POLICY NOTE

THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014 (CONSEQUENTIAL MODIFICATIONS AND SAVING) ORDER 2015

SSI 2015/XXX

1. The above instrument was made in exercise of the powers conferred by section 70 of the Public Bodies (Joint Working) (Scotland) Act 2014 ("the 2014 Act"). The instrument is subject to affirmative procedure.

Policy Objectives

2. This Order makes amendments to legislation which are appropriate in consequence of the 2014 Act .

3. The policy objectives relating to the Act are fully described in the Policy Memorandum which accompanied the Bill. To view the Policy Memorandum click here.

4. This Order makes amendments to primary and secondary legislation with effect in Scotland, which are consequential on the power to establish Integration Joint Boards in section 9 of the 2014 Act and Paragraphs 2(2) and (3), 5, 6, 10(2) and (4), 11, 13 and Part 2 of the Schedule make amendments in order that Integration Joint Boards, once established, will have similar powers and duties as Health Boards and local authorities do at present.

5. Further amendments are made in consequence of the provisions in sections 1,2, 9 and 15 of the 2014 Act which allow a Health Board and local authority to delegate certain of their statutory functions, either to each other or to an integration joint board. Paragraphs 1(2) and (2), 4, 7(2), 8(3) and 10(3) of the Schedule make amendments in relation to this delegation of functions. These amendments will ensure that where a function is delegated, the amended provisions will continue to apply in relation to that function.

6. Paragraph 1(4) of the Schedule makes amendments in relation to the setting and recovery of charges for social care services or accommodation. By virtue of section 1(5) of, and the schedule to the 2014 Act, a local authority may not delegate functions in relation to charges for social care services or residential accommodation. By virtue of regulations made under section 1(7) of the Act (and subject to the integration model that is used) a local authority must delegate its functions that relate to the provision of social care services. The amendments made by paragraph 1(4) of the Schedule modify the charging functions in section 87 of the Social Work (Scotland) Act 1968 (and sections 22 and 26 of the National Assistance Act 2914 as applied by section 87). The effect of these modifications is that the local authority may continue to exercise its statutory functions in relation to charges for the provision of social care services and residential accommodation in respect of services and accommodation which are provided by a person to whom the local authority has delegated the function of providing those services and accommodation.

7. The Order also makes changes that are needed as a consequence of the repeal of section 5A of the Social Work (Scotland) Act 1968 by section 71 of the 2014 Act. Section 5A contains a definition of 'community care services' which is widely used by other legislation. Paragraph 1(3) of the Schedule inserts a replacement definition in section 12A of the 1968 Act, in order that there will continue to be a clear legislative definition of these services. Paragraphs 2(4)(a), (5) – (7),3,7(3), 9 and 12 make repeals and amendments to replace other references to section 5A with a reference to that new definition in section 12A.

8. Article 3 of the Order contains a savings 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 they are repealed with arrangements under the 2014 Act. This provides for a smooth transition between discretionary integration arrangements under the 2002 Act and the start of the mandatory arrangements under the 2014 Act. Arrangements under the 2002 Act have only been entered into between Highland Council and Highland Health Board.

Modifications to legislation

9. Part one of the Schedule makes amendments and repeals to the following primary legislation:

- Social Work (Scotland) Act 1968
- National Health Service (Scotland) Act 1978
- Criminal Procedure (Scotland) Act 1995
- Adults with Incapacity (Scotland) Act 2000
- Ethical Standards in Public Life etc. (Scotland) Act 2000
- Local Government in Scotland Act 2003
- Mental Health (Care and Treatment) (Scotland) Act 2003
- Public Health etc. (Scotland) Act 2008
- Welfare Reform Act 2009
- Public Services Reform (Scotland) Act 2010
- Public Records (Scotland) Act 2011
- Social Care (Self-directed Support) (Scotland) Act 2013
- Children and Young People (Scotland) Act 2014

10. Part two of the Schedule makes amendments and repeals to the following to Secondary Legislation:

- National Health Service (Central Register) (Scotland) Regulations 2006
- Management of Offenders etc. (Scotland) Act 2005 (Designation of Partner Bodies) Order 2006
- Additional Support for Learning (Appropriate Agencies) (Scotland) Order 2005

Consultation

11. No public consultation has been carried out for this Order. The Scottish Government conducted formal consultation on:

- Integration of Adult Health and Social Care in Scotland: Consultation on Proposals (between 8th May 2012 and 11th September 2012); and
- The Public Bodies (Joint Working) (Scotland) Act 2014 Regulations and Orders (between 12 May 2014 and 27 August 2014);

Impact Assessments

12. An equality impact assessment has already been completed on the Public Bodies (Joint Working) (Scotland) Bill and a summary published. To view the Equality Impact Assessment click here. No additional issues arise as a result of this instrument.

Financial Effects

13. A Business and Regulatory Impact Assessment was completed on the Public Bodies (Joint Working) (Scotland) Bill and a summary was published. To view the Business and

Regulatory Impact Assessment click here. No additional issues arise as a result of this instrument.

Scottish Government
Directorate for Health and Social Care Integration
Integration and Reshaping Care Division