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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2014 No.**

**PUBLIC HEALTH**

**SOCIAL CARE**

**The Public Bodies (Joint Working) (Prescribed Local Authority Functions etc.) (Scotland) Regulations 2014**

*Made* - - - -

*Coming into force in accordance with Regulation 1(1)*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1(7) and (12) and 69(1)(b) of the Public Bodies (Joint Working) (Scotland) Act 2014<sup>(a)</sup> and all other powers enabling them to do so.

In accordance with section 69(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Public Bodies (Joint Working) (Prescribed Local Authority Functions etc.) (Scotland) Regulations 2014 and come into force on the day after the day on which they are made.

(2) In these Regulations—

“the Act” means the Public Bodies (Joint Working) (Scotland) Act 2014;

“aid or adaptation” means any alteration or addition to the structure, access, layout or fixtures of accommodation, and any equipment or fittings installed or provided for use in accommodation, for the purpose of allowing a person to occupy, or to continue to occupy, the accommodation as their sole or main residence;

“housing support service” means any service which provides support, assistance, advice or counselling to a person for the purpose of enabling that person to occupy, or to continue to occupy, accommodation as their sole or main residence; and

but does not include any service which involves the installation or maintenance of an aid or adaptation; or any service which is provided to a person as, or in conjunction with, personal care or personal support services provided in the person’s place of residence.

## Prescribed functions

2.—(1) The functions conferred by the enactments listed in column A of the table in Part 1 of the Schedule are prescribed for the purposes of section 1(7) of the Act.

(2) The functions conferred by virtue of the enactment listed in column A of the table in part 2 of the Schedule are prescribed for the purposes of section 1(7) of the Act.

(3) Each function prescribed for the purposes of section 1(7) is prescribed to the extent that the function is exercisable in relation to persons of at least 18 years of age.

(4) Where an entry in column B of the table in the Schedule specifies a limitation in relation to a function listed in column A, that function is prescribed subject to that limitation.

## Amendment of the schedule to the Act

3. In Part 1 of the schedule to the Act—

- (a) in the entry relating to the National Assistance Act 1948(**a**) the references to sections 22 and 26 of that Act are repealed;
- (b) in the entry relating to the Social Work (Scotland) Act 1968(**b**), the reference to section 87 of that Act is repealed;
- (c) in the entry relating to the Local Government and Planning (Scotland) Act 1982(**c**), for “24” substitute “24(1)”; and
- (d) in the entry relating to the Housing (Scotland) Act 1987(**d**), for “5 and 5A” substitute “5(1) and 5A(1)”.

*Name*

A member of the Scottish Government

St Andrew's House,  
Edinburgh

Date

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(a) 1948 c.29, (11 and 12 Geo. 6).

(b) 1968 c.49.

(c) 1982 c.43.

(d) 1987 c.26; section 5A was inserted by the Leasehold Reform, Housing and Urban Development Act 1993 (c.28) section 149.

# SCHEDULE

Regulation 2

## PART 1

### Functions prescribed for the purposes of section 1(7) of the Public Bodies (Joint Working) (Scotland) Act 2014

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<i>Column A</i>	<i>Column B</i>
<i>Enactment conferring function</i>	<i>Limitation</i>

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#### **National Assistance Act 1948(a)**

Section 48  
(duty of councils to provide temporary protection for property of persons admitted to hospitals etc.)

#### **The Disabled Persons (Employment) Act 1958(b)**

Section 3  
(provision of sheltered employment by local authorities)

#### **The Social Work (Scotland) Act 1968(c)**

Section 1 (local authorities for the administration of the Act)	So far as it is exercisable in relation to another integration function.
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- (a) 1948 c.29; section 48 was amended by the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 39, paragraph 31(4) and the Adult Support and Protection (Scotland) Act 2007 (asp 10) schedule 2, paragraph 1.
- (b) 1958 c.33; section 3 was amended by the Local Government Act 1972 (c.70), section 195(6); the Local Government (Scotland) Act 1973 (c.65), Schedule 27; the National Health Service (Scotland) Act 1978 (c.70), schedule 23; the Local Government Act 1985 (c.51), Schedule 17; the Local Government (Wales) Act 1994 (c.19), Schedules 10 and 18; the Local Government etc. (Scotland) Act 1994 (c.49), Schedule 13; and the National Health Service (Consequential Provisions) Act 2006 (c.43), Schedule 1.
- (c) 1968 c.49; section 1 was relevantly amended by the National Health Service (Scotland) Act 1972 (c.58), schedule 7; the Children Act 1989 (c.41), Schedule 15; the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), schedule 10; S.S.I. 2005/486 and S.S.I. 2013/211. Section 4 was amended by the 1990 Act, Schedule 9, the Children (Scotland) Act 1995 (c.36) (“the 1995 Act”), schedule 4; the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (“the 2003 Act”), schedule 4; and S.S.I. 2013/211. Section 10 was relevantly amended by the Children Act 1975 (c.72), Schedule 2; the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13; the Regulation of Care (Scotland) Act 2001 (asp 8) (“the 2001 Act”) schedule 3; S.S.I. 2010/21 and S.S.I. 2011/211. Section 12 was relevantly amended by the 1990 Act, section 66 and Schedule 9; the 1995 Act, Schedule 4; and the Immigration and Asylum Act 1999 (c.33), section 120(2). Section 12A was inserted by the 1990 Act, section 55, and amended by the Carers (Recognition and Services) Act 1995 (c.12), section 2(3) and the Community Care and Health (Scotland) Act 2002 (asp 5) (“the 2002 Act”), sections 8 and 9(1). Section 12AZA was inserted by the Social Care (Self Directed Support) (Scotland) Act 2013 (asp 1), section 17. Section 12AA and 12AB were inserted by the 2002 Act, section 9(2). Section 13 was amended by the Community Care (Direct Payments) Act 1996 (c.30), section 5. Section 13ZA was inserted by the Adult Support and Protection (Scotland) Act 2007 (asp 10), section 64. Section 13A was inserted by the 1990 Act, section 56 and amended by the Immigration and Asylum Act 1999 (c.33), section 102(2); the 2001 Act, section 72 and schedule 3; the 2002 Act, schedule 2 and by S.S.I. 2011/211. Section 13B was inserted by the 1990 Act sections 56 and 67(2) and amended by the Immigration and Asylum Act 1999 (c.33), section 120(3). Section 14 was amended by the Health Services and Public Health Act 1968 (c.46), sections 13, 44 and 45; the National Health Service (Scotland) Act 1972 (c.58), schedule 7; the Guardianship Act 1973 (c.29), section 11(5); the Health and Social Service and Social Security Adjudications Act 1983 (c.41), schedule 10 and the 1990 Act, schedule 9. Section 28 was amended by the Social Security Act 1986 (c.50), Schedule 11 and the 1995 Act, schedule 4. Section 29 was amended by the 1995 Act, schedule 4. Section 59 was amended by the 1990 Act, schedule 9; the 2001 Act, section 72(c); the 2003 Act, section 25(4) and schedule 4 and by S.S.I. 2013/211.

<i>Column A</i> <i>Enactment conferring function</i>	<i>Column B</i> <i>Limitation</i>
Section 4 (provisions relating to performance of functions by local authorities)	So far as it is exercisable in relation to another integration function.
Section 8 (research)	So far as it is exercisable in relation to another integration function.
Section 10 (financial and other assistance to voluntary organisations etc. for social work)	So far as it is exercisable in relation to another integration function.
Section 12 (general social welfare services of local authorities)	Except in so far as it is exercisable in relation to the provision of housing support services.
Section 12A (duty of local authorities to assess needs)	So far as it is exercisable in relation to another integration function.
Section 12AZA (assessments under section 12A - assistance)	So far as it is exercisable in relation to another integration function.
Section 12AA (assessment of ability to provide care)	
Section 12AB (duty of local authority to provide information to carer)	
Section 13 (power of local authorities to assist persons in need in disposal of produce of their work)	
Section 13ZA (provision of services to incapable adults)	So far as it is exercisable in relation to another integration function.
Section 13A (residential accommodation with nursing)	
Section 13B (provision of care or aftercare)	
Section 14 (home help and laundry facilities)	
Section 28 (burial or cremation of the dead)	So far as it is exercisable in relation to persons cared for or assisted under another integration function.
Section 29 (power of local authority to defray expenses of parent, etc., visiting persons or attending funerals)	

<i>Column A</i> <i>Enactment conferring function</i>	<i>Column B</i> <i>Limitation</i>
Section 59 (provision of residential and other establishments by local authorities and maximum period for repayment of sums borrowed for such provision)	So far as it is exercisable in relation to another integration function.
<b>The Local Government and Planning (Scotland) Act 1982(a)</b>	
Section 24(1) (The provision of gardening assistance for the disabled and the elderly)	
<b>Disabled Persons (Services, Consultation and Representation) Act 1986(b)</b>	
Section 2 (rights of authorised representatives of disabled persons)	
Section 3 (assessment by local authorities of needs of disabled persons)	
Section 7 (persons discharged from hospital)	In respect of the assessment of need for any services provided under functions contained in welfare enactments within the meaning of section 16 and which are integration functions.
Section 8 (duty of local authority to take into account abilities of carer)	In respect of the assessment of need for any services provided under functions contained in welfare enactments (within the meaning set out in section 16 of that Act) which are integration functions.
<b>The Adults with Incapacity (Scotland) Act 2000(c)</b>	
Section 10 (functions of local authorities)	
Section 12 (investigations)	
Section 37 (residents whose affairs may be managed)	Only in relation to residents of establishments which are managed under integration functions.
Section 39 (matters which may be managed)	Only in relation to residents of establishments which are managed under integration functions.

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- (a) 1982 c.43; section 24(1) was amended by the Local Government etc. (Scotland) Act 1994 (c.39), schedule 13.
- (b) 1986 c.33. There are amendments to sections 2 and 7 which are not relevant to the exercise of a local authority's functions under those sections.
- (c) 2000 asp 4; section 12 was amended by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), schedule 5(1). Section 37 was amended by S.S.I. 2005/465. Section 39 was amended by the Adult Support and Protection (Scotland) Act 2007 (asp 10), schedule 1 and by S.S.I. 2013/137. Section 41 was amended by S.S.I. 2005/465; and the Adult Support and Protection (Scotland) Act 2007 (asp 10), schedule 1 and S.S.I. 2013/137. Section 45 was amended by the Regulation of Care (Scotland) Act 2001 (asp 8), Schedule 3.

<i>Column A</i> <i>Enactment conferring function</i>	<i>Column B</i> <i>Limitation</i>
Section 41 (duties and functions of managers of authorised establishment)	Only in relation to residents of establishments which are managed under integration functions.
Section 42 (authorisation of named manager to withdraw from resident's account)	Only in relation to residents of establishments which are managed under integration functions.
Section 43 (statement of resident's affairs)	Only in relation to residents of establishments which are managed under integration functions.
Section 44 (resident ceasing to be resident of authorised establishment)	Only in relation to residents of establishments which are managed under integration functions.
Section 45 (appeal, revocation etc)	Only in relation to residents of establishments which are managed under integration functions.
<b>The Housing (Scotland) Act 2001(a)</b>	
Section 92 (assistance to a registered for housing purposes)	Only in so far as it relates to an aid or adaptation.
<b>The Community Care and Health (Scotland) Act 2002(b)</b>	
Section 5 (local authority arrangements for residential accommodation outwith Scotland)	
Section 14 (payments by local authorities towards expenditure by NHS bodies on prescribed functions)	
<b>The Mental Health (Care and Treatment) (Scotland) Act 2003(c)</b>	
Section 17 (duties of Scottish Ministers, local authorities and others as respects Commission)	
Section 25 (care and support services etc)	Except in so far as it is exercisable in relation to the provision of housing support services.
Section 26 (services designed to promote well-being and social development)	Except in so far as it is exercisable in relation to the provision of housing support services.

(a) 2001 asp 10; section 92 was amended by the Housing (Scotland) Act 2006 (asp 1), schedule 7.

(b) 2002 asp 5.

(c) 2003 asp 13; section 17 was amended by the Public Services Reform (Scotland) Act 2010 (asp 8), section 111(4), and schedules 14 and 17, and by the Police and Fire Reform (Scotland) Act 2012 (asp 8), schedule 7. Section 25 was amended by S.S.I. 2011/211. Section 34 was amended by the Public Services Reform (Scotland) Act 2010 (asp 8), schedules 14 and 17.

<i>Column A</i> <i>Enactment conferring function</i>	<i>Column B</i> <i>Limitation</i>
Section 27 (assistance with travel)	Except in so far as it is exercisable in relation to the provision of housing support services.
Section 33 (duty to inquire)	
Section 34 (inquiries under section 33: Co-operation)	
Section 228 (request for assessment of needs: duty on local authorities and Health Boards)	
Section 259 (advocacy)	
<b>The Housing (Scotland) Act 2006(a)</b>	
Section 71(1)(b) (assistance for housing purposes)	Only in so far as it relates to an aid or adaptation.
<b>The Adult Support and Protection (Scotland) Act 2007(b)</b>	
Section 4 (council's duty to make inquiries)	
Section 5 (co-operation)	
Section 6 (duty to consider importance of providing advocacy and other services)	
Section 11 (assessment Orders)	
Section 14 (removal orders)	
Section 18 (protection of moved persons property)	
Section 22 (right to apply for a banning order)	
Section 40 (urgent cases)	

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(a) 2006 asp 1; section 71 was amended by the Housing (Scotland) Act 2010 (asp 17), section 151.  
(b) 2007 asp 10; section 5 and section 42 were amended by the Public Services Reform (Scotland) Act 2010 (asp 8), schedules 14 and 17 and by the Police and Fire Reform (Scotland) Act 2012 (asp 8), schedule 7. Section 43 was amended by the Public Services Reform (Scotland) Act 2010 (asp 8), schedule 14.

<i>Column A</i>	<i>Column B</i>
<i>Enactment conferring function</i>	<i>Limitation</i>
Section 42 (adult Protection Committees)	
Section 43 (membership)	
<b>Social Care (Self-directed Support) (Scotland) Act 2013(a)</b>	
Section 3 (support for adult carers)	Only in relation to assessments carried out under integration functions.
Section 5 (choice of options: adults)	
Section 6 (choice of options under section 5: assistances)	
Section 7 (choice of options: adult carers)	
Section 9 (provision of information about self-directed support)	
Section 11 (local authority functions)	
Section 12 (eligibility for direct payment: review)	
Section 13 (further choice of options on material change of circumstances)	Only in relation to a choice under section 5 or 7 of the Social Care (Self-directed Support) (Scotland) Act 2013.
Section 16 (misuse of direct payment: recovery)	
Section 19 (promotion of options for self-directed support)	

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(a) 2013 asp 1.



## PART 2

Functions, conferred by virtue of enactments, prescribed for the purposes of section 1(7) of the Public Bodies (Joint Working) (Scotland) Act 2014

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<i>Column A</i>	<i>Column B</i>
<i>Enactment conferring function</i>	<i>Limitation</i>
<b>The Community Care and Health (Scotland) Act 2002</b>	
Section 4(a)	
The functions conferred by Regulation 2 of the Community Care (Additional Payments) (Scotland) Regulations 2002(b)	

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- (a) Section 4 was amended by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), schedule 4 and the Adult Support and Protection (Scotland) Act 2007 (asp 10), section 62(3).
- (b) S.S.I. 2002/265, as amended by S.S.I. 2005/445.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe certain functions of local authorities for the purpose of section 1(7) of the Public Bodies (Joint Working) (Scotland) Act 2014 (“the Act”), and make amendments to the schedule to the Act.

The Act requires Health Boards and local authorities to agree arrangements for joint working in their area in relation to certain of their statutory functions. This will have the effect that adult health and social care services, and certain other health and social care services, are provided, in all local authority areas, in a way which is integrated from the point of view of a person using those services. These joint working arrangements will involve the delegation of functions by a local authority, or by the Health Board, or both. Where a local authority is to delegate functions it must delegate the prescribed functions and may also delegate additional functions as provided for by section 1(5) of, and the schedule to, the Act.

Regulation 2(1) introduces the schedule to the Regulations, column A of which contains a list of functions which are prescribed for the purpose of section 1(7) of the Act. Section headings for each enactment conferring prescribed functions are given in brackets for illustrative purposes. Regulation 2(2) describes the effect of the limitations on the prescription of certain functions which are set out in column B of the schedule. The prescribed functions may be broadly described as relating to social care services provided by local authorities. The effect of prescribing these functions is that in every local authority area in Scotland, the statutory functions relating to adult social care services will be held by the same body as holds statutory functions relating to adult primary and community health services.

The social care services that are provided under the prescribed functions include social work services for adults, including adults with physical disabilities or learning disabilities, social work services for older people, mental health services, drug and alcohol support services, adult protection services, health improvement services and aspects of housing support services.

Regulation 3 makes amendments to remove certain enactments from the schedule to the Act. The effect of these amendments is that the functions conferred by enactments removed from the schedule, which relate to the setting of charges for social care services, will not be able to be delegated by a local authority as part of the joint working arrangements prepared under the Act.

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