

**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**

**No**

2. If no, please explain why:

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

**Yes**

**No**

4. If yes, please suggest:

The Integration Narrative published by the Scottish Government in April 2014 outlined governance arrangements and professional guidance for integrated health and social care partnership arrangements. This narrative clearly lays out the responsibility of the Chief Officer for “the operational delivery of all integrated services within the strategic plan” as follows.

“The Integration Joint Board, through its Chief Officer, now has responsibility for the planning, resourcing and operational delivery of all integrated services within the strategic plan. Decisions on integrated services are now joint and integrated and made by the Integration Joint Board scheme. The delivery of services will be delegated by the Health Board and Local Authority to the Integration Joint Board and the Chief Officer and the integration scheme must be set out how the managerial arrangements across the integrated arrangements flow back to the Integration Joint Board and the Chief Officer. The staff that will deliver the services are not required to transfer from one employer to another nor to change their terms and conditions.

The Chief Officer has a direct line of accountability to the Chief Executives of the Health Board and the Local Authority for delivery of integrated services. The Chief Officer is responsible for ensuring that service delivery improves the national outcomes, and any locally delegated responsibilities for health and wellbeing and for measuring, monitoring and reporting on the underpinning measures and indicators that will demonstrate progress.”

A subsequent letter of 18 June 2014 from the Cabinet Secretary for Health & Wellbeing and the COSLA spokesperson for Health & Wellbeing to Chairs of NHS Boards and Council Leaders states “We expect, as noted in the consultation, that in many cases day to day operational management of hospital services will remain within Health Board hospital management arrangements. Close working relationships between the Chief Officer and hospital sector will assure congruence between operational delivery and the integrated strategic plan.”

There would appear to be some ambiguity between the Integration Narrative and the letter of 18 June 2014 in terms of the proposed operational management responsibilities of the Chief Officer.

It is vital that the responsibilities of the Chief Officer are clearly understood and we would suggest that the expected operational management responsibilities of the Chief Officer should be outlined in the Regulations.

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

Information sharing – under all of the other headings, the requirement is to specify either the “arrangements for” or “processes for” doing things. In relation to information sharing the requirement is to include the actual information sharing accord. For consistency should it not be the case that the parties are required to have an accord and the Scheme should only deal with a high level commitment to do so. Again, arrangements on information sharing may change, and if there is too much detail in the Scheme, then there is a risk of Boards having to make formal changes to the Scheme.

**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**

2. If no, please explain why:

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

We broadly agree with the list of services which must be delegated by the Local Authority, however we would ask for clarification in terms of some of the specific statutory provisions as follows:

STATUTORY PROVISION	DESCRIPTION	QUESTIONS AND COMMENTS
<p><b>National Assistance Act 1948</b></p> <p><b>Section 22</b></p> <p><b>Section 26</b></p> <p><b>Section 45</b></p> <p><b>Section 48</b></p>	<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>
<p><b>Social Work (Scotland) Act 1968</b></p> <p><b>Section 1</b></p> <p><b>Section 4</b></p>	<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 other bodies to perform their functions under the Act.</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 guidance should also be delegated?</p>

STATUTORY PROVISION	DESCRIPTION	QUESTIONS AND COMMENTS
<b>Section 8</b>	Section 8 gives the power to carry out research.	<p>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?</p>
<b>Section 10</b>	Section 10 gives power to make grant or loan payments and other support to voluntary organisations.	
<b>Section 12</b>	Section 12- duty to promote social welfare by making advice, guidance and assistance available.	
<b>Section 12A</b>	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.	
<b>Section12AZA</b>	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)	
<b>Section12AA</b>	Section 14 – power to provide home care and laundry facilities.	
<b>Section 12AB</b>	<b>Section 59</b>	
<b>Section 13</b>	<b>Section 86</b>	
<b>Section 13ZA</b>		
<b>Section 13A</b>		
<b>Section 13B</b>		
<b>Section 14</b>		
<b>Section 28</b>		
<b>Section 29</b>		

STATUTORY PROVISION	DESCRIPTION	QUESTIONS AND COMMENTS
	<p>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</p> <p>Section 29 – power to pay expenses of relatives to enable them to visit clients receiving Council assistance</p> <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>	
<p><b>Housing (Scotland) Act 1987</b> <b>Section 5</b></p>	<p>Power to provide laundry and meal facilities when providing housing accommodation.</p>	<p>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 5A.</p>

STATUTORY PROVISION	DESCRIPTION	QUESTIONS AND COMMENTS
<p><b>Adults with Incapacity (Scotland) Act 2000</b></p> <p><b>Section 10</b></p> <p><b>Section 12</b></p> <p><b>Sections 37, 39 and 41-45</b></p>	<p>Section 10 – contains a number of powers and duties.</p> <ul style="list-style-type: none"> <li>• Duty to supervise welfare guardians</li> <li>• Duty to investigate where adult’s personal welfare at risk</li> <li>• Duty to receive and investigate complaints about welfare attorneys and welfare guardians/intervenors</li> <li>• Duty to give advice to welfare attorneys/guardians</li> <li>• Duty to consult with MWC and Office of Public Guardian on matters of common interest</li> </ul> <p>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.</p>	<p>It is unclear why section 12 is 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.</p> <p>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.</p> <p>Elements of section 73 relating to recall of guardianship also refer to the local authority and so should perhaps also be delegated.</p> <p>What is the intention with Authority to Intromit/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?</p>



STATUTORY PROVISION	DESCRIPTION	QUESTIONS AND COMMENTS
	<p>Sections 37, 39 and 41-45 contain the provisions which allow a residential establishment to manage a resident's funds.</p>	<p>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?</p> <p>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?</p>
<p><b>Housing (Scotland) Act 2001</b> <b>Section 92</b></p>	<p>Power to provide assistance for "housing purposes". This section contains a number of linked powers</p> <ul style="list-style-type: none"> <li>• Power to promote formation and development of registered social landlords</li> <li>• Power to provide assistance to a RSL for various purposes. These include improving, adapting, repairing and managing housing but also alleviating homelessness</li> </ul>	<p>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.</p>

STATUTORY PROVISION	DESCRIPTION	QUESTIONS AND COMMENTS
<p><b>Community Care and Health (Scotland) Act 2002</b></p> <p><b>Section 4</b>  <b>Section 5</b>  <b>Section 6</b>  <b>Section 14</b></p>	<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 a 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>	<p>We were not clear about why section 1 isn't 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.</p>
<p><b>Housing (Scotland) Act 2006</b></p> <p><b>Section 71</b></p>	<p>Section 71 gives a LA powers to provide assistance for "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>One of the purposes relates to adaptation but is it too wide to include the whole section? See earlier comment on section 92 of the 2001 Act.</p>

STATUTORY PROVISION	DESCRIPTION	QUESTIONS AND COMMENTS
<p><b>Adult Protection and 2007</b></p> <p><b>Support (Scotland) Act</b></p> <p><b>Section 4</b></p> <p><b>Section 5</b></p> <p><b>Section 6</b></p> <p><b>Section 11</b></p> <p><b>Section 14</b></p> <p><b>Section 18</b></p> <p><b>Section 22</b></p> <p><b>Section 40</b></p> <p><b>Section 42</b></p> <p><b>Section 43</b></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 – 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>

STATUTORY PROVISION	DESCRIPTION	QUESTIONS AND COMMENTS
<b>Social Care (Self Directed Support) (Scotland) Act 2013</b>	Section 3 – duty to consider carer assessments and decide whether the carer needs support, and power to then provide that support	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 to those options being provided by the LA, but of course the functions in relation to provision of services under the 1968 Act 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”)?
<b>Section 3</b> <b>Section 5</b> <b>Section 6</b> <b>Section 7</b> <b>Section 9</b> <b>Section 11</b> <b>Section 12</b> <b>Section 13</b> <b>Section 16</b> <b>Section 19</b>	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.	
	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	
	Section 16 allows recovery of direct payments in the event of misuse.	
	Section 19 contains a general duty to promote self-directed support and the choice options.	
		Should section 2 of the Chronically Sick and Disabled Persons Act 1970 be included?

**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

No

If no, please explain why:

We are informed by the list of services schedule 2 and would make no comment on Schedule 1.

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

Yes

No

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

Consideration should be given to including other relevant acute hospital services as well as Unplanned Inpatients and Outpatients – Accident & Emergency. Health Care can be provided by the same health and social care professionals for both planned and unplanned patients. Including all care pathways within the new integrated arrangements may increase the scope for change and improvement and support whole system re-design in favour of preventative and anticipatory care in communities. Including both planned and unplanned care pathways within the scope of Integration Authorities would promote understanding, communication and synergies to allow focus upon planning for improved population health across the whole health care system.

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

<b>Yes</b>	<input type="checkbox"/>
<b>No</b>	<input checked="" type="checkbox"/>

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.

We would also ask some specific questions in terms of Schedule 2 as follows:

- i) In relation to Community Mental Health Teams more clarity would be helpful as to the note which states “Integration Authorities should have a coordination and governance role in relation to more specialist mental health services that the population may require.”
- ii) Are psychiatry of old age in-patient services to be included in the functions that must be delegated?
- iii) Are the services Community Hospitals provide, via both in and out patient, to be included in the functions that must be delegated?
- iv) Consideration should be given to including in-patient Mental Health hospital services to promote coordination and communication across the spectrum of Mental Health Services?

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

**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

No

If no, please explain why:

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

Yes

No

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

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

5. If not , why not?

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

The proposed health and wellbeing outcomes provide an easily understood framework to direct the work of integration bodies. The consistency across all partnerships is to be welcomed while still allowing for flexibility for each partnership to develop their own performance framework.



**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

No

2. If you answered 'no', please explain why:

3. 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?

Yes

No

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

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

Occupational Therapists employed by local authorities, as well as those employed by Health Boards, require to be registered with the College of Occupational Therapists and this should be reflected in the relevant section of the Regulations.

**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**

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

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