

APPENDIX 2

ANALYSIS OF PROPOSED LOCAL AUTHORITY FUNCTIONS TO BE INCLUDED

SOLAR RESPONSE

<u>STATUTORY PROVISION</u>	<u>DESCRIPTION</u>	<u>ISSUES AND COMMENTS</u>
National Assistance Act 1948 Section 22 Section 26 Section 45 Section 48	<p>Section 22 contains the duties to fix standard rates for residential/nursing care and to charge those rates to clients. It is the statutory basis for the CRAG Guidance and therefore elements of the Charging Policy.</p> <p>Section 26 regulates the charging process and contains the provisions about net/gross payments to care homes and recovery of client contributions.</p> <p>Section 45 gives the Council power to recover money if the client has lied or misrepresented their financial situation.</p> <p>Section 48 places a duty on the Council to protect the moveable property of hospital patients in some circumstances.</p>	<p>Generally this seems comprehensive. However, the vast majority of the rules in relation to charging for residential/nursing care are found in the National Assistance (Assessment of Resources) Regulations 1992. This highlights a general issue about whether the functions of a local authority which are either found in Regulations or guided/supplemented by Regulations also need to be delegated (either specifically or generally).</p>
Disabled Persons (Employment) Act 1958	<p>This contains a power to provide sheltered employment opportunities for people with severe disability.</p>	<p>No issues</p>
Social Work (Scotland) Act 1968 Section 1	<p>Section 1 sets out that local authorities are responsible for the administration of the Act.</p> <p>Section 4 allows Councils to enter into agreements with</p>	<p>Do parts of section 5 not also need to be included (in so far as Guidance relates to a delegated function)? Presumably if there is statutory guidance relating to a function which is to be delegated, then the duty to comply with associated</p>

Section 4 Section 8 Section 10 (these first 4 only in so far as they relate to a delegated function)	other bodies to perform their functions under the Act. Section 8 gives the power to carry out research. Section 10 gives power to make grant or loan payments and other support to voluntary organisations.	guidance should also be delegated? What about Section 5A complaints procedure (in so far as the complaint relates to a delegated function)? Some complaints might rightly still be dealt with by LA as the operational provider of services but what about e.g. complaints about allocation of budget or availability of services, which might actually relate more to decisions of integration body? What about complaints about charging policy as that seems to arguably be delegated?
Section 12 Section 12A Section 12AZA Section 12AA Section 12AB Section 13 Section 13ZA Section 13A Section 13B Section 14 Section 28 Section 29 Section 59 Section 86 Section 87	Section 12- duty to promote social welfare by making advice, guidance and assistance available. Sections 12A, AZA, AA and AB, 13ZA, 13A and 13B - the sections contain the duties to assess community care needs and make decisions about whether to provide services to meet needs (including care with nursing) and the powers and duties of the Council in relation to carer assessments. Section 13 – power to assist clients with disposing of their work where we provide facilities for them to be engaged under section 12 (e.g sales of work at day centres or other supported employment type scenarios which are provided by the Council) Section 14 – power to provide home care and laundry facilities. Section 28/29 - duty to arrange burial/cremation of those who were in care homes funded by the local authority and power to pay expenses for relatives to attend funerals Section 29 – power to pay expenses of relatives to enable them to visit clients receiving Council assistance	This highlights a general issue about the handling of complaints and need to be clear about the processes to be followed.

	<p>Section 59 – power to provide residential establishments (either directly or through arrangements with others)</p> <p>Section 86 – recovery of expenses for clients ordinarily resident in other areas</p> <p>Section 87 – power to make and recover charges for services provided by the Council</p>	
Local Government and Planning (Scotland) Act 1982 Section 24	Power to arrange gardening assistance for the disabled and elderly	No issues other than to highlight that in some Councils this function This was a former District Council function and so may currently sit within Housing.
Health and Social Security and Social Services Adjudications Act 1983 Sections 21-23	Power to recover care home fees where there has been deprivation of capital; power to place a Charging Order on a client’s property where there is a debt for care home fees	No issues
Disabled Persons (Services, Consultation and Representation) Act 1986 Sections 2, 3, 7 and 8	These sections enhance the local authority’s general duties in relation to assessing need and providing services, in the case of disabled persons. Sections 2 and 3 provide for the sharing of information and involvement of an authorised representative when the client is a “disabled person”. Sections 7 and 8 deal with the assessment of need of disabled persons leaving hospital and the need to have regard to the ability of carers to provide care when assessing needs.	No issues
Housing (Scotland) Act 1987 Section 5	Power to provide laundry and meal facilities when providing housing accommodation.	We are not clear about what the justification is for including this but not other services under the 1987 Act – for example there is a power to provide welfare services under section

Adults with Incapacity
(Scotland) Act 2000

Section 10

Section 12

Sections 37, 39 and 41-45

Section 10 – contains a number of powers and duties.

- Duty to supervise welfare guardians
- Duty to investigate where adult’s personal welfare at risk
- Duty to receive and investigate complaints about welfare attorneys and welfare guardians/intervenors
- Duty to give advice to welfare attorneys/guardians
- Duty to consult with MWC and Office of Public Guardian on matters of common interest

Section 12 contains further provisions about investigations and authorises the local authority to take steps to safeguard the adult’s personal welfare. This includes making an application to court.

Sections 37, 39 and 41-45 contain the provisions which allow a residential establishment to manage a resident’s funds.

It is unclear why is section 12 delegated but not the power to make applications for guardianship or intervention orders. Although “any person” can apply for an Order, the Act contains duties to apply which specifically relate to the local authority.

We note that sections 3(3) or section 20 are not delegated which allow the local authority to make an application for court orders as well. Is it because they refer to “any person” applying so the IJB is already covered? It would be useful to have the intention clarified here.

Elements of section 73 relating to recall of guardianship also refer to the local authority and so should perhaps also be delegated.

What is the intention with Authority to Intrude/Access to Funds (sections 24A onwards)? Again, is that not mentioned because it doesn’t need to be as the IJB can exercise that power?

If some of the options open to the LA are delegated but not all, does that not make governance and decision making more difficult in terms of accountability?

We also consider that the comments noted highlight general issues in relation to the legal nature of the relationship between the IJB and the local authority. For example, will applications to court for guardianship be in the name of the local authority, the IJB or the local authority on behalf of the

		IJB?
Housing (Scotland) Act 2001 Section 92	<p>Power to provide assistance for “housing purposes”. This section contains a number of linked powers</p> <ul style="list-style-type: none"> • Power to promote formation and development of registered social landlords • Power to provide assistance to a RSL for various purposes. These include improving, adapting, repairing and managing housing but also alleviating homelessness 	Inclusion of section 92 as whole appears to be too wide and encompasses functions which have little to do with social care or those who may have social care needs.
Community Care and Health (Scotland) Act 2002 Section 4 Section 5 Section 6 Section 14	<p>Sections 4, 5 and 6 contain provisions relating to charging for care home places. They provide the statutory framework which underpins the rules relating to top up payments and deferred payments. Section 5 gives the LA power to arrange care home places in the rest of the UK.</p> <p>Section 14 is technical section which allows the LA to make payments to the NHS for certain services. This provision was in place to facilitate earlier attempts at promoting joint working.</p>	We were not clear about why isn't section 1 included, when section 87 of the 1968 Act is? Section 1 seems to be intrinsically linked to both the provisions of the 1968 Act relating to assessment/service provision and charging, so should probably be included to ensure a comprehensive delegation of the functions.
Mental Health (Care and Treatment) (Scotland) Act 2003 Section 17 Section 25 Section 26 Section 27 Section 33 Section 34	<p>Section 17 obliges the LA to provide facilities to the MWC to enable them to carry out their functions. There is a similar obligation on the NHS.</p> <p>Section 25 contains the duty to provide care and support services for people with a mental disorder who are not in hospital. There is also a power to provide such services to those who are in hospital. “Care and support” can include residential accommodation and personal care, but would include other forms of care and support as well such as</p>	No issues

Section 228
Section 259

day care.

Section 26 contains a separate duty to provide services to people with a mental disorder who are not in hospital. It provides that the LA must provide services designed to promote wellbeing and social development. This must include services which provide social, recreational and cultural activities, training and assistance in obtaining and undertaking employment. There is also a power to provide such services to those in hospital.

Section 27 contains a duty to provide assistance with travel for those it is providing services to under sections 25 or 26. There is a power to provide this in the case of persons in hospital.

Section 33 sets out the LA duty to make inquiries in relation to those with mental disorder in certain circumstances (e.g. the person is uncared for, or suffering from some deficiency in care or treatment).

Section 34 gives the LA the power to request assistance from other bodies when carrying out inquiries.

Section 228 sets out the duty to assess the needs of those with mental disorder on the request of certain people (e.g. MHO, primary carer)

Section 259 contains the duty to make advocacy services available.

Housing (Scotland) Act 2006

Section 71 gives a LA powers to provide assistance for

One of the purposes relates to adaptation but is it too wide

<p>Section 71</p>	<p>“housing purposes”. This is a very widely drafted section. It includes power to provide assistance with the acquisition or sale of a house. It also gives a power to provide assistance with work on any land or premises for certain purposes.</p> <p>These purposes are listed and again are wide. They include repair, maintenance and construction of a house but also adaptation of a house for a disabled person.</p>	<p>to include the whole section? See earlier comment on section 92 of the 2001 Act.</p>
<p>Adult Support and Protection (Scotland) Act 2007</p> <p>Section 4</p> <p>Section 5</p> <p>Section 6</p> <p>Section 11</p> <p>Section 14</p> <p>Section 18</p> <p>Section 22</p> <p>Section 40</p> <p>Section 42</p> <p>Section 43</p>	<p>Section 4 sets out the LA duty to make inquiries in relation to an adult at risk.</p> <p>Section 5 contains the duty on public bodies to co-operate with the LA and with each other where the LA is making inquiries.</p> <p>Section 6 contains the duty to consider advocacy for an adult when the decision is made by the LA that it needs to intervene.</p> <p>Sections 11, 14, 18 and 22 relate to the Council’s powers to apply for assessment, removal and banning orders.</p> <p>Section 40 contains the power to apply to a JP for a removal order or warrant for entry in an emergency instead of a Sheriff.</p> <p>Sections 42 and 43 require the LA to establish an Adult Protection Committee and to appoint members.</p>	<p>Sections 7-10 are not delegated. These sections set out the powers of “Council officers” under the 2007 Act, and include matters such as access to records, access to premises, carrying out visits to the adult and medical examination. We note the intention to pass separate Regulations which will enable the role of “Council officer” under these sections to be fulfilled by a Health employee (provided they meet the qualification requirements which already exist, which are that the officer must be a social worker, social services worker, OT or nurse with 12 months experience in identifying, assessing and managing adults at risk).</p> <p>Sections 12 and 17 also refer to the Council, albeit in the abstract rather than placing a direct power or duty on the Council. This highlights a potential difficulty where references are made to “the Council” or “the local authority” in any of the legislation listed in the consultation. Should there be a reading in provision which states that where there is any reference to a local authority or Council, that includes a reference to an IJB?</p> <p>Section 38 permits the Council to apply for a warrant for entry in applications to court. This is presently not listed –</p>

		<p>should it be? It is linked to applications for orders so should it not also be delegated?</p> <p>Section 48 relates to consultation. Should the IJB be included in that list?</p>
<p>Social Care (Self Directed Support) (Scotland) Act 2013</p> <p>Section 3 Section 5 Section 6 Section 7 Section 9 Section 11 Section 12 Section 13 Section 16 Section 19</p>	<p>Section 3 – duty to consider carer assessments and decide whether the carer needs support, and power to then provide that support</p> <p>Sections 4 – 7, 9 and 11 set out the core legal duties in relation to self-directed support. In particular, these provisions contain the duty to offer choice and to comply with the client’s wishes in relation to this, and the duty to provide information in relation to self-directed support.</p> <p>Sections 12 and 13 deal with changes in eligibility for direct payments and the duty to offer the options for support again in the event of changes in client circumstances</p> <p>Section 16 allows recovery of direct payments in the event of misuse.</p> <p>Section 19 contains a general duty to promote self-directed support and the choice options.</p>	<p>Should sections 1 and 2 be delegated too? Section 1 sets out the general principles the LA must comply with when carrying out their community care functions under the 1968 Act (all of which are delegated). Section 2 sets out the options and makes reference those options being provided by the LA, but of course the functions in relation to provision of services under the 1968 are to be delegated so is it correct that section 2 is left out? Does the reference to LA in section 2 not now need to be read as a reference to the IJB (see earlier comment in relation to “reading in”)?</p>
		<p>Should section 2 of the Chronically Sick and Disabled Persons Act 1970 be included?</p>