

Policy briefing – Public Bodies (Joint Working) (Scotland) Bill

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Background

The [Public Bodies \(Joint Working\) \(Scotland\) Bill](#) was introduced to the Scottish Parliament on 28 May 2013.

The Bill provides the framework which will support improvement of the quality and consistency of health and social care services through the integration of health and social care in Scotland. This framework permits integration of other local authority services with health services.

Scottish Ministers intend to use the framework to integrate adult health and social care services as a minimum, and for statutory partners to decide locally whether to include other functions in their integrated arrangements.

The policy memorandum states that the ambition for integrating health and social care services is to:

- Improve the quality and consistency of services for patients, carers, service users and their families.
- Provide seamless, joined up quality health and social care services in order to care for people in their homes or a homely setting where it is safe to do so.
- Ensure resources are used effectively and efficiently to deliver services that meet the increasing number of people with longer term and often complex needs, many of whom are older.

A lead committee has yet to be appointed to scrutinise the Bill.

Key documents:

- [Bill \(as introduced\)](#)
- [Explanatory Notes \(including Financial Memorandum\)](#)

- [Policy Memorandum](#)

Overview of Bill

In summary the Bill:

- Provides for national outcomes for health and wellbeing, and for delivery of which health boards and local authorities will be accountable to Scottish Ministers and the public.
- Sets out principles for planning and delivery of integrated functions, which local authorities, health boards and joint integration boards will be required to have regard to.
- Establishes integration joint boards and integration joint monitoring committees as the partnership arrangements for the governance and oversight of health and social care services. The Bill will remove Community Health Partnerships from statute.
- Requires health board and local authority partners to enter into arrangements (the integration plan) to delegate functions and appropriate resources to ensure the effective delivery of those functions. The Bill provides two options for integrating budgets and functions – delegation to an integration joint board established as a body corporate; or delegation between partners.
- Requires integration joint boards to appoint a chief officer, who will through the board be jointly accountable to the constituent health board and local authorities, responsible for the management of the integrated budget and the delivery of services for the area of the integration plan.
- Requires integration joint boards, and health boards or local authorities to whom functions are delegated acting in the capacity of the integration authority to prepare a strategic plan for the area, which sets out arrangements for delivery of integration functions and how it will meet the national health and wellbeing outcomes.

The integration authority will be required to involve a range of partners in the development of the plan and consult widely. In addition, locality planning duties will require the integration authority to make suitable arrangements to consult and plan locally for the needs of its population.

- Provides opportunities for more effective use of public services and resources by allowing health boards to be able to contract on behalf of other health boards for contracts which involve providing facilities.
- Allows Scottish Ministers to form a wider range of joint ventures structures to work effectively with local authorities and enable a joint approach to asset management and disposal.
- Provides for the extension of the Common Services Agency's ability to deliver shared services to public bodies including local authorities.

- Enables Scottish Ministers to extend the range of bodies able to participate in the Clinical Negligence and Other Risks Scheme (CNORIS) to include local authorities and integration joint boards.

Direct implications for the Care Inspectorate and joint inspections

The Bill does not specifically outline how integrated services will be scrutinised. The **Care Inspectorate** is not mentioned on the face of the Bill, but is referenced in both the explanatory notes (financial memorandum) and the policy memorandum.

The **policy memorandum** states that the **Care Inspectorate** and Healthcare Improvement Scotland (HIS) are “to have a joint scrutiny role of integration authorities”. However, both will retain their current functions in relation to health services and social services respectively.

In particular:

- Under the “delegation to a body corporate model”, joint inspections will scrutinise the integration joint board and the services provided under their direction.
- In the “delegation between partners” model, joint inspections will scrutinise the lead agency and the services which it provides on behalf of the delegating partner, as well as the services of the lead agency as part of the integrated arrangements.
- Scrutiny bodies will also be required to scrutinise strategic plans for quality and standards. In particular to ensure the plan will effectively achieve the objectives of the integration plan and the nationally agreed outcomes.

The **financial memorandum** refers to cost implications for the **Care Inspectorate** from provisions in the Bill.

It outlines costs to the **Care Inspectorate** and HIS in assessing the performance of partnerships in meeting the nationally agreed outcomes. This is estimated to be £173,362 per joint inspection, with six inspections expected to take place per year.

The financial memorandum also notes that “additional resources, longer term” will be required to fund the **Care Inspectorate** and HIS for scrutiny of strategic commissioning. This recurrent cost is estimated to be £670k per annum with costs incurred from 2015/16 onwards.

Part 1 – Functions of local authorities and health boards

Integration plans (sections 1-8)

Section 1 – Integration plans: same local authority and health board area

This section makes provision about integration plans and sets out the four models of integration.

The four models are:

- The local authority and the health board delegate functions to an integration joint board established as a body corporate by order of Scottish Ministers.
- The local authority delegates functions to the health board.
- The health board delegates functions to a local authority.
- The local authority delegates functions to the health board; and the health board delegates functions to the local authority.

Where there is a single local authority within a health board area, the local authority and the health board must jointly prepare an integration plan for the area of the local authority.

The integration plan must include:

- The model of integration which is to be used.
- The functions that are to be delegated in accordance with that model.
- Where functions are delegated to a health board, local authority or both, the functions of that body which are to be carried out in conjunction with the delegated functions.
- A method of calculating payments, which are to be made with respect to the delegated functions.
- Any additional information that may be required by Scottish Ministers through regulations.

Subsection 6 of the Bill enables Ministers to prescribe through regulations, functions of local authorities and health boards, which must, may or may not be delegated under an integration plan.

The explanatory notes state that if no regulations are made, local authorities and health boards will be able to choose which of their functions to delegate under the Bill. This provision will give Ministers flexibility to set parameters, including minimum requirements, for the delegation of functions.

Section 2 – Integration plans: two or more local authorities in health board area

This section sets out integration planning requirements where more than one local authority sits within the boundary of a single health board area. The Bill outlines two options:

- The local authority can jointly prepare an integration plan with the health board for its own area only.
- The local authority can join together with one or more other local authorities to prepare an integration plan with the health board.

This means that within a single health board area, which houses more than one local authority; there may be several single local authority plans and/or multiple local authority plans.

When preparing an integration plan, the local authority must take account of any other plans prepared within the same health board area.

Section 3 – Considerations in preparing integration plan

The Bill requires the local authority and health board to consider the integration principles and national health and wellbeing outcomes when preparing an integration plan.

The explanatory notes state that the purpose of this is to link with the national outcomes for health and wellbeing from the outset and to underpin the purpose of integrating services – “to ensure integration arrangements which embed a preventative, anticipatory and person-centred approach to the planning and delivery of services”.

Section 4 – Integration planning principles

The Bill sets out the integration planning principles that must be taken into account when preparing an integration plan.

Subsection 1(a) states that “the main purpose of services which must or may be provided...under an integration plan is to improve the wellbeing of recipients.”

Subsection 1(b) sets out principles for delivery which must be taken into account when making decisions about how functions will be integrated. Services should be provided in the way which, “so far as possible”:

- is integrated from the point of view of recipients;
- takes account of the particular needs of different recipients;
- takes account of the particular needs of recipients in different parts of the area in which the service is being provided;

- is planned and led locally in a way which is engaged with the community and local professionals;
- best anticipates needs and prevents them arising;
- makes the best use of the available facilities, people and other resources.

Section 5 – Power to prescribe national outcomes

The Bill states that Scottish Ministers may by regulation set out national outcomes for health and wellbeing. The explanatory notes state that the national outcomes will provide for improved experience of services and outcomes that services achieve.

Before setting national outcomes, Ministers are required to consult extensively with groups listed in the Bill. This includes: local authorities; health boards; integration joint boards; health and social care professionals; people who use services and their carers; health care providers; and social care providers.

Section 6 – Consultation

Before submitting the integration plan to Scottish Ministers for approval, the local authority and health board must consult with people or groups specified by Ministers in regulations; and other people as the local authority and health board “think fit”.

The local authority and health board are required by the Bill to take account of any views expressed when finalising the plan.

Section 7 – Approval of integration plan

The local authority and health board must jointly submit the integration plan to Scottish Ministers for approval, before a date to be set by Ministers through regulations. Ministers will have a discretionary power to grant an extension for submission.

If Ministers refuse to approve a submitted integration plan, the local authority and health board must jointly amend the plan and resubmit for approval.

Section 8 – Publication of integration plan

The local authority and health board are required to publish the approved integration plan “as soon as practicable”.

Implementation of integration plan (sections 9-20)

Section 9 – Functions delegated to integration joint board

Where Ministers approve an integration plan which sets out that functions will be delegated to an integration joint board, they may by order establish the

integration joint board to which the functions specified in the integration plan are to be delegated.

Sections 10-20 outline the detail involved in the formation and running of the integration joint boards. Areas covered include payments; staffing; membership of joint boards; and cooperation.

Carrying out of delegated functions (sections 21-22)

Section 21 sets out the effect the delegation of functions, by one body to another, has on the rights, powers, duties and liabilities of those bodies. Where a function is delegated from one body to another, the body to which the function is delegated will be subject to the duties, rights and powers of the delegating body.

The receiving body is also entitled to enforce any rights acquired and is liable in respect of any liabilities incurred, in carrying out the delegated functions.

Section 22 enables integration joint boards to direct the local authorities or health board that have delegated functions to it to carry out a function on its behalf.

It also enables a local authority or health board which has had functions delegated to it to direct the local authority or health board which delegated the function to it to carry out the functions on its behalf.

A direction may include provision:

- about the manner in which the function is to be carried out;
- about the rights, powers, duties or liabilities of the person who is to carry out the function.

Strategic planning etc. (sections 23-30)

Section 23 requires each integration authority to prepare a strategic plan. It can include any information that the integration authority thinks is useful, although there are two mandatory elements:

- The strategic plan must set out the arrangements for carrying out the integration functions in the local authority area over the period of the plan. The area must be divided into localities for this purpose and the arrangements for each locality must be set out separately.
- The plan must also set out the way in which arrangements for carrying out the functions are intended to achieve or contribute to achieving, the national health and wellbeing outcomes.

The first strategic plan must be prepared before a date set by Scottish Ministers through regulations and must cover a three year period. Subsequent

strategic plans must be prepared on an annual basis and cover a three year period.

Section 24 requires the integration authority to take into account the integration delivery principles and the national health and wellbeing outcomes when preparing the strategic plan.

The integration delivery principles outlined in **section 25** are the same as the integration planning principles listed in [section 4](#).

Section 26 requires integration authorities to establish a consultation group for each local authority area, for the purposes of preparing the strategic plan for that area.

Depending on the model of integration chosen, the group must involve members nominated by the local authority or the health board, or both. This ensures that the partners who prepared the integration plan are involved in the development of the strategic plan.

The integration authority is also required to involve a range of relevant stakeholders as prescribed by Scottish Ministers. **Section 27** outlines the consultation process that must be followed when preparing the strategic plan.

Section 28 – Requirement for agreement to certain strategic plans

This section of the Bill applies where a strategic plan is prepared by an integration authority that is a local authority or health board. The integration authority is required to submit the finalised strategic plan for approval to the delegating health board or local authority.

The explanatory notes state that this will ensure that the body who has delegated functions to the integration authority is in agreement with the arrangements for delivery of those functions set out in the plan.

Section 29 – Publication of strategic plans

This section of the Bill places a duty on integration authorities to publish strategic plans.

Section 30 – Significant decisions outside strategic plan: public involvement

Where an integration authority proposes to take a “significant decision” about the arrangements for carrying out the integration function outside the context of the strategic plan, the integration authority is required to take appropriate action in order to involve and consult users.

Carrying out of integration functions (sections 31-33)

Section 31 requires integration joint boards, local authorities and health boards to have regard to the national health and wellbeing outcomes and the integration delivery principles when carrying out an integrated function.

The explanatory notes state that the purpose of this is to embed the principles in delivery as well as in planning. It is hoped that this will ensure a shift towards preventative and anticipatory care and that the services delivered meet the different needs of different individuals and are person centred.

Section 32 requires a person carrying out an integration function for the area of a local authority to involve and consult interested people, determined by Ministers in regulations, where it proposes to take a decision that it considers might “significantly affect” the service provision in a locality.

Section 33 requires each integration authority to prepare and publish a performance report for each reporting year. This report must set out an assessment of performance in carrying out the integrated functions during this year.

Scottish Ministers are able to make regulations that set out the form and content of performance reports, and the period within which performance reports must be published.

Change of integration plan (sections 34-36)

Sections 34-36 set out the process for making changes to an integration plan once it has been approved.

Key points:

- A revised integration plan may include additional functions that are to be delegated, set out functions that are no longer to be delegated, amend the functions that are to be carried out and make adjustments to the method of calculating payments. **(Section 34)**
- If the local authority and health board wish to change the local authorities that are party to the plan or the integration model then a new integration must be prepared. **(Section 35)**

Supplementary (sections 37-43)

Sections 37 to 43 relate to supplementary issues. This includes information on grants to local authorities; directions; guidance; definitions; and information sharing.

Of note:

- Where a local authority and health board are jointly preparing an integration plan, each of them may disclose information to the other for or in relation to the purpose of preparing the plan. **(Section 37)**
- Scottish Ministers can take action where a local authority and health board have failed to submit an integration plan to them for approval by the deadline set. **(Section 39)**
- Scottish Ministers have the power to give directions to integration joint boards, health boards and local authorities. **(Section 40)**
- Every local authority, health board and integration joint board is required to take account of any guidance issued by Scottish Ministers about their functions, under or in relation to the Bill. **(Section 41)**

Part 2 – Shared Services

Section 44 enables the Common Services Agency for the Scottish Health Service to provide, or arrange the provision of, goods and services (administrative, technical or legal) to bodies listed in the Bill. It may only do so with consent of Scottish Ministers.

Section 45 amends section 85B of the National Health Service (Scotland) Act 1978 to allow membership of the CNORIS indemnity scheme to local authorities and to extend cover to social care functions.

Part 3 – Health Service: Functions

Section 46 provides for amendments to section 84B (Joint ventures) of the 1978 Act. This amendment gives Scottish Ministers the power to form and participate in any type of body corporate.

Section 47 amends the 1978 Act to allow health boards to carry out any function of another health board when both the health board and Scottish Ministers have given consent.

Part 4 – General

Sections 48-53 provides information in relation to interpretation, subordinate legislation, ancillary provision, repeals, commencement and short title.

Financial Implications

The financial memorandum gives consideration to costs in relation to integration of adult health and social care functions only. It outlines the cost implications for both the Scottish Government (transitional costs) and for health boards and local authorities (recurrent costs).

The financial memorandum also provides a summary of health board and local authority health and social care expenditure. Areas covered include the case for integrated care; delayed discharge; anticipatory care plans; and reducing variation.

Scrutiny of strategic plans and service delivery

The Bill places a duty on the health board and local authority to achieve the nationally agreed outcomes for health and social care. The outcomes and performance measures will be prescribed by Scottish Ministers. Where other functions beyond adult health and social care have been delegated, the health board and/or local authority will be required to take account of other relevant outcome measures.

The performance of partnerships in meeting the nationally agreed outcomes and other relevant outcomes will be assessed jointly by the **Care Inspectorate** and HIS.

The financial memorandum refers to the 'pilot' joint inspections of integrated services that the **Care Inspectorate** and HIS undertook in early 2013. It states that estimates based on these pilots suggest a cost of £173,362 per joint inspection, with six inspections anticipated to take place per year.

In addition it states: "Additional resource, longer term, will also be required to fund the **Care Inspectorate** and Healthcare Improvement Scotland for scrutiny of strategic commissioning. The scrutiny bodies will review strategic plans as part of joint inspections, assessing whether the plan meets all statutory requirements and has been created within the statutory duties laid out in the Bill".

It says it is "anticipated" that the scrutiny bodies will carry out six joint inspections per year, with a recurrent cost estimated at £670k per annum. This will be incurred from 2015/16.

Cost implications to other bodies, individuals and businesses

Providers of social care services, in particular, but also other community services, are provided by third or independent organisations. The Business Regulatory Impact Assessment outlines the consequential impacts of the provisions in the Bill on businesses.

The costs to businesses are anticipated to be the following:

- Costs for delivery of training; to diversify the business to take into account the demand for community provision, increase capacity and support delivery of more community based services and skills to participate in the commissioning and planning process;

- Costs arising from diversification, rationalisation or expansion of business model in response to commissioning of health and social care services;
- Increased costs to business to support and train unpaid carers;
- Costs associated with participation in partnership planning arrangements; and
- Costs associated with compliance with Information Technology, data sharing and data protection protocols.