

# **PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1**

#### **Functions of Local Authorities and Health Boards**

#### **Carrying out of delegated functions**

##### ***Section 25 – Effect of delegation of functions***

67. **Section 25** sets out the effect of the delegation of functions in pursuance of an integration scheme.
68. Subsection (2) requires the integration authority to which a function is delegated to carry out that function. Subsection (3) provides that the integration authority has all of the powers and duties that apply in connection with carrying out the function. Subsection (4) provides that the delegation of the function does not prevent the function being carried out by the person who delegated it. Subsection (5) confers a power on the Scottish Ministers, by order, to require that an integration authority which is an integration joint board must or must not exercise a power which otherwise applies in connection with the carrying out of the function specified in the order.

##### ***Section 26 – Directions by integration authority***

69. Subsection (1) provides that, where the integration authority is an integration joint board, it must provide directions to the Health Board and local authority for the carrying out of the delegated functions.
70. Subsection (2) applies where the integration authority is not an integration joint board, i.e. it is a local authority or a Health Board. This enables the integration authority to give directions to the other bodies who prepared the integration scheme for the carrying out of any delegated functions. The giving of directions is not mandatory under this subsection. This enables an integration authority which is not an integration joint board to choose to carry out functions itself, or to issue a direction in respect of the carrying out of the function. Where an integration scheme was prepared by more than one local authority, this subsection allows the integration authority to direct one of the local authorities to carry out a function for the entire area covered by the integration scheme.
71. Subsection (3) provides that the person to whom a direction may be given under subsection (1) or (2) must provide such information to the integration authority as is necessary to enable the integration authority to decide whether or not to give a direction and the content of any direction. This seeks to ensure that such information as is necessary for effective strategic planning is shared between the integration authority, the Health Board and the local authority.

72. Subsections (4) and (5) provide that a direction can be given to more than one person, i.e. an integration joint board can give a direction to both the Health Board and the local authority, and that such a direction can require each party to: carry out the functions jointly, in part or in relation to a specified area, or do particular things in relation to the function.

***Section 27: supplementary***

73. This section makes supplementary provision in relation to the issuing of directions under section 26.
74. Subsection (1) provides that directions issued under section 26 must specify the amounts to be set aside in respect of large hospital functions and must, in any other case, set out payments (or the method of determining payments) to be made by the integration authority to the person to whom the function is delegated. It must also specify how such an amount, or payment, is to be used. Directions may regulate the way in which the function is to be carried out and may make ancillary provision.
75. Subsection (2) sets out particular matters which may be provided for in directions issued under section 26. This provides that integration authorities may use directions to require the provision of information to the integration authority, to take action to enable the integration authority to comply with any court order made against it in connection with a delegated function or reimburse the integration authority in relation to any liabilities incurred in connection with a delegated function.
76. Subsection (3) requires that the integration authority make such payments to the Health Board and local authority as are set out in directions given by it.
77. Subsection (4) provides that a person to whom a direction under section 26 is given must comply with the direction.
78. Subsection (5) provides that a direction may vary or revoke an earlier direction and that the direction must be given in writing.
79. Subsections (6), (7) and (8) provide for the situation in which a Health Board and local authority agree that an integration joint board should be enabled to deliver functions itself rather than by issuing directions to the Health Board and local authority. Subsection (6) provides that the Scottish Ministers may make an order to allow an integration joint board to decide not to give directions in respect of a specified delegated function. Subsection (7) sets out the conditions that apply to the exercise of this power. An order under (6) may be made only if an application is received from the Health Board and local authority, and if the Scottish Ministers consider that the order should be made to improve compliance with the national health and wellbeing outcomes. Subsection (8) allows the Scottish Ministers to exclude a particular function (or functions) from an order made under subsection (6) if they do not consider that the making of an order in respect of that function would improve compliance with the integration delivery principles or contribute to achieving the national health and wellbeing outcomes.

***Section 28 – Health funding: further provision***

80. Section 28 deals with how budgets for services provided in large hospitals are to be used in planning for the delivery of services using the health and social care resources to best meet the needs of the population. Health Boards are required to identify and set aside amounts which relate to services provided in large hospitals which are included in the delegated functions, where such amounts are not included in the payments to the integration authority. Subsection (2) gives the integration authority the power to direct the use of this amount by the Health Board in line with the strategic plan.
81. Subsections (3) and (4) deal with situations where there is a difference between actual costs and those set out in the direction. Where the amount spent in relation to services delivered in a large hospital is less than the amount set out in the direction, subsection (3)

*These notes relate to the Public Bodies (Joint Working) (Scotland)  
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allows the integration authority to require that the Health Board make payment to it for the unused amount. Where the amount spent in relation to services delivered in a large hospital is greater than had been determined in the strategic plan, subsection (4) allows the Health Board to require that the integration authority make payment to it for the additional amount spent. Subsections (5) and (6) require that the Health Board provides the integration authority with information relating to the amounts set aside.