

Draft Order laid before the Scottish Parliament under section 69(4) of the Public Bodies (Joint Working) (Scotland) Act 2014, for approval by resolution of the Scottish Parliament. This draft Order replaces the one laid on 19th February 2015.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

PUBLIC HEALTH

SOCIAL CARE

**The Public Bodies (Joint Working) (Scotland) Act 2014
(Consequential Modifications and Saving) Order 2015**

Made - - - -

Coming into force - -

1st April 2015

The Scottish Ministers make the following Order in exercise of the powers conferred by section 70 of the Public Bodies (Joint Working) (Scotland) Act 2014^(a) and all other powers enabling them to do so.

In accordance with section 69(4) 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) This Order may be cited as the Public Bodies (Joint Working) (Scotland) Act 2014 (Consequential Modifications and Saving) Order 2015 and comes into force on 1st April 2015.

(2) In this Order, “the 2014 Act” means the Public Bodies (Joint Working) (Scotland) Act 2014.

Consequential amendments and repeals

2. The Schedule contains amendments and repeals consequential on the provisions of the 2014 Act.

Saving

3.—(1) Paragraph (2) applies if before 1st April 2015 a local authority enters into arrangements by virtue of section 15(1) or 17(1) (delegation between local authorities and NHS bodies etc.) of the Community Care and Health (Scotland) Act 2002^(b) (“the 2002 Act”).

(2) Despite the repeal by the 2014 Act of sections 15 to 17 of the 2002 Act, those sections continue to have effect on and after 1st April 2015 in relation to the arrangements until the relevant day.

(a) 2014 asp 9.

(b) 2002 asp 5.

(3) In paragraph (2), “relevant day” means the day on which a function is delegated to or by the local authority in pursuance of the 2014 Act.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

SCHEDULE

Article 2

Consequential Amendments

PART 1

PRIMARY LEGISLATION

Social Work (Scotland) Act 1968

1.—(1) The Social Work (Scotland) Act 1968(a) is amended as follows.

(2) In section 6B(b) (local authority inquiries into matters affecting children), after subsection (1) insert—

“(1A) Where a function mentioned in subsection (1) is delegated by a local authority to a person in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014, this section applies to that person as it applies to a local authority (but subject to the modification in subsection 1B).

(1B) The modification is that the reference in subsection (3) to an officer of the local authority must be construed as if it were a reference to a member of staff of the person to whom the function is delegated.”

(3) In section 12A(c) (duty of local authority to assess needs), in subsection (8), for the definition of “community care services” substitute—

““community care services” means services, other than services for children, which a local authority is under a duty or has a power to provide, or to secure the provision of, under—

- (a) Part 2 of this Act; or
- (b) any of the following provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003(d)—
 - (i) section 25 (care and support services etc.);
 - (ii) section 26 (services designed to promote well-being and social development);
 - (iii) section 27 (assistance with travel);”.

(4) In section 87(e) (charges that may be made for services and accommodation)—

(a) after subsection (1B) insert—

“(1C) Despite section 25(3) of the Public Bodies (Joint Working) (Scotland) Act 2014, where a local authority delegates a function in pursuance of an integration scheme under that Act to a person in pursuance of which a service mentioned in subsection (1) is provided by (or under the direction of) that person, subsections (1) to (1B) apply subject to the modifications in subsection (1D).

(a) 1968 c.49.

(b) Section 6B was inserted by the Children (Scotland) Act 1995 (c. 36), section 100.

(c) Section 12A was inserted by the National Health Service and Community Care Act 1990 (c.19), section 55.

(d) 2003 asp 13.

(e) Section 87 was relevantly amended by the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(25), the Community Care and Health (Scotland) Act 2002 (asp 5), section 1(6) and the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), section 28(1).

(1D) The modifications are—

(a) subsection (1) applies as if—

- (i) the reference to a local authority providing a service mentioned in that subsection were to a person mentioned in subsection (1C) to whom a function is delegated (or another person under the direction of that person) providing the service, and
- (ii) the reference to a local authority recovering a charge for a service provided by it were to a local authority recovering a charge for a service that is provided by (or under the direction of) a person mentioned in subsection (1C) to whom a function is delegated, and

(b) subsection (1A) applies as if the reference to the authority providing the service were to a local authority mentioned in subsection (1C).”, and

(b) after subsection (4) insert—

“(4A) Despite section 25(3) of the Public Bodies (Joint Working) (Scotland) Act 2014, where a local authority delegates a function in pursuance of an integration scheme under that Act to a person in pursuance of which accommodation mentioned in subsection (3) is provided by (or under the direction of) that person, subsections (3) and (4) apply subject to the modifications in subsection (4B).

(4B) The modifications are that subsection (4) applies as if—

(a) after “Secretary of State” there were inserted—

“and that section 22 applies as if—

- (a) in subsection (2), the reference to the authority managing premises in which the accommodation is provided were to a local authority mentioned in subsection (4A) of this section,
- (b) in subsection (3)—
 - (i) the reference to accommodation provided in premises managed by a local authority were to accommodation provided in premises managed by (or under the direction of) a person mentioned in subsection (4A) of this section to whom a function is delegated, and
 - (ii) the reference to the local authority were to a local authority mentioned in subsection (4A) of this section, and
- (c) in subsection (5A)—
 - (i) the reference to an authority managing premises in which accommodation is provided were to a local authority mentioned in subsection (4A) of this section, and
 - (ii) the reference to the authority providing accommodation were to a person mentioned in subsection (4A) of this section to whom a function is delegated,
- (d) in subsection (8), the reference to a local authority providing accommodation were to a local authority mentioned in subsection (4A) of this section.”,

(b) at the end of the subsection there were inserted—

“and that section 26 applies as if—

(a) in subsection (2)—

- (i) the reference to the local authority making payments to the organisation with whom the arrangements are made to provide the accommodation were to a person mentioned in subsection (4A) of this section to whom a function is delegated (or another person under the direction of that person) making those payments, and

- (ii) the reference to the local authority recovering an amount of refund were to a local authority mentioned in subsection (4A) of this section recovering that amount,
- (b) in subsection (3), the reference to the refund of any payments to the local authority were to the refund of any such payments to the local authority mentioned in subsection (4A) of this section,
- (c) in subsection (3A)—
 - (i) the reference to the making of arrangements by the local authority were to the making of arrangements by (or under the direction of) a person mentioned in subsection (4A) of this section to whom a function is delegated,
 - (ii) in paragraphs (a) and (c), the references to the local authority were to a person mentioned in subsection (4A) of this section to whom a function is delegated , and
 - (iii) in paragraph (b) the reference to the local authority were to a local authority mentioned in subsection (4A) of this section,” and
- (d) for subsection (4) there were substituted—
 - “(4) Section 22(5A) of this Act applies for the purposes of subsection (3A) as it applies for the purposes of that section but as if—
 - (a) the reference to an authority managing premises in which accommodation is provided were to a local authority mentioned in section 87(4A) of the Social Work (Scotland) Act 1968, and
 - (b) the reference to the authority providing accommodation were to a person mentioned in section 87(4A) of the Social Work (Scotland) Act 1968 to whom a function is delegated.””.

National Health Service (Scotland) Act 1978

- 2.—**(1) The National Health Service (Scotland) Act 1978(**a**) is amended as follows.
- (2) In section 10ZA(**b**) (provision of patient advice and support service)—
 - (a) in subsection (4), after paragraph (d) insert—
 - “(e) an integration joint board.”
 - (b) in subsection (6)—
 - (i) the word “and” immediately following paragraph (a) is repealed; and
 - (ii) after that paragraph insert—
 - “(ab) an integration joint board, and”
- (3) In section 13(**c**) (co-operation between Health Boards and other authorities), after “local authorities” insert “, integration joint boards”.
- (4) In section 108 (interpretation and construction), in subsection (1)—
 - (a) after the definitions of “area medical committee” etc. insert—
 - ““community care services” has the meaning given by section 12A(8) of the Social Work (Scotland) Act 1968;” and
 - (b) after the definition of “illness” insert—
 - ““integration joint board” means an integration joint board established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014;”.

(a) 1978 c.29.

(b) Section 10ZA was inserted by the Patient Rights (Scotland) Act 2011 (asp 5), section 17(2).

(c) Section 13 was amended by the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), Schedule 9, paragraph 19(4), and by the Public Services Reform (Scotland) Act 2010 (asp 8), schedule 17, paragraph 5.

(5) In Schedule 1 (Health Boards), in paragraph 8A(a), the words “(within the meaning of section 5A(4) (local authority plans for community care services) of the Social Work (Scotland) Act 1968)” are repealed.

(6) In Schedule 5 (the Agency), in paragraph 8A(b), the words “(within the meaning of section 5A(4) (local authority plans for community care services) of the Social Work (Scotland) Act 1968)” are repealed.

(7) In Schedule 7A(c) (National Health Service Trusts), in paragraph 17, the words “(within the meaning of section 5A(4) (local authority plans for community care services) of the Social Work (Scotland) Act 1968)” are repealed.

Criminal Procedure (Scotland) Act 1995

3. In section 57A of the Criminal Procedure (Scotland) Act 1995(d) (compulsion order), in subsection (16), in the definition of “community care services”, for “5A(4)” substitute “12A(8)”.

Adults with Incapacity (Scotland) Act 2000

4.—(1) The Adults with Incapacity (Scotland) Act 2000(e) is amended as follows.

(2) In section 6 (the Public Guardian and his functions), after subsection (3) insert—

“(4) In subsection 2(f), where a function under this Act is delegated by a local authority to a person in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014, the reference to a local authority includes a reference to that person.”.

(3) In section 9 (functions of the Mental Welfare Commission), after subsection (3) insert—

“(4) In subsection (1)(c), where a function under this Act is delegated by a local authority to a person in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014, the reference to a local authority includes a reference to that person.

(5) In subsection (1)(d), where a function under section 10(1)(c) is delegated by a local authority in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014, the references to a local authority are to be read as if they were references to the person to whom the function is delegated.”

Ethical Standards in Public Life etc. (Scotland) Act 2000

5. In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000(f) (devolved public bodies), after “Highlands and Islands Enterprise” insert—

“An integration joint board established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014”.

(a) Paragraph 8A of Schedule 1 was inserted by the 1990 Act, Schedule 5, paragraph 6.

(b) Paragraph 8A of Schedule 5 was inserted by the 1990 Act, Schedule 5, paragraph 12.

(c) Schedule 7A was inserted by the 1990 Act, Schedule 6.

(d) 1995 c.46. Section 57A was inserted by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), section 133.

(e) 2000 asp 4.

(f) 2000 asp 7. Schedule 3 was relevantly amended by the Water Industry (Scotland) Act 2002 (asp 3), schedule 7, paragraph 28; the Gaelic Language (Scotland) Act 2005 (asp 7), schedule 2, paragraph 1; the Management of Offenders etc. (Scotland) Act 2005 (asp 14), section 21; the Tourist Boards (Scotland) Act 2006 (asp 15), schedule 2, paragraph 6(a)(i); the Public Services Reform (Scotland) Act 2010 (asp 8), schedule 1, paragraph 28, schedule 10, paragraph 1(a) and schedule 17, paragraph 24(b); the Crofting Reform (Scotland) Act 2010 (asp 14), schedule 4, paragraph 4; and by S.S.I. 2003/1; S.S.I. 2003/119; S.S.I. 2003/279; S.S.I. 2011/113 and S.I. 2012/1659

Local Government in Scotland Act 2003

6. In section 16(1) of the Local Government in Scotland Act 2003(**a**) (community planning: further provision), after paragraph (b) insert—

“(ba) an integration joint board established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014;”.

Mental Health (Care and Treatment) (Scotland) Act 2003

7.—(1) The Mental Health (Care and Treatment) (Scotland) Act 2003(**b**) is amended as follows.

(2) In section 30 (co-operation with Health Boards and others), after subsection (1) insert—

“(1A) If, in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014, a local authority delegates the carrying out any of the functions conferred by sections 25 to 27 of this Act—

- (a) subsection (1) applies to the person to whom the functions are delegated as it applies to a local authority; and
- (b) the person to whom the functions are delegated must co-operate with the local authority if it appears to the person that the authority has an interest, power or duty mentioned in subsection (2)(b) below.”.

(3) In section 329 (interpretation), in subsection (1), in the definition of “community care services”, for “5A(4)” substitute “12A(8)”.

Public Health etc. (Scotland) Act 2008

8.—(1) The Public Health etc. (Scotland) Act 2008(**c**) is amended as follows.

(2) In section 6 (duty of health boards and local authorities to co-operate), in subsection (2), after paragraph (c), insert—

“(ca) an integration joint board established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014;”.

(3) In section 8 (power to direct health boards and local authorities), after subsection (4), insert—

“(5) If, in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014, a health board delegates any of its functions relating to the protection of public health, this section and sections 9 and 10 apply in relation to the person to whom the functions are delegated as they apply to the health board.”.

Welfare Reform Act 2009

9. In section 50 of the Welfare Reform Act 2009(**d**) (interpretation of Part 2), in the definition of “community care services”, in paragraph (b), for “5A” substitute “12A(8)”.

Public Services Reform (Scotland) Act 2010

10.—(1) The Public Services Reform (Scotland) Act 2010(**e**) is amended as follows.

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- (a) 2003 asp 1. Section 16 was relevantly amended by the Police and Fire Reform (Scotland) Act 2012 (asp 8), section 46 and schedule 7, paragraph 14, and by the Transport (Scotland) Act 2005 (asp 12), schedule 1, paragraph 11(a).
 - (b) 2003 asp 13.
 - (c) 2008 asp 5.
 - (d) 2009 c.24.
 - (e) 2010 asp 8.

(2) In section 51 (information and advice), in subsection (3)(b)—

- (a) the word “and” immediately following sub-paragraph (v) is repealed, and
- (b) after that sub-paragraph insert—

“(va) integration joint boards established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014, and”.

(3) In section 105 (interpretation of Part 5), in subsection (1), in the definition of “local authority”, at the end insert “and, other than in section 51(3), a reference to a local authority includes a person who is providing services in exercise of functions delegated to that person by a local authority in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014.”.

(4) In schedule 5(a) (improvement of public functions: listed bodies), in the list headed “Scottish public authorities with mixed functions or no reserved functions” after “Highland and Islands Enterprise” insert—

“any integration joint board established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014 but only in relation to functions that it exercises other than functions delegated to it in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014.”.

Public Records (Scotland) Act 2011

11. In schedule 1 to the Public Records (Scotland) Act 2011(b) (Authorities to which Part 1 applies), after “Highlands and Islands Enterprise” insert—

“Integration joint boards established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014”.

Social Care (Self-directed Support) (Scotland) Act 2013

12. In section 24 of the Social Care (Self-directed Support) (Scotland) Act 2013(c) (interpretation), in subsection (1), in the definition of “community care services” for “5A” substitute “12A(8)”.

Children and Young People (Scotland) Act 2014

13.—(1) The Children and Young People (Scotland) Act 2014 (d) is amended as follows.

(2) In schedule 1 (authorities to which section 2 applies), after paragraph 19 insert—

“**20.** An integration joint board to which functions in relation to persons under 18 years of age are delegated in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014.”

(3) In schedule 2 (relevant authorities), after paragraph 13 insert—

“**14.** An integration joint board to which functions in relation to persons under 18 years of age are delegated in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014.”

(a) Schedule 5 was relevantly amended by the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11), schedule 1, paragraph 20(b) and by S.I. 2012/1659; S.S.I. 2013/192; and S.S.I. 2013/197.

(b) 2011 asp 12. Schedule 1 was relevantly amended by the Police and Fire Reform (Scotland) Act 2010 (asp 8), schedule 7, paragraph 1, the Revenue Scotland and Tax Powers Act 2014 (asp 16), schedule 4, paragraph 8, and by S.I. 2012/1659 and S.S.I. 2013/197.

(c) 2013 asp 1.

(d) 2014 asp 8.

(4) In schedule 3 (listed authorities), after paragraph 14 insert—

“**15.** An integration joint board to which functions in relation to persons under 18 years of age are delegated in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014.”.

(5) In schedule 4 (corporate parents), after paragraph 24 insert—

“**25.** An integration joint board to which functions in relation to persons under 18 years of age have been delegated in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014.”.

PART 2

SECONDARY LEGISLATION

National Health Service (Central Register) (Scotland) Regulations 2006

14. In Schedule 2 to the National Health Service Central Register (Scotland) Regulations 2006(a) (information which may be provided from the register and persons to whom it may be provided), in column (2) of entry 1, after “Healthcare Improvement Scotland” insert—

“an integration joint board established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014.”.

Management of Offenders etc. (Scotland) Act 2005 (Designation of Partner Bodies) Order 2006

15. In article 2 of the Management of Offenders etc. (Scotland) Act 2005 (Designation of Partner Bodies) Order 2006(b) (partner bodies), after paragraph (b) insert—

“(ba) an integration joint board established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014 for an area of a local authority which is comprised within the area of the community justice authority;”.

Additional Support for Learning (Appropriate Agencies) (Scotland) Order 2005

16. In article 2 of the Additional Support for Learning (Appropriate Agencies) (Scotland) Order 2005(c) (appropriate agencies) —

(a) the word “and” immediately following paragraph (b) is omitted, and

(b) after paragraph (c) insert—

“; and

(d) an integration joint board established under section 9(2) of the Public Bodies (Joint Working) (Scotland) Act 2014.”.

(a) S.S.I. 2006/484, as relevantly amended by S.S.I. 2011/211.

(b) S.S.I. 2006/63, as relevantly amended by S.S.I. 2013/119.

(c) S.S.I. 2005/325.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments, repeals and saving provision in consequence of the Public Bodies (Joint Working) (Scotland) Act 2014 (“the 2014 Act”).

The Schedule, which is given effect to by Article 2, contains amendments and repeals of primary and secondary legislation. Section 9 of the 2014 Act provides for the establishment, by order, of integration joint boards to which Health Boards and local authorities may delegate certain of their statutory functions relating to health and social care. Amendments are made in consequence of this power to establish integration joint boards. Amendments are also made in consequence of the provisions of sections 1, 9 and 15 of the 2014 Act which provide for the delegation of functions by Health Boards and local authorities.

The Schedule also contains amendments in consequence of the repeal of section 5A of the Social Work (Scotland) Act 1968 by section 71(1) of the 2014 Act. The definition of “community care services” provided in section 5A is replaced by a similar definition inserted into section 12A of the same Act. Legislative references to the section 5A definition are replaced with references to section 12A. Other references in enactments to section 5A are repealed.

Article 3 contains a saving provision so that arrangements made under sections 15 to 17 of the Community Care and Health (Scotland) Act 2002 (which are repealed by section 71(3) of the 2014 Act) may continue in operation until such date as they are replaced with arrangements made under the 2014 Act. By virtue of the Public Bodies (Joint Working) (Prescribed Days) (Scotland) Regulations 2014 (S.S.I. 2014/284) such arrangements must begin by, at the latest, 1st April 2016.

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