

PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1

Functions of Local Authorities and Health Boards

Implementation of integration scheme

Section 9 – Functions delegated to integration joint board

27. This section provides that, where the Scottish Ministers approve an integration scheme which sets out that functions will be delegated to an integration joint board under section 1(4)(a), Ministers may by order establish the integration joint boards, which will have the functions specified in the integration scheme delegated to it.
28. Subsection (3) provides for the functions in the integration scheme to be delegated on a day set by the Scottish Ministers in regulations, unless the functions have been delegated on an earlier date under section 29(4).

Section 10 – Chief officer of integration joint board

29. **Section 10** requires the integration joint board to appoint a member of staff to be its chief officer. The integration joint board will not necessarily be given powers to employ its own staff. Subsections (2), (3) and (4) provide that the chief officer is to be seconded to the integration joint board from its constituent local authority or Health Board. In the event that there is a wish in future for the chief officer to be employed directly by the integration joint board, the Scottish Ministers have powers to make an order under subsection (5) to enable this.
30. Subsection (4) provides that where the person to be appointed is not an existing member of staff of a local authority or Health Board which prepared the integration scheme, the person is first to be appointed to the local authority or the Health Board and then seconded to the integration joint board.
31. Subsection (6) requires the integration joint board to consult the Health Board and each local authority, before appointing the chief officer of the integration joint board.
32. Subsection (7) provides for the Scottish Ministers to approve the responsibilities of the chief officer.

Section 11 – Other staff of integration joint board

33. This section provides for the Scottish Ministers, by order, to give integration joint boards the ability to employ staff other than a chief officer and to make further provision in relation to the staffing of integration joint boards as the Scottish Ministers think fit,

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including: (a) the appointment of staff; (b) the numbers of staff; and (c) the terms and conditions of staff.

34. Subsection (3)(a) provides for flexibility in the use of the power in subsection (1), so an order under section 11 can be made which can apply only to a single, or some, integration joint boards as well as to all integration joint boards. Subsection (3)(b) provides for further flexibility for the Scottish Ministers to make different provision in relation to different integration joint boards.
35. Subsection (4) places a requirement on the Scottish Ministers to consult with Health Boards, local authorities and integration joint boards before exercising the power to make an order under subsection (1).

Section 12 – Integration joint boards: further provision

36. This section enables the Scottish Ministers to make further provision about integration joint boards.
37. Subsection (1) gives the Scottish Ministers powers to make provision by order about the membership, proceedings and powers of integration joint boards; the supply of services or facilities to integration joint boards by a local authority or Health Board; the establishment of committees by integration joint boards; the operation of committees of integration joint boards, the delegation of functions conferred upon integration joint boards by an integration scheme to the chief officer, any member of its staff or any committee; and any other matter as the Scottish Ministers think fit in relation to the establishment or operation of integration joint boards.
38. Subsection (2) provides for flexibility in the use of the power in subsection (1). By virtue of subsection (2)(a) an order may be made under section 12(1) containing the type of provision mentioned in paragraphs (c) to (h) which applies only to a single, or some, integration joint boards as well as to all integration joint boards. By virtue of (2) (b) an order made under section 12 may make different provision in relation to different integration joint boards.
39. Subsection (3) requires the Scottish Ministers to consult with the Health Board, local authority and integration joint board, before making an order under subsection (1).
40. Subsection (4) provides for the Scottish Ministers to make schemes for the transfer to an integration joint board of staff, property, rights, liabilities, or obligations of their constituent authorities. This power may be exercised to support the delivery of delegated functions by the integration joint board, where that is considered appropriate. Subsection (5) requires the Scottish Ministers to consult with the relevant integration joint board, relevant Health Board and local authority before making a scheme under subsection (4).
41. Subsections (6) and (7) require the Scottish Ministers, before making a scheme under subsection (3) which relates to staff, to consult with health professionals, social care professionals and other groups of persons prescribed by regulations whom the Scottish Ministers consider to have an interest.

Section 13 – Integration joint boards: finance and audit

42. Paragraph (a) amends section 106 of the Local Government (Scotland) Act 1973 so that the provisions of Part 7 of that Act will apply to integration joint boards, requiring them to appoint a proper officer for the financial administration of the financial affairs of the integration joint board, keep accounts and have these accounts audited by the Accounts Commission for Scotland. The proper officer may be the chief officer if the integration joint board deems that to be appropriate. The chief officer is the accountable officer for all matters, but the integration joint board is able to appoint another officer to be the proper officer for matters of financial administration. Such an arrangement is not

obligatory, but will allow for the integration joint board to place financial accountability in the hands of a finance professional, if it is agreed locally that that is appropriate.

43. Subsection (b) provides that certain sections of the Local Government (Scotland) Act 1973, in respect of social security and benefit administration, will not apply to integration joint boards as they are outside of the scope of their functions.

Section 14 - Payments to integration joint boards in respect of delegated functions

44. **Section 14** applies where an integration joint board has been established. It makes provision for the allocation of resources by the local authority and Health Board in relation to the functions delegated by them to an integration joint board, to support the effective carrying out of the functions.
45. Subsection (2) requires payments to be made by the local authority, in respect of such of their functions as are delegated under the integration scheme, of the amount determined in accordance with the method set out in the integration scheme.
46. Subsection (3) places a requirement on Health Boards to set aside an amount, to be determined in accordance with the method set out in the integration scheme, for functions which are delegated. An amount set aside by a Health Board is to be available for use under the direction of the integration joint board. Subsection (4) places a requirement on Health Boards to make payments, either to an integration joint board or a local authority acting as the integration authority, for delegated functions which do not relate to services provided in large hospitals (or where the Health Board has deemed that such functions are to be treated as if they did not relate to services provided in large hospitals). The amount to be paid by a Health Board under subsection (4) will not include an amount set aside under subsection (3).

Section 15 – Functions delegated to local authority or Health Board

47. **Section 15** applies where the Scottish Ministers approve an integration scheme under section 7 and that scheme contains provision about the delegation of functions by a local authority to a Health Board or functions delegated by a Health Board to a local authority, or both, as the case may be, under section 1(4)(b), (c) or (d).
48. Subsection (2) enables the Scottish Ministers to prescribe a day by which functions must be delegated, if they are not delegated on an earlier date specified under section 29(4).
49. Subsection (3) requires, before the functions are delegated, that the local authority and Health Board set up an integration joint monitoring committee to monitor the operational delivery of the functions set out in the integration scheme.

Section 16 – Transfer of staff where functions delegated to a local authority or Health Board

50. **Section 16** provides that the Scottish Ministers may make provision by scheme about the transfer or secondment of staff from the body responsible for delegating the functions in the integration scheme as set out in section 1(4)(b), (c) or (d), to the body the functions are delegated to. This provision therefore relates to transfers to local authorities or Health Boards, as opposed to transfers to integration joint boards, which are dealt with by section 12(4).
51. Before making such a scheme under section 16, subsections (2) and (3) require the Scottish Ministers to consult with health professionals, social care professionals and other groups of persons who are prescribed in regulations whom the Scottish Ministers consider to have an interest. Subsection (5) also requires the Scottish Ministers to consult the Health Board and local authority in relation to such a scheme.

Section 17 – Integration joint monitoring committees: further provision

52. **Section 17** confers a power on the Scottish Ministers to make provision by order about the establishment, membership and proceedings of integration joint monitoring committees (either generally or making different provision about different committees), as well as any other matter relating to their operation as the Scottish Ministers think fit.

Section 18 – Payments to Health Boards in respect of delegated functions

53. **Section 18** requires that where a local authority delegates a function to the Health Board, in accordance with an approved integration scheme, the local authority must make payment to the Health Board of an amount determined in accordance with the method set out in the integration scheme.

Section 19 – Payments to local authorities in respect of delegated functions

54. Subsection (2) requires that, where a Health Board delegates a function to a local authority, the Health Board is under a duty to set aside an amount for use by the local authority which has been determined according to the method set out in the integration scheme in respect of services provided in a hospital in the area of a Health Board which serves the area of two or more local authorities (such hospitals are referred to in these Notes as “large hospitals”). Subsection (3) provides that where no delegated functions relate to services delivered in large hospitals, or where the Health Board chooses to make payments to the local authority in respect of such functions, the Health Board must make payments of amounts to the local authority for all of the delegated functions, including those which relate to services delivered in large hospitals in accordance with the method set out in the integration scheme.
55. Subsection (4) requires that, in arrangements in which a local authority is the integration authority and where more than one local authority is covered by the same integration scheme, each delegating local authority is under a duty to make a payment to the local authority which is the lead authority for each delegated function.

Section 20 – Power of Scottish Ministers to make provision giving effect to integration scheme

56. **Section 20** provides that the Scottish Ministers may, by regulation, make provision about the effect to be given to a provision included in an integration scheme by regulations made under section 1(3)(f).

Section 21 – Transfer of staff: effect on contract of employment

57. **Section 21** makes provision about the effect on an individual’s contract of employment on the transfer (or proposed transfer in the case of subsection (2)) of that individual’s employment by scheme under section 12(4), 16(1) or 48(3).
58. Subsection (2) provides that where, before the day of transfer, a person who is to be transferred informs their original employer that they do not wish to transfer employment, the person’s contract of employment is terminated on the day before the day of transfer. The effect of this is that a person who does not wish to transfer does not have to do so but instead his or her contract will end on the day before the transfer would have taken place.
59. Subsection (3) sets out the effects of a transfer on an employee’s contract. In effect, the contract continues as it was before the transfer, except that the new employer takes the place of the previous employer. This means that the rights, powers, duties and liabilities of the original employer under or in connection with the contract of employment are transferred to the new employer and anything done by or in relation to the original employer in respect of the contract of employment is treated as having been done by or in relation to the new employer.

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60. Subsection (4) clarifies that, in relation to pension obligations, in circumstances where staff transfer between employer, whether between a local authority and Health Board or to an integration joint board, there will be no transfer of any liability for any deficit, or right to a share in any surplus, in respect of the transferred employee's membership of a pension scheme relating to their employment prior to the transfer.
61. Subsection (5) provides that a person is not to be treated as being dismissed as a result of any provision of this section.
62. Subsection (6) protects any right that a person may have to terminate their contract where there is a substantial detrimental change to his or her working conditions.
63. Subsection (7) makes clear that the change in employer as a result of the transfer of a person under this section does not constitute a substantial detrimental change to a person's working conditions. This has the effect that the transfer (of itself) of a person by scheme under section 12(4), 16(1) or 48(3) cannot be considered a substantial detrimental change such as to give rise to any right mentioned in subsection (6).

Section 22 - Co-operation

64. **Section 22** applies where two or more local authorities have joined together to prepare an integration scheme under section 2(4), or there is otherwise more than one integration scheme in relation to the same Health Board area. It puts a duty on the local authorities involved and the Health Board to co-operate with each other in relation to the efficient and effective use of their resources (including, in particular, buildings, staff and equipment) relevant to the scheme or schemes.

Section 23 - Carrying out of functions conferred on officers of local authorities

65. **Section 23** provides that a function that is prescribed by the Scottish Ministers by regulations which is conferred by or by virtue of enactment on an officer of a local authority and which: (a) relates to a function delegated as part of the integration scheme and (b) meets any conditions that are prescribed in regulations made by the Scottish Ministers, is deemed to be conferred on officers of the other bodies (a Health Board and any other local authorities) which prepared the same integration scheme.

Section 24 - Carrying out of functions conferred on officers of Health Boards

66. **Section 24** provides that a function that is prescribed by the Scottish Ministers by regulations which is conferred by or by virtue of enactment on an officer of a Health Board and which: (a) relates to a function delegated as part of the integration scheme and (b) meets any conditions that are prescribed in regulations made by the Scottish Ministers, is deemed to be conferred on officers of the local authority or local authorities which prepared the same integration scheme.