The Public Bodies (Joint Working) (Scotland) Act, draft Regulations (Set 1 & 2) and their implications for housing: FAQ Guide for housing practitioners

The Public Bodies (Joint Working) (Scotland) Act received royal assent in 1 April 2014. Housing has engaged with the parliamentary process leading up to the Act through a cross sector group - the Housing Coordinating Group.

The Act is being introduced to permit the integration of local authority services with health services, to address challenges associated with the current health and social care system in Scotland, including the need to respond to an ageing population which will put increasing strain on demand led budgets and services. A key aim of integration is to shift the balance of care from acute to community-based settings, and to ensure services and resources can be used more flexibly to better meet need, including through earlier intervention to take future demand out of the system.

The following frequently asked questions have been produced by the Housing Coordinating Group for the benefit of housing practitioners in Scotland and compiled in co-operation with the Scottish Government. The FAQ’s set out some of the key elements of the new legislation and the associated regulations, as well as what it means for the housing sector.

The Act, draft regulations and guidance

What is the Public Bodies Act about?

1. Effective partnership working between the NHS and local authorities is widely recognised as a prerequisite for achieving good health and social care outcomes. The Act is intended to provide a framework to support improvement in the quality and consistency of service outcomes through the integration of health and social care services.

2. The Act sets out in a schedule a range of social care functions, including certain functions of local authorities under ‘housing’ legislation, which may be delegated to an Integrated Authority at their discretion. In addition, the Act establishes a power for Ministers to make Regulations requiring that certain of those functions ‘must’ be delegated.

3. Local partners can decide which of two different models they will use – a ‘lead agency’ arrangement where functions are delegated from one partner to another or to both partners, or a ‘body corporate’ where functions are delegated to a new partnership body whose voting membership will be drawn in equal proportion from the respective health board and local authority. Both models are referred to as an ‘Integration Authority’, and the ‘Integration Scheme’ sets out the local arrangements.

4. Local authorities and health boards will be required to develop an Integration Scheme setting out which integration model they intend to use (lead agency or body corporate), and which functions, services and budgets they intend to
delegate to it. The Integration Scheme effectively ‘creates’ the integration authority and must be agreed by both bodies and the Cabinet Secretary for Health and Wellbeing.

**What are the timescales for implementation?**

5. Regulations will be consulted on between May 2014 – Aug 2014, prior to commencement of integration in April 2015. April 2-15 is also the date by which Integration Schemes must be in place. All integration arrangements must be in place for April 2016.

**Implementation Timetable**

<table>
<thead>
<tr>
<th>Event</th>
<th>Date Range</th>
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<tbody>
<tr>
<td>Royal Assent</td>
<td>1 Apr 2014</td>
</tr>
<tr>
<td>Consultation of Regulations</td>
<td>Set #1: 12 May 2014 – 1 Aug 2014</td>
</tr>
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<td></td>
<td>Set #2: 27 May 2014 – 18 Aug 2014</td>
</tr>
<tr>
<td>Regulations complete</td>
<td>Late 2014</td>
</tr>
<tr>
<td>Integration goes live locally</td>
<td>Apr 2015</td>
</tr>
<tr>
<td>All integration arrangements must be in place</td>
<td>Apr 2016</td>
</tr>
</tbody>
</table>

**What do the draft Regulations cover?**

6. Two sets of draft Scottish Statutory Instruments have been developed to accompany the Act and have been published for consultation. Set one is open for consultation from **12 May 2014 – 1 August 2014**, and covers functions and outcomes. The second set is being consulted on from **27 May 2014 – 18 August 2014**, and looks at membership and consultation related to the Act. The contents of both sets of the Regulations are outlined below:

**Draft Regulations Set #1**

- Information to be included in the Integration Scheme
- Delegated functions:
  - Functions that must be delegated by Local Authorities
  - Functions that must be delegated by Health Boards
  - Functions conferred on a Local Authority Officer
- National Health and Wellbeing Outcomes
- Interpretation of what is meant by the terms health and social care professionals
Draft Regulations Set #2

- Membership
  - Establishment, membership and proceedings of the joint monitoring committee in lead agency arrangements
  - Membership, powers and proceedings of integration joint boards in body corporate arrangements
  - Membership of strategic planning groups
- Groups that must be consulted when
  - Drafting or revising integration schemes
  - Preparing draft strategic plans
  - Making decisions about localities
- Prescribed form and content of performance reports

**Will there be guidance?**

7. The Act and Regulations will be supported by a suite of guidance. This will cover a wide range of topics, such as strategic planning, more detail about the health and wellbeing outcomes and associated indicators, and locality planning. The draft guidance will be issued for consultation to key stakeholders over the next few months.

**What does it have to do with housing?**

8. The Act and the draft regulations recognise in various ways the importance of people’s homes to their health and wellbeing and vital role played by housing organisations in improving people’s health and wellbeing. This reflects the emphasis placed in evidence on integration given to the Parliament both by the housing sector and health and social care groups during the passage of the Bill.

9. There are 4 areas where the proposals are of particular significance to the housing sector:
   (a) **Functions, currently undertaken by local housing authorities**, which may or must be delegated to the new integrated authorities
   (b) National **health and wellbeing outcomes**, and how these connect with the quality of people’s homes and the contribution of the housing sector
   (c) Arrangements for **strategic planning** by the new integrated authorities, and their relationship with housing strategic planning
   (d) Arrangements for **locality planning**, and how housing organisations will be involved

10. Each of these areas is considered further below.
**What housing related functions are included?**

11. The Act sets out functions that ‘may’ be delegated and those that should be made mandatory through regulations requiring that they ‘must’ be delegated. Through the current consultation on set one of the draft Regulations accompanying the Act, there is an opportunity to advise on which elements of housing related provisions should be mandatorily included in the new arrangements, and which should remain optional.

**Functions which may be delegated**

12. The housing-related provisions included within the Act as those that ‘may’ be delegated are summarised in the table below.

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**Public Bodies Act: Housing-related functions that “may” be delegated**

<table>
<thead>
<tr>
<th>Act</th>
<th>Section/s</th>
<th>Functions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing (Scotland) Act 1987</td>
<td>Sections 4, 5 and 5A and Part II</td>
<td>Power of local authority to provide furniture, etc.</td>
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<tr>
<td></td>
<td></td>
<td>Power of local authority to provide board and laundry facilities.</td>
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<td></td>
<td></td>
<td>Power of local authority to provide welfare services.</td>
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<td></td>
<td></td>
<td>Homelessness</td>
</tr>
<tr>
<td>Housing (Scotland) Act 2001</td>
<td>Sections 1, 2, 5, 6, 8 and 92</td>
<td>Homelessness strategies</td>
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<td></td>
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<td>Advice on homelessness</td>
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<td>Duty of registered social landlord to provide accommodation</td>
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<td>Duty of registered social landlord: further provision</td>
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<td></td>
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<td>Common housing registers</td>
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<td></td>
<td></td>
<td>The promotion of the formation or development of registered social landlords and the provision of assistance to a registered social landlord or any other person concerned with housing matters</td>
</tr>
<tr>
<td>Housing (Scotland) Act 2006</td>
<td>Section 71</td>
<td>The provision of assistance in connection with the acquisition or sale of property or work on land or in premises</td>
</tr>
<tr>
<td>Social Work (Scotland) Act 1968</td>
<td>Section 12A</td>
<td>Community care services assessment</td>
</tr>
<tr>
<td>Local Government and Planning (Scotland) Act 1982</td>
<td>Section 24</td>
<td>Provision of gardening assistance for people with disabilities and to older people</td>
</tr>
</tbody>
</table>
Why have those functions been put forward for delegation to the Integration Authority?

13. The option to delegate these functions is considered key to enabling local authorities and NHS boards to establish and promote comprehensive and integrated health and social care services. Housing support services are identified as forming part of the package of supports that people need to be able to maintain their health, wellbeing and independence, and it is therefore considered important that this contribution is properly reflected in the strategic planning arrangements agreed for health and social care in to the future.

14. The social work functions listed in the table at para 11 above have a number of housing support functions that are already available for delegation from Local Authorities to the NHS under the 2002 Community Care Act.

Which housing functions “must” be delegated to the new integration authorities?

15. Ministers will, by regulation, make a sub-set of these functions mandatory for inclusion in the new integrated arrangements.

16. The key role of housing services have been emphasised by the Scottish Government, with a particular focus on equipment and adaptations. However, it is important to note that the housing functions listed in set one of the regulations, those that must be delegated by local authorities, are wide ranging and go beyond equipment and adaptations.

17. Within set one of the Regulations, Annex 2(A) sets out the list of functions which it is proposed must be delegated.

- Social work services for adults and older people;
- Services and support for adults with physical disabilities, learning disabilities;
- Mental health services;
- Drug and alcohol services;
- Adult protection and domestic abuse
- Carers support services;
- Community care assessment teams;
- Support services;
- Care home services;
- Adult placement services;
- Health improvement services;
- Housing support services, aids and adaptations;
- Day services;
- Local area co-ordination;
- Respite provision;
- Occupational therapy services;
- Re-ablement services, equipment and telecare.
18. Annex 2(A) then sets out the Acts and sections which are therefore to be included in the ’must delegate’: this includes the following functions of particular interest to the housing sector:

**Draft Regulations (set 1 of 2): Housing-related functions that “must” be delegated**

<table>
<thead>
<tr>
<th>Act</th>
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<th>Functions</th>
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</thead>
<tbody>
<tr>
<td>Housing (Scotland) Act 1987</td>
<td>Section 5</td>
<td>Power of Local Authority to provide board and laundry facilities and to charge for them.</td>
</tr>
<tr>
<td>Housing (Scotland) Act 2001</td>
<td>Section 92</td>
<td>The whole of this section is included in the ‘must delegate’. This includes section (2)(a): Local Authority assistance to RSL’s regarding housing adaptations in line with the stated policy intent. <strong>The remainder of section relates to Local Authority strategic housing functions to promote and provide housing</strong></td>
</tr>
<tr>
<td>Housing (Scotland) Act 2006</td>
<td>Section 71</td>
<td>The whole of this section is included in the ‘must delegate’. This includes section (2)(e)&amp;(f): Local Authority provision of housing adaptations in line with the stated policy intent. <strong>The remainder of section relates to wide range of Local Authority powers including repair and improvement grants in Scheme of assistance</strong></td>
</tr>
<tr>
<td>Social Work (Scotland) Act 1968</td>
<td>Section 12</td>
<td><strong>[NB: The following function is particularly relevant to housing support]</strong> Assessment of need and provision of social welfare services including residential care, personal care and housing support. <strong>[Assessments and care provision can go beyond housing support needs. Consequently, it can be problematic to separate out housing support from care packages, this may likely continue under Integration]</strong></td>
</tr>
<tr>
<td>Community Care and Health (Scotland) Act 2002</td>
<td>Section 4</td>
<td>Provision of accommodation under the Social Work (Scotland) Act 1968, including residential care</td>
</tr>
<tr>
<td>Local Government and Planning (Scotland) Act 1982</td>
<td>Section 24</td>
<td>Provision of gardening assistance for people with disabilities and to older people</td>
</tr>
</tbody>
</table>
How are homelessness related provisions affected?

19. A number of homelessness functions are listed in the Act that ‘may’ be delegated to an Integrated Authority:
   - Housing (Scotland) Act 1987, part II
   - Housing (Scotland) Act 2001, section 1, 2, 5 & 92 [NB: Section 92 is the only function included in the Regulations that ‘must’ be delegated by a Local Authority]

20. The proposed housing related functions that ‘may’ be delegated cover a wide range of services including, but not limited to, housing adaptions, housing support and services related to homelessness. Contrastingly, and with regards to homelessness, functions that ‘must’ be delegated are narrow and limited in scope. For example, included in the ‘must’ list is Housing (Scotland) Act 1987; Section 5 which deals with powers to provide services such as laundry and meals and to charge for them. Within the same legislation Section 32B is part of the ‘may’ list and deals with the duty to assess and provide for the housing support needs of homeless people. It will be at the discretion of each Integrated Authority as to whether the duty to assess and provide for the housing support needs of homeless people falls within their scope.

How is Housing Support defined within the delegated functions listed?

21. Housing support is specifically mentioned within set one of the regulations. Previous definitions of Housing Support can be found which are specific to their particular their legislative purpose¹. The Public Bodies Joint Working regulations relate to a number of enactments which together enable the provision of Housing Support services under the Public Bodies Joint Working Act. Once the regulations have been finalised and agreed by parliament supporting guidance will be provided.

Why are the national health and wellbeing outcomes important?

22. The new integration authorities will be held to account for their performance in relation to national health and wellbeing outcomes. The draft outcomes are included within set one of the Regulations currently out for consultation.

23. A range of indicators are being identified which are intended to enable the Integration Authority, the Health Board and Local Authority, Scottish Ministers and the public to assess progress made to improve outcomes locally and in different parts of the country. Measurement of each national health and wellbeing outcome will rely on nationally gathered data to ensure consistency of definition and collection methodology. These indicators will be included in guidance, currently being prepared.

24. The nine draft National Health and Wellbeing Outcomes are as follows:

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¹ ‘21 Tasks’; The Housing (Scotland) Act 2001 (Housing Support Services) Regulations 2002, Regulation of Care (Scotland) Act 2001 (Section 2 (27))
Draft National Health & Wellbeing Outcomes

Outcome 1: People are able to look after and improve their own health and wellbeing and live in good health for longer.

Outcome 2: People, including those with disabilities, long term conditions, or who are frail, are able to live, as far as reasonably practicable, independently and at home or in a homely setting in their community.

Outcome 3. People who use health and social care services have positive experiences of those services, and have their dignity respected.

Outcome 4. Health and social care services are centred on helping to maintain or improve the quality of life of service users.

Outcome 5. Health and social care services contribute to reducing health inequalities.

Outcome 6. People who provide unpaid care are supported to reduce the potential impact of their caring role on their own health and well-being.

Outcome 7. People who use health and social care services are safe from harm.

Outcome 8. People who work in health and social care services are supported to continuously improve the information, support, care and treatment they provide and feel engaged with the work they do.

Outcome 9. Resources are used effectively in the provision of health and social care services, without waste.

25. Outcome 2 with its reference to independent living and the importance of ‘home’ has particular significance to housing organisations.

Strategic planning: How will this be undertaken in the new integrated authorities?

26. Integration authorities will be required to establish a strategic planning group who will develop the strategic plan and will be required to consult on their draft strategic plan. Set two of the Regulations set out which groups must be represented on the strategic planning group, as outlined below:
   - Strategic Planning Process; Integrated Authorities are required to ‘treat the third and independent sectors as key partners’
   - Strategic planning group representation;
     - ‘Non-commercial providers of social housing within the Local Authority area (this should be an individual, representative of providers of social housing)’
‘Third sector bodies within the Local Authority carrying out activities related to health or social care (this should be an individual, representative of interest groups, social enterprises or community organisations who are active in the area of health or social care)

27. Local authorities will also be represented on the strategic planning group: it will be a local matter as to whether this will include the local housing authority. In addition, Local Authorities and their Integration Authority will be responsible for developing strategic plans which align and consider plans relating to housing.

28. The integration authority established through the integration scheme will then be required to develop a strategic plan setting out how it will deliver improved health and social care outcomes, including through locality planning that will involve professionals, communities, service-users, carers and the third sector. This plan must be widely consulted on. It will then be the responsibility of the integration authority to ensure the delegated functions, services and budgets support the delivery of the agreed priorities.

29. Set two of the draft Regulations accompanying the Act lists those groups that must be consulted when developing strategic plans, this draft list is currently available for consultation. Housing professionals are not explicitly included in this list, however, the following consultees relevant to housing are:
   - ‘Non-commercial providers of social housing’
   - ‘Third sector bodies carrying out activities related to health or social care’
   - Social care professionals: this includes the following definitions in set one of the Regulations;
     - Managers, supervisors and workers responsible for housing support and care at home services
     - ‘Other Social Care Professionals who are not regulated by the Scottish Social Services Council but provide care or support to users of social care services’

30. Set two of the draft regulations set out who must be consulted when preparing Integration Schemes; developing a strategic plan; locality planning, and revising Integration Schemes. Those that are housing-related are:
   - Social care professionals (those responsible for housing support services)
   - Non-commercial providers of social housing
   - Third sector bodies carrying out activities related to health or social care
   - [NB: the absence of local authority housing services]
What is locality planning and how will housing be involved?

31. The development of locality planning arrangements is seen as an essential part of the integration reform agenda. By virtue of section 23(3), all strategic plans prepared under the Act require to make provision about localities. All integration authorities are expected to have at least two localities as part of their local arrangements for planning and delivering services.

32. As noted above, the draft regulations stipulate that ‘non commercial providers of social housing’ will be one of the groups consulted in relation to decisions affecting localities.

33. Further explanation of locality planning will be set out in guidance which is currently being drafted.

What are the next steps for housing?

34. We have an opportunity to advise on a number of issues via the current consultation on the draft Regulations that accompany the Act:

- The scope of housing and housing support services (and what that means in order to support people in their homes) proposed for mandatory delegation
- The interpretations of what is meant by the terms health and social care professionals; this is important because of the way consultation on key aspects of integration will be conducted
- The national health and wellbeing outcomes are intended to enable the assessment of progress made to improve outcomes locally, with the prescribed form and content of performance reports detailed in set two of the Regulations. The Scottish Government is in the process of developing indicators to be used in conjunction with the proposed national outcomes