



## EXPLANATORY NOTES

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### **Public Bodies (Joint Working) (Scotland) Act 2014 (asp 9)**

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# **PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE ACT**

3. The Act provides the framework which will support the improvement of the quality and consistency of health and social care services in Scotland. This framework requires the integration of certain local authority services with health services. In addition, the Act provides for the Common Services Agency, commonly known as NHS National Services Scotland, to provide goods and services to public bodies, including local authorities. It also allows the Scottish Ministers to form a wider range of joint venture structures, and to form joint ventures for a wider range of purposes, than at present, in order to make the most effective use of resources. The Act also extends the Clinical Negligence and Other Risks Indemnity Scheme (“CNORIS”) run by the Scottish Ministers.

### **Outline of the Act**

4. In summary, the Act:

- Requires Health Board and local authority partners to enter into arrangements (the integration scheme) to delegate functions and appropriate resources to ensure the effective delivery of those functions. The Act provides two options for integrating budgets and functions. First, delegation to an integration joint board established as a body corporate - in this case the Health Board and the local authority agree the amount of resources to be committed by each body to the integration joint board for the delivery of services to support the functions delegated. Second, delegation between the Health Board and local authority. In this case, the Health Board and/or local authority delegates functions, and the corresponding amount of resource, to the other body.
- Provides for national outcomes for health and wellbeing to be prescribed by the Scottish Ministers, for the delivery of which Health Boards and local authorities will be accountable to the Scottish Ministers and the public (note

that the provisions of the Act apply to Area Health Boards and not Special Health Boards).

- 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. They set out that the main purpose of integrated services is to improve the wellbeing of recipients, as well as an expectation that planning and delivery will take account of key principles relating to integrated delivery; the requirement to balance the needs of individuals with the overall needs of the population; anticipation and prevention of need; and effective use of resources.
- 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 Act will remove Community Health Partnerships from statute.
- 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 scheme. The chief officer will also lead the development and delivery of the strategic plan for the joint board.
- Requires integration joint boards and Health Boards or local authorities to whom functions are delegated, acting in the capacity of “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.
- Delivers 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, and by allowing the Scottish Ministers to form a wider range of joint ventures structures to collaborate 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 and integration joint boards.
- Enables the Scottish Ministers to extend the range of bodies able to participate in CNORIS for meeting losses and liabilities of certain health service bodies. The scheme is established for relevant bodies to meet expenses arising from any loss or damage to their property; and liabilities to third parties for loss, damage or injury arising from the carrying out of the functions of the scheme members. The Act amends the bodies able to participate in the scheme to include local authorities and integration joint boards.

## **COMMENTARY ON SECTIONS**

### **PART 1**

#### **FUNCTIONS OF LOCAL AUTHORITIES AND HEALTH BOARDS**

##### *Integration schemes*

##### **Section 1 – Integration schemes: same local authority and Health Board area**

5. Section 1 makes provision about integration schemes and sets out the four models of integration from which local authorities and Health Boards are to choose for the purposes of integration planning and integrated delivery of services in accordance with the Act.

6. Integration planning is predicated on the delegation of local authority and/or Health Board functions using one of the four models of delegation set out in subsection (4): (a) the local authority and the Health Board delegate functions to an integration joint board established as a body corporate by order by the Scottish Ministers; (b) the local authority delegates functions to the Health Board; (c) the Health Board delegates functions to a local authority, and (d) the local authority delegates functions to the Health Board and the Health Board delegates functions to the local authority.

7. By virtue of subsections (1) and (2), where the area of a local authority is the same as the area of a Health Board i.e. there is a single local authority within the Health Board area, the local authority and the Health Board are required to jointly prepare an integration scheme for the area of the local authority.

8. Subsection (3) sets out what the integration scheme must include. The required information is: (a) which model of integration is to be used; (b) the functions which are to be delegated in the way identified; (c) 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, (the functions which may be set out in this part of the scheme are described in subsection (13)); (d) (where subsection (14) applies) a method of determining amounts to be made available by the Health Board for use by the person to whom the functions are delegated; (e) (where subsection (14) does not apply, or where it applies but the Health Board deems it not to apply) a method of determining payments which are to be made with respect to the delegated functions; and (f) information about additional matters or agreements that may be required by the Scottish Ministers by regulations.

9. Subsection (5) provides that local authorities may delegate only those of their functions that are conferred by the enactments listed in Part 1 of the schedule, or by virtue of an enactment listed in Part 2 of the schedule. Subsection (6) provides for Health Boards to delegate such of their functions as are prescribed by the Scottish Ministers. Subsection (7) provides that the Scottish Ministers may by regulations prescribe functions conferred by or by virtue of the enactments listed in the schedule that local authorities must delegate (where the integration model mentioned in subsection (4)(a) or (b) applies) in so far as those functions relate to persons aged 18 years or over. Subsection (8) provides for the

Scottish Ministers to prescribe certain functions of a Health Board that must be delegated where the integration model mentioned in subsection (4)(a) or (c) applies and the functions relate to persons aged 18 years or over. Subsection (9) sets out the requirements which apply where the integration model provided for in subsection (4)(d), in which functions may be delegated to both the Health Board and local authority, is chosen. The provision sets out that either the local authority or the Health Board must delegate functions prescribed under subsections (7) or (8) respectively so far as the functions relate to persons aged 18 years or over. By virtue of subsection (10), the Scottish Ministers may prescribe functions of Health Boards that must be delegated other than in prescribed circumstances and prescribe functions of Health Boards that may not be delegated in prescribed circumstances. In addition, under subsection (11), the Scottish Ministers may prescribe functions listed in the schedule that may not be delegated by local authorities in prescribed circumstances. By virtue of subsection (12) the Scottish Ministers may remove enactments from the schedule.

10. Subsection (14) applies where Health Board functions which are to be delegated are carried out in a hospital which serves two or more local authority areas. Subsection (15) provides that regulations under subsection (3)(f) may include provisions: (a) conferring discretion on local authorities and Health Boards; (b) requiring local authorities and Health Boards to establish processes and procedures relating to prescribed matters; (c) imposing requirements on local authorities and Health Boards about the disclosure of information; and (d) on other matters relating to integration schemes as the Scottish Ministers think fit. Subsection (16), read with section 68(1)(Interpretation), defines what is meant by “Health Board” for the purposes of the Act. Its effect is that the provisions of the Act do not apply to Special Health Boards.

## **Section 2 - Integration schemes: two or more local authorities in Health Board area**

11. Section 2 sets out requirements which apply where more than one local authority sits within the boundary of a single Health Board area (in contrast to the requirements in section 1(2) which apply where there is a single local authority in a Health Board area).

12. By virtue of subsection (2), each local authority and the Health Board are to agree which of the alternative duties in subsections (3) and (4) they will comply with in respect of the local authority area (compliance with one or the other is mandatory). The options are for a local authority to jointly prepare an integration scheme with that Health Board, for its own area only (subsection (3)), or for the local authority to join together with one or more other local authorities to jointly prepare, with the Health Board, an integration scheme for the areas of those local authorities (subsection (4)). The result is that within a single Health Board area, which consists of more than one local authority area, there may be any number of single local authority schemes and/or multiple local authority schemes. For example, in an area with 3 local authorities there may be a scheme for a single area plus a scheme covering the other two areas; or in an area with 6 local authorities there could be a scheme covering three areas, plus a scheme covering two areas, plus a scheme for a single area. The effect is to provide flexibility so that planning decisions can be taken on the basis of what is appropriate for the areas in question i.e. multiple local authorities within the area of the same Health Board can plan together where appropriate or they can choose to plan separately.

13. Subsection (5) sets out that where two or more local authorities and a Health Board decide that the integration model mentioned in section 1(4)(c) or (d) is to apply: (a) functions must be delegated to only one of the local authorities; (b) the integration scheme must set out which local authority the functions are to be delegated to (known as the “lead authority”); (c) functions are to be delegated by the Health Board and the local authority/local authorities to the lead authority; and (d) functions are to be delegated by local authorities to the Health Board and by the Health Board and the local authority/local authorities to the lead authority.

14. Subsection (6) sets out that when preparing an integration scheme, whether between an individual local authority and a Health Board, or multiple local authorities and a Health Board, a local authority and Health Board must (a) take into account any other integration scheme that has been prepared for the same Health Board area, and (b) the likely effect on the Health Board of any integration schemes prepared in relation to that Health Board. This provision establishes the importance of different integration schemes within a single Health Board area having regard to their combined effect, and interaction in relation, in particular, to the effective running of the Health Board.

### **Section 3 – Considerations in preparing integration scheme**

15. Section 3 requires the local authority and Health Board to consider the integration planning principles and the national health and wellbeing outcomes when preparing an integration scheme. This provides a link with the national outcomes for health and wellbeing from the outset of the integration process, and underpins the purpose of integrating services.

### **Section 4 – Integration planning principles**

16. Section 4 establishes the integration planning principles that must be taken into account when preparing an integration scheme.

17. The effect of subsection (1)(a) is to ensure that decisions about integration of functions take account of the principle that services, for the purposes of carrying out functions that must or may be delegated, are to improve the wellbeing of users of that service.

18. Subsection (1)(b) supplements this by setting out principles for delivery which must also be taken into account in taking decisions about how functions will be integrated. The effect is to ensure a focus on integrated delivery, including consideration of the needs of different service users and different areas, the particular characteristics and circumstances of different service users, the rights of service users, the dignity of service users, the participation by service users in the community in which they live, protecting and improving the safety of service users, improving the quality of services, local planning and leadership, the anticipation of needs and prevention of needs arising, and the effective use of resources.



## **Section 5 – Power to prescribe national outcomes**

19. This section provides for the Scottish Ministers to set out in regulations national outcomes that relate to health and wellbeing. The national outcomes are to be taken into account throughout the process of integration planning and the operation of integrated services, to support the improvement of health and social care services. Before prescribing national outcomes, the Scottish Ministers are required to consult persons set out in subsections (2) and (3). The effect of the provision is to involve the groups identified in the development of the national outcomes on health and wellbeing.

## **Section 6 – Consultation**

20. Section 6 sets out consultation requirements in relation to the preparation of integration schemes.

21. The local authority and Health Board, before submitting the integration scheme for approval, are required to consult (a) those persons or groups of person prescribed by the Scottish Ministers, by regulations, and (b) any other persons as the local authority and Health Board think fit. The consultation must be carried out jointly by the local authority and the Health Board. The local authority and Health Board are required to take account of views expressed as part of the consultation, when finalising the integration scheme.

## **Section 7 - Approval of integration scheme**

22. This section requires a local authority and Health Board to jointly submit the integration scheme to the Scottish Ministers for approval, before a date that will be set by the Scottish Ministers in regulations.

23. Subsection (3) applies where a scheme is submitted but is not approved. It requires the Scottish Ministers to (a) provide the Health Board and the local authority with the reasons for the refusal to approve the scheme, (b) explain how the scheme should be modified and (c) set a date by which the modified scheme must be submitted for approval.

24. Subsection (4) makes provision for the approval of a modified integration scheme, and subsection (5) provides that, where the Scottish Ministers refuse to approve a modified scheme, the local authority and the Health Board will be treated as if they have failed to submit an integration scheme. The default powers of the Scottish Ministers in section 51 will then apply.

25. Subsection (6) gives the Scottish Ministers a discretionary power to grant an extension for submission of an integration scheme for approval. The Scottish Ministers may grant an extension on their own initiative or on the request of the local authority and the Health Board. Where the request comes from the local authority and the Health Board it must be made jointly and reasons for the request must be given. The effect is to enable a scheme to be accepted after the statutory deadline for submission, where there is good reason.



## **Section 8 – Publication of integration scheme**

26. Section 8 requires the local authority and Health Board to publish the approved integration scheme, as soon as practicable after it has been approved.

### *Implementation of integration scheme*

## **Section 9 – Functions delegated to integration joint board**

27. This section provides that, where the Scottish Ministers approve an integration scheme which sets out that functions will be delegated to an integration joint board under section 1(4)(a), Ministers may by order establish the integration joint boards, which will have the functions specified in the integration scheme delegated to it.

28. Subsection (3) provides for the functions in the integration scheme to be delegated on a day set by the Scottish Ministers in regulations, unless the functions have been delegated on an earlier date under section 29(4).

## **Section 10 – Chief officer of integration joint board**

29. Section 10 requires the integration joint board to appoint a member of staff to be its chief officer. The integration joint board will not necessarily be given powers to employ its own staff. Subsections (2), (3) and (4) provide that the chief officer is to be seconded to the integration joint board from its constituent local authority or Health Board. In the event that there is a wish in future for the chief officer to be employed directly by the integration joint board, the Scottish Ministers have powers to make an order under subsection (5) to enable this.

30. Subsection (4) provides that where the person to be appointed is not an existing member of staff of a local authority or Health Board which prepared the integration scheme, the person is first to be appointed to the local authority or the Health Board and then seconded to the integration joint board.

31. Subsection (6) requires the integration joint board to consult the Health Board and each local authority, before appointing the chief officer of the integration joint board.

32. Subsection (7) provides for the Scottish Ministers to approve the responsibilities of the chief officer.

## **Section 11 – Other staff of integration joint board**

33. This section provides for the Scottish Ministers, by order, to give integration joint boards the ability to employ staff other than a chief officer and to make further provision in relation to the staffing of integration joint boards as the Scottish Ministers think fit, including: (a) the appointment of staff; (b) the numbers of staff; and (c) the terms and conditions of staff.

34. Subsection (3)(a) provides for flexibility in the use of the power in subsection (1), so an order under section 11 can be made which can apply only to a single, or some, integration joint boards as well as to all integration joint boards. Subsection (3)(b) provides for further flexibility for the Scottish Ministers to make different provision in relation to different integration joint boards.

35. Subsection (4) places a requirement on the Scottish Ministers to consult with Health Boards, local authorities and integration joint boards before exercising the power to make an order under subsection (1).

## **Section 12 – Integration joint boards: further provision**

36. This section enables the Scottish Ministers to make further provision about integration joint boards.

37. Subsection (1) gives the Scottish Ministers powers to make provision by order about the membership, proceedings and powers of integration joint boards; the supply of services or facilities to integration joint boards by a local authority or Health Board; the establishment of committees by integration joint boards; the operation of committees of integration joint boards, the delegation of functions conferred upon integration joint boards by an integration scheme to the chief officer, any member of its staff or any committee; and any other matter as the Scottish Ministers think fit in relation to the establishment or operation of integration joint boards.

38. Subsection (2) provides for flexibility in the use of the power in subsection (1). By virtue of subsection (2)(a) an order may be made under section 12(1) containing the type of provision mentioned in paragraphs (c) to (h) which applies only to a single, or some, integration joint boards as well as to all integration joint boards. By virtue of (2)(b) an order made under section 12 may make different provision in relation to different integration joint boards.

39. Subsection (3) requires the Scottish Ministers to consult with the Health Board, local authority and integration joint board, before making an order under subsection (1).

40. Subsection (4) provides for the Scottish Ministers to make schemes for the transfer to an integration joint board of staff, property, rights, liabilities, or obligations of their constituent authorities. This power may be exercised to support the delivery of delegated functions by the integration joint board, where that is considered appropriate. Subsection (5) requires the Scottish Ministers to consult with the relevant integration joint board, relevant Health Board and local authority before making a scheme under subsection (4).

41. Subsections (6) and (7) require the Scottish Ministers, before making a scheme under subsection (3) which relates to staff, to consult with health professionals, social care professionals and other groups of persons prescribed by regulations whom the Scottish Ministers consider to have an interest.

### **Section 13 – Integration joint boards: finance and audit**

42. Paragraph (a) amends section 106 of the Local Government (Scotland) Act 1973 so that the provisions of Part 7 of that Act will apply to integration joint boards, requiring them to appoint a proper officer for the financial administration of the financial affairs of the integration joint board, keep accounts and have these accounts audited by the Accounts Commission for Scotland. The proper officer may be the chief officer if the integration joint board deems that to be appropriate. The chief officer is the accountable officer for all matters, but the integration joint board is able to appoint another officer to be the proper officer for matters of financial administration. Such an arrangement is not obligatory, but will allow for the integration joint board to place financial accountability in the hands of a finance professional, if it is agreed locally that that is appropriate.

43. Subsection (b) provides that certain sections of the Local Government (Scotland) Act 1973, in respect of social security and benefit administration, will not apply to integration joint boards as they are outside of the scope of their functions.

### **Section 14 - Payments to integration joint boards in respect of delegated functions**

44. Section 14 applies where an integration joint board has been established. It makes provision for the allocation of resources by the local authority and Health Board in relation to the functions delegated by them to an integration joint board, to support the effective carrying out of the functions.

45. Subsection (2) requires payments to be made by the local authority, in respect of such of their functions as are delegated under the integration scheme, of the amount determined in accordance with the method set out in the integration scheme.

46. Subsection (3) places a requirement on Health Boards to set aside an amount, to be determined in accordance with the method set out in the integration scheme, for functions which are delegated. An amount set aside by a Health Board is to be available for use under the direction of the integration joint board. Subsection (4) places a requirement on Health Boards to make payments, either to an integration joint board or a local authority acting as the integration authority, for delegated functions which do not relate to services provided in large hospitals (or where the Health Board has deemed that such functions are to be treated as if they did not relate to services provided in large hospitals). The amount to be paid by a Health Board under subsection (4) will not include an amount set aside under subsection (3).

### **Section 15 – Functions delegated to local authority or Health Board**

47. Section 15 applies where the Scottish Ministers approve an integration scheme under section 7 and that scheme contains provision about the delegation of functions by a local authority to a Health Board or functions delegated by a Health Board to a local authority, or both, as the case may be, under section 1(4)(b), (c) or (d).

48. Subsection (2) enables the Scottish Ministers to prescribe a day by which functions must be delegated, if they are not delegated on an earlier date specified under section 29(4).

49. Subsection (3) requires, before the functions are delegated, that the local authority and Health Board set up an integration joint monitoring committee to monitor the operational delivery of the functions set out in the integration scheme.

### **Section 16 – Transfer of staff where functions delegated to a local authority or Health Board**

50. Section 16 provides that the Scottish Ministers may make provision by scheme about the transfer or secondment of staff from the body responsible for delegating the functions in the integration scheme as set out in section 1(4)(b), (c) or (d), to the body the functions are delegated to. This provision therefore relates to transfers to local authorities or Health Boards, as opposed to transfers to integration joint boards, which are dealt with by section 12(4).

51. Before making such a scheme under section 16, subsections (2) and (3) require the Scottish Ministers to consult with health professionals, social care professionals and other groups of persons who are prescribed in regulations whom the Scottish Ministers consider to have an interest. Subsection (5) also requires the Scottish Ministers to consult the Health Board and local authority in relation to such a scheme.

### **Section 17 – Integration joint monitoring committees: further provision**

52. Section 17 confers a power on the Scottish Ministers to make provision by order about the establishment, membership and proceedings of integration joint monitoring committees (either generally or making different provision about different committees), as well as any other matter relating to their operation as the Scottish Ministers think fit.

### **Section 18 – Payments to Health Boards in respect of delegated functions**

53. Section 18 requires that where a local authority delegates a function to the Health Board, in accordance with an approved integration scheme, the local authority must make payment to the Health Board of an amount determined in accordance with the method set out in the integration scheme.

### **Section 19 – Payments to local authorities in respect of delegated functions**

54. Subsection (2) requires that, where a Health Board delegates a function to a local authority, the Health Board is under a duty to set aside an amount for use by the local authority which has been determined according to the method set out in the integration scheme in respect of services provided in a hospital in the area of a Health Board which serves the area of two or more local authorities (such hospitals are referred to in these Notes as “large hospitals”). Subsection (3) provides that where no delegated functions relate to services delivered in large hospitals, or where the Health Board chooses to make payments to the local authority in respect of such functions, the Health Board must make

payments of amounts to the local authority for all of the delegated functions, including those which relate to services delivered in large hospitals in accordance with the method set out in the integration scheme.

55. Subsection (4) requires that, in arrangements in which a local authority is the integration authority and where more than one local authority is covered by the same integration scheme, each delegating local authority is under a duty to make a payment to the local authority which is the lead authority for each delegated function.

## **Section 20 – Power of Scottish Ministers to make provision giving effect to integration scheme**

56. Section 20 provides that the Scottish Ministers may, by regulation, make provision about the effect to be given to a provision included in an integration scheme by regulations made under section 1(3)(f).

## **Section 21 – Transfer of staff: effect on contract of employment**

57. Section 21 makes provision about the effect on an individual's contract of employment on the transfer (or proposed transfer in the case of subsection (2)) of that individual's employment by scheme under section 12(4), 16(1) or 48(3).

58. Subsection (2) provides that where, before the day of transfer, a person who is to be transferred informs their original employer that they do not wish to transfer employment, the person's contract of employment is terminated on the day before the day of transfer. The effect of this is that a person who does not wish to transfer does not have to do so but instead his or her contract will end on the day before the transfer would have taken place.

59. Subsection (3) sets out the effects of a transfer on an employee's contract. In effect, the contract continues as it was before the transfer, except that the new employer takes the place of the previous employer. This means that the rights, powers, duties and liabilities of the original employer under or in connection with the contract of employment are transferred to the new employer and anything done by or in relation to the original employer in respect of the contract of employment is treated as having been done by or in relation to the new employer.

60. Subsection (4) clarifies that, in relation to pension obligations, in circumstances where staff transfer between employer, whether between a local authority and Health Board or to an integration joint board, there will be no transfer of any liability for any deficit, or right to a share in any surplus, in respect of the transferred employee's membership of a pension scheme relating to their employment prior to the transfer.

61. Subsection (5) provides that a person is not to be treated as being dismissed as a result of any provision of this section.

62. Subsection (6) protects any right that a person may have to terminate their contract where there is a substantial detrimental change to his or her working conditions.

63. Subsection (7) makes clear that the change in employer as a result of the transfer of a person under this section does not constitute a substantial detrimental change to a person's working conditions. This has the effect that the transfer (of itself) of a person by scheme under section 12(4), 16(1) or 48(3) cannot be considered a substantial detrimental change such as to give rise to any right mentioned in subsection (6).

## **Section 22 - Co-operation**

64. Section 22 applies where two or more local authorities have joined together to prepare an integration scheme under section 2(4), or there is otherwise more than one integration scheme in relation to the same Health Board area. It puts a duty on the local authorities involved and the Health Board to co-operate with each other in relation to the efficient and effective use of their resources (including, in particular, buildings, staff and equipment) relevant to the scheme or schemes.

## **Section 23 - Carrying out of functions conferred on officers of local authorities**

65. Section 23 provides that a function that is prescribed by the Scottish Ministers by regulations which is conferred by or by virtue of enactment on an officer of a local authority and which: (a) relates to a function delegated as part of the integration scheme and (b) meets any conditions that are prescribed in regulations made by the Scottish Ministers, is deemed to be conferred on officers of the other bodies (a Health Board and any other local authorities) which prepared the same integration scheme.

## **Section 24 - Carrying out of functions conferred on officers of Health Boards**

66. Section 24 provides that a function that is prescribed by the Scottish Ministers by regulations which is conferred by or by virtue of enactment on an officer of a Health Board and which: (a) relates to a function delegated as part of the integration scheme and (b) meets any conditions that are prescribed in regulations made by the Scottish Ministers, is deemed to be conferred on officers of the local authority or local authorities which prepared the same integration scheme.

### *Carrying out of delegated functions*

## **Section 25 – Effect of delegation of functions**

67. Section 25 sets out the effect of the delegation of functions in pursuance of an integration scheme.

68. Subsection (2) requires the integration authority to which a function is delegated to carry out that function. Subsection (3) provides that the integration authority has all of the powers and duties that apply in connection with carrying out the function. Subsection (4) provides that the delegation of the function does not prevent the function being carried out by the person who delegated it. Subsection (5) confers a power on the Scottish Ministers, by order, to require that an integration authority which is an integration joint board must or



must not exercise a power which otherwise applies in connection with the carrying out of the function specified in the order.

### **Section 26 – Directions by integration authority**

69. Subsection (1) provides that, where the integration authority is an integration joint board, it must provide directions to the Health Board and local authority for the carrying out of the delegated functions.

70. Subsection (2) applies where the integration authority is not an integration joint board, i.e. it is a local authority or a Health Board. This enables the integration authority to give directions to the other bodies who prepared the integration scheme for the carrying out of any delegated functions. The giving of directions is not mandatory under this subsection. This enables an integration authority which is not an integration joint board to choose to carry out functions itself, or to issue a direction in respect of the carrying out of the function. Where an integration scheme was prepared by more than one local authority, this subsection allows the integration authority to direct one of the local authorities to carry out a function for the entire area covered by the integration scheme.

71. Subsection (3) provides that the person to whom a direction may be given under subsection (1) or (2) must provide such information to the integration authority as is necessary to enable the integration authority to decide whether or not to give a direction and the content of any direction. This seeks to ensure that such information as is necessary for effective strategic planning is shared between the integration authority, the Health Board and the local authority.

72. Subsections (4) and (5) provide that a direction can be given to more than one person, i.e. an integration joint board can give a direction to both the Health Board and the local authority, and that such a direction can require each party to: carry out the functions jointly, in part or in relation to a specified area, or do particular things in relation to the function.

### **Section 27: supplementary**

73. This section makes supplementary provision in relation to the issuing of directions under section 26.

74. Subsection (1) provides that directions issued under section 26 must specify the amounts to be set aside in respect of large hospital functions and must, in any other case, set out payments (or the method of determining payments) to be made by the integration authority to the person to whom the function is delegated. It must also specify how such an amount, or payment, is to be used. Directions may regulate the way in which the function is to be carried out and may make ancillary provision.

75. Subsection (2) sets out particular matters which may be provided for in directions issued under section 26. This provides that integration authorities may use directions to require the provision of information to the integration authority, to take action to enable the integration authority to comply with any court order made against it in connection with



a delegated function or reimburse the integration authority in relation to any liabilities incurred in connection with a delegated function.

76. Subsection (3) requires that the integration authority make such payments to the Health Board and local authority as are set out in directions given by it.

77. Subsection (4) provides that a person to whom a direction under section 26 is given must comply with the direction.

78. Subsection (5) provides that a direction may vary or revoke an earlier direction and that the direction must be given in writing.

79. Subsections (6), (7) and (8) provide for the situation in which a Health Board and local authority agree that an integration joint board should be enabled to deliver functions itself rather than by issuing directions to the Health Board and local authority. Subsection (6) provides that the Scottish Ministers may make an order to allow an integration joint board to decide not to give directions in respect of a specified delegated function. Subsection (7) sets out the conditions that apply to the exercise of this power. An order under (6) may be made only if an application is received from the Health Board and local authority, and if the Scottish Ministers consider that the order should be made to improve compliance with the national health and wellbeing outcomes. Subsection (8) allows the Scottish Ministers to exclude a particular function (or functions) from an order made under subsection (6) if they do not consider that the making of an order in respect of that function would improve compliance with the integration delivery principles or contribute to achieving the national health and wellbeing outcomes.

## **Section 28 – Health funding: further provision**

80. Section 28 deals with how budgets for services provided in large hospitals are to be used in planning for the delivery of services using the health and social care resources to best meet the needs of the population. Health Boards are required to identify and set aside amounts which relate to services provided in large hospitals which are included in the delegated functions, where such amounts are not included in the payments to the integration authority. Subsection (2) gives the integration authority the power to direct the use of this amount by the Health Board in line with the strategic plan.

81. Subsections (3) and (4) deal with situations where there is a difference between actual costs and those set out in the direction. Where the amount spent in relation to services delivered in a large hospital is less than the amount set out in the direction, subsection (3) allows the integration authority to require that the Health Board make payment to it for the unused amount. Where the amount spent in relation to services delivered in a large hospital is greater than had been determined in the strategic plan, subsection (4) allows the Health Board to require that the integration authority make payment to it for the additional amount spent. Subsections (5) and (6) require that the Health Board provides the integration authority with information relating to the amounts set aside.

*Strategic planning etc.*

## **Section 29 – Requirement to prepare strategic plans**

82. Section 29 requires the integration authority to prepare a strategic plan for the area of each local authority. This section sets out what a strategic plan is and the period the plan relates to. Section 59 defines the term “integration authority” by reference to the integration model adopted in the integration scheme.

83. The integration authority can include such material as it thinks fit in the strategic plan, however there are two mandatory elements:

- A strategic plan must set out the arrangements for carrying out the integration functions (defined in section 60) in the local authority area over the period of the plan (subsection (2)(a)). The area must be divided into localities for this purpose, and the arrangements for each locality must be set out separately (subsection (3)).
- A strategic plan must also set out the way in which the arrangements for carrying out the functions are intended to achieve or contribute towards achieving the national health and wellbeing outcomes.

84. Subsection (4) provides that the Health Board and local authority may choose to delegate the functions on a day that is earlier than the day prescribed by the Scottish Ministers under sections 9(3) or 15(2). Where this occurs, the integration authority must make clear in its first strategic plan the date when functions are to be delegated.

85. The first strategic plan of an integration authority must be prepared before the integration start date (subsection (5)), which is defined in subsection (6) as meaning either the date of delegation of functions set out in the strategic plan or the day prescribed by the Scottish Ministers under section 9(3) or 15 (2).

## **Section 30 – Considerations in preparing strategic plan**

86. Section 30(2) requires the integration authority to take into account the integration delivery principles (set out in section 31) and the national health and wellbeing outcomes (prescribed under section 5) in preparing a strategic plan. Subsections (3) and (4) provide that each integration authority, when preparing a strategic plan, must take account of any other strategic plan that has been, or is being, prepared where that plan sets out, or proposes to set out, arrangements for the use of services, facilities or resources used by another integration authority.

## **Section 31 – Integration delivery principles**

87. Section 31 sets out the integration delivery principles that must be taken into account in preparation of the strategic plan and in the exercise of integration functions (as required by section 40).

88. The effect of subsection (1)(a) is to ensure that, in making arrangements for the carrying out of integration functions, the integration authority takes account of the main purpose of the services provided in pursuance of those functions, which is to improve the wellbeing of users of the service.

89. Subsection (1)(b) supplements this by setting out principles for the provision of those services which must also be taken into account in making arrangements for delivery of integration functions. The effect is to ensure a focus on integrated delivery - including consideration of the needs of different service users and different areas, the particular characteristics and circumstances of different service users, the rights of service users, the dignity of service users, the participation by service users in the community in which they live, protecting and improving the safety of service users, improving the quality of services, local planning and leadership, the anticipation and prevention of need, and the effective use of resources.

### **Section 32 – Establishment of strategic planning group**

90. Section 32 puts an obligation on integration authorities to establish a strategic planning group for each local authority area, for the purposes of preparing the strategic plan for that area.

91. Depending on the model of integration chosen, the group must involve members nominated by the local authority or the Health Board, or both, as set out in subsection (1)(a), (b) and (c). In effect, this provides for the bodies who prepared the integration scheme to be involved in the development of the strategic plan. In addition, the integration authority will be required by subsection (1)(d) and (e) to involve a range of relevant stakeholders, including representatives of groups prescribed by the Scottish Ministers by regulations under subsection (2).

92. Subsection (3) provides for the integration authority to determine the number of members in its strategic planning group and the process for the appointment, replacement and removal of members. Subsection (4) provides that the integration authority may appoint members of the strategic planning group from persons nominated under subsection (1), to remove persons from membership of the group and to appoint members in place of members who resign or are removed from membership of the group. Subsection (5) provides for a constituent authority to remove from its strategic planning group a member appointed to represent it and to nominate (under subsection (1)) another person in place of a member of the group appointed to represent it. Subsection (6) provides for a member of the strategic planning group to resign at any time. Subsections (7) to (9) provide for the views of localities to be taken into account by requiring the integration authority to identify the most appropriate person to represent each locality on the strategic planning group. This also provides for local flexibility, so that an individual can represent more than one locality. Subsection (10) provides that the integration authority's ability to make decisions is not undermined by any vacancy in its membership.

93. Subsection (11) and (12) provide that the integration authority is to determine the procedure of the group, and may pay members of the group expenses and allowances.

### **Section 33 – Preparation of strategic plan**

94. Section 33 sets out the process for the involvement of the strategic planning group in the development of the strategic plan by an integration authority, assuring the group's engagement in the process from the start.

95. The integration authority is required to prepare proposals for the content of the strategic plan, to consult the strategic planning group on the proposals (subsection (2)) and then to prepare a first draft of the strategic plan, taking into account the views of the group expressed during the consultation. The integration authority must then consult the group on the draft (subsection (3)).

96. Taking account of the views in response to the consultation on the first draft, the integration authority is required to prepare a second draft of the strategic plan and send a copy of it for comment to persons mentioned in subsection (5), and any other persons the integration authority considers appropriate.

97. The persons mentioned in subsection (5) include the local authority and the Health Board or both (depending on the model of integration chosen) as well as representatives of any groups prescribed by the Scottish Ministers by regulations under subsection (6). The effect of this is to ensure that any others with an interest will have an opportunity to comment on the draft plan.

98. Subsection (7) requires the integration authority to take into account the views obtained through consultation on the second draft of the strategic plan when finalising the strategic plan.

### **Section 34 – Provision of information for purpose of preparing strategic plan**

99. Section 34 places a duty on Health Boards and local authorities to share information for the purpose of preparing the strategic plan. Subsection (1) requires the provision of information by constituent authorities to an integration joint board. Subsections (2) and (3) apply to the provision of information to an integration authority which is a local authority or a Health Board. In both cases, information must be shared if it is information which may be reasonably required for the purpose of preparing a strategic plan.

### **Section 35 – Publication of strategic plans**

100. Section 35 places a duty on integration authorities to publish strategic plans. Subsection (1) requires this to be done as soon as practicable after the plan has been finalised under section 33. Subsection (2) requires an integration authority to publish a statement at the same time it publishes its strategic plan, which describes the consultation it undertook under section 33.

### **Section 36 – Significant decisions outside strategic plan: public involvement**

101. Section 36 makes provision for where an integration authority plans to make a decision that would have a significant effect on the arrangements for provision of a service in pursuance of integrated functions and give effect to the decision by means other than by revising its strategic plan under section 37.

102. The integration authority is required to consult its strategic planning group, along with users or potential users of the service which is being or may be provided, on the proposed decision.

### **Section 37 – Review of strategic plan**

103. Section 37 sets out the review process that applies to a strategic plan. Subsection (1) (read with subsection (10)) require that an integration authority review its strategic plan at least every three years, and may carry out additional reviews from time to time. Subsection (2) provides that in carrying out a review of the strategic plan, integration authorities must have regard to the national health and wellbeing outcomes, the integration delivery principles, and the views of the strategic planning group. Subsection (3) provides that the carrying out of a review under subsection (1) may result in the integration authority making any necessary changes by replacing its strategic plan. Subsection (4) provides flexibility for integration authorities to determine the details of the review process they use, subject to the requirements imposed by subsection (2).

104. Under subsections (5) to (7), the Health Board and local authority are required to provide the integration authority with the information that is reasonably required to carry out the review of the strategic plan. Subsection (8) provides that, in preparing a replacement strategic plan, the integration authority must have regard to the national outcomes for health and wellbeing and the integration planning and delivery principles, along with the requirements on consultation, provision of information and publication that are set out in the Act in relation to strategic planning. Subsection (9) provides that a strategic plan which is prepared following a review must specify the date on which it takes effect.

### **Section 38 – Requirement to prepare replacement strategic plan**

105. Section 38 applies to integration joint boards. It provides that the local authority and the Health Board may, acting jointly, direct the integration joint board to prepare a replacement strategic plan where they feel the strategic plan prohibits either of them from carrying out any of their functions. Subsections (3) and (4) set out specific requirements for a direction to prepare a replacement strategic plan. Under subsection (6), a direction requiring the replacement of the strategic plan is binding on the integration authority.

### **Section 39 – Strategic plan: annual financial statement**

106. Section 39 requires the integration authority to publish an annual financial statement upon publication of its first strategic plan, and every year after that (subsection (1)). The financial statement must set out the total resources that the integration authority intends to allocate under the provisions of the strategic plan (subsection (2)).

*Carrying out of integration functions*

**Section 40 – Carrying out of integration functions: general**

107. Section 40 obliges integration joint boards, local authorities and Health Boards to have regard to the national health and wellbeing outcomes and the integration delivery principles (which are set out in section 25) when carrying out an integration function.

**Section 41 – Carrying out of integration functions: localities**

108. Section 41 relates to the localities identified in the strategic plan pursuant to section 29(3)(a). Subsections (1) to (4) require the person carrying out an integration function for the area of a local authority (which may be the local authority, the Health Board or the integration joint board depending on the integration model adopted and any directions made under section 26) to involve and consult interested persons prescribed by the Scottish Ministers by regulations where it proposes to take a decision that it considers might significantly affect the service provision in a locality of the area of the local authority.

109. Subsection (5) gives the integration authority the ability to pay the members of the groups consulted such expenses and allowances as the integration authority determines.

**Section 42 - Integration authority: performance report**

110. This section requires each integration authority to prepare a performance report for each reporting year. The report must set out an assessment of performance in carrying out the integrated functions during the reporting year.

111. Subsection (3) enables the Scottish Ministers to make regulations that set out the form and content of performance reports. Subsections (4) and (5) require the integration authority to publish the performance report within four months of the end of the reporting year and to provide a copy to the Health Board, the local authority and/or the integration joint monitoring committee, as appropriate to the model of integration chosen.

112. Subsections (6) and (7) require that the Health Board and the local authority must provide such information as the integration authority might reasonably require for the purposes of preparing a performance report to the integration joint board or the authority (being a local authority or Health Board), as appropriate to the model of integration chosen.

113. Subsection (8) provides that the “reporting year” is a period of one year starting on the date that the integration functions were delegated or the prescribed date set by the Scottish Ministers that delegation of functions must occur, and each subsequent period of a year.



*Reports by integration joint monitoring committee*

**Section 43 - Reports**

114. Section 43 sets out that an integration joint monitoring committee may give reports to the integration authority on the carrying out of any aspect of the integration functions.

115. Under subsection (2), reports under this section may include recommendations as to how the integration functions should be carried out in future.

116. Subsection (3) obliges the integration authority to have regard to the report and any recommendations contained within it. It requires the integration authority to take such action as it considers necessary and, where a report contains recommendations, respond to the integration joint monitoring committee. Subsection (4) makes provision for the publication of reports under this section.

117. Subsection (5) obliges the local authority and the Health Board to provide the integration joint monitoring committee with such reports, information and other assistance that it may reasonably require for the purpose of preparing a report under (1).

**Section 44 - Review of integration scheme**

118. Section 44 obliges the local authority and the Health Board to carry out a review of their integration scheme at least every five years. Subsection (3) requires that the Health Board and the local authority have regard to the integration planning principles and the national health and wellbeing outcomes and that they undertake the consultation process as set out in section 6.

119. Subsection (4) requires the local authority and the Health Board to take account of the views of the persons consulted and to decide whether changes to the integration scheme are necessary or desirable.

**Section 45 - Requirement to review integration scheme**

120. Section 45 provides for two circumstances where review of an integration scheme may be required more frequently than every 5 years.

121. Subsection (2) gives the Health Board or the local authority the power to require that a joint review of the integration scheme is undertaken to identify if any changes to the integration scheme are necessary or desirable.

122. On each occasion on which the Scottish Ministers exercise the power conferred by section 1(3)(f), subsection (3) gives the Scottish Ministers the power to require that the local authority and the Health Board undertake a review of the integration scheme, for example to identify whether they require to include additional information in the scheme.



123. Subsections (4) and (5) require that, where a review is required for either of these two reasons, the Health Board and the local authority undertake this review having regard to the integration planning principles and the national health and wellbeing outcomes and that they undertake the consultation process as set out in section 6. Subsection (5) requires the local authority and the Health Board to take account of the views of the persons consulted and decide whether changes to the integration scheme are necessary or desirable.

#### **Section 46 – Revised integration scheme**

124. This section sets out the process for varying the integration scheme after the local authority and Health Board decide, following a review, that changes to the scheme are necessary or desirable.

125. Any changes must be made jointly by the local authority and the Health Board and are to be achieved by the preparation of a revised integration scheme.

126. Subsection (3) establishes the scope of the changes that may be made to the integration scheme. A revised integration scheme may include further 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 in conjunction with the delegated functions when delegating to a Health Board only or a local authority only or to both, make adjustments to the method of determining payments as mentioned in section 1(3)(d) and/or 1(3)(e) and change or remove any information included within the integration scheme by virtue of section 1(3)(f).

127. Subsections (4) and (5) oblige the Health Board and the local authority to consult with persons or groups of persons the Scottish Ministers may prescribe and other persons as they think fit, and take account of their views.

128. Section 46(6) provides that the revised integration scheme must be submitted for approval by the Scottish Ministers.

129. Subsection (7) obliges the Scottish Ministers to set a date that a revised integration scheme takes effect. Subsection (8) requires the Health Board and the local authority to publish a revised scheme as soon as is practicable after the date on which it takes effect.

#### **Section 47 – New integration scheme**

130. Section 47 applies where a local authority and Health Board decide under section 44 or 45 that changes to an integration scheme are necessary or desirable. Section 47 sets out that a local authority and Health Board must prepare a new integration scheme under section 1 where they wish to change either the number or identity of the local authorities which prepared the scheme, or the integration model used. The new scheme is subject to all the same requirements, including consultation and the requirement for Ministerial approval, as the original integration scheme. Subsection (4) clarifies that the Act applies to a new integration scheme created under section 47 as it applies to a scheme prepared under section 1 or section 2(2).

## **Section 48 – Power to make provision in consequence of new integration scheme**

131. This section confers power on the Scottish Ministers to take steps in consequence of a new integration scheme approved under section 47. They are empowered to provide by order for the winding-up of any integration joint board that was established in pursuance of the original scheme. They can also provide by scheme for the transfer of staff, property, rights, liabilities or obligations of an integration joint board, local authority or Health Board as may be necessary in light of the new scheme.

132. Subsection (4) requires the Scottish Ministers to consult the local authority and the Health Board before making such a scheme as a consequence of a new integration scheme.

133. Subsection (5) and (6) require that health and social care professionals have to be consulted where a scheme relates to the transfer of staff.

### *Supplementary*

## **Section 49 – Information-sharing**

134. Section 49 allows for the disclosure of information between local authorities, Health Boards and integration joint boards for the purpose of preparing an integration scheme, carrying out the functions that are delegated, the functions that are to be carried out in conjunction with delegated functions and the preparation of a strategic plan. The sharing of information for these purposes can take place without breaching any duty of confidentiality that may be owed by a Health Board or local authority to any person.

## **Section 50 – Grants to local authorities**

135. Section 50 provides for the Scottish Ministers to make grant payments to local authorities in respect of costs incurred by virtue of Part 1 of the Act, and to set conditions in relation to grants made.

## **Section 51 – Default power of Scottish Ministers**

136. Section 51 provides for the Scottish Ministers to take action where a local authority and Health Board have failed to submit an integration scheme to them for approval by the deadline set for the purposes of section 7 or under section 7(3)(c).

137. In such circumstances, the Scottish Ministers may require the local authority and Health Board to adopt the integration joint board model of integration and may decide the functions to be delegated. They may also establish the integration joint board by order, set a deadline by which the local authority and Health Board must delegate the specified functions to the integration joint board, specify payments to be made by the local authority and Health Board to the integration joint board and impose other requirements in relation to the delegated functions.

## **Section 52 – Directions**

138. Section 52 confers a power on the Scottish Ministers to give directions to integration joint boards, Health Boards and local authorities.

139. Directions given to a local authority or Health Board under this section may relate to the functions conferred on them by this Act, the carrying out of functions delegated to them in pursuance of an integration scheme, and the functions to be carried out in conjunction with the delegated functions (subsections (1) and (2)).

140. Directions to an integration joint board may relate to the functions conferred on it by this Act and the carrying out of functions delegated to it in pursuance of an integration scheme (subsection (3)).

141. Integration joint boards, Health Boards and local authorities are required to comply with a direction given to them by the Scottish Ministers under this section.

142. Subsection (5) provides that directions made under this section may vary or revoke earlier directions made under this section and are to be made in writing.

143. Subsection (6) places a limit on the use of the power in this section to prevent the Scottish Ministers from issuing a direction to require a local authority and Health Board to submit an application under section 27(7). The Scottish Ministers cannot make an order under section 27(6) without the prior written application of the Health Board and local authority. Section 52(6) ensures that the Scottish Ministers cannot direct the Health Board and local authority to make such a written application.

## **Section 53 – Guidance**

144. Section 53 requires persons mentioned in subsection (2) to take account of any guidance issued by the Scottish Ministers about their functions, under or in relation to the Act. The persons are a local authority, a Health Board, an integration joint board and an integration joint monitoring committee.

## **Section 54 – Social Care and Social Work Improvement Scotland**

145. Section 54 makes amendments to the Public Services Reform (Scotland) Act 2010 to provide for Social Care and Social Work Improvement Scotland (“SCSWIS”) to inspect services which are delivered under integration functions in pursuance of an integration scheme, regardless of the person carrying out the function.

## **Section 55 - Healthcare Improvement Scotland**

146. Section 55 makes amendments to the National Health Service (Scotland) Act 1978 to provide for Healthcare Improvement Scotland (“HIS”) to inspect services which are delivered under integration functions in pursuance of an integration scheme, regardless of the person carrying out the function.

## **Section 56 – Joint inspections of health and social services**

147. Section 56 makes amendments to the Public Services Reform (Scotland) Act 2010 to provide for SCSWIS and HIS to jointly inspect health and social care services provided under integration functions in pursuance of an integration scheme, and to carry out such inspections jointly with the other persons mentioned in section 115(6) of that Act .

148. In carrying out joint inspections, SCSWIS and HIS are to adhere to current codes of practice issued by the Scottish Ministers and may carry out joint inspections for any of the purposes provided for by section 10I(1) or (1B) or 10J(2) of the National Health Service (Scotland) Act 1978, or section 53(2) of the Public Services Reform (Scotland) Act 2010.

## **Section 57 – Amendments of section 56 of Local Government (Scotland) Act 1973**

149. Section 57 amends the Local Government (Scotland) Act 1973 to ensure that the functions which are conferred on local authorities by the Act must be carried out by that local authority, and may not be delegated to another local authority. For example, a local authority could not delegate the function of preparing a strategic plan under section 1 or 2 to another local authority.

## **Section 58 – Children’s services planning**

150. Section 58 adds a new paragraph into the definition of “other service provider” in section 7(1) of the Children and Young People (Scotland) Act 2014, inserting a reference to integration joint boards. This means that services provided under functions delegated to an integration joint board will be treated in the same way, for the purposes of Part 3 of that Act, as services provided by Health Boards or local authorities.

## **PART 2**

### **SHARED SERVICES**

#### **Section 62 - Shared services**

151. Section 62(1) enables the Common Services Agency for the Scottish Health Service (the “Common Services Agency”) to provide, or arrange the provision of, goods and services to the bodies listed in subsection (2). The Common Services Agency may only provide, or arrange the provision of goods and services to those bodies with the consent of the Scottish Ministers.

152. Subsection (3) provides an illustrative list of the services which may be provided. The list comprises administrative, technical, legal, other professional and accommodation services.

153. The Common Services Agency also has powers under the National Health Service (Scotland) Act 1978 (“the 1978 Act”) to provide goods and services to certain persons. For example, under section 15 of the 1978 Act, the Common Services Agency may

provide goods to doctors, dentists and ophthalmologists who are providing primary medical services under a contract with a Health Board. Subsection (4) sets out that the power of the Common Services Agency to provide goods and services under subsection (1) of this section sits alongside and does not prejudice any other power of the Common Services Agency to provide goods or services to other persons.

154. Subsection (5) enables the Scottish Ministers to amend, by order, the list of persons, or description of persons, to whom the Common Services Agency may provide goods or services.

### **Section 63 – Section 62: consequential provision**

155. Section 63 amends sections 10 and 15 of the National Health Service (Scotland) Act 1978 (the “1978 Act”) and section 17(2) of the Patient Rights (Scotland) Act 2011 so as to make changes which are necessary in consequence of sections 62 and 71. Subsection (2) adjusts section 10 of the 1978 Act to reflect that the functions of the Common Services Agency are conferred on it by section 62 of the Act as well as by the 1978 Act. Subsection (3)(a) removes references to the Common Services Agency from section 15 of the 1978 Act. The functions formerly conferred on the Agency by that section are replaced by functions conferred on the Agency by section 44 of the Act. Subsection (3)(b) and (c) have the effect that section 15(1)(a) of the 1978 Act continues to apply to the Common Services Agency despite the change made by subsection (2). Subsection (3)(d) repeals section 15(2A)-(2D) of the 1978 Act. Subsection (4) makes a change to section 17(2) of the Patient Rights (Scotland) Act 2011 to insert a reference to “the 1978 Act”. Section 17(1) of the 2011 Act, which includes a similar reference to the 1978 Act, is repealed by section 71(5) of the Act.

### **Section 64 – Common Services Agency for the Scottish Health Service: residual liabilities**

156. Section 64 amends section 2(1) of the National Health Service (Residual Liabilities) Act 1996 to ensure that those bodies entering into contracts with the Common Services Agency are offered the same protection which is provided when contracting with other NHS bodies. This change is made to take account of the fact that the Common Services Agency may, since the enactment of section 14 of the Public Services Reform (Scotland) Act 2010, be dissolved by order under that Act. In the event that such an order is made, any residual liabilities of the Common Services Agency will transfer to the Scottish Ministers or another health body.

### **Section 65 – Extension of schemes for meeting losses and liabilities of health service bodies**

157. Section 65 amends section 85B of the National Health Service (Scotland) Act 1978 to permit local authorities and integration joint boards to participate in the scheme established under that section for the purposes of meeting losses and liabilities incurred in the exercise of relevant functions.

158. Subsection (3) inserts references into the 1978 Act, which have the effect of restricting the functions of local authorities that can be covered by a scheme made under section 85B of the 1978 Act. It restricts the functions to integration functions and to functions that a local authority carries out in accordance with a direction from an integration joint board. The Scottish Ministers are given the power to specify by order other functions of local authorities that can be covered by a scheme under section 85B of the 1978 Act. “Integration functions” are defined for the purposes of this section in relation to local authorities as functions which are delegated to the authority under an integration scheme; to be carried out in conjunction with delegated functions; or to be carried out by the local authority in pursuance of a direction by a Health Board or integration joint board under section 26.

159. Subsection (4) amends the existing power in the 1978 Act so that the Scottish Ministers are not able to direct local authorities to participate in a scheme made under section 85B of the 1978 Act.

### **PART 3**

#### **HEALTH SERVICE: FUNCTIONS**

##### **Section 66 – Scottish Ministers: power to form companies etc.**

160. Section 66 amends section 84B of the 1978 Act. Currently, the Scottish Ministers may only form or participate in companies as defined by section 1(1) of the Companies Act 2006, and only for certain limited purposes. The amendments enable the Scottish Ministers to form, participate in, transfer assets to or invest in any type of body corporate. This includes limited liability partnerships and Scottish Charitable Incorporated Organisations. The amendment also allows such bodies corporate to be used for the purpose of management, development or disposal of assets, and permits the Scottish Ministers to prescribe additional purposes for which bodies corporate may be used in the future.

##### **Section 67 – Health Boards: carrying out of functions**

161. Section 67 amends the 1978 Act to permit Health Boards to exercise any function of another Health Board where the other Health Board and the Scottish Ministers give their consent.

### **PART 4**

#### **GENERAL**

##### **Schedule**

162. The schedule to the Act is introduced by section 1(5). The schedule sets out a list of functions conferred on local authorities that, by virtue of section 1(5), may be delegated under an integration scheme prepared under section 1 or 2 of the Act. Broadly, the listed enactments confer functions on local authorities which relate to the provision of social care services.



## PARLIAMENTARY HISTORY

163. The following table sets out for each Stage of the proceedings in the Scottish Parliament for this Act, the dates on which the proceedings at that Stage took place, the references to the Official Report of those proceedings and the dates on which Committee Reports and other papers relating to the Act were published, and references to those Reports and other papers.

<i>Proceedings and Reports</i>	<i>Reference</i>
<b>Introduction</b>	
Act as introduced	SP Act 32
<b>Stage 1</b>	
<b><i>(a) Health and Sport Committee (lead)</i></b>	
24 <sup>th</sup> Meeting 2013 (Session 4)	3 September 2013, Cols 4166-4182 & Minutes
25 <sup>th</sup> Meeting 2013 (Session 4)	10 September 2013, Cols 4191-4242 & Minutes
26 <sup>th</sup> Meeting 2013 (Session 4)	17 September 2013, Cols 4250-4296 & Minutes
27 <sup>th</sup> Meeting 2013 (Session 4)	24 September 2013, Cols 4305-4356 & Minutes
28 <sup>th</sup> Meeting 2013 (Session 4)	1 October 2013, Cols 4400-4428 & Minutes
30 <sup>th</sup> Meeting 2013 (Session 4)	29 October 2013, in private
31 <sup>st</sup> Meeting 2013 (Session 4)	5 November 2013, in private
32 <sup>nd</sup> Meeting 2013 (Session 4)	12 November 2013, in private
11 <sup>th</sup> Report 2013 (Session 4) Health and Sport Committee Report	18 November 2013, Stage 1 Report
<b><i>(b) Local Government and Regeneration Committee</i></b>	
19 <sup>th</sup> Meeting 2013 (Session 4)	12 June 2013, in private
22 <sup>nd</sup> Meeting 2013 (Session 4)	4 September 2013, Cols 2498-2356 & Minutes
	25 September 2013, in private
<b><i>(c) Finance Committee</i></b>	
21 <sup>st</sup> Meeting 2013 (Session 4)	11 September 2013, Cols 2899-2938 & Minutes
23 <sup>rd</sup> Meeting 2013 (Session 4)	25 September 2013, in private
<b><i>(d) Delegated Powers and Law Reform Committee</i></b>	
22 <sup>nd</sup> Meeting 2013 (Session 4)	3 September 2013, Cols 1028-1036 & Minutes
25 <sup>th</sup> Meeting 2013 (Session 4)	24 September 2013, in private
<b><i>(e) Consideration by Parliament</i></b>	
Stage 1 Debate, 26 November 2013	Debate, Cols 24873-24910 Decision time, Cols 24911-24912



*These notes refer to the Public Bodies (Joint Working) (Scotland) Act 2014 (asp 9)  
which received Royal Assent on 1 April 2014*

<b>Stage 2</b>	
<b><i>Health and Sport Committee</i></b>	
2 <sup>nd</sup> Meeting 2014 (Session 4)	21 January 2014, Cols 4745-4800 & Minutes
3 <sup>rd</sup> Meeting 2014 (Session 4)	28 January 2014, Cols 4807-4836 & Minutes
Act (as amended at Stage 2)	SP Act 32A
<b>Stage 3</b>	
Stage 3 Debate, 25 February 2014	Amendments, Cols 28069-28135 Debate, Cols 28135-28157 Decision Time, Cols 28157-28158
Act as passed, 25 February 2014	<b>SP Act 32B</b>
<b>Royal Assent</b>	
Royal Assent, 1 April 2014	Public Bodies (Joint Working) (Scotland) Act 2014

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