

PUBLIC BODIES (JOINT WORKING) (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these Revised Explanatory Notes are published to accompany the Public Bodies (Joint Working) (Scotland) Bill (introduced in the Scottish Parliament on 28 May 2013) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.
2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. 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 BILL

4. The Bill provides the framework which will support the improvement of the quality and consistency of health and social care services in Scotland. This framework permits the integration of local authority services with health services. In addition, the Bill provides for the Common Services Agency commonly 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 than at present in order to make the most effective use of resources; and to extend the Clinical Negligence and Other Risks Scheme (CNORIS) indemnity scheme run by the Scottish Ministers.

Outline of the Bill

5. In summary the Bill:
 - Provides for national outcomes for health and wellbeing, and for delivery of which Health Boards and local authorities will be accountable to the Scottish Ministers and the public (note that the provisions of the Bill 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 Bill will remove Community Health Partnerships from statute.
- 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 Bill 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 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.
- 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 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 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 CNORIS scheme 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 Bill 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

6. 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 Bill.

7. 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.

8. 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.

9. 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 (5)), (ca) (where subsection (5A) applies) a method of determining amounts to be made available by the Health Board with respect to the delegated functions, (d) (where subsection (5A) 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 (e) any additional information that may be required by the Scottish Ministers by regulations.

10. Subsection (4A) provides for local authorities to delegate only those of their functions that are conferred by the enactments listed in the schedule. Subsection (4B) provides for Health Boards to delegate such of their functions as are prescribed by the Scottish Ministers. Subsection (4C) provides that the Scottish Ministers may by regulations prescribe functions conferred by 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 (4D) 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 (4E) 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 local authorities and Health Boards must delegate functions prescribed under

subsections (4C) and (4D) respectively so far as the functions relate to persons aged 18 years or over. By virtue of subsections (4F) and (4G), the Scottish Ministers may prescribe functions of Health Boards that must be delegated other than in prescribed circumstances or and prescribe functions of Health Boards and local authorities that may not be delegated in prescribed circumstances. By virtue of subsection (4H) the Scottish Ministers may remove enactments from the schedule.

11. Subsection (5A) 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 (7), read with section 48(1)(Interpretation) defines what is meant by “Health Board” for the purposes of the Bill. Its effect is that the provisions of the Bill do not apply to Special Health Boards.

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

12. Section 2 sets out integration planning requirements 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).

13. 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, with the Health Board, jointly prepare an integration scheme for the areas of those local authorities (subsection (4)). The result is that within a single Health Board area, which houses more than one local authority, there may be any number of single local authority plans and/or multiple local authority plans. For example, in an area with 3 local authorities there may be a plan for a single area plus a plan covering the other two areas; or in an area with 6 local authorities there could be a plan covering three areas, plus a plan covering two areas, plus a plan 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 may choose to plan separately.

14. Subsection (4A) sets out that where the 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 can 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 may also be delegated by the Health Board to the lead authority and (d) functions may be delegated by local authorities to the Health Board and by the Health Board and other local authorities to the lead authority.

15. Subsection (5) sets out that when preparing an integration scheme, whether between an individual local authority and Health Board, or multiple local authorities and a Health Board, a local authority must (a) take into account any other integration scheme that is currently or has been prepared for the same Health Board area, and (b) the potential impact on the Health Board of any plans 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 inter-operability, in relation, in particular, to the effective running of the Health Board.

Section 3 – Considerations in preparing integration scheme

16. Section 3 requires the local authority and Health Board to consider the integration principles and the national health and wellbeing outcomes when preparing their integration scheme. This provides the link with the national outcomes for health and wellbeing from the outset and underpins the purpose of integrating services, to ensure integration arrangements which embed a preventative, anticipatory and person-centred approach to the planning and delivery of services. Section 4 provides further information on integration principles and section 5 provides further information on national health and wellbeing outcomes.

Section 4 – Integration planning principles

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

18. 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.

19. 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 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

20. This section provides for the Scottish Ministers to set out in regulations, national outcomes that relate to health and wellbeing. The national outcomes will provide for improved experience of services and outcomes that services achieve. The intention is for the national outcomes on health and wellbeing to be reflected in the Single Outcome Agreements, which the national outcomes expressed within the National Performance Framework.

21. Before doing so, the Scottish Ministers are required to consult persons set out in subsections (3) and (4). 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

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

23. The local authority and Health Board, before submitting the integration scheme for approval, are required to consult (a) those persons or groups of person, set out 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

24. 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 by regulations.

25. Subsection (4) requires the Scottish Ministers to, (a) provide the Health Board and the local authority with the reasons for refusing to approve an integration scheme, (b) explain how the scheme should be modified and (c) set a date by which the modified scheme must be submitted for approval.

26. Following submission of a modified integration scheme under subsection (4), the Scottish Ministers can, (a) approve the modified integration scheme or (b) refuse to approve the modified scheme. 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 and the default powers of the Scottish Ministers in section 39 will then apply.

27. Subsection (5) gives Ministers a discretionary power to grant an extension for submission of a plan 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 must be given. The effect is to enable a plan to be accepted after the statutory deadline for submission, where there is good reason.

28. The Scottish Ministers may decide either to approve an integration scheme submitted to them, or to refuse to approve it. Although any information that may be included by virtue of section 1(3)(e) does not form part of the information to be approved, it may be taken into account by Ministers in coming to their decision.

Section 8 – Publication of integration scheme

29. 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

30. 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.

31. Subsection (3) provides for the functions in the integration scheme to be delegated on a day set by the Scottish Ministers, unless the functions have been delegated on an earlier date under section 23(3A).

Section 10 – Chief officer of integration joint board

32. 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 it from one of its constituent local authorities or Health Board. In the event that there is a wish in future for the chief officer to be employed directly by the joint integration board, the Scottish Ministers have powers to make an order under subsection (5) to enable this.

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

34. 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.

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

Section 11 – Other staff of integration joint board

36. This section provides for the Scottish Ministers, by order, to give integration joint boards the ability to appoint staff other than a chief officer and to make further provision in relation to the staffing of integration joint boards (generally or making different provision in relation to different 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. The Scottish Ministers may make provision for these matters to be subject to the determination, direction or agreement of any person. This allows the Scottish Ministers to permit other persons, such as integration joint boards, to decide these matters.

37. Subsection (4)(a) provides for flexibility in the use of the power in subsection (1), so an order made 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 (4)(b) provides for further flexibility for the Scottish Ministers to make different provision in relation to different integration joint boards.

38. Subsection (5) 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

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

40. Subsection (1) gives the Scottish Ministers powers to make provision by order (either generally or making different provision about different joint boards) about the membership,

proceedings and general 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 member; and any other matter as the Scottish Ministers think fit in relation to the establishment or operation of integration joint boards.

41. 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 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.

42. Subsection (2A) requires the Scottish Ministers to consult with the Health Board, local authority and integration joint board, before making an order under subsection (1).

43. Subsection (3) 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 (3A) requires the Scottish Ministers to consult with the relevant integration joint board, relevant Health Board and local authority before making a scheme under subsection (3).

44. Subsections (4) and (5) require the Scottish Ministers, before making such a scheme under subsection (3), 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 12A – Integration joint boards: finance and audit

45. Section 12A(1) provides that the chief officer of an integration joint board is responsible for the financial affairs of the integration joint board.

46. Subsection (2)(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.

47. Subsection (2)(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 13 - Payments to integration joint boards in respect of delegated functions

48. Section 13 provides for the allocation of resources by the local authority and Health Board in relation to functions delegated by them to an integration joint board, to support the effective carrying out of the functions.

49. 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.

50. Subsection (2A) 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 that relate to services provided in large hospitals, namely a hospital that carries out functions in relation to two or more local authority areas. Subsection (3) 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 where no “large hospital” functions are delegated (or where they are and the Health Board has deemed them not to apply). It has the effect that the amount to be paid by a Health Board will not include an amount set aside under subsection (2A).

Section 14 – Functions delegated to local authority or Health Board

51. Section 14 applies where the Scottish Ministers approve an integration scheme under section 7 and that plan 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).

52. Subsection (1A) 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 23(3A).

53. Subsection (2) 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 15 – Transfer of staff where functions delegated to a local authority or Health Board

54. Section 15 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(3).

55. Before making such a scheme under section 15, subsections (1A) and (1B) 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, and subsection (3) requires the Scottish Ministers to consult the Health Board and local authority.

Section 16 – Integration joint monitoring committees: further provision

56. Section 16 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 17 – Payments to Health Boards in respect of delegated functions

57. Section 17 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 18 – Payments to local authorities in respect of delegated functions

58. Subsection (1A) requires that, where a Health Board delegates a function to a local authority, the Health Board is under a duty in subsection (1) 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 large hospitals. Subsection (2) 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 those 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.

59. Subsection (3) 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 18A – Health funding: further provision

60. Section 18A deals with how budgets for services provided in large hospitals are to be used in planning for the delivery of services using the totality of health and social care resources to best meet the needs of the population. Health Boards are required to identify and make available to the integration authority an amount which relates 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.

61. Subsections (3) and (4) deal with situations where there is a variance between actual costs and those set out in the strategic plan.

62. Where the amount spent in relation to services delivered in a large hospital is less than the amount set out in the strategic plan, subsection (3) allows the integration authority to require that the Health Board make payment to it for the difference.

63. 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 difference.

64. Subsections (5) and (6) require that the Health Board provides the integration authority with information relating to the amounts set aside.

Section 19 – Transfer of staff: effect on contract of employment

65. Section 19 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 or 15.

66. 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 immediately before the transfer would have taken place.

67. 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.

68. Subsection (3A) 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.

69. Subsection (4) makes provision to put beyond doubt that a person is not to be treated as being dismissed as a result of any provision of this section.

70. Subsection (5) protects any right that a person may have under general employment law to terminate their contract where there is a substantial detrimental change to his or her working conditions.

71. Subsection (6) 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 a person by scheme under section 12 or 15 cannot be considered a substantial detrimental change such as to give rise to any right protected by subsection (5).

Section 20 - Co-operation

72. Section 20 operates 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 cooperate 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 20A - Carrying out of functions conferred on officers of local authorities

73. Section 20A provides that functions that are conferred by enactment on an officer of a local authority, which relate to a function delegated as part of the integration scheme, are 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 20B - Carrying out of functions conferred on officers of Health Boards

74. Section 20B provides that functions that are conferred by enactment on an officer of a Health Board, which relate to a function delegated as part of the integration scheme, are 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 21 – Effect of delegation of functions

75. Section 21 sets out the effect of the delegation of functions in pursuance of an integration scheme.

76. Subsection (2) requires that the integration authority to which a function is delegated is 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 22 – Directions by integration authority

77. 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.

78. 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 to choose to carry out functions itself, or to issue a direction in respect of the carrying out

of the function. Where an integration plan 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.

79. 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.

80. 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 or in part or in relation to a specified area or to do particular things in relation to the function.

Section 22A - Section 22: supplementary

81. This section makes supplementary provision in relation to the issuing of directions under section 22.

82. Subsection (1) provides that directions issued under section 22 must 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. Directions may regulate the way in which the function is to be carried out and may make ancillary provision.

83. Subsection (2) sets out particular matters which may be provided for in directions issued under section 22. 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.

84. 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.

85. Subsection (4) provides that a person to whom a direction under section 22 is given must comply with the direction.

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

87. 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 directly by itself. 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 national health and wellbeing outcomes.

Strategic planning etc.

Section 23 – Requirement to prepare strategic plans

88. Section 23 requires the integration authority for the area of each local authority to prepare a strategic plan. This section sets out what a strategic plan is and the period the plan relates to. Section 39 sets out who is the integration authority for a local authority area, depending on the integration model adopted in the integration scheme.

89. 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 40) 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.

90. Subsection (3A) 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 14(1A). Where this occurs, the integration authority must make clear in its first strategic plan the date when functions are to be delegated.

91. The first strategic plan of an integration authority must be prepared before the integration start date (subsection (4)), 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 14(2).

Section 24 – Considerations in preparing strategic plan

92. Section 24(2) requires the integration authority to take into account the integration delivery principles (set out in section 25) and the national health and wellbeing outcomes (prescribed under section 5) in preparing a strategic plan. Section 24(2) seeks to ensure the principles and national outcomes are at the heart of planning for the population and embeds a person centred approach, alongside anticipatory and preventative care planning.

93. 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 25 – Integration delivery principles

94. Section 25 sets out the integration delivery principles that must be taken into account in preparation of the strategic plan and in the actual carrying out of functions delegated under an integration scheme (as required by section 31).

95. 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 is to improve the wellbeing of users of the service.

96. Subsection (1)(b) supplements this by setting out principles for delivery 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 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 26 – Establishment of strategic planning group

97. Section 26 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.

98. 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 partners who prepared the integration scheme and are party to the integrated arrangements 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.

99. The group must also include representatives of groups prescribed by the Scottish Ministers by regulations under subsection (2) as having an interest, and other persons as the integration authority considers appropriate.

100. Subsection (2A) 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 (2B) provides for the integration authority to 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 (2C) 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 (2D) provides for a member of the strategic planning group to resign at any time. Subsections (2E) to (2G) 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 (2H) provides that the integration authority's ability to make decisions is not undermined by any vacancy in its membership.

101. The integration authority is to determine the procedure of the group, and may pay members of the group expenses and allowances.

Section 27 – Preparation of strategic plan

102. Section 27 applies where an integration authority in relation to the area of a local authority is preparing a strategic plan. The section sets out the process for the involvement of the strategic planning group in the development of the strategic plan, assuring the group's engagement in the process from the start.

103. The integration authority is required to prepare proposals about matters the strategic plan should contain, and consult the strategic planning group on the proposals (subsection (1A)) 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 (2)).

104. 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 (4), and any other persons the integration authority considers appropriate (subsection (3)).

105. The persons mentioned in subsection (4) 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 under subsection (5). The effect of this is to ensure that any others with an interest will have an opportunity to comment on the draft plan.

106. Subsection (6) 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 27A – Provision of information for purpose of preparing strategic plan

107. Section 27A 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 29 – Publication of strategic plans

108. Section 29 places a duty on integration authorities to publish strategic plans.

109. Subsection (1) requires integration authorities to publish their strategic plans as soon as practicable after the plan has been finalised under section 27.

110. Subsection (3) 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 27.

Section 30 – Significant decisions outside strategic plan: public involvement

111. Section 30 makes provision for where an integration authority plans on making a decision that would have a significant effect on the arrangements for provision of a service in pursuance of integrated functions outwith the context of the strategic planning cycle.

112. The integration authority is required to take appropriate action in order to involve and consult its strategic planning group, along with users or potential users of the service which is being or may be provided in relation to the decision.

Section 30A – Review of strategic plan

113. Section 30A sets out the review process that applies to a strategic plan. Subsections (1) and (9) 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 subsection (2).

114. 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 a strategic plan which is prepared following a review must specify the date on which it takes effect.

Section 30B – Requirement to prepare replacement strategic plan

115. Section 30B applies only in relation to integration joint boards. It provides for the local authority and the Health Board, acting jointly, to direct the integration joint board to prepare a replacement strategic plan where they, jointly, feel the strategic plan prohibits 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 30C – Strategic plan: annual financial statement

116. Section 30C 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 31 – Carrying out of integration functions: general

117. Section 31 obliges integration joint boards, local authorities and Health Boards to have regard to the national health and wellbeing outcomes and the integration delivery principles set out

in section 25, when carrying out an integration function. The effect is to embed the principles in delivery as well as in planning to ensure a shift towards preventative and anticipatory care and that the services delivered meet the different needs of different individuals and are ‘person centred’.

Section 32 – Carrying out of integration functions: localities

118. Section 32 requires 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 22) 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.

119. 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 33 - Integration authority: performance report

120. This section requires each integration authority to prepare a performance report for each reporting year.

121. The report must set out an assessment of performance in carrying out the integrated functions during the reporting year.

122. Subsection (3) enables the Scottish Ministers to make regulations that set out the form and content of performance reports. Subsections (3A) and (3B) 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.

123. Subsections (3C) and (3D) 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.

124. Subsection (4) 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 33A - Reports

125. Section 33A 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.

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

127. 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.

128. 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 33B - Review of integration scheme

129. Section 33B 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, as set out in section 3, and that they undertake the consultation process as set out in section 6.

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

Section 33C - Requirement to review integration scheme

131. Section 33C 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. Subsection (3) gives the Scottish Ministers the ability to require that the local authority and the Health Board undertake a review of the integration scheme where matters are prescribed under section 1(3)(e).

132. Subsections (4) and (5) require that the Health Board and the local authority undertake this review having regard to the integration planning principles and the national health and wellbeing outcomes, as set out in section 3, 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 those persons consulted and decide whether changes to the integration scheme are necessary or desirable.

Section 34 – Revised integration scheme

133. 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 desirable.

134. Any variation must be made jointly by the local authority and the Health Board and is to be achieved by the preparation of a revised integration scheme.

135. Subsection (3) establishes the scope of variation that may apply 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)(ca) and/or 1(3)(d) and change or remove any information included within the integration scheme by virtue of section 1(3)(e).

136. Subsections (3A) and (3B) 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.

137. If the revised integration scheme includes changes of the type mentioned in subsection (3)(a) to (e) then it must be submitted for approval by the Scottish Ministers.

138. If the revised integration scheme includes changes of the type mentioned in subsection (3)(f), the Scottish Ministers must be notified of the change.

139. Subsection (5) obliges the Scottish Ministers to set a date that a revised integration scheme takes effect. Subsection (6) 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 35 – New integration scheme

140. Section 35 applies where a local authority and Health Board decide under section 33B or 33C that changes to an integration scheme are necessary or desirable. Section 35 sets out that a local authority and Health Board must prepare a new integration scheme under section 1 where they wish to change the local authorities that are party to the scheme or the integration model. 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 Bill applies to a new integration scheme created under section 35 as it applies to a scheme prepared under section 1 or section 2(2).

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

141. This section confers powers on the Scottish Ministers to take steps in consequence of a new integration scheme approved under section 35. They are empowered to provide by order for the winding-up of any integration joint board that was established in pursuance of the original plan. 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.

142. Subsection (4) requires the Scottish Ministers to consult the local authority and the Health Board before putting in place a scheme for the transfer of staff as a consequence of a new integration scheme.

Supplementary

Section 37 – Information-sharing

143. Section 37 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 38 – Grants to local authorities

144. Section 38 provides for the Scottish Ministers to make grant payments to local authorities in respect of costs incurred by virtue of Part 1 of the Bill, and to set conditions in relation to grants made.

Section 39 – Default power of Scottish Ministers

145. Section 39 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 under section 7, or the day specified under section 7(4)(c).

146. 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 to it. 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 40 – Directions

147. Section 40 confers a power on the Scottish Ministers to give directions to integration joint boards, Health Boards and local authorities.

148. Directions given to a local authority or Health Board under this section may relate to the functions conferred on them by this Bill, 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)).

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

150. 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.

151. 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.

152. 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 22A(7). The Scottish Ministers cannot make an order under section

22A(6) without the prior written application of the Health Board and local authority. Section 40(6) ensures that the Scottish Ministers cannot direct the Health Board and local authority to make such a written application.

Section 41 – Guidance

153. Section 41 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 Bill. The persons are a local authority, a Health Board, an integration joint board and an integration joint monitoring committee.

Section 41A – Social Care and Social Work Improvement Scotland

154. Section 41A 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 41B - Healthcare Improvement Scotland

155. Section 41B 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 41C – Joint inspections of health and social services

156. Section 41C 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.

157. 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 41D – Amendments of section 56 of Local Government (Scotland) Act 1973

158. Section 41D amends the Local Government (Scotland) Act 1973 to ensure that the functions which are conferred on local authorities by the Bill 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 42 –Meaning of “integration authority”

159. Section 42 sets out who is the integration authority for a local authority area for the purposes of Part 1 of the Bill. This depends on the model of integration adopted, so that the integration authority is: the integration joint board, where the integration scheme provides for functions to be

delegated to an integration joint board; the Health Board, where in accordance with the integration scheme functions are delegated to the Health Board only; the local authority where, in accordance with the integration scheme, functions are delegated to the local authority only; or both the local authority and the Health Board acting jointly where, in accordance with the integration scheme, functions are delegated to both the local authority and the Health Board.

Section 43 – Meaning of “integration functions”

160. Section 43 sets out what the integration functions for the area of a local authority are for the purposes of Part 1 of the Bill. Where the integration scheme provides for functions to be delegated to an integration joint board, the integration functions are those delegated to the board in pursuance of the scheme. Where the integration scheme provides for functions to be delegated to either a local authority or to a Health Board or to both a local authority and a Health Board, the integration functions are those delegated in pursuance of the scheme, as well as the functions specified in the scheme as ones which are to be exercised in conjunction with the delegated functions.

Section 43A – Meaning of “constituent authority”

161. Section 43A provides a definition of the term “constituent authority” for the purposes of Part 1 of the Bill. This term refers to the local authority, or local authorities, and the Health Board which prepared an integration scheme in pursuance of which an integration joint board has been established.

PART 2

SHARED SERVICES

Section 44 - Shared services

162. Section 44(1) provides for the Common Services Agency for the Scottish Health Service 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.

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

164. 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.

165. Subsection (4A) provides for the Scottish Ministers by order to amend the list of persons, or description of person, to whom the Common Services Agency may provide goods or services.

Section 44A – Section 44: consequential provision

166. Section 44A amends sections 10 and 15 of the 1978 Act and section 17(2) of the Patient Rights (Scotland) Act 2011 to make changes which are necessary in consequence of section 44 and 51. 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 44 of the Bill 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 Bill. 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 sections 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 51(3A) of the Bill.

Section 44B – Common Services Agency for the Scottish Health Service: residual liabilities

167. Section 44B 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 45 – Extension of schemes for meeting losses and liabilities of health service bodies

168. Section 45 amends section 85B of the National Health Service (Scotland) Act 1978 (the “1978 Act”) 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.

169. 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 22.

170. 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 46 – Scottish Ministers: power to form companies etc.

171. Section 46 provides for amendments to section 84B (Joint ventures) 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. The amendment permits the Scottish Ministers to form and participate in any type of body corporate. This includes limited liability partnerships and Scottish Charitable Incorporated Organisations.

Section 47 –Health Boards: carrying out of functions

172. Section 47 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

Section 48 – Interpretation

173. Section 48 provides various definitions that apply to this Act.

Section 49 - Subordinate legislation

174. The Bill contains various powers for the Scottish Ministers to make regulations and orders. This section makes further provision about regulations and orders under the Bill in particular enabling them to make different provision for different purposes, make different provisions for different classes of cases, and to include supplementary, incidental, consequential, transitional or transitory provision. It also provides that regulations under sections 1(4H) and 5(1) and any order under section 44(4A), along with any order under section 50 which amends the text of another Act, is subject to the affirmative procedure. Other regulations and orders under the Bill are subject to the negative procedure.

Section 50 - Ancillary provision

175. This section provides powers for the Scottish Ministers to make supplementary, incidental or consequential provision by order, as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by, or by virtue of, this Act. Such an order may also make such transitional, transitory or savings provision as the Scottish Ministers consider appropriate for the purposes of, or in connection with, the coming into force of any provision.

Section 51 – Repeals and revocation

176. Subsection (A1) repeals section 5A of the Social Work (Scotland) Act 1968, which makes provisions about local authority plans for community care services.

177. Subsection (1) and (3) repeal sections 4A and 4B of the National Health Service (Scotland) Act 1978 and section 2 of the National Health Service Reform (Scotland) Act 2004, thereby removing Community Health Partnerships from statute.

178. Subsection (2) repeals sections 15 to 17 of the Community Care and Health (Scotland) Act 2002 which provide the current mechanism for Health Boards and local authorities to delegate functions and make payments in relation to those functions, and for the transfer of staff in relation to the delegated functions.

179. Subsection (3A) repeals section 17(1) of the Patient Rights (Scotland) Act 2011 which makes an amendment to the National Health Service (Scotland) Act 1978 which is superseded by section 44(1) of the Bill.

180. Subsection (4) repeals section 20 of the Social Care (Self-directed Support) (Scotland) Act 2013 which amends section 15 of the Community Care and Health (Scotland) Act 2002 (which is itself repealed by subsection (2)).

181. Subsection (5) revokes the Public Services Reform (Functions of the Common Services Agency for the Scottish Health Service) (Scotland) Order 2013. The provisions of that Order are substantially replicated in sections 44 and 44A of the Bill.

Section 52 – Commencement

182. Section 52 establishes that sections 1(3) to (7), 5, 37, 41 and Part 4 (other than section 51) of the Bill come into force on the day after Royal Assent. Powers are conferred on the Scottish Ministers to commence the other provisions of the Act on dates appointed by order and to make transitory, transitional or savings provisions in connection with commencement.

Section 53 – Short title

183. Section 53 states that the short title of this Act is the Public Bodies (Joint Working) (Scotland) Act 2014.

Schedule

184. The schedule to the Bill is introduced by section 1(4A). The schedule sets out a list of functions conferred on local authorities that, by virtue of section 1(4A), may be delegated under an integration scheme prepared under section 1 or 2 of the Bill. Broadly, the listed enactments confer functions on local authorities which relate to the provision of social care services.

*This document relates to the Public Bodies (Joint Working) (Scotland) Bill as amended at Stage 2
(SP Bill 32A)*

PUBLIC BODIES (JOINT WORKING) (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

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