

# Policy Response

**Capability Scotland**

**14<sup>th</sup> August 2014**

Capability Scotland campaigns with, and provides education, employment and care services to disabled people across Scotland.

We are one of the Scottish Government's Key Strategic Partners for housing and disability issues and, along with the Glasgow Centre for Inclusive Living (GCIL), we have undertaken an ambitious involvement project aimed at radically improving disabled people's access to suitable housing.

## **Consultation on the Draft Regulations relating to the Public Bodies (Joint Working) (Scotland) Act 2014 (Set 2 of 2)**

### **Summary**

- Capability Scotland is of the view that these regulations provide an excellent opportunity to reinforce the social model of disability by enabling people to live independently and maintain wellbeing, rather than being forced to rely on medical intervention. This shift in the balance of care could enable disabled people to access the service they require more easily by removing unnecessary administrative and budgetary barriers.
- Capability Scotland is supportive of the policy rationale for integrating health and social care services. We have carried out extensive consultation exercises with disabled people on improvements to wheelchair and seating services, help with adaptations and access to suitable housing. This work has indicated that disabled people across Scotland want to see seamless, joined up, high quality health and social care services that keep them living well in their own homes where this is possible.
- We would, however, like the legislation to make reference to public bodies' duties to take a human rights based approach to service planning and delivery. In particular, we would like consideration to be given to how services can be arranged in such a way that leads to the realisation of individual rights through high quality, equitable services. Incorporation of a principle on the realisation of

individual human rights would not create new duties but would consolidate existing duties contained in the Human Rights Act 1998, Patients' Rights (Scotland) Act (2011) and Social Care (Self-directed Support) (Scotland) Act 2013.

- The Social Care (Self-directed Support) (Scotland) Act 2013 will give most older and disabled people the right to receive direct payments to pay for their care and support. Several people have contacted Capability Scotland's Advice Service to ask whether integration will make it possible for them to use their direct payments to purchase services delivered by the NHS. We would like more clarity to be provided on this issue which will obviously become increasingly pressing as community health and social care services become indistinguishable.
- The integration of health and social care services will make it increasingly difficult to maintain the tenuous distinction between health care, which is free at the point of delivery, and social care which can be charged for. This distinction will become more difficult to justify as health and social care work together to achieve shared objectives from a shared budget. Whilst we welcome a shift away from hospitalisation and towards independent living, we are concerned about the impact this will have on the amount disabled people are asked to contribute to the cost of their care. While living at home with care and support is clearly preferable to living in a hospital, it can also be more expensive for the individual who may have to pay care charges. We are concerned about cases of hospital discharge where disabled people are unable or reluctant to return home because of the cost of care.
- There is a concern that where Health Boards' are responsible for administering the joint budget as the lead agency that spending will be disproportionately focused on medical services and services be delivered in a medical model approach. This is a particular worry for disabled people who are likely to benefit disproportionately from spending on more 'social' services. We are also concerned that priority will always be given to cases of urgent need rather than spending on those with moderate levels of need and those who would benefit from anticipatory care.
- Importantly, Capability Scotland is particularly concerned that integration bodies will be measured on the extent to which they have moved resources from 'institutional' to community based care and support, by reference to changes in the proportion of the budget spent on each type of care and support. We would not like to see this performance measure create a bias in favour of moving disabled people out of their current settings when that is not in their best interests or indeed is not their preference
- Furthermore, Capability Scotland is concerned that there is currently no adequate and independent mechanism available to people who want to challenge joint decisions relating to entitlement for care, assessment of need or care charges. We would urge the Scottish Government to establish an independent tribunal to hear appeals against decisions about the assessment of care needs, provision of care and charges applied. Any appeals process should be transparent, rights-based, timeous and easily understood by applicants.

## **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**

#### **1. Do these draft Regulations include the right groups of people?**

Yes. Capability Scotland is pleased to see the inclusion of non-commercial providers of social care, social housing and third sector bodies carrying out activities related to health or social care in the list of standard consultees. Integration Bodies must be in a position to provide sufficient resources to support effective engagement by these groups, many of whom may find this a considerable challenge.

## **ANNEX 2(D)**

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

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

No

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

Capability Scotland strongly supported the inclusion of the third sector on the integration joint board and are pleased to see that reflected in the draft order, and that the definition of 'third sector bodies' explicitly includes non-commercial providers of health and social care. The draft order indicates that third sector representatives will be 'appointed' by the integration joint board. We believe guidance should say that this person will be chosen by the third sector directly or third sector interface rather than a representative imposed by the board when no candidate is forthcoming.

## **ANNEX 3(D)**

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

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

Yes.

## **ANNEX 4(D)**

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

**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. Housing partners have the potential to enhance prevention and early intervention but alongside this there is a need to consider resource allocation from health and social care provision to support this effort in the guidance. The supply of good quality, affordable and accessible housing in Scotland is critical to meet current and ongoing needs of disabled people. Unsuitable housing increases costs to the public purse through increased injury rates, treatment and care costs. Frontline housing staff are uniquely positioned to recognise stress and deterioration in a vulnerable person's condition and, given the clear focus of housing providers on maintaining disabled people in their own homes for as long as possible, housing providers need to be more involved as equal partners in key decisions around health & social care integration.

## **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.

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

Yes. Consideration should be given to how the prescribed matters align with outcomes for individual and the implementation of Social Care (Self-directed Support) (Scotland) Act 2013 for individuals.

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

Prescribing the form of annual performance reports by Scottish Ministers will allow for consistent benchmarking measurements across the whole of Scotland minimising the potential for significantly diverse reports. However, the need for flexibility at a local level based on demographics is important. This could be picked up in the detail of the local plan as opposed to the reporting form.

We are pleased to see that the regulations are quite prescriptive about what integration authorities must report on and that there are specific requirements to demonstrate the extent to which resources are shifting towards the more preventive end of the spectrum. However as a provider of residential care services to disabled people with some of the most complex needs in Scotland we are particularly concerned that integration bodies will be measured on the extent to which they have moved resources from 'institutional' to community based care and support, by reference to changes in the proportion of the budget spent on each type of care and support. We would not like to see this performance measure create a bias in favour of moving disabled people out of their current settings when that is not in their best interests or indeed is not their preference.

## **Contact Us**

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