

Response to the consultation on regulations to support the Public Bodies (Joint Working) (Scotland) Act 2014 – Set Two

Introduction

1. COSLA continues to be committed to working with the Scottish Government to ensure that regulations to support the Public Bodies (Joint Working) Bill will contribute to building integrated health and social care arrangements which help to improve the health and wellbeing of the people of Scotland. We are committed to the underpinning principles of the Act which are about developing a strong commissioning framework and shifting the balance of care towards community based health and care, and wish to work with government to ensure regulations give appropriate expression to these principles. We have offered comments where we believe there to be political issues and/or high-level policy impacts. Responses from our individual members, and related professional associations, will offer further insight and detail in relation to more technical and professional matters.

Prescribed groups which must be consulted when preparing or revising integration schemes; preparing draft strategic plans; and when making decisions affecting localities relating to the Public Bodies (Joint Working) (Scotland) Act 2014.

2. While the list of consultees would appear to be comprehensive, we are not necessarily convinced that prescription of particular groups is required. It is important to recognise that genuine engagement requires Integration Authorities to go beyond standard consultation by developing flexible and innovative approaches which reach seldom-heard groups and empower communities to effect change. Local authorities and their partners already have well-developed systems for engaging communities through community planning, with these arrangements being reinforced through coming legislation on community empowerment and renewal. It will be important to ensure that regulations do not introduce a requirement for additional layers of engagement; therefore the regulations, and any supporting guidance, should make clear the scope for integrating with existing community planning arrangements.

3. It is also important to acknowledge the role and contribution of local authority elected members in representing localities. While elected members sitting on Integration Joint Boards (IJBs) or Joint Monitoring Committees (JMCs) will help ensure democratic accountability, the wider grouping of elected members representing the interests of communities at ward-level across the local authority should be seen as an important part of the process.

4. Insofar as the regulations as currently drafted do list prescribed consultees, we would ask that it is made clear that 'non-commercial providers of social housing' can include local authorities, and therefore local authority housing professionals.

Membership, powers and proceedings of Integration Joint Boards established under the Public Bodies (Joint Working) (Scotland) Act 2014.

Membership

5. The draft regulations setting out the required membership of IJBs and JMCs generally reflect COSLA's agreements with government. However, it should be acknowledged that single members of particular groups, for example carers or service-users, cannot be fully-representative of the views of those communities overall. It is therefore of even more importance that Integration Authorities develop innovative approaches to community engagement and empowerment – both in relation to consulting on the integration scheme and

strategic plan (as outlined at paragraph 2 above), and in relation to locality planning (as outlined at paragraphs 12 - 14 below).

6. In respect of staff-side representation, the proposition that one staff-side representative should represent the workforce interests of both the health and local government sectors may be better-expressed as an ambition to be realised over the longer-term. Integrated arrangements will require time to bed in and during this process staff may require sector-specific representation due to differing workforce issues during the transition period. In discussion with the Society of Personnel Directors in Scotland and our trades unions colleagues from the Scottish Joint Council, COSLA has agreed a policy position that local partnerships should maintain symmetry on the IJBs by having one staff representative from health and one from local government in the short to medium term.

7. COSLA fully-supports the Scottish Government's position that it is appropriate for only the members nominated by the health board and local authority to have a vote. The restriction of voting membership to the parent bodies is required to ensure appropriate democratic accountability (directly through elected members; indirectly through Health Board members) for the use of public funds, and COSLA wishes to see this retained in the final regulations.

Powers and proceedings

8. COSLA notes that the term of office for board members is 'not to exceed three years' before reappointment is required. While we would agree with the principle of ensuring that board members cannot sit indefinitely without a mechanism for reviewing their tenure, we would query the rationale for selecting three years as the proposed term of office. This is more conservative than that required for both national and local government, which normally operate at four and five years respectively. While we recognise that the regulations allow for the re-appointment of the same member at the three year point, we would suggest that a five year maximum term of office should be given consideration.

9. Section 8.3 of the draft regulation specifies that: A member who is a councillor appointed on the nomination of the local authority is not required to resign before the expiry of the term of office determined under paragraph (1) only by reason of ceasing to be a councillor. While we recognise that this may be intended to help secure stability for an IJB during succession following local elections, elected members sitting on IJBs are appointed by virtue of their democratic accountability. We therefore consider that use of such a clause would lead to an unacceptable democratic deficit and that it should therefore be removed. This would bring the proceedings of IJBs in line with the operation of council committees and council representatives on external bodies, whereby members are replaced should they cease to be a councillor.

10. The draft regulations define quorum as requiring at least two-thirds of the local authority and two-thirds of the health board appointees to be present. We are aware of differing levels of concern among our members regarding potential difficulties in maintaining this at all times, with some considering a lower quorum requirement more practical. However, while we do not wish to offer a formal position on the proportion of members that should be required, we do wish to emphasise the importance of parity. Should there be any changes made to quorum requirements in the final regulations, the principle of parity between parent body appointees should be considered of greater importance than the quantum.

Establishment, membership and proceedings of Integration Joint Monitoring Committees established under the Public Bodies (Joint Working) (Scotland) Act 2014.

11. The lead agency model described by this regulation is not one that, thus far, many of our members have opted to pursue or consider in depth. COSLA does not therefore wish to make significant comment on this regulation and will defer to individual councils on points of detail.

Prescribed membership of strategic planning groups established under the Public Bodies (Joint Working) (Scotland) Act 2014.

12. COSLA believes that in building integrated health and social care arrangements, we must not only shift the balance of care towards community based health and care, but must also shift the locus of power so that decisions are taken as close to communities as possible. This will require a strong focus on locality planning, community engagement and co-production; including through developing innovative approaches to supporting communities to effect change and secure improved outcomes.

13. With this in mind, it is important to be clear about the limitations of the strategic planning group, as conceived of by this regulation. While the list of prescribed members would appear to be comprehensive, we are not necessarily convinced that prescription of particular groups is required. It should be acknowledged that single members of particular groups, for example carers or service-users, cannot be fully-representative of the views of those communities overall, and simply increasing their number risks jeopardising the groups' ability to function efficiently. It is therefore of even more importance that Integration Authorities have the flexibility to develop innovative approaches to community engagement and empowerment, and that this can drive the work of the partnership.

14. In this respect it is important the locality planning is given greater emphasis as a mechanism for further devolving decision making closer to communities. This will be required in order to go beyond traditional paradigms of consultation and move towards genuine coproduction, whereby communities are empowered to take a lead role in producing the desired outcomes, in co-operation with statutory services. As highlighted at paragraph 2 above, it will be important to build on existing arrangements where possible, including those developed through community planning.

Prescribed form and content of performance reports relating to the Public Bodies (Joint Working) (Scotland) Act 2014.

15. Essential to any performance management and monitoring is the use of data to measure change, both in terms of outputs within the system and in relation to the resultant outcomes that those who use services experience. Public reporting of this, and other information regarding the decision-making and operation of the Integration Authority, is required to ensure transparency and democratic accountability for the use of public funds. Local authorities and their community planning partners already undertake regular performance reporting and the areas listed in the draft regulation appear to cover much of what Integration Authorities would want to monitor as a matter of effective management, to ensure transparency, and to support local accountability.

16. However, there is a need to ensure that reporting requirements will produce the most meaningful information, capable of capturing progress towards the agreed policy intent. The regulation's focus on considering shifts in resources as a means of monitoring whether we are achieving the required shift in the balance of care is welcome. However, we need to be assured that measures are capable of being collected in a robust manner and of capturing the intended change, and some of the proposed measures may need further thought in this respect.

17. For example, the regulations require integration authorities to report spend on 'social care services provided in pursuit of integration functions to support unpaid carers in relation to needs arising from their caring role' (Section 2(2)(d)). In practice, services are often designed to support both the carer and the cared-for, with this increasingly becoming the case as we recognise the inter-dependence of relationships and work holistically with families to develop flexible supports which recognise this. Therefore it is not always possible to identify which services are provided to support carers in their caring role, as distinct from those which also support the cared-for or wider family as a whole.

18. Furthermore, due to differences in the way budgets are configured locally, it may be difficult to breakdown and track spend in the ways set out at Section 2(2)(a)-(d). In this respect, further thought may need to be given to the way in which changes in the proportion of the budget spent on each type of care and support should be captured.

19. The draft regulation further requires that Integration Authorities report 'information on performance against key indicators or measures'. It is our expectation that these will be a mixture of local measures and a core suite of indicators which will be meaningful and manageable – at both the local and national level, and that this core suite will be agreed between the Scottish Government and COSLA.

20. We further expect that Integration Authorities will set local targets against these indicators, and that this will form the basis (along with priorities for service re-design set out within the strategic plan) for local performance management, including by defining what will constitute success (and conversely failure). We also recognise and welcome the scope for Integration Authorities to develop and report on additional local measures where these provide further insight to local trends and drivers.

21. We would also wish to note that the introduction of a core suite of outcomes and indicators presents a challenge for building integrated health and social care. National outcomes and indicators for health and social care are intended to drive the desired system change; however key parts of that system have thus far been focused on other frameworks such as NHS HEAT targets and quality strategy ambitions. The health and social care system will now be required to re-orient itself towards the national health and wellbeing outcomes and indicators, and this will require accelerated reform of pre-existing performance frameworks, including rationalisation where appropriate.

22. In respect of the form of performance reports (as opposed to their content), we consider it wholly inappropriate for the Minister introduce prescription in this area. The form of reporting must be flexible and adaptable to suit different audiences at different times. Local authorities already undertake multi-faceted reporting as part of their duties on public performance reporting and community planning. It will be vital that the form of reporting continues to be managed at the local level – both to ensure fit with these other arrangements, and to avoid a one-size-fits all approach. In practice, this is likely to mean that performance reporting takes many different forms, including those required to ensure accessibility for all members of the community.

COSLA
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