

EXPLANATORY DOCUMENT

ORDER TO REMOVE AN OBSTACLE TO EFFICIENCY AND PRODUCTIVITY RESULTING FOR THE COMMON SERVICES AGENCY AND OTHER PUBLIC BODIES IN SCOTLAND FROM THE TERMS OF SECTIONS 10 AND 15 OF THE NATIONAL HEALTH SERVICE (SCOTLAND) ACT 1978

CHAPTER 1: INTRODUCTION

- 1.1 This Explanatory Document has been prepared in respect of the Public Services Reform (Functions of the Common Services Agency of the Scottish Health Service) (Scotland) Order 2013 ("the Order"), which is to be made in exercise of powers conferred by section 17(1) and (9)(a) of the Public Services Reform (Scotland) Act 2010 ("the 2010 Act").
- 1.2 This document has been prepared for the purposes of section 25(2)(a) (procedure) and section 26(2)(a)(ii) and (b) (consultation).
- 1.3 A copy of this document was laid before the Scottish Parliament as part of the consultation process along with a copy of the draft Order.
- 1.4 The Explanatory Document laid before the Scottish Parliament under section 25(2)(a) must contain the details set out in section 27 of the 2010 Act, with the exception of the details required by section 27(1)(f), which relate to the consultation undertaken under section 26.
- 1.5 Subsequent to the consultation under section 26, the Explanatory Document and the draft Order must be laid again before the Scottish Parliament (section 25(2)(b)). At this stage, the Explanatory Document has to include the details required by section 27(1)(f), which relate to the consultation undertaken. This Explanatory Document has accordingly been amended and expanded to give details of representations received as a result of the consultation. No changes have been made to the draft Order as a result of those representations.
- 1.6 The overarching purpose of the Order is to remove an obstacle to the efficiency and productivity of the Common Services Agency for the Scottish Health Service ("the Agency") and other public bodies. The Agency (also known as National Services Scotland) was established by section 10 of the National Health Service (Scotland) Act 1978 ("the 1978 Act"), which sets out its functions. These are to perform functions on behalf of the Scottish Ministers and Health Boards, and to provide services and perform tasks for bodies associated with the health service. In consequence, the Agency provides a range of shared services to NHS bodies including legal services, counter fraud and data processing.
- 1.7 In addition to its functions under section 10, by virtue of section 15 the Agency has power to supply goods and services to local authorities and certain other bodies outwith the NHS. The Agency's business support services are of interest to the public sector in Scotland generally. But the fact that the powers in section 15 are not expressed as functions has in practice, raised a question as to the extent to which the

Agency can provide accommodation, goods and services using these powers. In addition, the Agency's ability to use the powers is expressly limited to different and in some cases quite narrow ranges of bodies. Both of these factors act as an obstacle to the Agency maximising efficiency and productivity. For example, Central Legal Office (part of the Agency) could provide legal services to the public sector more broadly. There is potential for Counter Fraud Services to provide services to local authorities and other bodies whose responsibilities include distributing money. Likewise, procurement and information systems and management are services used across most public bodies in Scotland.

- 1.8 It is proposed that the 1978 Act is amended to remove this obstacle to efficiency and productivity by making clear that the use of the powers in section 15 is one of the functions of the Agency, and to expand the range of bodies to which it can provide accommodation, goods and services to remove the current anomalous situation. The statutory role of the Agency will thus be widened so that it is able (but not required) to provide services to a wide range of public bodies in Scotland, including local authorities and the Scottish Ministers.
- 1.9 This Explanatory Document provides a formal assessment of the proposed amendments against the requirements of the 2010 Act, and is arranged as follows:
- Chapter 2 sets out the background and provides an overview of the proposals, and
 - Chapter 3 explains how the requirements of sections 18 (preconditions) and 27 (explanatory document) of the 2010 Act are met.

CHAPTER 2: BACKGROUND TO THE DRAFT ORDER

2.1 The Agency (also known as NHS National Services Scotland) was established by section 10 of the National Health Service (Scotland) Act 1978 to perform functions of the Scottish Ministers and Health Boards. It is a non departmental public body run by a management committee appointed by the Scottish Ministers. It currently employs around 3,600 staff based in 24 locations in Edinburgh, Glasgow, Aberdeen, Inverness, Dundee and Livingston.

2.2 The Agency currently provides a range of services to the NHS in Scotland, including

Health support

Health Facilities Scotland - operational advice on all facilities topics

Health Protection Scotland - coordinating health protection

Information Services Division - health statistics and analysis

National Services Division - screening and specialist health services

Scottish National Blood Transfusion Service - blood transfusion service

Business support

Central Legal Office – specialist legal services

Counter Fraud Services – deterring, detecting and investigating fraud

National Information Systems Group – support the delivery of Information Management and Technology.
National Procurement – sourcing, storing and delivering goods and services
Practitioner Services – primary care practitioner payments and patient registration services
Scottish Health Service Centre – conferences facilities and event organising

- 2.3 The functions of the Agency are set out in section 10 of the 1978 Act and in the National Health Service (Functions of the Common Services Agency of the Scottish Health Service) (Scotland) Order 2008.

Section 10 provides, in relation to functions, as follows–

“(1) There shall be constituted a body, to be called the Common Services Agency for the Scottish Health Service (hereafter in this Act referred to as “the Agency”), which shall have the functions conferred on it by this section.

...

(3) The Secretary of State may by order delegate to the Agency such of his functions relating to the health service as he considers appropriate.

(4) After consultation with the Health Boards... and any other interests which appear to the Secretary of State to be concerned, the Secretary of State, where he considers it expedient for the efficient discharge of the functions of the Health Boards ... may by order provide that the performance of such functions as he may determine shall stand referred to the Agency and be discharged by it on behalf of any or all of the Health Boards

(5) The Secretary of State may by order withdraw from the Agency any function delegated or referred to it under this section.

(6) The Agency shall provide such services and carry out such tasks for bodies associated with the health service as the Secretary of State and those bodies may agree, and on such terms and conditions as may be agreed.

(7) In carrying out its functions the Agency shall act subject to, and in accordance with, such directions as may be given by the Secretary of State.

...“

- 2.4 The functions currently delegated or referred to the Agency are set out in the NHS (Functions of the Common Services Agency of the Scottish Health Service) (Scotland) Order 2008. The relevant part of the 2008 Order provides as follows -

“The functions of the Agency are to:

- (a) examine, check and price prescriptions for drugs, medicines and appliances supplied under the arrangements for the provision of pharmaceutical services;
- (b) provide accommodation of the kind referred to in section 36(1) of the Act for the functions of the Agency and, if so directed by Scottish Ministers, for the functions of Health Boards and Special Health Boards;
- (c) provide such services relating to the exercise by Scottish Ministers, Health Boards or Special Health Boards of functions under section 36(1) or section 48 of the Act as they may require;
- (d) procure equipment, supplies and services in support of the functions of the Scottish Ministers, Health Boards and Special Health Boards;
- (e) exercise the power of the Scottish Ministers under section 40(1) of the Act to make arrangements with medical practitioners for the vaccination or immunisation of persons against yellow fever, either by medical practitioners or by persons acting under their control;
- (f) provide information, advice and management services in support of the functions of Scottish Ministers, Health Boards and Special Health Boards other than where the Health Protection Agency is exercising functions under the Health Protection Agency (Scottish Health Functions) Order 2006;
- (g) exercise the functions of the Scottish Ministers under section 44 of the Act to provide supplies of human blood for the purposes of carrying out blood transfusion, or provide material which has come from a human body and consists of, or includes, human cells, and provide related services for the purpose of, or in the course of, providing any service in relation to the health service;
- (h) provide staff, accommodation and other facilities required by the Scottish Dental Practice Board to enable the Board to discharge its duties with respect to the approval of estimates of dental treatment and appliances;
- (i) co ordinate personnel policies, including, to such extent as may be agreed with Health Boards and Special Health Boards, arrangements for appointment, training and planned movement of staff and the organisation of and participation in training;
- (j) collect and disseminate epidemiological data and participate in epidemiological investigations;
- (k) provide legal services to Health Boards and Special Health Boards;
- (l) prevent, detect and investigate fraud or other irregularities in relation to the health service;

(m) exercise the powers of the Scottish Ministers under section 79(1) of the Act to take on lease or to purchase by agreement moveable property and land which is required for the functions of the Agency and to use for those functions and manage any heritable or moveable property so acquired; and

(n) exercise the powers of the Scottish Ministers under section 79(1A) of the Act to dispose of land no longer required for the functions of the Agency.”

2.5 The Agency also has powers under section 15 of the 1978 Act, including power to –

“(1)(a) purchase and store and, on such terms and conditions as may be agreed, supply to persons —

(i) providing primary medical services under a general medical services contract or, general dental or general ophthalmic services, or pharmaceutical services under Part II of the 1978 Act, or

(ii) providing, in accordance with section 17C arrangements, primary medical services, personal dental services or other services of a kind that may be provided under this Part or Part III,

such equipment, goods or materials as may be prescribed;

(b) purchase and store and, on such terms and conditions as may be agreed, supply to local authorities, education authorities, government departments and such public bodies or classes of public bodies as may be determined by the Scottish Ministers, any equipment, goods or materials of a kind used in the health service;

(c) provide local authorities and education authorities, on such terms and conditions as may be agreed, with any administrative, professional or other services of persons employed by or having contracts with the Agency;

(d) permit local authorities and education authorities, on such terms and conditions as may be agreed, to use premises occupied for the purposes of the health service;

(e) permit local authorities and education authorities, on such terms and conditions as may be agreed, to use any vehicle, plant or apparatus belonging the Agency;

(f) permit education authorities, on such terms and conditions as may be agreed, and for the purpose of providing special education within the meaning of section 1(5)(c) of the Education (Scotland) Act 1980, to use any premises or facilities provided under section 36 of the 1978 Act;

(g) carry out, on such terms and conditions as may be agreed, maintenance work in connection with land or buildings for the maintenance of which a local authority or education authority is responsible. “

(2) The power to supply equipment, goods and materials under subsection 1(a) and (b) includes a power to make arrangements with third parties for the supply by them of those things.

2.6 The Agency also has duties under sections 2A (to promote health improvement) and 2B (to encourage public involvement in the health service) of the 1978 Act.

2.7 Thus, the Agency has a range of functions, powers and duties –

(a) the functions of the Scottish Ministers delegated to it, and the functions of Health Boards referred to it, by the Scottish Ministers under section 10 (3) or (4) of the 1978 Act

(b) the function of providing such services and carrying out such tasks for bodies associated with the health service as the Scottish Ministers and those bodies may agree, and doing that on such terms and conditions as may be agreed, under section 10 (6) of the 1978 Act;

(c) the power to provide accommodation, goods and services and carry out work for bodies certain outwith the health service, on such terms and conditions as may be agreed, under section 15 (1) and (2) of the 1978 Act; and

(d) duties imposed by sections 2A and 2B of the 1978 Act.

REASONS FOR AMENDMENT

2.8 November 2010 saw the launch of the Christie Commission, Dr Campbell Christie chaired the Commission on the Future Delivery of Public Services. The Commission was asked to:

- address the role of public services in improving outcomes, what impact they make, and whether this can be done more effectively;
- examine structures, functions and roles, to improve the quality of public service delivery and reduce demand through, for example, early intervention; and
- consider the role of a public service ethos, along with cultural change, engaging public sector workers, users and stakeholders.

2.9 In response to the independent review of the Future Delivery of Public Services (the Christie Commission) report published in June 2011, the Scottish Government–outlined its approach in “Renewing Scotland’s Public Services” published in September 2011.

- 2.10 The Report is built on four pillars, consistent with the Christie report:
- a decisive shift towards prevention;
 - partnership between public services at local level;
 - greater investment in people delivering services; and
 - a sharp focus on performance.
- 2.11 The Commission's specific recommendations included a new set of statutory powers and duties on all public service bodies, focused on improving outcomes, and embedding community participation in designing and delivering services.
- 2.12 John McClelland was commissioned in 2010 by the Public Procurement Reform Board to review the strategic management of investment in Scottish public sector ICT infrastructure and to report on how best to deliver improved value for money and support multi-agency working and shared services. The remit included describing a future vision for Scottish public sector ICT infrastructure and identifying any key issues and opportunities.
- 2.13 The Key Findings of the McClelland review included:
- ICT adoption is progressing but still lagging behind where it should be;
 - there are many exemplars and much progress can be made through a strategy of extending adoption;
 - the stand-alone self-sufficient operating model for ICT needs to be discontinued;
 - fragmented operating practices and structure are adding significant unnecessary cost; and
 - procurement, commissioning and engagement with the industry are inadequately performed.
- 2.14 To address these issues, McClelland has proposed strategic principles and made a range of recommendations to ensure the principles are adopted, including:
- new 5-year ICT strategies for each part of the public sector, which move the model from local self-sufficiency to sharing within each sector;
 - development of an overarching national public sector IT strategy;
 - creation of a national oversight and "ICT futures" board, to provide leadership and with authority and responsibility for the strategy;
 - broadband should be a national service;
 - network contracts should be aggregated to build a single Scottish Public Sector Network that adopts the standards and protocols of the UK Public Sector Network; and
 - there should be executive and technical professional leadership of the "go to market" approach, supported by established centres of procurement expertise.
- 2.15 The Scottish Government published Scotland's Digital Future: Digital Public Services strategy in response in September 2012. The strategy sets out a vision for Scotland where digital technology provides a foundation for integrated public services that meets the needs of the user – that means responsive services where organisations are

working together across sectors. It outlines approaches and actions which the Scottish public sector as a whole will take, and specific actions which will be taken forward at national level. The strategy is a key foundation for delivering on our preventative spend and innovative public service priorities. We are working with the wider public sector to achieve public services that are high-quality, continually improving, efficient and responsive to local needs.

- 2.16 Following the recommendations from the Christie Commission Report and the McClelland Review of ICT Infrastructure, the Scottish Government has been examining ways to deliver improved value for money through multi-agency working and shared services. The Scottish Government have been working with service areas that are currently providing services to the core Scottish Government and in some instances beyond, to establish areas that could provide services to a wider user base. There are a number of areas that have been identified and are included in the first edition of the Scottish Government Sector Shared Services Directory due for publication by the end of 2012.
- 2.17 During this work, discussions with the Agency highlighted that its potential to provide a wide range of shared services throughout the public sector in Scotland is being obstructed by the current legislation. This is because, in practice, there has been doubt as to the extent of the Agency's power to provide shared services outwith the Scottish health service, and that has discouraged innovations in service delivery which could be expected to increase productivity and efficiency. In addition, those powers are restricted to different (sometimes narrow) ranges of bodies for different powers, meaning that efficiencies such as can be expected from supplying a service to a large number of bodies cannot be realised, and similarly, bodies themselves cannot achieve the efficiencies associated with sourcing a range of services from a single supplier.
- 2.18 The Scottish Government believes that these obstacles to efficiency and productivity caused by the Agency not being able to provide services to a wider range of public bodies in the Scottish public sector should be removed. The proposed amendments would enable (but not require) the Agency to provide services to a wide range of public bodies in Scotland.

CONSULTATION

- 2.19 Following initial consultation with the Common Services Agency and senior officials within the Scottish Government, a consultation document incorporating an explanation of the key provisions of the Order, a draft of the Order itself and the proposed Explanatory Document was issued on 8 February 2013.
- 2.20 There were 13 responses to the consultation - all of which expressed support for the proposals. To the question "Do you agree with the proposed changes?" 12 responded in the affirmative and 1 did not respond.

Key issues raised by consultees were as follows –

- Agree with changes subject to reassurance that service quality to NHS bodies is maintained

- It would be helpful to have more clarity on the extent to which shared service arrangements between public bodies are permitted,
 - It is important that proper governance arrangements are in place for shared services arrangements between public bodies
 - Sharing of services across the public sector should be based on the principles of mutuality and collaboration
 - The issue of VAT in the context of shared services requires to be addressed with HMRC
- 2.21 The points and issues raised by those who responded to the Consultation are listed in Annex 1.
- 2.22 In addition to the representations received in response to the consultation, the Subordinate Legislation Committee stressed the need to ensure that service quality to NHS bodies would not deteriorate as a result of the changes, particularly in the context of services which link directly to the delivery of healthcare to patients (such as the supply of blood and other human cell products).
- 2.23 The Scottish Ministers agree that the Agency must have adequate systems in place to ensure that service quality to NHS bodies is maintained. The systems which the Agency has in place are more fully described in paragraphs 3.12 to 3.24, and Ministers note that these have operated effectively in the context of the wide range of bodies and services which the Agency already provides for a number of years. The other representations made are relevant to the shared services agenda generally, as opposed to being specifically related to this Order. For example, the applicability of VAT to payments made in the context of shared services is an issue which is of relevance to most, if not all shared services proposals, and consideration is being given to this issue both in relation to individual proposals and more generally. The principles on which the sharing of services should be based is also one of general applicability, and it is accepted that mutuality and collaboration are important principles in this context. Likewise, it is desirable that there is clear guidance as to the extent to which shared service arrangements between public bodies are permitted and that proper governance arrangements are put in place where services are to be shared. The Scottish Ministers will continue to give consideration as to what general guidance can usefully be provided to public bodies in these areas, conscious of the need to look at the specific of each individual proposal to ensure its compatibility with public procurement rules and good governance.

OVERVIEW OF PROPOSALS

- 2.24 The Order makes amendments to section 10 and 15 of the 1978 Act the purpose of which is to clarify that the Agency's functions extend to its powers under section 15, and to extend the functions of the Agency under section 15 so as to –
- (a) extend the types of equipment, goods and materials which the Agency may purchase and supply to others,
 - (b) extend the range of public bodies to which the Agency may provide services (subject to the agreement of the Scottish Ministers),

(c) extend the range of public bodies which the Agency may permit to use health service premises

(d) extend the range of public bodies which the Agency may permit to use any vehicle, plant or apparatus belonging to it,

(e) extend the range of public bodies for which the Agency may carry out maintenance work in connection with land or buildings.

2.25 Following the Order –

(a) the Agency will be able to purchase, store and supply both equipment, goods and materials used in the health service, and equipment, goods and materials (whether or not used in the health service) for supply to a range of public bodies; and

(b) the range of bodies to which the Agency will be able to provide accommodation, goods and services will be extended to include the Scottish Ministers, government departments, local authorities, education authorities and public bodies.

2.26 This will allow the Agency to provide services such as counter fraud services to a wide range of different public bodies in Scotland including local authorities. It will also allow the Agency to provide IT services across a wide range of public bodies in Scotland.

2.27 Permitting the Agency to (a) purchase, store and supply a wider range of equipment, goods and materials for other public bodies, (b) to provide services to other public bodies, (c) allow use of premises, vehicles, plant and apparatus by other public bodies, and (d) provide property maintenance services to other public bodies in Scotland in this way will remove an obstacle to efficiency in the delivery of a wide range of public services in Scotland.

TIMETABLE

2.28 Section 26(2)(a)(ii) of the 2010 Act provides that a copy of the Explanatory Document has to be laid before the Parliament as part of the consultation process under section 26, along with a copy of the draft Order. The timetable below shows steps that will lead to the full commencement of the Order.

Event	Date
Introduction of draft Order to the Scottish Parliament for consideration	24 January 2013
Formal consultation	24 December 2012 – 19 April 2013
Consideration of comments / if necessary further circulation of the draft	19 April 2013 – 29 April 2013
Draft Order laid in the Scottish Parliament for approval	20 May 2013
Order approved and made on or before	29 June 2013
Order comes into force on or before	29 June 2013

CHAPTER 3 REQUIREMENTS OF THE PUBLIC SERVICE REFORM (SCOTLAND) ACT 2012

- 3.1 Section 26(2)(a)(ii) of the 2010 Act provides that a copy of the Explanatory Document has to be laid before the Parliament as part of the consultation process under section 26, along with a copy of the draft Order. That has now been done.
- 3.2 The explanatory document laid before the Parliament under section 26 must contain the details set out in section 27 of the 2010 Act, with the exception of the details required by section 27(1)(f), which relate to the consultation undertaken under section 26. The explanatory document must accordingly address what is required by the various elements of section 27. In respect of provision which does not merely restate an enactment, the details required by section 27 include an explanation of why the Scottish Ministers consider that the preconditions specified in section 18(2) of the 2010 Act, where relevant, are satisfied in relation to that provision.
- 3.3 The Order does not 'merely restate an enactment' in terms of section 18(1) of the 2010 Act and accordingly the conditions of section 18(2) require to be satisfied. As it is only the relevant preconditions of section 18(2) which require to be satisfied in this analysis for the purposes of sections 27 and 18(2), only those preconditions which the Scottish Ministers consider to be relevant are addressed.
- 3.4 Consultation on the draft Order and proposed Explanatory Document has now been completed. Subsequent to the consultation under section 26, the Explanatory Document has to be laid before the Parliament along with the draft Order (section 25(2)(b)). At that stage, the Explanatory Document must include the details required by section 27(1)(f), which relate to the consultation undertaken under section 26.
- 3.5 This chapter and chapter 2 have accordingly been amended and expanded after the consultation required by section 26 of the 2010 Act which has now been completed.

PRECONDITIONS

Powers under which the draft Order is being made

- 3.6 Provision in the draft Order is made under section 17 of the 2010 Act.

Section 18 pre-conditions

- 3.7 Section 27(1)(d)(i) of the 2010 Act provides that this Explanatory Document must explain why the Scottish Ministers consider that the conditions in section 18(2) (where relevant) are satisfied or the condition in section 18(8) is satisfied. Section 18(8) is not applicable as the Order does not "merely restate an enactment". The following sets out an assessment of this provision against the section 18(2) pre-conditions.

Section 18(2)(a) the policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means

3.8 The reduction of this burden cannot be achieved by non-legislative means as the burden is created by the legislation which establishes and sets out the functions, powers and duties of the Agency. The necessary changes to that legislation can only be achieved by means of legislation.

Section 18(2)(b) the effect of the provision is proportionate to the policy objective

3.9 The Scottish Government believes that the Agency can better leverage its services to support the public sector through the current challenging period of austerity by ensuring that its ability to provide accommodation, goods and services is free from doubt and that it has a consistent ability to do so across a range of public bodies. The Agency has capabilities that other public sector organisations either buy from the private sector or lack completely. Thus, if the obstacles to the Agency fulfilling its remit are removed and it is able to provide accommodation, goods and services to a wide range of public bodies, it should improve the efficiency and productivity of the public sector.

3.10 The policy objective is allow (but not to require) the Agency to provide accommodation, goods and services to a broad range of public bodies in Scotland in a way which avoids doubt as to its ability to do so. The provision proposed closely reflects the policy objective, and does not go beyond it.

3.11 The Scottish Ministers therefore consider the effect of this provision is proportionate to the policy objective.

Section 18(2)(c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it

3.12 It is in the public interest that public sector organisations maximise their efficiency and productivity. Although, in some cases current suppliers of goods or services to the public sector may be adversely affected by the provision as it may result in lower cost services being provided, it is in the interests of the public as a whole that the public sector reduces its costs and maximises its efficiency so long as in doing so there is no material deterioration in the quality of services provided by the Agency.

3.13 Whilst the Agency does not provide services directly to patients, a number of the services provided by the Agency impact on patients – for example, the blood transfusion service, ensuring the nutritional content of meals, and IT services. Therefore, it is necessary to ensure that the provision also strikes a fair balance between the public interest in more cost effective services and the interests of patients in the Agency continuing to provide a high quality service.

3.14 In assessing whether this balance is met, it is necessary to have regard to the changes which the provision makes and the resultant risk of deterioration in the quality of

services, on the one hand, and the statutory scheme within which the Agency is established and operates and the controls in place to manage risk, on the other.

- 3.15 The Agency currently has power to provide a range of services across health bodies in Scotland. In addition, the Agency has power to provide goods, equipment and materials to NHS doctors, dentists, pharmacists and opticians, local authorities, government departments and potentially other public bodies; to provide certain services to local authorities; and to allow local authorities to use certain premises and vehicles.
- 3.16 The Agency currently provides 67 different services through its 11 divisions to a range of bodies. Each division is focused on a particular functional area, for example, procurement, practitioner services. The Agency has for over 30 years evolved governance to ensure that in running more than 67 different services, quality and cost are balanced whilst managing risk appropriately. For example, the top level management committee has a clinical governance committee to ensure that clinical risk is managed, whilst a finance and performance committee ensure that financial risk is managed.
- 3.17 The Order would make it clear that providing goods and services outwith the health service is a function of the Agency and thereby remove uncertainty, and would also, for example, allow goods equipment and materials to be provided by the Agency to the Scottish Ministers. However this would not radically alter the remit of the Agency or its risk profile. The Agency is already a large complex organisation providing a wide range of services across a number of different areas (e.g. health statistics and analysis, procurement) to a range of bodies. The range of services actually provided will not change, only the number of bodies to which services are provided. Therefore, the risk of deterioration in service quality is limited. Furthermore, there are measures in place to mitigate that risk. The Agency operates an integrated risk management approach for planning and monitoring all service provision, with executive management reporting ultimately to the top level Management Committee appointed by the Scottish Ministers. The Management Committee has systems and processes in place to monitor both quality and cost effectiveness, which help protect against any deterioration in service levels. The Agency is subject to external, internal and service audit which helps to ensure that its business processes are robust and that any weaknesses are drawn to management's attention. In addition, particular areas of the Agency's activity are subject to external regulation, for example, the lawyers in the Central Legal Office are regulated by the Law Society of Scotland. Both the MHRA and the Human Tissue Authority are involved in regulating the activities of the Blood

Transfusion Service. Thus, there are already significant measures in place to ensure service quality and mitigate the risk of deterioration in service quality.

- 3.18 Therefore, it is considered that this pre-condition is satisfied because a change which leads to an overall reduction in the cost of public services without a deterioration in quality is in the public interest; and, the risk associated with the change which the provision enables is limited, and the Agency has in place a range of measures to mitigate the risk of a deterioration in service quality.

Section 18(2)(d) the provision does not remove any necessary protection

- 3.19 In the context of 'necessary protections' for the purposes of section 18(2)(d) of the 2010 Act, account should normally be taken of the provisions of sub-sections 18(3) to (9) of the 2010 Act.
- 3.20 Section 18(3) gives examples of protections, namely: - (a) the independence of judicial decision making, or decision making of a judicial nature, by a person occupying judicial office (b) civil liberties (c) health and safety of persons, (d) the environment (e) cultural heritage (including access, through display, exhibition or otherwise, to cultural heritage). No such protections are affected by this provision.
- 3.21 Taking account of the terms of section 18(3) to (7), the Scottish Ministers consider that the Order does not remove any necessary protection.
- 3.22 The Scottish Ministers have also considered further the adequacy of the protections in place in relation to decisions about accommodation and service sharing (and whether further protection could be achieved), given the context that the Agency provides services which link directly to the delivery of healthcare services to patients (such as the supply of blood and human cell products).
- 3.23 The Agency has operated accommodation sharing for over 30 years, using the risk management systems which it has developed, without incident. The Agency currently undertakes a wide variety of activities and has very effectively consolidated its estate in recent years - providing firm evidence of its ability to manage occupation of premises and sharing of premises in an appropriate manner. Most of the Agency's sites have limited public access (e.g. office, distribution, scientific and administration buildings), and it is feasible, where necessary, to restrict access to different elements of buildings.
- 3.24 In relation to the Blood Transfusion Service specifically, as noted above, both the Medicines and Healthcare Products Regulatory Agency and the Human Tissue Authority are actively engaged with the Blood Transfusion Service, and any change of premises for that service would involve close engagement at an early stage with

those bodies. This provides an additional layer of protection to the Agency's own risk management systems described above.

Section 18(2)(e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

3.25 The Scottish Ministers consider that the Order does not interfere with the rights or freedoms of any person.

Assessment of the extent to which provision made by the Order will remove a burden

3.26 The Scottish Ministers consider that the provision made by the Order will remove a burden in that it will remove an obstacle to efficiency and productivity and thereby improve the delivery of public services (section 27(1)(c)(ii) of the 2010 Act) in the following ways:

3.27 Legal services – part of the Agency known as Central Legal Office (CLO) of the Agency currently provides NHS Scotland with legal services in every area of law relevant to the health service. The service is delivered through 50 expert solicitors, organised in team structures, covering litigation, employment, commercial contracts and property. CLO have specialised expertise in delivering legal services in a public sector environment and is equipped to deliver services to the wider public sector. As the integration of Health and Social Care develops, it is particularly important that there is a robust framework for the provision of legal services in place that allows for joined-up approach to health functions being delivered by both NHS Scotland and local authorities. After more than 60 years of operation, CLO have well established systems and processes that can confidently expand to provide services to a wider range of public bodies in Scotland. CLO has the opportunity to provide a high quality, consistent and competitively priced legal service to other areas of the public sector.

3.28 A substantial part of CLO's work is litigation. Analysis of the cost incurred by CLO in conducting litigation costs, including comparison of the costs incurred by other parties in the same litigation, indicates that CLO are significantly lower cost than equivalent private law firms. Further, CLO has an excellent track record in relation to medical negligence claims in Scotland. In England, where the medical negligence claims against the NHS are dealt with by the NHSLA and private law firms, the cost is significantly higher at around £1bn per annum.

3.29 Counter fraud services – part of the Agency known as Counter Fraud Services (CFS) of the Agency, currently protects NHS Scotland from fraud, using a centrally-based, professionally accredited team of specialists, dedicated to counter fraud work. Working in partnership with NHS Boards, professional organisations and in line with a Memorandum of Understanding with the Association of Chief Police Officers in Scotland (ACPO(S)), CFS's role is to deter, detect, disable and deal with financial crime when it occurs. CFS also has a role in promoting awareness of the detrimental impact of fraud on the delivery of healthcare, and investigates financial crime when it

is reported. Currently, CFS is only permitted to pursue fraud in the NHS in Scotland. However, as the integration of health and social care develops, it will become increasingly desirable that CFS is able to pursue fraud across boundaries. Many public bodies do not have a counter fraud capability, and CFS has the capability to provide a range of services to meet that gap.

- 3.30 Industry experts consistently estimate fraud to be anywhere between 3% and 8% of an organisation's budget. The UK's Government's National Fraud Authority Report in 2012 estimated that £73 billion is lost each year to fraud. That report included figures supplied by Audit Scotland. Within that UK figure, the NFS estimated that fraud losses in the public sector were £20 billion. Since 2000, CFS has demonstrated savings to the NHS in Scotland of £42 million through its counter-fraud work.
- 3.31 Procurement – part of the Agency known as National Procurement (NP) of the Agency, has a well established capability that now services the whole of NHS Scotland. Overall there is approximately £1.1 billion of NHS spend managed under NSS contracts between National Procurement, Health Facilities Scotland and National Information Systems Group. Contract savings delivered in the last 5-6 years are in excess of £250m. NP's purchasing power and contract management capability is significant, but is currently constrained to NHS activity. This will become increasingly problematic as health and social care services become more integrated, with many areas in the public sector being denied the opportunity of making use of NP's capabilities. In IT, NISG are leading the SWAN procurement, and are the only agency in Scotland well placed to do this, having managed BT N3 for NHS Scotland which has similar scale and complexity. It is estimated that between national care contracts and the provision of services and aids for daily living procurement, spend in this area will be in excess of £400m. A further benefit of health and social care integration and the removal of the restriction on the Agency would be its ability to impact on primary care prescribing. Collaborative procurement will become an increasing opportunity.
- 3.32 The Agency's innovative property framework approach has a turnover of £446 million but it is currently restricted to health. The Agency has addressed the problem of projects being late and over budget by securing a quality framework that others beyond health could use if that was within its remit. As a result of National Procurement's scale and experience, it is able to ensure that SME's are taken into account in determining the route to market, and so promote the geographic distribution of jobs and the development of Scottish industry. NP is also well qualified for its task in that it is commercially aware, whilst having an excellent understanding of public procurement law.
- 3.33 Within the Public Procurement Reform Programme, National Procurement have performed well, as evidenced in Audit Scotland's reviews.
- 3.34 The logistics model used by the Agency, which currently has a turnover of £127 million, is well established as good practice within logistics generally, and has potential to be rolled out to other public sector bodies, although this would require investment in further infrastructure. National Procurement has already started looking at combined services to the Islands and is in discussion with a number of local authorities around logistics opportunities. Other examples of current activity include

discussion with Zero Waste Scotland around reverse logistics. There also remains a large scale opportunity to have an integrated logistics service to patients who require goods and services delivered to their home. There are a number of local models in place covering this kind of thing but currently no national perspective. This kind of approach not only has potential for financial benefit but a significant impact in terms of improvements for patients.

- 3.35 IT services – part of the Agency known as National Information Systems Group (NISG), is currently the single point of support to NHS IT systems. As health and social care integration gathers pace, the Order would make it possible for NISG to assist in IT implementations going beyond health. A major element of the McClelland reforms is that the IT infrastructure should be built around the needs of the citizen, not isolated into different sectors. The potential for IT to contribute to more efficient public services increases dramatically if it can be joined up.
- 3.36 NISG has the capability to go beyond the NHS if we are to make the kind of use of the existing public sector infrastructure that McClelland talks about. There is a strong contribution to be made in areas such as local authority care homes where the tele-medicine potential is high.
- 3.37 In the McClelland report, health is acknowledged to be an exemplar in terms of provision of large scale, shared IT services. NISG acting as the core service provider has enabled significant efficiency and effectiveness benefits to be realised within the sector. NISG provides a broad range of IT services (circa £65m per annum) to all Boards and Special Health Boards in NHS Scotland, not only delivering a high level of IT service provision, but also cost savings (£4.3m in recurring cost savings in 2012/13 alone). In addition, NISG's work also enables significant business cost reductions/avoidance across a range of business areas such as productivity, office administration, clinical decision support, information sharing, clinical screening, electronic referrals and child health.
- 3.38 NISG services which would be applicable to the broader public sector include:
- Architecture & Consulting - advising agencies on business cases, business analysis, and architecture design etc with emphasis on supporting high quality IT investment decision making
 - Procurement, Contract & Vendor Management - ensuring that requisite IT and commercial expertise is applied to all procured assets and outsourced services where scope for cost avoidance and reduction is very significant
 - Project Management - efficient and effective delivery of business sponsored / IT enabled programmes and projects in complex environments
 - Solution & Application Services - cost effective delivery and maintenance of bespoke IT solutions with a focus on cross-boundary / agency integration solutions
 - Accreditation & Testing - ensuring that 3rd party supplied systems continue to meet agencies required standards and specifications
 - Service Management - ensuring installed / commissioned IT systems continue to meet service levels and deliver expected business value throughout entire lifecycle

3.39 NISG is already heavily engaged in cross-sector initiatives which are at the forefront of the realisation of the McClelland recommendations. NISG provides service management and architecture guidance on the national level systems which enable data sharing across sector boundaries and are also currently leading the procurement of a Scottish Wide Area Network (SWAN) which will provide cross-sector network connectivity whilst aggregating public sector demand to ensure the best possible procurement deal across participating agencies. Relationships have also been established with other public sector IT organisations through the leadership role on the initiatives above, but also through membership of the Public Sector ICT Industry Board and other associated governance groups set up to achieve the objectives of the national public sector ICT strategy. It is considered that there is extensive scope for further inter-agency IT collaboration if the obstacles in the current legislation are removed.

CONSULTATION REPORT ON THE DRAFT PUBLIC SERVICES REFORM (FUNCTIONS OF THE COMMON SERVICES AGENCY FOR THE SCOTTISH HEALTH SERVICE) ORDER 2013

Responses

A total of 13 responses were received as part of the consultation process:-

(alphabetical order)

- Aberdeenshire Council
- Angus Council
- COSLA Health & Well-being Spokesperson
- Glasgow City Council
- ICAS
- Local Government ICT Sectoral Board
- NHS Greater Glasgow and Clyde Acute Division
- North Ayrshire Council
- North Lanarkshire Council
- Skills Development Scotland
- South Lanarkshire Council Social Work Resources
- The Clerk of Faculty
- West Lothian Community Health & Care Partnership

Key Point or Issue Raised
<p>Agree with the changes subject to a reassurance that services to the NHS will be of a similar quality and be able to deliver timeously.</p> <p>Human Resource Management is not a service provided by the CSA across the NHS at present. How will the proposed changes impact on National Shared Services?</p>
<p>In principle it would be helpful to local authorities if the proposed changes in the Order are implemented. This would allow local authorities and other public bodies to tap into the Agency's potential to provide a wide range of services throughout the public sector in Scotland. As the consultation paper recognises, this could help to remove some obstacles to efficiency and productivity in the public sector.</p> <p>There are certain other issues, however, which would also need to be clarified. For example, when local authorities are procuring services over certain specified value thresholds they normally require to undertake some form of fair and transparent competitive tendering process.</p> <p>It would be useful (and this is probably a wider point to cover all forms of public-public co-operation) if there could be additional guidance or legislation which clarifies the extent of permitted arrangements between public entities acting under shared service arrangements. For example, where goods/services are to be provided in the public interest without private sector involvement, and</p>

- such arrangements can be demonstrated to achieve best value,
- do not distort competition, and
- where the remuneration is restricted to reimbursing the public body providing the goods/services its reasonable costs and expenses, then such arrangements should be permitted without the need for competitive tendering.

Finally, on a drafting point, it is not immediately clear why, for example, in the proposed new Section 15(2A)(b) reference is made to enabling the Agency to purchase, store and supply to “government departments, *local authorities* and such public bodies or classes of public bodies as may be determined...” certain equipment, goods or materials. In Section 15(2A)(c) however, which allows the Agency to provide administrative, professional or other services, the list of bodies to whom it may provide those services is the “Scottish Ministers, government departments and such public bodies or classes of public bodies as may be determined...”.

Why are local authorities specifically mentioned in Section 15(2A)(b) but not in (c), (d), and (e)? I expect they are covered by the term “public body” in any event, but just wonder why they’re specifically mentioned in addition to public bodies in the earlier provision, but not in the subsequent ones.

We understand that the recent Christie and McClelland reviews into the Future Delivery of Public Services and the Public Procurement Reform have led Scottish Government to examine ways of delivering improved value for money through multi-agency working and shared services, and that this amendment will allow for this to happen.

The Proposal that the 1978 Act is amended to remove the obstacle to efficiency and productivity allow (not require) the Common Services Agency (CSA) to expand the range of bodies to which it can provide accommodation, goods and services by way of a range of business support systems in the form of legal services, counter fraud services, information systems and management, procurement, practitioner services, conferences and events, seems a logical measure under the current challenging period of austerity. The proposal also seems to fit with the wider policy context related to health and social care integration. However, while this proposal goes some way to address issues of potential duplication for support services across the public sector, in practice these proposals may not deliver as effectively as might be expected. The changes may present challenges for local authorities who also have their own business support systems, which operate at locality level.

Cognisance needs to be given to the practicality of regional/national service delivery in the local context. For example, in South Lanarkshire, the Council’s own legal services department is readily

responsive to the needs of Social Work Resources; similarly a dedicated procurement team is responsive to the particular needs of social work needs. In short, local service providers are responsive to local needs. There is a strong emphasis on locality arrangements in proposals relating to health and social care integration. In this context, there is potential for tension between centralised, national support arrangements, and demands from localities, many of which will also be moving to every more personalised approaches for services which will have implications for commissioning and procurement, and potentially related legal issues.

Moreover, we are aware of some anecdotal reports from partners that the CSA processes can already be lengthy. For example, we are aware that local colleagues in the NHS have chosen to work in partnership with local authority under contracting arrangements, rather than link with the CSA, as it would have taken a longer time to conclude. The process to verify legal or contractual arrangements, we understand, may also be lengthy. Having local arrangements

within the Council helps to speed up local processes. We also note that the list of consultees at Annexe C is large. If this is the potential wider audience that the CSA could offer their services to, consideration will need to be given to capacity issues within the service.

Bearing in mind the focus at the National, Sectoral and Local level on the need to streamline services and generate efficiencies, it is sensible to support the proposed changes which will allow wider sharing of the NSS services. It would be useful however to have clarity on the governance arrangements going forward which will allow this to happen in practice. For example:

- would NSS simply be able to respond to tenders for work or would they have any ability to just be 'given' work.
- how would individual projects be funded/managed and how would relationships with 3rd parties work?
- any arrangements put in place would presumably be governed by suitable payment/performance mechanisms and associated service level agreements?

It is worth noting that LA's also have a centre of procurement expertise in Scotland Excel and there are already contracts in place which are used by both local authorities and health but these are somewhat 'one way' ie local authorities can open their contract for health to use but because of current constraints there is no 'quid pro quo', these proposals therefore are most welcome in that respect.

At the same time, we would want to make the point that there should not be any presumption that local authorities will *necessarily* want to take advantage of these new opportunities. You will be aware that some of the business support functions you mention already have well-established shared services in place within a local government context. So for instance, Scotland Excel is a good example of how local authorities have collaborated to develop a shared centre of expertise in procurement.

Indeed, just as councils may gain from tapping into the services of NHS National Services, so too might Health Boards gain from using the shared services of local government. We would therefore want to make sure that access to shared support arrangements flows in both directions. This will be particularly important within the context of health and social care integration. Whatever joint services are pursued with integration, there will be a need to develop effective joint governance arrangements.

In summary, then, we welcome the developments outlined in your consultation document on the basis that any rationalisation of business support services within the public sector is based on the principles of mutuality and collaboration. It is, of course, for individual local authorities to determine whether any of the opportunities opened-up by these reforms fit with their business planning requirements.

It is only reasonable that the Common Services Agency should be able to act in a similar manner to other public sector bodies in terms of the provision of accommodation, goods and services to those bodies. The proposed Order 2013 appears to place the CSA on a 'level playing field' with local authorities and other public sector agencies and as such we have no objection to the Order. It is, however, important that it remains a 'level playing field' and that the Order is not perceived as putting the CSA into a more privileged position than other bodies such that there is a belief that it should be providing services to others rather than there being an open procurement process where such is required.

The issue of VAT within the confines of Shared Services requires to be addressed. There should be dialogue with HMRC. The relationship with Procurement Scotland will require to be addressed – perhaps through a Memorandum of Understanding. Priorities and governance would require to be addressed.