

HSCI

Public Bodies Joint Working Scotland Regulations; Prescribed Local Authority Functions

Easy Read Version

Isaunders

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POLICY NOTE

THE PUBLIC BODIES (JOINT WORKING) (PRESCRIBED LOCAL AUTHORITY FUNCTIONS ETC.) (SCOTLAND) REGULATIONS 2014

1. The above instrument was made 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 (“the Act”) and all other powers enabling them to do so.

Policy Objectives

2. 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.¹ The purpose of these Regulations is to set out local authority functions primarily relating to social care services for adults, which must be delegated under the Act, and to amend the schedule to that Act to restrict the range of local authority functions which can be delegated.

3. The legal framework that confers social care functions on Local Authorities can be found across a wide range of legislation. The Act enables the Scottish Ministers to prescribe in regulations the functions of a Local Authority that must be delegated to the Integration Authority. The range of Local Authority functions that may be delegated, which relate to social care and social work services, is set out in the schedule in the Act.

4. Listed below are the delegated functions for adults provided by Local Authorities that **must** be included in the joint working arrangements that are made under the public bodies Act. You will also see the linked pieces of legislation for each function to be delegated.

National Assistance Act 1948

- Duty of Local Authorities to provide temporary protection for property of persons admitted to hospitals

The Disabled Persons (Employment) Act 1958

- Provision of sheltered employment by local authorities.
- The powers and duties of a local authority under subsection (1) of this section shall be in lieu of any power or duty of the authority to make arrangements for the same purposes under section twenty-nine of the National Assistance Act 1948, or [section 38 of the National Health Service (Scotland) Act 1978].
- The arrangements made by a local authority under this section shall be carried into effect subject to the approval of the Secretary of State.

¹ Locally in Shetland, in July 2nd 2014, the Health Board and the Shetland Islands Council took the decision to move forward with the integration model of Body Corporate.

Social Work (Scotland) Act 1968

- Local Authorities for the administration of the act
- Mental Health Function
- Provision Relating the Performance of functions by Local Authority
- Research in Relation to Social Welfare, Financial assistance and other Assistance to voluntary organisations for social work functions.
- Promotion of Social Welfare by Local Authorities
- Duty of Local Authority to Assess needs
- Provide assistance in relation to Incapacity Act 2000 and Mental Health (Care and Treatment)(Scotland) Act 2003(asp 13)
- Carers Assessment
- Power of local authorities to assist persons in need in disposal of produce of their work
- Residential accommodation with nursing
- Provision of care and after care
- Domiciliary services
- Burial or cremation of the dead
- Power of local authority to defray expenses of parent, visiting persons or attending funerals
- Provision of residential and other establishments

The Local Government and Planning (Scotland) Act 1982

- The provision of gardening assistance for the disabled and the elderly

Disabled Persons (Services, Consultation and Representation) Act 1986

- Rights of authorised representatives of disabled person
- Assessment by local authorities of needs of disabled persons
- Care for persons being discharged from hospital in relation to Mental Health (Care and Treatment) Act 2003 and 1983 Act.
- Duty of local authority to take into account abilities of unpaid carer

The Adults with Incapacity (Scotland) Act 2000(6)

- Functions of local authorities in relation to the Mental Welfare Commission and Public Guardian
- Mental Health or capacity related adult Investigations by MHO officers –
- Local authority management of resident's affairs. - Only in relation to residents of establishments which are managed under integration functions

The Housing (Scotland) Act 2001

- Section 92 – Strategic Housing Functions, assistance for housing functions – only in so far as it relates to aids and adaptations

The Community Care and Health (Scotland) Act 2002

- Local Authority arrangements for residential accommodation outwith Scotland
- Payments by Local Authorities towards expenditure by NHS bodies on prescribed functions

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

- The Duties of the Scottish Ministers, local authorities and others as respects Commission. This is to enable to commission to be able to perform their functions under the act.
- Local Authority functions to provide or secure care and support for such persons who are not in hospital but have or have had a mental disorder
- Local Authority functions to provide assistance with travel for such persons who are not in hospital but have or have had a mental disorder
- Duty to inquire
- Duty to assess needs in respect of mentally disordered persons
- Duty on Local Authority to secure independent mental health advocacy and take steps to ensure that persons with a mental health disorder have appropriate knowledge of this

The Housing(Scotland) act 2006

- Assistance for housing purposes but only in so far as it relates to aids and adaptations

The Adult support and Protection(Scotland) Act 2007

- Local Authority duty to make inquiries
- Duty to consider the importance of independent advocacy and other services
- Assessment orders for the protection of adults at risk of harm
- Removal Orders for the protection of adults at risk of harm
- Banning Orders for the protection of adults at risk of harm
- Protection Orders and Visits

- Urgent Cases
- Adult Protection Committees and its membership

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

- Local Authority support for adult carers
- Local Authority Function in relation to the choice of options and assistance for self directed support
- Provision of information about self directed support
- Eligibility for direct payment: review
- Further choice of options on material change on circumstance
- Misuse of direct payment: recovery
- Promotion of options for self directed support

5. The Regulations do not restrict the flexibility for a Local Authority to delegate additional services to an Integration Authority, provided that these relate to the functions listed in the schedule to the Act. The Act provides a clear limitation, in primary legislation, on the Local Authority services that may be included in joint working arrangements established under the Act.

6. In response to comments arising from the consultation process some amendments have also been made, under section 1(12) of the Act, to the schedule to the Act. Regulation 3 sets out these amendments, which remove statutory functions relating to local authority charging for social care services from the list in the schedule. This gives effect to the policy, developed in conjunction with key stakeholders, including COSLA, that the power to set charges should remain a function of Local Authorities, and should not be able to be included in joint working arrangements made under the Act.