

Health and Social Care Alliance Scotland

Briefing paper: Public Bodies (Joint Working) (Scotland) Bill, May 2013

1. Introduction

The Public Bodies (Joint Working) (Scotland) Bill was presented to the Scottish Parliament on 28 May 2013. This follows an initial consultation on the principle of integrating health and social care which ran from May 2012 to September 2012. A shared statement from third sector organisations on the integration of adult health and social care¹ was published in July 2012.

This briefing has been prepared to reflect some of the ALLIANCE's initial reflections and concerns in relation to the Bill, based on the series of discussions we have had with members and partners to date. However, the ALLIANCE will be working in partnership with members over the coming weeks and months to further develop our position on the Bill.

2. Key Points

- The change of name (the bill had been expected to be titled 'Health and Social Care Integration') may signal a shift in focus towards structural aspects of the integration agenda. While the broader intent is clear within the Policy Memorandum, implementation of the legislation must not become so focused on structural aspects that we lose sight of the bigger picture – improving the outcomes of people who use support and services. Nor can we overlook the critical role of other sectors, in particular the third sector (provider of over a third of all social care in Scotland), and the need for a more radical shift in the design of health and social care – advocated by the Christie Report – that includes greater emphasis on individual and community assets and a sharing of power between statutory agencies, the third sector and people who use support and services.

¹ http://www.alliance-scotland.org.uk/download/library/lib_512cd0902fafc/

- While the principles of co-production or asset-based approaches are prominent in the Policy Memorandum, their implementation in practice will require strengthening in aspects of the bill itself.
- The inclusion of principles on the face of the bill is welcome, however these should have an explicit basis in human rights. The power of a human rights based approach to not only protecting basic dignity and quality of life, but to act as a practical driver of change and improvement has been demonstrated through Scotland's National Dementia Strategy (2010). Replacing the "delivery principles" and "planning principles" included on the face of the Bill with human rights based principles would also chime with development of Scotland's first National Action Plan for Human Rights.
- A strategic role for the third sector is critical to this agenda, however this is not reflected strongly enough in the Bill. A key area of concern within the consultation stage was the lack of a voting right for the third sector, or for users of support and services, on integration committees. It is a concern that this remains the position, and that the decision on membership of integration committees will not be subject to Parliamentary scrutiny (it is currently proposed that Scottish Ministers will have the power to make this decision through secondary legislation). We are concerned that the third sector may not have a role in signing off the local strategic plans. The requirement for the third sector to be a signatory to the local Change Plan has been a significant enabler of the cultural change evidenced in the Reshaping Care for Older People (RCOP) Change Fund process. Our expectation would have been that this legislation would build on this process rather than maintain the status quo.
- At present there is a lack of transparency in relation to in-house and Arm's-length external organisations spending. We believe the Bill could be strengthened with the inclusion of a requirement for explicit reporting of the option appraisal exercises used to inform the content of both strategic and joint strategic commissioning plans or for decisions to include a robust option appraisal approach for all service delivery, not just externally commissioned or new services.

3. Bill - Overview

Part 1 – Functions of local authorities and Health Boards

Integration Plans

“An integration plan (referred to in the consultation on integration as a Partnership Agreement between the Health Board and local authority) will set out the terms of establishing each integration authority arrangement, which applies where the area of the local authority falls within the area of that Health Board.”

Public Bodies (Joint Working) (Scotland) Bill, Policy Memorandum, May 2013

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

The Bill proposes **four** models for integration from which local authorities and Health Boards can choose to plan and deliver integrated services:

1. The local authority and Health Board delegate functions to an integration joint board – “a body corporate” by order of Scottish Ministers
2. Local authority delegates functions to the Health Board
3. Health Board delegates functions to the local authority
4. The local authority delegates functions to the Health Board **AND** the Health Board delegates functions to the local authority

Integration plans must be prepared in each area including information on the model of integration to be used, functions to be delegated, the functions to be carried out by different bodies, the method for calculating payments in respect of these functions and any additional information required.

Section 2: Integration plans – two or more local authorities in Health Board area

Where a Health Board covers more than one local authority area, the Bill makes provision for:

- A local authority to jointly prepare an integration plan with the Health Board, for its own area
- For the local authority to join together with one or more local authority to jointly prepare an integration plan

Section 3: Consideration in preparing integration plan

In preparing the plan, and in order to ensure that they underpin the purpose of this legislation, the local authority and Health Board must give consideration to the integration principles and the national health and wellbeing outcomes.

Section 4: Integration planning principles

Integration plans must be underlined by the following principles:

- Decisions about integration of functions must take account of the principle that services are to improve the wellbeing of people who use that service
- Integration happens from the viewpoint of people using services, taking account of different needs and different parts of the areas in which the service is provided
- Services are planned and led locally by the community and local professionals
- Services anticipate and prevent needs from arising
- Services make the best use of the available facilities, people and other resources

The ALLIANCE view

The ALLIANCE welcomes the inclusion of '**Integration planning principles**' (**Section 4**), however, as these are drafted, we are concerned that they do not sufficiently reflect wider Scottish Government policy on stronger engagement between the statutory and third sectors and co-production between those designing/providing and those receiving services.

We would strongly advocate the use of human rights based principles which would encompass the points in the draft bill (e.g. taking account of the needs of different recipients etc.) while also enshrining the principle of users of services being involved in the planning process. A key principle of integration planning should be that the process includes the third and independent sectors which, together, provide the majority of social care, and in the case of the third sector a wealth of community-based, preventative support.

Section 5: Power to prescribe national outcomes

“By introducing nationally agreed health and wellbeing outcomes, the Scottish Government will, for the first time, introduce a mechanism for ensuring that Health Boards and local authorities are jointly and equally accountable for planning and delivery of effectively integrated services.”

Public Bodies (Joint Working) (Scotland) Bill, Policy Memorandum, May 2013

National outcomes, titled “The national health and wellbeing outcomes”, will be prescribed centrally by Scottish Ministers. The Scottish Government will consult widely in establishing these outcomes, including with people who use support and services, carers and organisations providing health and social care.

The ALLIANCE view

The ALLIANCE welcomes the development of ‘**national health and wellbeing outcomes**’ (**Section 5**) and the requirement on Scottish Ministers to consult on these. The third sector is implicitly included within ‘non-commercial providers of health/social care’.

In practice it will be essential that strategic third sector organisations are also included within consultation on the outcomes, particularly national strategic intermediaries and the local Third Sector Interfaces. It will also be critical to include organisations that may not consider themselves as ‘providers of health/social care’ (e.g. because they do not provide formal care or contracted services) but which contribute considerably to health and wellbeing through community-based activity.

The ALLIANCE would wish to see an additional category added: ‘(k) third sector organisations contributing to health and wellbeing’. This should also include housing associations.

Section 6: Consultation

Each proposed joint board must consult on their integration plans with groups who Scottish Ministers believe have an interest and other people the joint board sees fit. The views of these groups must be taken into account.

The ALLIANCE view

The ALLIANCE is concerned that Section 6 (Consultation) is not sufficiently robust to ensure effective partnership in developing integration plans. We are particularly concerned that the third sector may not have a role in signing off the local strategic plans. The Bill suggests that the Integration Plans signed off only by the two statutory partners (presumably the third sector will be among those that Scottish Ministers will require to be consulted, however this is a far weaker provision than requiring joint sign off).

The requirement for the third sector to be a signatory to the local Change Plan has been a significant enabler of the cultural change evidenced in the Reshaping Care

for Older People (RCOP) Change Fund process. Our expectation would have been that this legislation would build on this process rather than maintain the status quo.

While the Change Fund process has not been universally straightforward, it has, however, undoubtedly helped to foster strategic partnership across sectors and reflects the need – clearly articulated in the Scottish Government’s wider public service reform agenda – for health and social care needs to be addressed by more than the statutory sector alone.

Section 7: Approval of integration plans

Integration plans must be submitted to Scottish Ministers. Ministers will either approve or refuse to approve a plan. Where a plan is refused, it must then be modified and resubmitted to Scottish Ministers for approval.

The ALLIANCE view

The bill does not specify the grounds on which Scottish Ministers would not approve an integration plan. An integration plan should only be approved if it has been developed with involvement of the third sector and people who use support and services. The ALLIANCE considers that there may be some scope in building on or adopting a similar Quality Assurance procedure to the Single Outcome Agreements.

Implementation of an integration plan

Section 10: Chief Officer of integration joint board

Once a plan has been approved by Scottish Ministers, they can establish an integration joint board to which functions are to be delegated. A Chief Officer is to be appointed to each integration joint board (often seconded from either the local authority or Health Board). The responsibilities of each Chief Officer will be subject to the agreement of Scottish Ministers.

Section 11: Other staff to join integration joint board

Scottish Ministers may enable joint boards to appoint other staff, including provision to make decisions on the number of staff and their terms and conditions.

Section 12: Integration joint boards: further provision

Scottish Ministers will make provision for the membership, proceedings and general powers of each joint board, alongside the supply of services or facilities by the local

authority or Health Board and any other matter they think fit in relation to operation and establishment of joint boards.

Sections 13, 17 and 18: Payments between Health Boards and local authorities

Sections 13, 17 and 18 of the Bill provides for payments to be made between Health Boards and local authorities (and the other way around) in respect to functions delegated, as per the calculation method set out in the integration plan.

Sections 15 & 19: Transfer of staff

Sections 15 and 19 establish the principle that Scottish Ministers will be able to make provision in respect to the transfer of staff where functions have been delegated to local authorities or Health Boards. Section 19 sets out the effect of a transfer on an employee's contract. In effect the contract continues as before the transfer but rights, powers, duties and liabilities are transferred to the new employer.

Section 16: Joint Monitoring Committees

Where functions are delegated to a local authority or health board, a joint monitoring committee must be set up to monitor the operational delivery of the functions set out in the integration plan. Section 16 allows Scottish Ministers to make provision about their establishment, membership and proceedings.

Section 20: Co-operation

This establishes the principle that where two or more local authorities have joined together to prepare an integration plan, the local authorities and health boards must co-operate to achieve the efficient and effective use of relevant buildings, staff and equipment.

Carrying out of delegated functions

“In this model, functions and budgets are delegated between statutory partners. Where functions and budgets are delegated to the local authority by the Health Board, the local authority becomes the —lead agencyll, and is responsible for the delivery of the delegated functions using the delegated budgets. Where functions and budgets are delegated to the Health Board by the local authority, the Health Board becomes the —lead agencyll, and is responsible for the delivery of the delegated functions using the delegated budgets.”

Public Bodies (Joint Working) (Scotland) Bill, Policy Memorandum, May 2013

Section 21: Effect of delegation of functions

Outlines that where functions are delegated, the body to which the function is delegated will be subject to the duties, rights and powers of the delegating body. This includes liabilities incurred in carrying out these functions.

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

Enables joint boards to direct the local authorities or Health Boards that have delegated functions to it in an integration plan, to carry out a function on its behalf. Direction may include further detail as to how these functions are to be carried out and local authorities/Health Boards must comply with any direction given to them. Scottish Ministers will have the power to require an integration joint board to give, or not give, such a direction.

Strategic planning

“Once established, the integration authority will be under a duty to produce a strategic plan, which will set out the detailed arrangements for the joint carrying out of integrated functions in its area, as well as the outcomes to be achieved by the integration authority via delivery of services, using the resources delegated to it by the Health Board and/or local authority, which form the integrated budget.”

Public Bodies (Joint Working) (Scotland) Bill, Policy Memorandum, May 2013

Section 23-29: Strategic plans

Each joint area will be required to develop strategic plans that cover a three year period that are reviewed and updated annually, setting out:

- Arrangements for carrying out integration functions over the next three years
- How those arrangements intend to achieve the national health and wellbeing outcomes over the next three years
- Other information the integration authority sees fit

Section 25 makes provision that in preparing strategic plans the integration authority must include a member of the integration joint board, a local authority representative, a Health Board representative and one person representing groups who appear to Scottish Ministers to have an interest. These groups are not specified in the bill and will likely be outlined in guidance which will supplement the Bill.

Integration authorities must use this group to agree what a strategic plan will contain and seek views on their proposals. This is to be repeated after a first and second

draft of the plan is prepared. In finalising the plan, the integration authority must take account of any views expressed.

Where the “integration authority” is a Health Board or local authority, the plan will then be submitted to authority who has delegated this function for approval. If it is not approved the plan must be modified. Each strategic plan will then be published alongside a statement of the action it took to seek views.

The ALLIANCE view

The ‘**strategic plans**’ required by Section 23 of the draft bill will be critical in determining how the integration agenda is implemented on the ground. In preparing these plans regard has to be given to the ‘integration delivery principles’ (which mirror the ‘integration planning principles’). Again, adopting a set of human rights based principles would strengthen these significantly.

It is welcome that a ‘**consultation group**’, must be established to prepare the strategic plan. The bill suggests that Ministers will specify who – in addition to the Health Board and Local Authority – must be represented on the consultation groups and given the opportunity to comment on draft strategic plans. It is essential that this includes users of support and services as well as the third sector (both in terms of providers of health and social care and the local Third Sector Interface).

We need to know more about how the local strategic plans will be scrutinised. The Policy Memorandum suggests that Health Improvement Scotland and the Care Inspectorate will be involved in ensuring that plans “will effectively achieve the objectives of the integration plan and nationally agreed outcomes”. However, this is a key issue with the joint strategic commissioning plans that currently have to be prepared as part of the Reshaping Care for Older People agenda. Valuable support is given by the Joint Improvement Team but there is insufficient scope for action where plans are poor.

The Audit Scotland report ‘Commissioning Social Care’ set out a series of recommendations for improving commissioning processes and outcomes. These should be embedded within the guidance on development of local strategic plans required by this bill.

Section 30: Significant decisions outside the plan

Where the integration authority proposes to take a decision that might significantly affect the provision of a service or a decision other than in its next strategic plan, the

authority must take action it thinks fit to involve and consult users of the service which is being provided.

The ALLIANCE view

It is welcome that the draft bill (Section 30) requires that **people who use services are 'involved and consulted' in any 'significant decision' that may affect service provision** where this is done outwith the strategic plan. Section 32 of the draft bill suggests that Ministers will specify others who must be 'involved and consulted' in this situation. This must include the third sector, particularly as any decision that significantly affects service provision is likely to have implications for demand on local third sector support and services. The third sector is also very often able to respond quickly and flexibly with high quality, value for money provision that meets local needs in a way the statutory sector sometimes cannot. In a situation where a decision that will significantly affect service provision is being made the third sector should be viewed as a key partner in designing and delivering a person-centred solution.

Carrying out of integration functions

Sections 31-33: Carrying out integration functions

In carrying out the functions, the authority must give regard to the delivery principles established and the national health and wellbeing outcomes.

Section 32 requires the integration authority to involve and consulted interested persons prescribed by Scottish Ministers by regulations where it proposes to take a decision it considers might significantly affect service provision.

Each authority must prepare and publish a performance report for the reporting year. This will set out an assessment of performance. Form, content and period during which they will be published may be prescribed through regulations.

The ALLIANCE view

The requirement for each integration authority to produce an **annual 'performance report'** is welcome. However the draft bill states that this will report on 'performance during the year in carrying out the integration functions for the area of the local authority'. This reflects the risk of focusing on integration as an end in itself. Instead, the annual reports should give an assessment of performance in delivering on the national health and wellbeing outcomes, through the integration functions.

Change of integration plan

Section 34: Revised integration plan

Where a plan has been agreed by Scottish Ministers, the Health Board and local authority may vary the plan by jointly preparing a revised edition. This will set out additional functions, functions no longer to be delegated, functions no longer to be carried out or changes to the calculation of payments. A new integration plan must then be prepared and agreed by Scottish Ministers.

In this consequence Scottish Ministers may make provision about the transfer of staff, property, rights, liabilities or obligations of an integration joint board, a local authority or Health Board as they see necessary.

The ALLIANCE view

The draft bill (Section 34) allows a local authority and Health Board to **revise their integration plan** but does not require this to be done with any consultation or engagement. This is a significant oversight which needs to be amended.

Supplementary

Section 37: Information-sharing

In preparing a plan local authorities and Health Boards may disclose information for, or in relation to, the purpose of preparing the plan.

Section 38: Grants to local authorities

Scottish Ministers may make a grant to a local authority in respect of costs incurred by the authority in achieving these functions. The circumstances for this will be determined by Scottish Ministers.

Section 39: Default power of Scottish Ministers

Where a local authority and Health Board fail to submit an integration plan for approval, Scottish Ministers may:

- Specify functions to be delegated
- Establish the integration joint board
- Require local authorities and Health Boards to delegate the specified functions

- Require local authorities and Health Boards to make payments to the joint board as specified
- Require the local authorities and Health Boards to comply with such other requirements in relation to the functions specified by Ministers

Sections 40 & 41: Directions and Guidance

Scottish Ministers may give directions to a local authority, Health Board or integrated joint board in relation to functions conferred on it by this Act, delegated in pursuance of an integration plan, specified in the plan to be carried out in conjunction with those functions.

Local authorities, Health Boards and integrated joint boards must give due regard to guidance issues by Scottish Minister regarding their functions.

Part 2 – Shared Services

Provides for the Common Service Agency for the Scottish Health Service to provide, or arrange the provision of, good and services to a range of public bodies with the consent of Scottish Ministers.

This part of the Bill also amends the National Health Service (Scotland) Act 1978 to permit local authorities and integration joint boards to participate in the scheme established for the purposes of meeting losses and liabilities incurred in the exercise of relevant functions.

Part 3 – Health Service: Functions

Section 46 permits Scottish Ministers to form and participate in any type of body corporate, including limited liability partnerships and Scottish Charitable Incorporated Organisations. Section 47 permits Health Boards to exercise any function of another Health Board where the other Health Board and Scottish Ministers consent to this.

Part 4 – General

Part 4 provides general functions of the bill and provision for Scottish Ministers to act in future. This includes:

- Definitions for the various terms used in the Bill – including “health care” and “social care”.
- Provision to make regulations and orders through future subordinate legislation
- Repealing certain sections of previous legislation

- Establishing the principle that the Bill will come into effect the day after it achieves Royal Assent
- Stating that short title will be the Public Bodies (Joint Working) (Scotland) Act 2014.

The Bill and associated articles are available from the Scottish Parliament's website at the following address:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/63845.aspx>

This briefing has been prepared to reflect some of the ALLIANCE's initial reflections and concerns in relation to the Bill, based on the series of discussions we have had with members and partners to date. However, the ALLIANCE will be working in partnership with members over the coming weeks and months to further develop our position on the Bill.

If you would like to discuss how you can be involved in shaping the ALLIANCE's position or any of the topics raised within this briefing, please contact Andrew Strong, Policy and Information Officer, the ALLIANCE on 0141 404 0231 or email: andrew.strong@alliance-scotland.org.uk.

About the ALLIANCE

The ALLIANCE is the national third sector intermediary for a range of health and social care organisations. The ALLIANCE has nearly 300 members including large, national support providers as well as small, local volunteer-led groups. Many NHS Boards and Community Health and Care Partnerships are associate members.

The ALLIANCE's vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

www.alliance-scotland.org.uk