already cluttered with many, sometimes contradictory indicators, many of which do not provide evidence of effectiveness in delivering outcomes. This requires to be addressed as a priority. Specifically, clarity is required on how the outcomes contained within these draft Regulations relate both to NHS outcomes and targets, e.g. HEAT, and other Local Authority outcomes and indicators.

A mapping exercise will be required to ensure that all indicators operate with one another in a consistent way.

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

**Schedule**

The inclusive language used in the outcomes referring to 'people' is very welcome the only exception to this is in Outcome 4 where the phrase 'service users' appears. It would improve the consistency of the outcomes and deliver a strong message if Outcome 4 could be re worded to replace the phrase 'service users' with 'people'.

## **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. Do you agree that the groups listed in section 2 of the draft regulations prescribe what ‘health professional’ means for the purposes of the Act?

**Yes**  Y

**No**

2. If you answered ‘no’, please explain why:

#### **Article 2**

We assume that reference to “health professionals” does not imply professionals only employed by the NHS. The Council’s social care workforce includes staff registered with the Health and Care Professions Council.

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

**Yes**

**No**  Y

4. If you answered ‘no’, what other methods of identifying professional would you see as appropriate?

#### **Article 3**

In addition to staff registered with the Scottish Social Services Council, some staff may belong to other professional bodies. We suggest checking with the Scottish Social Services Council on the issue of “equivalence”.

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

**General**

The regulations could helpfully include consideration of the issue of professional governance for related services, which are not delegated to the integration body.

Children's dependency on adults for care and protection means that many services for adults will have a direct impact on outcomes for children. For example, transitions between children's and adult services for people with disabilities, mental health problems, or who offend do not appear as part of the integration agenda, which assumes a heavy focus on older people. The Council is not suggesting children's services need to be included in the integration body, however, there does need to be explicit reference to the importance of the links between the two areas of service.

## **ANNEX 6(D)**

### **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?

**Yes**

**No**  Y

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

#### **General**

The policy intentions in relation to public protection are not clear, making this question difficult to answer. It is necessary to understand the policy intention behind creating a statutory role for the “council officer” to allow for an assessment of whether delegation would undermine it. The regulations could usefully expand on this.

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

#### **General**

The drafting of mental health legislation, in particular when it relates to compulsory treatment and/or detention was subject to extensive, detailed and lengthy consultation with social work and health professionals, the Mental Welfare Commission and other groups. It includes very lengthy and detailed codes of practice, guidance and regulations. A fundamental principle in terms of social justice was the requirement for the involvement of Mental Health Officers (who are also council officers) in decisions about compulsion. This was to ensure an effective balance between clinical decision making and human rights.

The regulations provide no clarity on this issue or on the implications for people in the event of delegation and of integrated operational management of mental health services.

This has become even more critical since the court judgment in P v Chesher West and Chester Council and Q v Surrey County Council (although English Courts, the Scottish Courts will take this into account) where a much broader definition of deprivation of liberty has been stipulated, and where this now has to be authorised by an appropriate judicial process – this will have very significant implications for

Mental Health Officer interventions, which may challenge health professionals' decision-making. How this can be achieved appropriately in the context of integration requires detailed consideration.

## **Appendix Two – Response to Draft Regulations: Set 2**

### **ANNEX 1(D)**

#### **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**

#### **CONSULTATION QUESTIONS**

6. Do these draft Regulations include the right groups of people?

**Yes**

**No**

7. If no, what other groups should be included within the draft Regulations?

#### **Schedule: Standard Consultees**

The list of standard consultees should include:

- Housing Professionals;
- Children's services professionals.

#### **Article 4**

Article 4 of the draft Regulations should also include other local authorities operating within the area of the Health Board where that area covers more than one local authority.

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

#### **Schedule: Standard Consultees**

The standard list of consultees contains people and bodies who are subsequently treated in two distinct ways in later Annexes and it would be useful to explain and show this distinction if this is to remain. The following table shows the difference:

Group/Body	Annex 1: standard consultee	Annex 2: minimum non- voting advisory membership of IJB	Annex 3: minimum membership of IJMC	Annex 4: must be represented on SPG
Health professionals	Yes	Yes	Yes	Yes
Users of health care	Yes	Yes	Yes	Yes
Carers of users of health care	Yes	Yes	Yes	Yes
Commercial providers of health care	Yes	No	No	Yes
Non-commercial providers of health care	Yes	No	No	Yes
Social care professionals	Yes	Yes (via CSWO & staff-side rep)	Yes (via CSWO & staff-side rep)	Yes
Users of social care	Yes	Yes	Yes	Yes
Carers of users of social care	Yes	Yes	Yes	Yes
Commercial providers of social care	Yes	No	No	Yes
Non-commercial providers of social care	Yes	No	No	Yes
Non-commercial providers of social housing	Yes	No	No	Yes
Third sector bodies carrying out activities related to health or social care	Yes	Yes	Yes	Yes

### **Schedule: Standard Consultees**

The Council would like confirmation that the definition of ‘non-commercial providers of social housing’ includes both Local Authorities and Housing Associations.

### **Article 3(d)**

Article 3 (d) wording implies that the Health Board will be preparing the integration scheme rather than it being jointly prepared by the Health Board and Local Authority. This section should be reworded along the lines of “other local authorities operating within the geographic area of the Health Board where that area covers more than one local authority”.

## **ANNEX 2(D)**

### **MEMBERSHIP, POWERS AND PROCEEDINGS OF INTEGRATION JOINT BOARDS ESTABLISHED UNDER THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014**

#### **CONSULTATION QUESTIONS**

1. Are there any additional non-voting members who should be included in the Integration Joint Board?

**Yes**  Y

**No**

2. If you answered 'yes', please list those you feel should be included:

#### **Articles 1(f) / 2 / 6**

The Council notes that the Integration Joint Board may appoint other non-voting members, as required, but would draw attention to the additional comments in response to question 4 below.

3. Are there any other areas related to the operation of the Integration Joint Board that should also be covered by this draft Order?

#### **General**

A clearer articulation of the expectations in terms of the integration authority receiving advice from the professional representatives, e.g. the Assistant Medical Director/Clinical Director or the Chief Social Work Officer should be included.

4. Are there any further comments you would like to offer on this draft Order?

#### **Article 3**

It is important that staff-side representation has an influential role in decision making within the Integration Authorities. The Council is aware that other responses are being drafted that will request the inclusion of staff-side representation from both constituent authorities in the *voting* membership of each Integration Authority. If such a change were made the Council would support this and would put in place procedures to identify a staff-side representative to be part of voting membership.

In this case, however, it would be necessary to set out clearly in the Regulations the justification for voting member status and the rationale for inclusion of staff-side representatives and not other currently non-voting members such as carer representatives and service users.

### **Articles 1(f) / 2 / 6**

Notwithstanding the acknowledgement in the response to question 1 above and in line with the Council's response to Annex 1, there would be value in considering inclusion of the following as part of the minimum non-voting membership:

- Housing Professionals (Chartered Institute of Housing);
- Children's services professionals.

If these groups are not included as part of minimum membership, the Council will require to put robust arrangements in place to ensure that the Housing service and Children's services are adequately represented in decision making at local level.

In addition, it seems something of an anomaly that, while third sector bodies are included in the minimum non-voting membership, the following groups are not even though they are represented on the Strategic Planning Group and list of "standard consultees":

- Commercial providers of healthcare
- Non-commercial providers of healthcare
- Commercial providers of social care
- Non-commercial providers of social care
- Non-commercial providers of housing

### **Article 1**

"Voting member" sentence has a drafting error where it references 5(1)(a) when it should reference 5(2)(a).

### **Article 3(3)(c)**

This article states that the number of councillors on the Integration Joint Board must 'not exceed 10 per cent of the number of members of the local authority'. Applying the 10% rule to Edinburgh's current complement of 58 councillors would give 5.8 and it is the Council's view that this figure should be rounded up to 6 to reflect the scope and scale of the services involved.

### **Article 10**

One member should have one vote. Any authority that is missing a member can appoint a deputy who can vote instead of the member thus meaning no loss of voting power. The current Article distorts the accepted practice of one member

having one vote and also results in practical problems as it assumes that all members of the authority will vote the same way. Could lead to a vote to determine how to vote. Would suggest this article is deleted and Article 5 (Schedule) on Deputies is clarified to allow a deputy for a vacancy.

### **Article 12(2)(b)**

Clarity is needed on the word 'removed'. The electorate may remove a councillor from a local authority and then re-elect them later. This should not disqualify a councillor from being a member. The Council is unsure of the need for 'removed' when 'dismissed' is in the article. This could also potentially impact on staff who have been employed on a temporary contract.

### **Article 14 (3)**

The similar article for the Joint Monitoring Committee (Annex 3(B) Article 10 (3)) is preferable as it requires the agreement of the health board and local authority for the committee to remove a member. Suggest this is repeated for the Board to ensure that the Board does not remove a member for behaviour that their own authority believes is 'consistent with their membership of the Board'. This would not mean the constituent authorities were stopped from removing their own members.

### **Schedule Article 5**

Should be clarified to allow a deputy for a vacant position. Deputy would have to be from the authority where the vacancy was. This would allow Article 10 and the process of bloc voting to be removed.

### **Schedule Article 6**

This could be adjusted to clarify that it is for the member to decide if they have a conflict of interest.

It is unclear which body would investigate any breach of this Standing Order. The Standards Commission currently has jurisdiction in relation to elected members but clarity would be beneficial.

## **ANNEX 3(D)**

### **ESTABLISHMENT, MEMBERSHIP AND PROCEEDINGS OF INTEGRATION JOINT MONITORING COMMITTEES ESTABLISHED UNDER THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014**

#### **Consultation Questions**

1. Do you agree with the proposed minimum membership of the integration joint monitoring committee, as set out in the draft Order?

**Yes**

**No**

2. If you answered 'no', please list those you feel should be included:

#### **General**

The remit of the Integration Joint Monitoring Committee is essentially one of assurance. It will not take decisions and does not appear to take any responsibilities away from the constituent authorities. The membership of this committee should be independent from executive management. This is similar to the principles used for any other assurance committee within an organisation. Membership gives a right of attendance and this should not be given to executive officers. The committee will invite officers to attend and will have a standing list of attendees who are not members. All officer posts should be removed from the regulations (i.e. chief social work officer, director of finance). The list of IJMC members should be reduced to NHS Board members, Councillors, Any co-opted individuals who are not employees of the Health Board or Council.

In this scenario the IJMC would require to have the powers to call in officers from both the local authority and health board for scrutiny as part of their assurance and monitoring remit.

If the change above is not made then the following comment applies:

#### **Article 3(1)(e & f)**

Given the Integration Joint Monitoring Committee's role to provide assurance and hold the bodies to which the functions are delegated to account, the minimum membership in terms of Finance representatives should require that the Finance representative (Health Board Director of Finance or Local Authority s.95 officer as applicable) of the **delegating** authority is represented. The current wording

requires that only the Finance representative of the Integration Authority is represented as a minimum and this does not seem appropriate since the role of the IJMC is to hold the Integration Authority to account for the delivery of integrated services.

3. Are there any other areas related to the operation of the integration joint monitoring committee that should also be covered by the draft Order?

### **Schedule, Article 5**

It is unclear who the voting members of the Joint Monitoring Committee are. The voting article in the Schedule does not mention nominated members. It is the Council's view that officials should be non-voting members of the monitoring committee. This would ensure that officials were not making a decision on scrutinising their own delivery of services. It is suggested that the voting members of the IJMC should be only the 'nominated' members.

4. Are there any further comments you would like to offer on this draft Order?

### **Articles 3(1 & 2) and 4 (2 & 3)**

In line with the Council's response to Annex 1 and Annex 2 above, there would be value in considering inclusion of the following as part of the minimum membership:

- Housing Professionals;
- Children's services professionals.

If these groups are not included as part of minimum membership, the Council will require to put robust arrangements in place to ensure that the Housing service and Children's services can exercise adequate assurance in relation to their affected functions.

### **Article 6**

It would be preferable for the chairperson to be from the authority who was not the lead authority. This would ensure an additional independence from those officers delivering the service.

### **Article 8**

Clarity is needed on the word 'removed'. The electorate may remove a councillor from a local authority and then re-elect them later. This should not disqualify a councillor from being a member. The Council is unsure of the need for 'removed' when 'dismissed' is in the article. This could also potentially impact on staff who have been employed on a temporary contract.

## **ANNEX 4(D)**

### **PRESCRIBED MEMBERSHIP OF STRATEGIC PLANNING GROUPS ESTABLISHED UNDER THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014**

#### **CONSULTATION QUESTIONS**

1. The draft Regulations prescribe the groups of people that should be represented on the strategic planning group. Do you think the groups of people listed are the right set of people that need to be represented on the strategic planning group?

**Yes**

**No**  Y

2. If no, what changes would you propose?

#### **Schedule**

The list of people or groups that must be represented should include:

- Housing Professionals;
- Children's services professionals.

In addition, Where the strategic plan is being prepared in respect of a local authority area which is part of the geographic area of a Health Board that covers more than one local authority, it would seem sensible for representatives from other local authorities operating within the area of the Health Board to be members of the strategic planning group.

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

N/A

## **ANNEX 5(D)**

### **PRESCRIBED FORM AND CONTENT OF PERFORMANCE REPORTS 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 performance report?

**Yes**  Y

**No**

2. If no, please explain why:

#### **General**

These are very high level, and they are agreed on that basis, however, guidance and consultation will be necessary in terms of the detail of the indicators. This will ensure their relevance in terms of outcomes; and to de-clutter the current landscape of complicated indicators, which do not often provide clarity about performance in terms of achieving outcomes.

3. Are there any additional matters you think should be prescribed in the performance report?

**Yes**  Y

**No**

4. If yes, please tell us which additional matters should be prescribed and why:

#### **Article 2(2)**

Given the importance of self-directed support to the transformation that the Scottish Government wishes to see in the provision of social care support; there is an argument for including an additional subsection in article 2 (2) (list of matters on which total spend is to be reported) along the following lines:

*"social care services provided in pursuit of integration functions to allow people to direct their own social care support through self-directed support options 1 (direct payments) or 2 (people direct their own support)".*

**General**

In order to ensure that those using health and social care services have a voice in the monitoring and evaluation of performance, reporting should include an element of feedback from people using health and social care services based upon their own experience.

5. Should Scottish Ministers prescribe the form that annual performance reports should take?

**Yes**

**No**

6. If you answered yes, what form should Scottish Ministers prescribe?

**General**

The Council does not think that it is necessary for Scottish Ministers to prescribe the form of reports; however, it would be helpful to have an agreed framework, with a template, to encourage consistency and benchmarking across Scotland.

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

N/A