

Introduction

1. This policy statement relates to the power of the Scottish Ministers to make regulations under the Public Bodies Joint Working (Scotland) Bill to prescribe functions of a Health Board which must, may or may not be delegated to an integration authority under an integration plan. The relevant powers in the Bill as introduced are set out in section 1(6), which provides:

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.*

A proposed amendment to Ministers' powers to prescribe functions for delegation under section 1 would replace the above section with the following provisions:

- <(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. Health Boards will be required to delegate certain functions, depending on the integration model that is used under their integration plan. The integration models are set out in section 1(4), which provides:

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.*

Delegation of Functions

3. The main purpose of the integration plan is to set out the major considerations and areas of agreement that must be reached before formally integrating functions and resources. Scottish Ministers intend to prescribe a list of functions of Health Boards that ‘must’ be delegated and also to prescribe those functions that a Health Board ‘may’ delegate under an integration plan. Any functions not listed in the ‘must’ or ‘may’ lists are by default not delegable under an Integration plan.

4. The Scottish Government proposes to require that a Health Board must delegate all of its functions as they relate to adult primary and community health services and the proportion of acute sector provision that will be part of integrated arrangements. Scottish Ministers intend to make regulations under Section 1 providing that functions in this class must be delegated.
5. The Scottish Government proposes to require that those functions of a Health Board that may be delegated under an integration plan are those functions that may be delivered alongside adult primary and community care, such as primary and community care for children and young people. Scottish Ministers intend to make regulations under Section 1 providing that functions in this class may be delegated.
6. The functions of a Health Board that are not to be available for delegation will include matters such as the provision of regional and national services, functions relating to education and research facilities of Health Boards and some specific duties, such as the registration of professionals. These will not be listed in regulations. Instead the functions which will not be delegable will be those which do not appear in the Regulations as functions which a Health Board may delegate.
7. Annex A provides an illustrative list of the types of functions which Ministers are considering prescribing that must be delegated. The Scottish Government intends to informally consult with Health Boards about the content of this list and it is likely, therefore, that the annexed list be altered to reflect these discussions to ensure that the delegation of functions of Health Boards is properly provided for in legislation.
8. The list of functions that Health Boards 'may' delegate is under development. The Scottish Government intends to informally consult with Health Boards about the content of this list once a draft has been developed.

The Scottish Government
January 2014

Annex A

List 1 – Functions which must be delegated

This list is comprised of those functions which Ministers intend to prescribe as functions that must be delegated in their entirety in as far as they relate to primary and community health care and the proportion of acute sector provision that will be part of integrated arrangements.

National Health Service (Scotland) Act 1978

<u>Section</u>	<u>Function</u>
2A(1)	Duty of Health Board, Special Health Board, the Agency and HIS to promote health improvement
2B(1)	Duty to encourage public involvement
2C(1)	Functions of Health Boards: primary medical services
2D(1)	Equal opportunities
12H	Duty of quality.
12J(1)	Health Boards: co-operation with other Health Boards, Special Health Boards and the Agency
13	Co-operation between Health Boards and other authorities.
13A(1)	Co-operation in planning of services for disabled persons, the elderly and others.
16	Assistance to voluntary organisations.
16A	Power to make payments towards expenditure on community services
16B	Financial assistance by the Secretary of State to voluntary organisations.
17C(1)	Personal medical or dental services.
17I	Use of accommodation.
25.(1)	Arrangements for provision of general dental services.
26.(1)	Arrangements for provision of general ophthalmic services.
27.(1)	Arrangements for provision of pharmaceutical services.
27A(1)	Arrangements for providing additional pharmaceutical services.
28 A	Remuneration for Part II services.
36.(1)	Accommodation and services.
37.	Prevention of illness, care and after-care.
38.	Care of mothers and young children.
38A	Breastfeeding
41.	Family planning.
42.	Health education.
43.	Control of spread of infectious disease.
64	Permission for use of facilities in private practice.
75A	Remission and repayment of charges and payment of travelling expenses.
98	Charges in respect of non-residents.

Disabled Persons (Services, Consultation and Representation) Act 1986

<u>Section</u>	<u>Function</u>
7	Persons discharged from hospital

Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)

<u>Section</u>	<u>Function</u>
17(1)	Duties of Scottish Ministers, local authorities and others as respects Commission
23	Provision of services and accommodation for certain patients under 18
24	Provision of services and accommodation for certain mothers with post-natal depression
31	Assistance from Health Boards and others
34	Inquiries under section 33: co-operation
228	Request for assessment of needs: duty on local authorities and Health Boards

Protection of Vulnerable Groups (Scotland) Act 2007

<u>Section</u>	<u>Function</u>
19	Information held by public bodies etc.
92	Meaning of “protected adult”

Certification of Death (Scotland) Act 2011

<u>Section</u>	<u>Function</u>
21	Duty to co-operate

Adults with Incapacity (Scotland) Act 2000

<u>Section</u>	<u>Function</u>
1(5)	General principles and fundamental definitions
35	Application of Part 4(MANAGEMENT OF RESIDENTS' FINANCES)
37	Residents whose affairs may be managed
39	Matters which may be managed
42	Authorisation of named manager to withdraw from resident's account
44	Resident ceasing to be resident of authorised establishment
45	Appeal, revocation etc.
81	Repayment of funds
82	Limitation of liability