

PUBLIC BODIES (JOINT WORKING) (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Public Bodies (Joint Working) (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Overview of the Bill

3. The Bill primarily provides the framework for the improvement of the quality and consistency of health and social care services through the integration of health and social care services in Scotland. In addition, the Bill provides for the Common Services Agency (also known as NHS National Services Scotland) to provide goods and services to public bodies including local authorities; for the Scottish Ministers to form a wider range of joint venture structures in relation to persons providing functions and services under the National Health Service (Scotland) Act 1978 than at present in order to make the most effective use of resources; and to extend the scheme for meeting losses and liabilities of health service bodies which is run by NHS Scotland on behalf of the Scottish Ministers to local authorities and "integration joint boards" established under Part 1.

Outline of Bill provisions

4. In summary the Bill:

- Provides for nationally agreed outcomes for health and social care, and for delivery of which Health Boards and local authorities are equally and jointly accountable to the Scottish Ministers and the public.

- Establishes integration joint boards and integration joint monitoring committees as the partnership arrangements for the governance, planning and delivery of health and social care services. The Bill will remove Community Health Partnerships from statute. Health Boards and local authorities will establish functions and resources to be integrated, for the improvement of person-centred care, in an integration plan, which will set out the detail of their integrated arrangements.
- 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 for 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 partner for the delivery of services to support the functions delegated. Second, delegation between partners. In this case the Health Board and/or local authority delegates functions and the corresponding amount of resource, to the other partner, which then hosts the services and the integrated budget.
- Requires integration joint boards to appoint a chief officer who will be responsible for the management of the integrated budget and the delivery of services to meet the outcomes in the integration plans. The chief officer will lead the development and delivery of the strategic plan for the joint board. Where delegation is between partners, these responsibilities fall to the Chief Executive of the host partner.
- Requires integration joint boards, and Health Boards or local authorities acting in the capacity of a 'lead agency' (the "integration authority"), to prepare a strategic plan for the area, which sets out how it will meet both local and nationally agreed outcomes. The integration authority will involve a range of partners in the development of the plan and will consult widely, taking into account any views expressed. In addition, the integration authority will be required to make suitable arrangements to plan locally for the needs of its population, ensuring the involvement of a range of partners, including clinicians and care professionals, in the development and implementation of local planning arrangements.
- Delivers opportunities for more effective use of public services and resources by allowing for 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.
- Enables the Scottish Ministers to extend the range of bodies able to participate in the scheme for meeting losses and liabilities of certain health service bodies. The scheme is established under section 85B of the National Health Service (Scotland) Act 1978 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 Bill amends the bodies able to participate in the scheme to include local authorities and integration joint boards.

Rationale for subordinate legislation

5. The Bill contains a number of delegated powers which are explained in more detail below. In deciding whether legislative provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has had regard to the need to:

- Strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances with the benefit of experience, without the need for primary legislation;
- Anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament;
- Make proper use of valuable parliamentary time;
- Allow detailed administrative arrangements to be kept up to date with the basic structures and principles set out in the primary legislation; and
- Consider the likely frequency of amendment.

6. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of parliamentary procedure has been considered appropriate. Powers that are referred to here as being exercisable by regulations or orders are to be made by Scottish statutory instrument.

Part 1 – Functions of Local Authorities and Health Boards

Integration

Delegated powers

Section 1 – Integration plans: same local authority and Health Board area

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

7. Subsection (3) provides that an integration plan is a plan setting out certain matters including, under subsection (3)(e) prescribed information about such other matters as may be prescribed.

8. Subsection (6) provides that the Scottish Ministers may by regulations prescribe: (a) functions of local authorities that must, may or may not be delegated under an integration plan;

(b) functions of Health Boards that must, may or may not be delegated under an integration plan; (c) functions of local authorities or Health Boards that must be delegated under an integration plan other than in prescribed circumstances; functions of local authorities or Health Boards that may be delegated under an integration plan only in prescribed circumstances; functions of local authorities or Health Boards that may not be delegated under an integration plan in prescribed circumstances; and (d) functions of local authorities or Health Boards that may be delegated under an integration plan only if other prescribed functions are also delegated to the same person under the plan.

Reason for taking this power

9. Subsection (3)(a) to (d) sets out the bare bones of an integration plan. The power in subsection (3)(e) allows Ministers to prescribe matters (additional to those specified in subsection (3)(a) to (d)) which are to be set out in an integration plan, and to prescribe information which must be provided in relation to those matters. This will allow Ministers to ensure that integration plans set out a full scheme for integration, and that the requirements can be adapted in light of future developments.

10. The power in subsection (6) allows Ministers to determine which functions must or may be delegated under an integration plan, and which may not. The Scottish Ministers seek innovation in service provision as part of these reforms. This provision enables the Scottish Ministers to take account of changing circumstances across health and social care in future, including in relation to the nature and form of services provided. It also enables Ministers to reconsider the range of functions that may be delegated as integration develops. For example, a function that may currently not be considered appropriate for delegation, may seem entirely appropriate for delegation in a few years' time. Such an approach will support continuous closer integration and adaptation of services. It is anticipated that any review will be taken forward in consultation with relevant stakeholders with the aim of strengthening and developing the delivery of integrated health and social care services.

Choice of procedure

11. The powers in subsection (3)(e) are subject to negative procedure. This is considered to provide an appropriate level of scrutiny given that the powers allow Ministers only to make detailed provision as to matters which are additional to the core elements of the integration plan.

12. The power in subsection (6) is subject to negative procedure. This is considered to provide an appropriate level of scrutiny given that the power sets the framework within which Health Boards and local authorities will determine which functions to delegate when implementing the integration of health and social care services under the Bill. It is considered therefore that a more detailed level of Parliamentary scrutiny is not required.

Section 5 – Power to prescribe national outcomes

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

13. Subsection (1) provides that the Scottish Ministers may by regulations prescribe outcomes in relation to health and wellbeing, following consultation under subsection (3).

14. This provision allows Ministers to prescribe national health and wellbeing outcomes, but to do so only after consulting with a range of interests across health and social care. It also allows them to amend the prescribed outcomes from time to time in order to recognise progress and to ensure – through updated national health and wellbeing outcomes - that integration authorities focus resources on the areas where Ministers, with the benefit of consultees' views, consider it is most needed.

Reason for taking this power

15. This provision helps to ensure that integration is taken forward with a focus on its purpose which is improving outcomes. By allowing Ministers to set national outcomes, it provides for a consistent focus nationally. It is appropriate that outcomes are set by regulations as this requires a process of consultation to be followed, contemporaneously with integration plans being prepared, to inform the outcomes. It also provides flexibility for the Scottish Ministers to amend outcomes in the future, in response to innovation locally and changing circumstances, and in order to support continuous improvement.

Choice of procedure

16. This is subject to affirmative procedure as the national outcomes are fundamental to health and social care integration in that they express its practical purpose. Whilst this level of scrutiny involves more parliamentary time, it is considered that the national outcomes are sufficiently important to justify this, and it is not anticipated that they will be regularly amended.

Section 6 – Consultation

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

17. Subsection (2)(a) provides that before submitting the integration plan for approval under section 7, the local authority and the Health Board must jointly consult such persons or groups of persons appearing to the Scottish Ministers to have an interest as may be prescribed. “Prescribed” means prescribed by regulations.

Reason for taking this power

18. This power will ensure that those who may be affected by the policy are appropriately consulted regarding the content of the integration plan. It is considered appropriate to set out the consultees in legislation, as this will ensure that the full range of persons and groups with an interest in the functions being integrated are consulted consistently throughout Scotland. It is also appropriate that the list be set out in secondary legislation as opposed to in the Bill itself, as this will allow the necessary level of flexibility for the list of consultees to be adjusted in future to reflect changes in service users and service delivery over time, as services adapt to changing needs. It will also enable new groups to be added in response to any future changes to the functions to be integrated (for example if an order under section 1(6) expands the types of functions that may or must be integrated).

Choice of procedure

19. This is subject to negative procedure, which is considered appropriate as the regulations will deal with matters of detail relating to the consultation requirement rather than broad principle. The Scottish Ministers consider that a more detailed level of Parliamentary scrutiny is not required for a provision of this nature.

Section 7 – Approval of integration plan

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

20. Subsection (1) provides that a local authority and a Health Board must submit an integration plan to the Scottish Ministers for approval by the prescribed day.

Reason for taking this power

21. The power in subsection (1) allows Ministers to set the date by which integration plans will be submitted for approval. This provides Ministers with flexibility to set an appropriate date in the circumstances prevailing once the Bill is passed and implementation has commenced.

Choice of procedure

22. This provision subsection (1) is subject to negative procedure. This is considered to provide an appropriate level of parliamentary scrutiny for an essentially administrative matter such as setting the date by which a duty must be complied with.

Section 9 – Functions delegated to integration joint board

Power conferred on: Scottish Ministers
Power exercisable by: order /regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

23. Subsection (2) provides that Ministers may establish an integration joint board by Order.

24. Subsection (3) provides that the Scottish Ministers may by regulations prescribe a day before which functions are to be delegated, where functions are being delegated to an integration joint board.

Reason for taking this power

25. In relation to subsection (2), it would be impractical to create individual integration joint boards in primary legislation, given that integration joint boards require to be created only where the corporate body model is the model of integration chosen locally. It is appropriate that the creation of a new body, such as an integration joint board requires some legislative underpinning, and so an order making power is considered appropriate. The order will establish the joint board for an area or areas.

26. In relation to subsection (3), “prescribed” means prescribed by regulations. This power is necessary to allow flexibility as to the date for delegation to occur in relation to different integration joint boards, recognising and accommodating the fact that there will be some variation in the progress achieved in different areas.

Choice of procedure

27. Negative procedure is considered appropriate in relation to an Order under subsection (2) given the formal nature of the order insofar as it establishes integration joint boards.

28. Regulations under subsection (3) will make provision for, the essentially administrative matter of, setting the date by which functions are to be delegated. Negative procedure is considered to provide an appropriate level of scrutiny for such an administrative matter.

Section 10 – Chief officer of integration joint board

Power conferred on: Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

29. Subsection (5) provides that the Scottish Ministers may in relation to any integration joint board by order: (a) disapply the requirements of subsections (2) to (4) which require that the chief officer is seconded to the integration joint board from a constituent authority (local authority or Health Board), and (b) make provision enabling the board to employ a chief officer on such terms and conditions as the board determines.

Reason for taking this power

30. If the person appointed as chief officer is an existing member of staff of the local authority or Health Board which has delegated functions to the integration joint board, then the chief officer will be seconded from the Health Board or local authority. If not, then the person will be appointed as a member of staff of either the local authority or the Health Board and will then be seconded to the integration joint board. This provision will allow the Scottish Ministers to disapply these arrangements and gives them the power to enable integration joint boards to employ a chief officer directly. This provision is essentially included as a safeguard – it is anticipated that the option of enabling the direct employment of a chief officer will be exercised only in the event that arrangements agreed locally fail to work.

Choice of procedure

31. This is subject to negative procedure which is considered appropriate. A more detailed level of Parliamentary scrutiny is not required for an administrative provision of this nature which, if used, will simply activate the alternative position (i.e. employment by the board on terms and conditions set by them) already set out in the Bill.

Section 11 – Other staff of integration joint board

Power conferred on: Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

32. Subsection (1) provides that the Scottish Ministers may by order make provision enabling integration joint boards to appoint staff other than a chief officer. Subsection (2) adds that such an order may include such further provision as regards such staff as the Scottish Ministers think

fit, including in particular provision as to: (a) the appointment of staff; (b) the numbers of staff; and (c) the terms and conditions of staff.

Reason for this power

33. To allow flexibility to appoint staff with appropriate skills and abilities to deliver integration plans. Such provision is not proposed to be made on the face of the Bill as it is envisaged that integration joint boards will not necessarily require to employ staff; delivery of functions is likely to be carried out by the constituent local authorities and Health Board rather than by the board directly. This provision is essentially included as a safeguard – i.e., as with the provision to enable direct employment by the joint board of the chief officer, it is anticipated that the option of enabling direct employment of staff will be exercised only in the event that locally agreed arrangements fail to work. It is considered appropriate to include this power in the Bill to enable a different approach to be taken in light of changing circumstances, if this proves necessary in the future.

Choice of procedure

34. This is subject to negative procedure which is considered appropriate. A more detailed level of Parliamentary scrutiny is not required for a provision of this nature which will set out administrative arrangements relating to the employment of staff.

Section 12 – Integration joint boards: further provision

Power conferred on: Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

35. Subsection (1) provides that the Scottish Ministers may by order make provision about: (a) the membership of integration joint boards; (b) their proceedings; (c) giving integration joint boards general powers (such as powers to contract, acquire or dispose of property or rights or borrow money or incur other liabilities) in connection with the carrying out of their functions; (d) the supply of services or facilities to integration joint boards by a local authority or Health Board; and (e) about any other matter relating to the establishment or operation of integration joint boards that the Scottish Ministers think fit.

Reason for taking this power

36. It is considered appropriate to enable the Scottish Ministers to establish appropriate parameters for operational arrangements within the new integrated partnerships, whilst leaving scope for future flexibility to respond to progress and innovation. It is also considered necessary as a safeguard to enable integration joint boards to fully transact. It is envisaged that this option will only be exercised in the event arrangements agreed locally fail. It is considered that this level of detail is most appropriately dealt with in secondary legislation. It is also necessary to

allow the flexibility that secondary legislation provides so that the arrangements may take into account the particular circumstances of individual joint boards – for example boards which are delegated a greater number of functions or which intend to carry out delegated functions themselves rather than directing the constituent authorities to do so are likely to require stronger supporting arrangements (e.g. larger membership or more extensive general powers) than boards which have lesser responsibilities.

Choice of procedure

37. This power is subject to negative procedure. This is considered appropriate as the order will deal with matters of detail rather than of broad principle. It is considered that a more detailed level of Parliamentary scrutiny would be inappropriate for a provision of this nature.

Section 14 – Implementation of integration plan where functions delegated to local authority or Health Board

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

38. Subsection (2) provides that the Scottish Ministers may prescribe by regulations a day before which: (a) the local authority and the Health Board must jointly establish a committee (an “integration joint monitoring committee”) for the purpose of monitoring the carrying out of the integration functions for the area of the local authority; and (b) the functions are to be delegated.

Reason for taking this power

39. This provision is required in order to allow Ministers to set an appropriate deadline for implementation of integrated arrangements, and to ensure that the monitoring committees which will scrutinise those arrangements are functional from the outset of their operation. The ability to set a timescale for these matters will also support the alignment of statutory planning and reporting periods with the start date of the integrated arrangements.

Choice of procedure

40. This is subject to negative procedure which is considered appropriate. A more detailed level of Parliamentary scrutiny is not required for an administrative provision of this nature which simply sets the date by which certain arrangements under the Bill must be put in place.

Section 16 – Provision about integration joint monitoring committees

Power conferred on: Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

41. Subsection (1) provides that the Scottish Ministers may by order make provision about: (a) the establishment of integration joint monitoring committees; (b) membership of integration joint monitoring committees; (c) the proceedings of integration joint monitoring committees; and (d) any other matter relating to the operation of integration joint monitoring committees that the Scottish Ministers think fit.

Reason for taking this power

42. These provisions enable Ministers to establish appropriate parameters for operational arrangements within the new integrated partnerships, while leaving scope for future flexibility to respond to progress and innovation over time.

Choice of procedure

43. This is subject to negative procedure which is considered appropriate. A higher level of Parliamentary scrutiny is not required for a provision of this nature which will deal with matters of detail rather than of broad principle.

Section 21 – Effect of delegation of functions

Power conferred on: Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

44. Subsection (5) provides that the Scottish Ministers may by order provide that an integration joint board must or must not exercise a power conferred by virtue of subsection (2)(b) i.e. a power that may be exercised in connection with the carrying out of a delegated function, that would otherwise be a power solely of the delegator.

Reason for taking this power

45. These provisions enable Ministers to establish appropriate parameters for responsibilities of the integration joint board, taking account of whether in practice the board or the constituent authorities will be carrying out the delegated functions, while leaving scope for future flexibility to respond to progress and innovation over time. It is anticipated that an order under this section

may be made in conjunction with an order under section 22(8) so that, for example, if functions are to be carried out directly by the integration joint board the board may be required to exercise the necessary powers to do so; or so that the board may be prevented from exercising powers simultaneously with constituent authorities if those authorities are given responsibility for carrying out the functions by virtue of a direction under section 22.

Choice of procedure

46. This is subject to negative procedure which is considered appropriate. A more detailed level of Parliamentary scrutiny is not required for a provision of this nature. Any order made under this power will constitute technical provision about the practical carrying out of functions delegated under the Bill. It would not add to or modify the powers of integration joint boards and would simply be used to provide that they must or must not be exercised, where appropriate.

Section 22 – Further powers of persons to whom functions are delegated

Power conferred on: Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

47. Subsection (8) provides that the Scottish Ministers may by order provide that an integration joint board must or must not give a direction under subsection (1).

Reason for taking this power

48. These provisions enable Ministers to establish appropriate parameters for responsibilities of the integration joint board, in light of whether in practice it is considered appropriate for the board to carry out functions directly or whether the constituent authorities should be given responsibility for them. Without this power, the Bill would allow the integration joint board complete discretion as to whether to carry out delegated functions itself or to require others to do so. It is considered appropriate that Ministers are able to influence the mechanisms for delivery of delegated functions within the integration joint board model, if this is considered necessary in light of practical experience and changing circumstances.

Choice of procedure

49. This is subject to negative procedure which is considered appropriate. A more detailed level of Parliamentary scrutiny is not required for a technical provision of this nature which merely allows Ministers to require that a particular delivery mechanism, already set out in the Bill, is used.

Section 23 – Requirement to prepare strategic plans

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

50. Subsection (4) provides that the first strategic plan of an integration authority is: (a) to be prepared before such date as may be prescribed by the Scottish Ministers by order; and (b) to relate to the period of 3 years beginning with such date as may be prescribed by the Scottish Ministers.

Reason for taking this power

51. This provision enables two dates to be prescribed. The first allows the Scottish Ministers flexibility to set the date by which strategic plans are to be prepared. The second allows the Scottish Ministers to prescribe the start date for the 3-year period that the first strategic plan is to cover. Integration of health and social care is an ongoing priority for Health Boards and local authorities; flexibility of this kind will allow the Scottish Ministers to respond to progress locally, and will allow the planning cycle to be synchronised in future, even where the start date for integration varies from place to place. This will allow the Scottish Ministers to align the start date of the strategic plan with the period of the performance report.

Choice of procedure

52. This is subject to negative procedure, which is considered appropriate. A more detailed level of Parliamentary scrutiny is not required for administrative provision of this nature which sets the date by which the duty to prepare a plan under Bill must be complied with and the start date for that plan.

Section 26 – Establishment of consultation group

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

53. Subsection 2 provides that the groups referred to in subsection (1)(d) are such groups of persons appearing to the Scottish Ministers to have an interest as may be prescribed. “Prescribed” means prescribed by regulations.

Reason for taking this power

54. It is considered appropriate to set out requirements as to representatives to be included in the consultation group in legislation, as this will ensure that the full range of persons and groups with an interest in the arrangements being detailed in the plan are consulted consistently throughout Scotland. It is also appropriate that the list be set out in secondary legislation as opposed to in the Bill itself, as this will allow the necessary level of flexibility for the membership to be adjusted in future in light of any future changes to integrated functions as well as the changing complexion of service users and providers over time.

Choice of procedure

55. This is subject to negative procedure which is considered appropriate as the regulations will deal with the detail of consultation requirements rather than broad principle. A higher level of Parliamentary scrutiny is not required for a provision of this nature.

Section 27 – Steps following establishment of consultation group

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

56. Subsection (5) provides that groups referred to in subsection (4)(d) are such groups of persons appearing to the Scottish Ministers to have an interest as may be prescribed. “Prescribed” means prescribed by regulations.

Reason for taking this power

57. It is considered appropriate to set out requirements as to who is to be consulted on the draft strategic plan in legislation, as this will ensure that the full range of persons and groups with an interest in the arrangements being detailed in the plan are consulted consistently throughout Scotland. It is also appropriate that the list be set out in secondary legislation as opposed to in the Bill itself, as this will allow the necessary level of flexibility for the list of consultees to be adjusted in future in light of any future changes to integrated functions as well as the changing complexion of service users and providers over time.

Choice of procedure

58. This is subject to negative procedure which is considered appropriate as the regulations deal with the detail of arrangements for consultation rather than broad principle. A more detailed level of Parliamentary scrutiny is not required for a provision of this nature.

Section 32 – Carrying out of integration functions: localities

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

59. Subsection (4) provides that the groups referred to in subsection (3) are such groups of persons appearing to the Scottish Ministers to have an interest as may be prescribed.

Reason for taking this power

60. It is considered appropriate to set out in legislation requirements as to who is to be consulted on decisions relating to service provision in localities within local authority areas. This will ensure that the full range of persons and groups with an interest in the service will be consulted at the local level, and that there is a consistent approach to ensuring involvement of local groups across Scotland. It is also appropriate that the list be set out in secondary legislation as opposed to in the Bill itself, as this will allow the necessary level of flexibility for the list of consultees to be adjusted in future in light of any future changes to integrated functions as well as the changing complexion of service users and providers over time.

Choice of procedure

61. This is subject to negative procedure which is considered appropriate as the regulations deal with the detail of arrangements for consultation rather than broad principle. A more detailed level of Parliamentary scrutiny is not required for a provision of this nature.

Section 33 – Integration authority: performance report

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

62. Subsection (3) provides that the Scottish Ministers may by regulations prescribe: (a) the form and content of performance reports; and (b) the period during which performance reports must be published. It is anticipated that performance reports will be required to include information assessing performance against the national outcomes and the strategic plan.

Reason for taking the power

63. To ensure consistency of reporting on delivery of outcomes across Scotland in order to address unnecessary variation. The power will provide flexibility for the form and content of reports to be adapted as appropriate, in response to progress and innovation over time, ensuring that all relevant matters are reported on and enabling Health Boards and local authorities to be held to account. It will also ensure consistency in timescales for reporting across Scotland.

Choice of procedure

64. This is subject to negative procedure which is considered appropriate. A more detailed level of Parliamentary scrutiny is not required for a provision of this nature about timescales for and content of reports. The provision will contain a level of administrative detail which would not normally be included in primary legislation.

Section 36 – Power to make provision in consequence of new integration plan

Power conferred on: Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

65. Subsection (2) provides that, in consequence of the replacement of an integration plan by a new plan, the Scottish Ministers may by order provide for the winding-up of an integration joint board.

Reason for taking this power

66. This power enables the Scottish Ministers to deal with a possible consequence of moving from an old plan to a new plan, in the event that the parties opt in the new plan to adopt a different model of integration not involving an integration joint board; or in the event that the parties to the plan change and the appropriate course of action is for the previous joint board to be replaced by a new joint board. In such circumstances it would be necessary for the pre-existing integration joint board to cease its activities and it is appropriate for the practical arrangements for the cessation of activities and dissolution of the board to be provided for in secondary legislation.

Choice of procedure

67. This is subject to negative procedure which is considered appropriate as an order providing for the winding-up of an integration joint board will relate to practical and administrative matters which do not merit a higher level of Parliamentary scrutiny.

Section 39 – Default power of Scottish Ministers

Power conferred on: Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

68. Subsection (2)(b) confers power on the Scottish Ministers to establish by order an integration joint board.

Reason for taking this power

69. The power is exercisable where a local authority and a Health Board have failed to comply with the duty imposed on them by section 7 to submit an integration plan to Ministers for their approval. It is envisaged that it would be exercised only as a last resort where there is a need for Ministers to step in to avert potential failure to integrate services in the area in question. In such circumstances, where the local authority and the Health Board have failed to work together to prepare a plan in fulfilment of their statutory duties, it is appropriate that a new body should be established to take on responsibility for the integrated arrangements. An order under this section will formally establish the integration joint board for this purpose.

Choice of procedure

70. This is subject to negative procedure which is considered appropriate as the order is simply the mechanism to formally establish an integration joint board in circumstances which are themselves set out in the Bill. A more detailed level of Parliamentary scrutiny is not required for a provision of this nature.

Part 2 – Shared Services

Section 45 – Extension of schemes for meeting losses and liabilities of health service bodies

Power conferred on: Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

71. Section 45(3) amends section 85B of the National Health Service (Scotland) Act 1978 to introduce a new subsection (2C). This new subsection confers a power on the Scottish Ministers to specify functions of local authorities (in addition to integration functions) to which the scheme will apply.

Reason for taking this power

72. Section 45 restricts the application of a scheme under section 85B of the 1978 Act, as far as concerns local authorities, to “integration functions” which are defined as functions delegated to the local authority, functions to be carried out in conjunction with those delegated functions, or functions that a local authority carries out in accordance with a direction from an integration joint board or Health Board under section 22. The Scottish Ministers are given the power to specify by order other functions of local authorities that can be covered by the scheme.. This would enable any or all functions of local authorities to be covered by the scheme if that is considered appropriate in the future.

Choice of procedure

73. This is subject to the negative procedure which is considered appropriate. A higher level of Parliamentary scrutiny is not required for an administrative provision of this nature which would simply extend the functions to which the statutory scheme applies.

Section 48 – Interpretation

Power conferred on: Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

74. Subsection (1) confers a power on the Scottish Ministers to prescribe by regulations persons who are “health professionals”, “social care professionals” and what is meant by “social care” for the purposes of the Bill.

Reason for taking this power

75. These definitions are relevant to the requirement for Ministers to consult relevant groups before prescribing national outcomes for health and wellbeing under section 5. It is appropriate for these definitions to be set out in regulations rather than on the face of the Bill as we do not wish to restrict the scope of functions the must or may be delegated, and nor do we want to restrict the range of groups that should be consulted when innovative future practice may make changes desirable.

Choice of procedure

76. These are subject to negative procedure which is considered appropriate as the definitions are a matter of detail rather than of broad principle. This power is for defining purposes only to allow appropriate consultation. It is considered that a more detailed level of Parliamentary scrutiny would be inappropriate for provisions of this nature.

Section 50 – Ancillary provision

Power conferred on: Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: negative procedure; affirmative procedure if making textual amendments of an Act.

Provision

77. Section 50 provides that the Scottish Ministers may by order: (a) make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision or the Act; and (b) make such transitional or transitory provision or savings as they consider appropriate for the purposes of, or in connection with, the coming into force of any provision of the Act.

Reason for taking this power

78. The new procedures introduced by the Bill may give rise to the need for ancillary provisions. The Scottish Ministers may need to make such provision by order to support the full implementation of the Bill. This provision empowers the Scottish Ministers to make provisions concerning incidental, supplemental, consequential, transitional, transitory provision or savings where this is thought to be necessary.

79. Without these powers to make ancillary provision, it might be necessary to return to Parliament, through subsequent primary legislation, to deal with a matter, which is clearly within the scope and policy intentions of the original Bill. It would not be an effective use of Parliament's time, or the Scottish Government's resources to deal with such matters through primary legislation. They are best addressed through subordinate legislation.

Choice of procedure

80. These orders are in general made subject to the negative procedure but an exception is made where the order adds to, replaces or omits any part of the text of an Act. In that case, the affirmative procedure applies. This approach on procedure is in line with the approach taken in most Bills and there are not considered to be any special factors justifying a different approach in this case.

Section 52 – Commencement

Power conferred on: Scottish Ministers
Power exercisable by: order made by Scottish statutory instrument
Parliamentary procedure: no procedure

Provision

81. Subsection (2) provides that the provisions of the Act (other than sections 49, 50, 52 and 53) come into force on such day as the Scottish Ministers may by order appoint.

Reasons for taking this power

82. This is a standard commencement by order power. As usual with commencement orders, no provision is made for laying the order in Parliament as the power is to commence provisions, which the Parliament has already scrutinised, together with any consequential or transitory arrangements.

Choice of procedure

83. Whilst the order will not be subject to Parliamentary procedure, the Subordinate Legislation Committee will, in terms of remit, have the opportunity to consider the order.

This document relates to the Public Bodies (Joint Working) (Scotland) Bill (SP Bill 32) as introduced in the Scottish Parliament on 28 May 2013

PUBLIC BODIES (JOINT WORKING) (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM