

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?

No

2. If no, please explain why:

Some general points must be made at the outset as they recur throughout the regulations. We view the Integration Board as a joint governance arrangement with key responsibilities for the oversight of operational performance. It is difficult to see how it can be an operational delivery vehicle in itself. This raises fundamental questions in relation to the draft regulations which appear at points to contradict this position.

In this context we specific have concerns over the issue of vicarious liability. The local authority delegates its obligations as a result of the establishment of the integration authority; it does not transfer them. Therefore the arrangements to be put in place require to reflect this.

For partnerships to operate effectively from the outset it is essential that the regulations are evenly balanced so that local authorities and Health Boards cannot choose the degree of delegation of functions in differential ways.

A number of specific matters require clarity in this section:

With regard to the second Paragraph of Column A of the Schedule ("*Local Government arrangements for an integration joint board where the integration scheme is prepared under section 2(4) of the Act*") (page 16 of document), we note that representatives of staff, carers, service users and the third sector are to form part of the membership of the Integration Joint Board. We have already included such groups in our interim board structure. However, in relation to the third sector, some guidance from the Scottish Government on appropriate representation would be helpful. In our interim structure, the third-sector interface organisation will represent the third sector as was the arrangement for Reshaping Care for Older People. However, this is not an explicit requirement or recommendation in the draft regulations.

In relation to the operational role of the Chief Officer (page 18), the act states that these responsibilities are subject to the agreement of Scottish Ministers but there is no detail on this in the regulations.

The inclusion in Column A of the Schedule of “plans for workforce development” (page 19) does not reflect that, whilst a strong partnership approach is clearly desirable, staff development remains the responsibility of the local authority and health board as direct employers.

With regard to the inclusion of *The Transfer of Staff between the Constituent Authorities of an Integration Board* under Column A of the Schedule (page 19), we question why the number of staff transferring needs to be specified where the body corporate model has been adopted, and that this should properly be a matter for local determination.

Some work has already taken place in North Lanarkshire in developing a shared approach to risk management (page 21), but it would be helpful if a national framework were developed to assist partnerships in this area. Similarly, although we agree that it is pragmatic that regulations should leave arrangements for complaints handling to be determined by the respective authorities (page 21), it would be helpful if the Government produced guidance on this due to the multiple agencies that could be implicated in a complaint. A robust system of complaints handling is essential in order to satisfy the Scottish Public Service Ombudsman that a complaint has been dealt with appropriately and to minimise the risk of claims.

With regard to insurance, as work is going on currently at a national level, full details should not be required for inclusion in the integration scheme.

Finally the statutory duties of the Chief Social Work Officer are clearly defined in legislation and the regulations require to reflect that these duties cannot be delegated to the Integration Board.

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?

No

2. If no, please explain why:

Some general points we would want to make:

- As previously stated, the integration vehicle should provide joint governance, shared strategic direction underpinned by joint outcomes and a joint performance framework. Whilst it is incumbent on partnerships to make best use of their combined resources and design operational arrangements accordingly, the prescriptive nature of the regulations appear to go much further than is desirable, necessary or appropriate.
- The draft regulations state that delegation of functions relate to people over 18. The Adults with Incapacity Act 2000 refers to people over the age of 16. Clarification on this is necessary.
- Where the words “local authority” are mentioned in prior legislation referring to a function delegated to an integration authority then such legislation should presumably be amended by adding “and/or integration authority”.

Specifically in relation to the following legislation:

Social Work (Scotland) 1968 Act

We agree with other local authorities who have argued that it should be made clear that any statutory guidance relating to the Social Work (Scotland) 1968 Act applies to an Integration Joint Board or Authority just as much as a local authority. This requires amendments to Section 5 of the 1968 Act (duty to discharge functions in accordance with central government guidance).

In relation to Section 5B of the 1968 Act, on local authority procedures for complaints about services, there are potentially issues when complaints will relate to decisions of the joint board which are outwith the control of the local authority and therefore beyond the remit of the local authority complaint process.

Adults with Incapacity (Scotland) Act 2000

The role which the Integration Joint Board would fulfil in adults with incapacity functions should be clarified. We would agree that Sections 53 (Applications for Intervention Orders) and 57 (Applications for Guardianship Orders) of the Act should not be delegated to the board. This would be contrary to the Board's purpose of being a strategic, not operational, body.

We assume the general principles of all Social Work legislation will apply to all persons or bodies and do not require to be delegated but it may be helpful if there was more detailed guidance as to how this will work in practice with Joint Boards and the split between strategic decision making and the actual implementation of the legislation for example with investigations or applications to court.

Social Care (Self Directed Support) (Scotland) Act 2013

Sections 1 and 2 impose obligations on a local authority to have regard to certain principles; the Regulations should make it clear that the Joint Board is equally obliged to follow the principles.

Section 4 sets out the options for SDS, providing for the making of payments or arrangements by the local authority. If these functions are to be delegated then the integration authority should be added when the words "local authority" are used in this section.

Housing (Scotland) Act 2006

Section 71 of the Housing (Scotland) Act 2006 is included within the Schedule contained at Annex 2 (A). It is assumed this section of the 2006 Act has been included in relation to the provision of grants to private properties for disabled adaptations. However this section of the 2006 Act covers the provision of all repair and improvement grants to owners as per the council's Scheme of Assistance. Therefore it should be clarified, presumably within column 'B' that it is only functions that relate to the provision of grants for adaptations for a disabled person that would transfer to the Integration Board, not responsibility for the delivery of the council's Scheme of Assistance including administration of repair and improvement grants.

Adult Support and Protection (Scotland) Act 2007

We would suggest that it is inconsistent to delegate to the Board the power to make applications for banning orders, assessment and removal orders under the 2007 Act, but not applications for Guardianships under Adults with Incapacity (Scotland) Act 2000, or Compulsory Treatment Orders under the Mental (Health Care and Treatment) (Scotland) Act 2003. Delegating these matters under the 2007 Act also seems contrary to the purpose of the Board acting as a strategic organisation.

We would also question whether the Integration Joint Board is appropriately placed to act as the lead authority in the operational delivery of adult protection services, given its strategic role. It is also unclear what the relationship between the Integration Joint Board and the Adult Protection Committee would be.

Housing Support

'Housing Support' is included within the list of functions that would potentially transfer to the Integration Board. There is a need for further clarification as to the definition of housing support services that it is envisaged should transfer to the Integration Board. Currently the council delivers and commissions a range of housing support services to help prevent or alleviate homelessness and enable people to sustain their tenancies. The council has a duty under section 32B of the Housing (Scotland) Act 1987 to assess the housing support needs of people who apply to the council as homeless or threatened with homelessness, and ensure that prescribed housing support services are provided to any person assessed as in need of them. Housing support includes the provision of support, assistance, advice or counselling to an individual with assessed support needs to enable them to occupy, or to continue to occupy, residential accommodation. It is important to note that many of the people who are assessed as requiring housing support services to enable them to sustain accommodation will not necessarily have 'social care' needs. We are concerned that if responsibility for housing support is transferred to the Integration Board, then our ability to meet the statutory duty in relation to homelessness would be compromised as the Integration Board would have the resources but not the statutory responsibility for homelessness. This could result in a fragmentation of housing services and make it difficult for local authorities to fulfil their duties towards all service users under housing legislation.

It is clear that housing providers are committed to the National Health & Wellbeing Outcomes and have a key role to play in their delivery. The Housing Service will continue to work collaboratively with health and social work colleagues to deliver on these shared priorities. However by prescribing the transfer of housing support services to the Integration Board there is a real risk that this could seriously impact on the council's ability to deliver on other Scottish Government priorities related to Financial Inclusion; Homelessness; Fuel Poverty and Anti Social Behaviour. It is therefore proposed that the transfer of responsibility for any housing support functions should be determined at a local level to reflect local circumstances and service delivery arrangements.

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

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

We welcome in principle the inclusion of an element of planning around unscheduled hospital care and can see how this will further support the work already taking place in Lanarkshire to reduce unscheduled hospital admissions, readmissions and achieve shorter hospital stays. This is a complex area of activity where responsibilities and accountabilities require to be explicitly defined.

**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

If no, please explain why:

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

Generally yes

The challenge will be in translating these into meaningful and comparable measures. While we welcome outcome measure 5 and it's recognition of the need for an integrated approach to reducing health inequalities, the achievement of this reduction will be well beyond the scope of the integrated authority. The role of community planning, positive economic initiatives, measures to tackle low income, access to leisure opportunities and health initiatives such as smoking cessation, better diet and lower alcohol intake are all relevant. How will we measure the impact of any one of these?

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

No

5. If not, why not?

Some of the language used in the document is unusual to say the least. For example, most people don't think in terms of "making the most of their genetic inheritance". In terms of measurement, there is always likely to be a difficulty in developing aggregate measures for individualised outcomes, but work developed by the Scottish Community Care Benchmarking Network has made a start on this and their work should be allowed to further develop. This work is informed by the Talking Points approach to measuring outcomes.

**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?

No

There is a balance between prescribing the group and recognising the need at a local level to have a workforce that responds to the local agenda. Groups such as health promotion professionals are excluded.

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

No

This excludes occupational therapists, for example, who are employed by local authorities but with a different professional body.

**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?

No

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

There are a number of functions relating to the Adult Support and Protection (Scotland) Act 2007, that must be delegated are restricted to specified persons before they can be authorised to perform the functions of a “council officer”.

The Adult Support and Protection (Scotland) Act 2007 does not specify who can carry out initial inquiries and is a function that could be delegated to other services, however this should be seen in its proper context. There has been a consistent theme in the three major pieces of social welfare legislation (AWI, MHA, ASP) in that they have greatly extended the protective, monitoring and investigative role of local authorities in respect of people who may be vulnerable as a result of mental disorder or at risk of harm and all are inter-related. These delegated changes, in particular with Section 33 of the Mental Health Act (Duty to Enquire) and Section 1 of the Adult Support and Protection Act (Local Authority Responsibilities), threaten to undermine this structure.

There is a danger that the clarity of operational and organisational responsibility and accountability for the protection of adults will be muddled by these changes

There may, for example, be a delegated responsibility on health to undertake an inquiry, but a duty on the local authority to undertake an investigate or access of a warrant where the risks are significant.

Any confusion and lack of clarity in protection procedures can be dangerous as we have seen in many cases throughout the years in both child and adult protection work.

The core business of social work has always been about assessing need and risk across the person’s life span. The delegation of Social Care duties in these new arrangements could pose significant challenges for services trying to work across the life span. Arguably there is a risk that early identification of / and communication about harm and risk could be impaired.