

Introduction

1. This statement summarises Scottish Ministers' intentions in relation to the regulations that will be made under section 1(6)(a) of the Public Bodies (Joint Working) (Scotland) Bill 2013.

Power as introduced –

1(6) The Scottish Ministers may by regulations prescribe—

- (a) Functions of local authorities that must, may or may not be delegated under an integration plan,*
- (b) functions of Health Boards that must, may or may not be delegated under an integration plan,*
- (c) functions of local authorities or Health Boards—*
 - (i) that must be delegated under an integration plan other than in prescribed circumstances,*
 - (ii) that may be delegated under an integration plan only in prescribed circumstances,*
 - (iii) that may not be delegated under an integration plan in prescribed circumstances,*
- (d) functions of local authorities or Health Boards that may be delegated under an integration plan only if other prescribed functions are also delegated to the same person under the plan.*

Ministers intend to propose a significant revision of section 1 by amendment at stage 2. This would remove the above power and substitute a new section 1(4) as follows:

1(4) The integration models are—

- (a) delegation of functions by the local authority to a body corporate that is to be established by order under section 9 (an “integration joint board”) and delegation of functions by the Health Board to the integration joint board,*
- (b) delegation of functions by the local authority to the Health Board,*
- (c) delegation of functions by the Health Board to the local authority,*
- (d) delegation of functions by the local authority to the Health Board and delegation of functions by the Health Board to the local authority.*

(4A) A local authority may delegate a function under an integration scheme only if the function is conferred by an enactment listed in schedule (Enactments conferring on local authorities functions which may be delegated).

(4B) A Health Board may delegate a function under an integration scheme only if the function is prescribed.

(4C) The Scottish Ministers may by regulations prescribe which of the functions conferred by enactments listed in schedule (Enactments conferring on local authorities functions which may be delegated) local authorities must delegate under an integration scheme so far as the functions are exercisable in relation to persons of at least 18 years of age where the integration model mentioned in subsection (4)(a) or (b) is to apply under the scheme.

(4D) The Scottish Ministers may by regulations prescribe functions of Health Boards which Health Boards must delegate under an integration scheme so far as the functions are exercisable in relation to persons of at least 18 years of age where the integration model mentioned in subsection (4)(a) or (c) is to apply under the scheme.

(4E) If the integration model mentioned in subsection (4)(d) is to apply under an integration scheme either—

(a) the local authority must delegate the functions prescribed under subsection (4C) so far as the functions are exercisable in relation to persons of at least 18 years of age, or

(b) the Health Board must delegate the functions prescribed under subsection (4D) so far as the functions are exercisable in relation to persons of at least 18 years of age.

(4F) The Scottish Ministers may by regulations prescribe functions of Health Boards that a Health Board—

(a) must delegate under an integration scheme other than in prescribed circumstances,

(b) may not delegate under an integration scheme in prescribed circumstances.

(4G) The Scottish Ministers may by regulations prescribe which of the functions conferred by enactments listed in schedule (Enactments conferring on local authorities functions which may be delegated) local authorities may not delegate in prescribed circumstances.

(4H) The Scottish Ministers may by regulations remove an enactment from schedule (Enactments conferring on local authorities functions which may be delegated).

2. Section 1 of the Bill requires a Health Board and a local authority to enter into an integration plan and provides for a number of models of integration including the delegation of functions by a local authority to a Health Board, by a Health Board to a local authority or by a Health Board and local authority to an integration joint board. The Bill as introduced provides for regulations to prescribe any function of a local authority as a function which must may or may not be delegated.

3. Scottish Ministers intend bring forward amendments to section 1 at Stage 2. By virtue of these, it is intended to restrict the range of local authority functions that can be delegated under the Bill to specific “social care” functions. By virtue of the amendment, a list of enactments which may be delegated will be set out in a Schedule of the Bill.

4. It is intended at Stage 2 to further restrict Scottish Ministers’ powers in prescribing local authority social care functions in so far as those set out in the schedule, so that Scottish Ministers can only *require* the delegation of social care functions insofar as they relate to adults. It is proposed that the age limit of 18 be used to define “adults”.

5. Thus, the Bill would provide that –

(a) Ministers are only able to *permit* a local authority to delegate social care functions, from a list of enactments as set out in the Bill and

- (b) Ministers are only able to *require* a local authority to delegate those functions insofar as they relate to adults.

Background

6. The legal framework which confers “social care” functions on local authorities can be found across a wide range of different pieces of legislation. These functions are considered key to the establishment and promotion of a comprehensive and integrated health and social care service across Scotland.

7. Local authorities, with partner organisations, purchase and provide a wide range of social work and social care services in order to carry out their legal functions. These services include services to children, young people, adults and families, promoting empowerment, independence, safety and protection. Services are provided for people of all ages and their carers, who have a range of care and support needs. Across all care groups, while some individuals receive a service voluntarily, others will have social work involvement as a result of statutory responsibilities.

8. Central to this for social work services is the Social Work (Scotland) Act 1968 which places a duty on all local authorities to “promote social welfare” and governs their duties in this area. Although most duties are given to local authorities some roles are allocated to specific staff, such as, Mental Health Officers (MHO’s) who are social workers specialising in mental health issues.

9. Access to services is based on an assessment of need, which is carried out by local teams. These teams include, Children and Families, Criminal Justice, Adult Mental Health or Learning Disability Assessment and Care Management Teams. The teams are responsible for carrying out assessments or investigations and for developing appropriate care and support plans as a response to identified need. They also carry out the on-going monitoring and review of care and support, providing a response to changing needs. In addition, the teams offer carers’ assessments and care management services to carers.

10. Teams can be staffed by social Workers and community care assistants or integrated with other professionals, who work in partnership, with other agencies and with service users and their carers to ensure that the support and care services provided are as person centred and flexible as possible.

11. The Scottish Social Services Council’s Code of Practice States that Social service workers must:

- Protect the rights and promote the interests of service users and carers;
- Strive to establish and maintain the trust and confidence of service users and carers;
- Promote the independence of service users while protecting them as far as possible from danger or harm;
- Respect the rights of service users whilst seeking to ensure that their behaviour does not harm themselves or other people;
- Uphold public trust and confidence in social services;
- Be accountable for the quality of their work and take responsibility for maintaining and improving their knowledge and skills.

Summary of matters to be prescribed in Regulations

12. Scottish Ministers intend to make regulations under section 1(4B) to prescribe that the following functions must be delegated by a local authority where the model of integration is that set out in section 1(4)(a), (b) or (d).

- Social Work Services for adults and older people;
- adults with physical disabilities, learning disabilities,
- mental health problems,
- drug and alcohol problems;
- adult protection; and domestic abuse, (including carers) covering: community care assessment teams,
- support services,
- care home services,
- adult placement services,
- health improvement services,
- housing support services,
- day services,
- local area co-ordination,
- respite provision,
- occupational therapy services,
- re-ablement services, equipment and telecare.

The Scottish Government
January 2014

Appendix (a) functions that must be delegated:

Local authority functions which must be delegated, as they relate to, or support, adult social work, social care services.

Act	Section/s
National Assistance Act 1948	Sections 22, 26, 45 and 48
Disabled Persons (Employment) Act 1958	Section 3
Social Work (Scotland) Act 1968	Sections 1, 4, 5, 8, 10, 12, 12A, 12AZA, 12AA, 12AB, 13 to 14, 27ZA, 28, 29, 59, 86 and 87
Local Government and Planning (Scotland) Act 1982	Section 24
Health and Social Services and Social Security Adjudications Act 1983	Sections 21, 22 and 23
Disabled Persons (Services, Consultation and Representation) Act 1986	Sections 2, 3, 7 and 8
Housing (Scotland) Act 1987	Sections 4, 5 and 5A and Part II
Adults with Incapacity (Scotland) Act 2000	Sections 10, 12, 37 and 39 to 45
Housing (Scotland) Act 2001.	Sections 1, 2, 5, 6, 8 and 92
Community Care and Health (Scotland) Act 2002	Sections 5, 6 and 14
Mental Health (Care and Treatment) (Scotland) Act 2003.	Sections 17, 25 to 27, 33, 34, 228 and 259
Housing (Scotland) Act 2006.	Section 71
Adult Support and Protection (Scotland) Act 2007	Sections 4 to 11, 14, 16, 18, 22, 40, 42 and 43
Social Care (Self-Directed Support) (Scotland) Act 2013	Sections 3, 5 to 13, 16 and 19