ANNEX 1(D)

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

CONSULTATION QUESTIONS

1. Do these draft Regulations include the right groups of people?

   Yes ☐

   No ☒

2. If no, what other groups should be included within the draft Regulations?

   NHS Lothian response:

   We recommend that no further groups of stakeholders are included in the list and that some could be removed.

   This draft Regulation needs to be considered alongside the draft regulation on the prescribed membership of strategic planning groups (Annex 4 of the SET 2 consultation).

   The integration authority is required to establish a strategic planning group before preparing its first strategic plan (Section 32(1)). Its membership is prescribed in Section 32 and the draft regulation. The integration authority must consult its Strategic Planning Group when preparing its strategic plan (Section 33), and when it proposes to make a significant decision (Section 36), and when it is reviewing its strategic plan (Section 37).

   If a Strategic Planning Group is properly established and is working effectively, it could be given a specific role to support and advise the integration authority on appropriate and effective consultation.

   Taking the above steps would rationalise the regulations, and simplify the integration authority's processes.

3. Are there any further comments you would like to offer on these draft Regulations?

NHS Lothian response:

If the above proposal is not accepted, and use of a long list of standard consultees is to remain, then that list needs to be reviewed to give clarity as to how to apply it in practice.

We have the following queries in NHS Lothian:

Health Professionals

How does this group differ from "staff of health board" who are to be consulted anyway under paragraphs 3 & 5 in the draft Regulation? If there was staff representation on the Strategic Planning Group, then this prompt may not be required.

Definitions of commercial and non-commercial providers

Section 68 (2) of the Act defines a commercial provider as:

"For the purposes of this Act, a provider of a service is a "commercial" provider if the aim of the person in providing the service is or includes making a profit."

The draft regulation does not refer to this definition, and even if it did it would not be particularly helpful. By necessity all organisations need to make some sort of financial surplus to remain financially viable.

The regulation is an opportunity to clarify what integration authorities need to do. Given that all public bodies already have to comply with the Bribery Act 2010, it may be more relevant to borrow a definition from that Act.

Section 7(5) of the Bribery Act 2010 defines a "commercial organisation" as follows:

"(5) In this section— "partnership" means—
(a) a partnership within the Partnership Act 1890, or
(b) a limited partnership registered under the Limited Partnerships Act 1907, or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom,

"relevant commercial organisation" means—
(a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),
(b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,

(c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or (d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom,

and, for the purposes of this section, a trade or profession is a business."

This definition captures every body corporate and partnership, and accordingly would cover registered charities (which may be engaged in health and social care).

This leaves the problem of identifying what a "non-commercial provider of care" is. The Regulation could list examples, e.g. sole traders, unpaid carers, unincorporated interest/ social/ groups, community groups, unincorporated social enterprises.

- By implementing the above proposal, the term "third sector bodies" can be removed.

- The regulation refers to "users". The Act refers to "service-users" – we suggest you change this to make terminology consistent.

- There is no need to separate the consultees for health care, social care and social housing. These can be consolidated, particularly if the clear definition for a commercial organisation is adopted.

Compliance

It would be helpful to clarify how the integration authority will be deemed to have complied with this Regulation, perhaps through reference to existing guidance from the Scottish Health Council.

We recommend that this regulation is consolidated with the regulation on strategic planning groups.

ANNEX 2(D)

MEMBERSHIP, POWERS AND PROCEEDINGS OF INTEGRATION JOINT BOARDS ESTABLISHED UNDER THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

CONSULTATION QUESTIONS

1. Are there any additional non-voting members who should be included in the Integration Joint Board?

Yes	X
No	

2. If you answered 'yes', please list those you feel should be included:

NHS Lothian response:

Finance Officer Membership

Within the draft regulation for the content of integration schemes (Set 1) it says that either the Health Board Director of Finance or the local authority proper officer should be included in the membership. In this Regulation there is no reference at all to any finance person within the membership.

We understand that as a consequence of Section 13 of the Act, the integration joint board will be required to have its own proper officer within the terms of Section 95 of the Local Government (Scotland) Act 1973. The integration joint board's proper officer is distinct from the local authority's proper officer. In our view this proper officer should be included in the minimum non-voting membership of the integration joint board.

3. Integration Joint	Are there any other areas related to the operation of the Board that should also covered by this draft Order?

NHS Lothian response:

The Regulations state that both the NHS Board and the local authority must "nominate" their voting members for the integration joint board. It is not stated anywhere in the Regulation that the nominees' appointment to the integration joint board is subject to the approval of Scottish Ministers, and we understand this to be the case. If this is correct, then this must be explicitly stated in the Regulation.

Following on from this point, Regulation 8 needs to be clarified;

"8.—(1) Subject to paragraph (2), the term of office of a member of the integration joint board member is to be determined by the constituent authorities, but is not to exceed three years."

If the Scottish Ministers are to make the appointment, does the above mean that they can only appoint the person for the term specified in the nomination by the constituent authority?

Regulation 14 (Removal of Members) raises further questions. It indicates that a constituent authority may remove a voting member by giving one month's notice. The integration joint board appears to be able to remove any member for missing 3 consecutive meetings, or acts in a way that brings the integration joint board into disrepute or in a way which is inconsistent with their membership of the board, the integration joint board may remove the member from office. In both cases it appears that a Ministerial appointment may be ended without further reference to the Scottish Government. Is this the intention?

Standing Orders – Deputies: Lothian NHS Board does not support the proposal that deputies are allowed, and it is recommended that this provision be removed. It is essential that members have the required knowledge, skills, and experience of the members to drive forward the work of the Integration Joint Boards. The nomination and appointment process should ensure that the members have the required knowledge, skills, and experience: the use of deputies could undermine this principle.

4. Are there any further comments you would like to offer on this draft Order?

NHS Lothian response

We want the regulations to remain flexible to allow Local Authorities and Health Boards to retain the ability to decide the number of voting members.

Staff-Side Representation – Voting membership

It is important that the views of staff-side from Health Boards and Local Authorities are considered by the Integration Joint Board in agreeing the strategic plan.

The Health and Social Care Integration HR Working Group recently received a briefing that was prepared following a meeting of trade union representatives on the working group, to discuss potential arrangements for trade union representation on integration boards. Those representatives proposed the following principles:

- "An understanding that the interests of health and local authority staff need to be represented by appropriate trade unions/professional organisations.
- The needs of health employed staff and local authority employed staff will often, but not always, be common and therefore representation on behalf of both health and local authority staff side will be necessary.
- An agreement that staff side representatives from each sector will represent the collective staff side organisations from that sector, this will require careful and sensitive handling as this is not currently common practice particularly in Local Authorities.
- It will be the responsibility of staff side representatives from each sector to ensure engagement with the partnership consultative committees within the employing authority.
- The partnership arrangements at integration board/committee level will not extend to collective bargaining arrangements and current collective bargaining arrangements over issues such as terms and conditions of employment, pay etc. will remain."

Given the history of partnership working within NHS Scotland, Lothian NHS Board does support the principle of nominating staff-side members from the NHS. This is consistent with the current position for NHS Boards where the Employee Director is appointed as a member of the Board. However the NHS Board does not support the above proposal that there should be two staff-side representatives on each integration joint board who are voting members.

The Scottish Government's policy position in the consultation paper is:

"*Scottish Ministers consider it appropriate for only the members nominated by the Health Board and the local authority to have a vote. The effect of this will be that the voting members are either democratically elected members of the Council or appointed by Scottish Ministers, via the Public Appointments system, to the Health Board and are therefore accountable by virtue of these robust and transparent mechanisms. This is not the case for other stakeholders. Therefore members who are appointed due to their professional role, or those representing other stakeholders, will not vote on decisions of the integration joint board*."

If a NHS Board operates within one local authority, then it could nominate its Employee Director onto the integration joint board and the above policy position would be upheld. However Lothian NHS Board operates over four local authority areas, and it would be impractical to require one person to sit on all four integration joint boards. Therefore we recommend that the Government supports NHS Boards

that cover several local authority areas, by providing that the NHS staff-side may nominate further individuals to sit on four integration joint boards, and that the Scottish Government will appoint them to be members.

Number of Councillors

The Regulations provide that the local authorities can elect to appoint up to 10% of their membership to integration joint boards, and that the health board and local authority are to appoint the same number of members on each integration joint board.

Lothian NHS Board serves four local authorities. If the 10% option was applied by each of them, Lothian NHS Board would have to nominate 16 of its 25 members to be members of the integration joint boards. 5 of the 25 are executive board members. There is a risk that securing this membership is not achievable, and the Scottish Ministers may need to appoint further NHS Board members.

The focus on the number of Integration Joint Board members in this draft Order detracts attention away from what is the more pertinent issue for the effectiveness of the Integration Joint Boards; the required knowledge, skills, and experience of the members to drive forward the work of the Integration Joint Boards.

Given the practical problems that can arise from the proposals in the draft Order, it is recommended that the 10% provision be dropped, and that there is a greater emphasis on the quality of the membership rather than the quantity.

Quorum

The quorum is set comparatively high with the requirement that at least two thirds of the voting members from the Health Board and two thirds from the Local Authority. Normal practice for calculating quorum means that you have to round up if the calculation leads to a number that is not whole, e.g. two thirds of 4 members is 2.67 members – 3 members need to be present to achieve at least 2.67. The effect in this scenario is that three quarters of the membership needs to be present to achieve quorum.

We recommend that this is lowered, otherwise there is a higher risk that the integration joint boards fail to meet due to lack of quorum.

Selection of Chair

The Order discusses the arrangements for selecting the Chair and the Vice-Chair. Arguably this is something that should be addressed within the integration scheme. It may be helpful to consolidate this regulation with the regulation on the integration scheme.

Additional Comments

Regulation 10: There should be clarification that if the remaining members do not agree on how the vote should be cast, then the vote will not be counted.

Regulation 13 (3) needs to be corrected. It should be clarified that as long as an individual holds the offices described at 3(1) (c-f), as well as the office of the IJB proper officer, then they will remain non-voting members of the IJB. However if they resign from office, then they will be deemed to have automatically resigned from the integration joint board too.

Regulation 15- Expenses: It may be simpler if the constituent bodies paid the expenses of their respective members.

ANNEX 3(D)

ESTABLISHMENT, MEMBERSHIP AND PROCEEDINGS OF INTEGRATION JOINT MONITORING COMMITTEES ESTABLISHED UNDER THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

Consultation Questions

1. Do you agree with the proposed minimum membership of the integration joint monitoring committee, as set out in the draft Order?

Yes ☐

No ☒

2. If you answered 'no', please list those you feel should be included:

The remit of the Integration Joint Monitoring Committee is essentially one of assurance. It will not take decisions and does not appear to take any responsibilities away from the constituent authorities. The membership of this committee should be independent from executive management. This is similar to the principles used for any other assurance committee within an organisation. Membership gives a right of attendance and this should not be given to executive officers. The committee will invite officers to attend and will have a standing list of attendees who are not members. All officer posts should be removed from the regulations (i.e. chief social worker, director of finance). The list of IJMC members should be reduced to NHS Board members, Councillors, and any co-opted individuals who are not employees of the Health Board or Council.

The integration authority will still have a Strategic Planning Group, which has representation from various stakeholders.

3. Are there any other areas related to the operation of the integration joint monitoring committee that should also covered by the draft Order?

NHS Lothian response:

No

4. Are there any further comments you would like to offer on this draft Order?

NHS Lothian response:

Given the nature of the IJMC, it should not have the ability to remove its members (Regulation 10) – that is a matter for the constituent authorities.

With regard to expenses (Regulation 11), these are a matter for the constituent authorities. The IJMC is not a separate public body and does not have the ability to make any payments.

The IJMC cannot make its own standing orders, as stated in Regulation 13. It is a creature of the NHS Board and the local authority, and it is for them to make the IJMC standing orders (or even their terms of reference).

With regard to the Standing Orders, a quorum of two thirds of the membership appears high. The IJMC is not a decision-making body, and it is not clear why the members would vote, rather than agreeing a position by consensus. Therefore it would be sensible to revisit the provisions for quorum and voting.

ANNEX 4(D)

PRESCRIBED MEMBERSHIP OF STRATEGIC PLANNING GROUPS ESTABLISHED UNDER THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

CONSULTATION QUESTIONS

1. The draft Regulations prescribe the groups of people that should be represented on the strategic planning group. Do you think the groups of people listed are the right set of people that need to be represented on the strategic planning group?

   Yes ☐

   No ☒

2. If no, what changes would you propose?

   NHS Lothian response:

   Breadth of Representation

   Further consideration should be given to the required membership of the strategic planning group. The list of required representation is too long and will result in a large group that may be unable to perform its function. This feedback should be considered in conjunction with the feedback on Annex 1 of Set 2: prescribed groups that must be consulted.

   There is a misplaced belief in this regulation that primarily breadth of representation will ensure that members of this group discharge their duty. Whilst NHS Lothian is committed to robust engagement and consultation with all our stakeholders it is of greater important that the members of the Strategic Planning Group have the relevant skills and experience to discharge their role properly – there will appropriate opportunities for engagement and consultation with stakeholders on the strategic commission plans.

   This regulation also fails to take cognisance of existing community planning structures which, if the planning group membership remains the same, may lead to duplication and confusion.

3. Are there any further comments you would like to offer on these draft Regulations?

   NHS Lothian response:

The Regulation only discusses the membership of the Strategic Planning Group, but does not offer any basic standing orders or other rules relating to how the Group is to operate.

It is fundamental to stipulate what the quorum is. If the integration authority has a duty to consult the Strategic Planning Group, then it is essential that it meets with an adequate membership to discharge its role.

ANNEX 5(D)

PRESCRIBED FORM AND CONTENT OF PERFORMANCE REPORTS RELATING TO THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

CONSULTATION QUESTIONS

1. Do you agree with the prescribed matters to be included in the performance report?

   Yes [X]

   No [ ]

2. If no, please explain why:

3. Are there any additional matters you think should be prescribed in the performance report?

   Yes [X]

   No [ ]

4. If yes, please tell us which additional matters should be prescribed and why:

   NHS Lothian response:

   Section 42 of the Act does not state whether or not the integration authority is to provide the performance report to the Scottish Ministers. It merely says that the performance report is to be published, with a copy given to the Board, Council, and IJMC (if there is one). It would be helpful to clarify what is meant by "publish". What is the minimum an integration authority is to do under Section 42 (4) in order to be deemed to have published the performance report.

   The performance report is to include:
   "information about the integration authority's performance against key indicators or measures in relation to the national health and wellbeing outcomes during the reporting year;"

   It would be helpful to clarify if it is for the integration authority to define what the key indicators or measures are, or whether this shall be prescribed by the Scottish Government.

5. Should Scottish Ministers prescribe the form that annual performance reports should take?

Yes [X]

No [ ]

6. If you answered yes, what form should Scottish Ministers prescribe?

NHS Lothian response:

This should be developed in consultation with Integration Authorities

7. Are there any further comments you would like to offer on these draft Regulations?

No