

## **Introduction**

1. This note summarises Ministers' intentions in relation to the regulations that will be made under section 1(3)(e) of the Public Bodies (Joint Working) (Scotland) Bill. These regulations will prescribe information about prescribed matters that must be included within an integration plan.

The power conferred on Ministers is:

1 (3) *An integration plan is a plan setting out –*

*(e) prescribed information about such other matters as may be prescribed.*

Section 48(1) of the Bill provides:

*(1) In this Act – “prescribed” means prescribed by regulations.*

Regulations under this power will, by virtue of section 49(4) of the Bill, be subject to negative parliamentary procedure.

## **Background**

2. The Bill and the associated regulation will require that the Health Board and the Local Authority agree and include within the integration plan three broad categories of detail:

3. Firstly, the context and scope within which the integration authority will operate. This includes agreements such as the scope of the functions delegated, the resources delegated, and the model of integration. The requirement to include these arrangements are as provided for in Section 1(3)(a-d) and associated provisions within the Bill.

4. Secondly, key areas that will ensure effective joint working and decision making. This would include areas such as dispute resolution, data sharing and complaints handling. Scottish Ministers will use the power in Section 1(3)(e) to set out the areas that must be agreed and included within the integration plan. The regulation will provide for flexibility to allow the Health Boards and local authorities to add further areas of local agreement that they feel would aid integrated working into the integration plan.

5. Thirdly, arrangements that the integration authority should implement to provide the necessary assurance to the accountable officers of the Health Board and the local authority that the integration authority has fit for purpose arrangements for the discharge of functions and the associated resources. This includes the arrangements for finance governance and clinical and care governance. Scottish Ministers will use the power in Section 1(3)(e) to set out these areas of agreement within the integration plan. It is notable that the integration plan does not legally bind

the integration authority. However Scottish Ministers intend to use their powers in section 40 of the Bill to direct integration authorities to comply with the integration plan in respect of these matters as they are fundamental to the safe and effective operation of health and social care services.

### **Summary of matters to be prescribed in regulations**

Ministers intent to provide that all integration plans must include:

- An agreement on clinical and care governance;
- An agreement and arrangements for the settling of liability;
- The inclusion of financial detail as noted above;
- An agreed process for dispute resolution;
- An agreed process for data sharing;

Ministers intend to provide that, where the integration model described in 1(4)(d) is chosen the integration plan must include:

- Details of the integration joint board arrangements and
- Details of agreed local measures and performance reporting arrangements.

Ministers intend to provide that, where the integration model described in 1(4)(a), (b) or (c) is chosen the integration plan must include:

- Details of the integration joint monitoring committee.

### **Detail of matters to be prescribed in regulations**

#### **Clinical and Care Governance**

6. Clinical and care governance is a system that assures that care, quality and outcomes are of a high standard for users of services and that there is evidence to back this up. It includes formal committee structures to review clinical and care services on a multidisciplinary basis and defines, drives and provides oversight of the culture, conditions, processes, accountabilities and authority to act of organisations and individuals delivering care.

7. Health Boards are under a statutory duty to put in place and maintain clinical governance arrangements and local authorities have similar duties for social care provisions, many of which are discharged through the statutory role of the Chief Social Work Officer. These systems currently provide a holistic framework within their respective organisations.

8. In general, the responsibility for professional oversight in both health and social care services flow back to a lead professional. Be it the Chief Social Work Officer, the Medical Director, the Nurse Director etc. Whilst there will be clinical representation on integration joint boards, this will not be a substitute for detailed clinical and care governance arrangements that practically assure the quality of services, professional regulation and audit of incidents.

9. It is also intended that regulations will require that the integration plan sets out the details of the clinical and care governance arrangements that will be used by the Integration Authority to provide assurance that services are delivered in line with current duties and responsibilities.

10. The Scottish Government will also provide guidance setting out matters that Ministers expect the Health Board and local authority to agree and put in place. Policy officials have set up a working group that is considering the guidance that will be provided to Integration Authorities, Health Boards and Local Authorities about the practical operation of clinical and care systems for the integrated functions and how they relate to those functions that have not been delegated to assure that there are common standards across all health and care services.

#### *Financial Governance*

11. The Health Board and the local authority need to make decisions and agreements about the resources that will be included within the integrated budget, and the arrangements that will provide assurance to the local authority section 95 officer and the Health Board Director of Finance to discharge their duties.

12. Ministers intend to make provision in regulations to require that the integration plan sets out the agreements that have been reached in relation to the financial management and performance monitoring of money paid to the integration authority.

13. Specifically, the following details should be agreed and set out in the integration plan:

- Financial Monitoring and performance management arrangements for the integration authority;
- Payment schedule;
- Process for treatment of over/underspends;
- Process for re-determining (in year) the allocations to the integration authority (to be used in extremis);
- Arrangements for risk management;
- Arrangements for information management;
- Arrangements for asset management and capital;
- Permitted use of reserves;
- Process for sharing the net assets of the integration authority on winding up.

14. The Scottish Government will also provide detailed guidance for each of the areas specified above.

#### *Liability arrangements*

15. It is intended to amend the Bill so that it provides for liability to be attributed in line with normal legal principles, in particular the principle that the person liable for any claim is the person with actual control over the circumstances giving rise to the claim. This will have the effect that any of the parties involved in integrated

arrangements may, depending on the circumstances, be held liable for a claim arising from the exercise of delegated functions.

16. Ministers also intend to use regulations to require that the integration plan must include details of any agreement made in relation to liability by the Health Board and the Local Authority. The Scottish Government will provide guidance to partners on this matter.

#### *Dispute resolution*

17. The successful operation of integrated arrangements is predicated on Health Boards and local authorities reaching agreement about some fundamental aspects of those arrangements and maintaining an on-going working relationship.

18. Scottish Ministers believe that, as far as possible, decisions should be made and agreed locally, without Ministerial intervention. To aid this process, it is intended that regulations will provide that Health Boards and local authorities must include an agreed mechanism for 'dispute resolution' in the integration plan.

#### *Data sharing*

19. The integration authority, for the purposes of fulfilling their statutory responsibilities, require anonymised demographic information to determine how services should be delivered rather than the personal data that is held on clinical and care systems. In this way, the Health Board and the local authority remain the data controls for this personal information.

20. To effectively integrate services at a delivery level and plan a package of care for an individual, it is important that professionals have access to the relevant data. This can happen through close working and the establishment of multidisciplinary teams or through allowing different professionals to access different records held across health and care systems. This sharing of personal data is sensitive and needs to be closely managed to ensure that an individual's privacy is respected.

21. As the data controllers for health and care information it is important that Health Boards and local authorities set out a process for how data sharing issues will be managed for integrated functions and teams, and how systems and databases will be aligned to aid professional decision making. Ministers will require in regulations that Health Boards and local authorities set out this detail within their integration plan.

#### *Local measures and performance reporting*

22. This requirement applies only to the integration model described in Section 1(4)(a).

23. Health Boards and local authorities have responsibility for delivering a wide range of targets, measures and improvements either at a national level or in response to local circumstance and need. Under the body corporate model of

integration they will delegate a significant amount of their resource and associated functions that would have been used to deliver, or impact upon these other local measures.

24. It is therefore important that the integration plan sets out the outcomes and targets that the integration authority might contribute to the wider delivery that Health Boards and local authorities are accountable for. It is important that a process is set out that would describe how the Integration Authority would take responsibility for any of these areas and the performance management arrangements that would need to exist to provide assurances to all parties.

25. Ministers intend to set out in regulations a requirement that Health Boards and local authorities include in their integration plan:

- the outcomes and targets that integration authorities will be expected to contribute to; and
- the expected performance management arrangements that would need to be put in place.

#### *Integration Joint Board*

26. This requirement applies only to the integration model described in Section 1(4)(a).

27. The regulations that underpin the creation of the Integration Joint Board (made under section 12) will give Health Boards and local authorities some flexibility to determine the governance arrangements of the integration joint board. Scottish Ministers will require that they set out these areas of local agreement within the Integration plan so that they are agreed before Ministers lay an order before Parliament to create the Integration Joint Board. Ministers intend that regulations under section 1(3)(e) will require that the following details are set out within the integration plan;

- The number of members of the integration joint board that will be drawn from the Health Board
- the number of members of the integration joint board that will be drawn from the Local Authority
- The arrangements that have been made in relation to the Chair of the integration joint board.

28. also It is also intended that regulations will prescribe that, in the case where two or more Local Authorities wish to enter into a body corporate arrangement with a Health Board, the detailed arrangements that have been agreed for the integration joint board must be included in the integration plan.

#### *Integration Joint Monitoring Committee*

29. This requirement applies only to the integration models described in Section 1(4)(b-d).

30. The regulations that underpin the creation of the integration joint monitoring committee (prescribed under section 16) will give Health Boards and local authorities flexibility in determining much of the governance arrangements for the integration joint monitoring committee. Scottish Ministers intend to require that these local agreements are included within the integration plan so that they are agreed before the lead agency takes responsibility for integrated functions.

31. It is also intended that regulations under section 1(3)(e) will require that the following details are set out within the integration Plan;

- The number of members of the integration joint monitoring committee that will be drawn from the Health Board;
- The number of members of the integration joint monitoring committee that will be drawn from the local authority;
- The arrangements for administrative support of the Integration Joint Monitoring Committee;
- The arrangements for and financing of the integration joint monitoring committee;
- Additional non statutory members that will be added to the integration joint monitoring committee.

32. Ministers also intend regulations to prescribe that, in the case where two or more local authorities wish to enter into a lead agency arrangement with a Health Board, the detailed arrangements that have been agreed for the integration joint monitoring committee must be included in the integration plan.

The Scottish Government  
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