

31st July 2014

**Joint Barnardo's Scotland and NSPCC Scotland response
to the Scottish Government's consultation on the Draft
Regulations Relating to Public Bodies (Joint Working)
(Scotland) Act 2014**

Barnardo's Scotland and NSPCC Scotland welcome the opportunity to respond to the consultation on the draft regulations relating to the Public Bodies (Joint Working) Act.

In general, we have been supportive of the benefits that the integration of health and social care can bring to public services, including services for children and young people. However, we are concerned that a confusing picture may arise nationally, as different local authorities and health boards take different decisions about the extent to which services for children and young people¹ will be included in integration schemes. Furthermore, we believe that there need to be safeguards in place, to ensure that children's health and social care services remain an important focus, regardless of who is responsible for their delivery and regardless of the extent to which they become integrated. Because of the local flexibility that is available, in regard to the integration of children's services, we believe that it is very important that Ministers keep the impact of health and social care integration on children's services under review, and make it clear in guidance that local authorities and health boards should consider the impact on children's services when reviewing local integration schemes, regardless of whether children's services have been included in the scheme or not.

We also have a concern that different approaches to integration for children's services have the potential to increase transition difficulties for young people moving from children's services to adult services. We believe that safeguards should be in place to ensure that transition does not become an increasingly difficult time for young people. We know from our services that transitions, from children's services to adult services and from one local authority or health board area to another, are already a very difficult time for the most vulnerable young people and it is very

¹ We have used the phrases 'services for children and young people' and 'children's services' a number of times in our response, and there are a number of understandings of the term. We are using the term in the broadest possible sense, to include all services that affect or benefit children, and this is in keeping with the definition provided by section 7 of the recently passed Children and Young People (Scotland) Act 2014.

important that effort is made to avoid anything that makes it any more difficult.

Lastly, for many more vulnerable families who are working with a range of different services from different statutory and voluntary organisations, the distinction between children's services and adult services may seem somewhat arbitrary. In practice many of these services often work as 'whole family services' rather than adult-only services. Indeed, the essential role of all services (including adult support services where they are working with parents) in child wellbeing is clearly articulated, both under the formal information sharing duty prescribed to them in the Children and Young People (Scotland) Act 2014, and in the *Common Core of Skills, Knowledge & Understanding and Values for the "Children's Workforce" in Scotland*². The Act, broadly-speaking, leaves it to the discretion of local authorities and health boards as to how they respond to this challenge. These are fundamental links between services and it is very important that the guidance that accompanies the Act and these regulations makes it clear that changes in planning processes and delivery responsibilities do not result in the loss of connections, and that whole family approaches continue when necessary.

As a general comment on all of the regulations, we are therefore concerned that there is little in the regulations, as drafted, that would help ensure that children and the services that support them do not lose out from integration, regardless of whether local partners choose to include services for children and young people in an integration scheme. In the individual sections of our response, we have suggested a number of ways in which these kinds of safeguards and protections could be included.

These regulations, and indeed the integration of Health and Social Care, are just one part of the Scottish Government's programme of reform for public services in Scotland. In our view, each piece of legislation that relates to public service reform should be contributing to the ambitions of the Christie Commission of shifting spending closer to prevention, of delivering services with the public rather than to the public and delivering services through collaboration. Clearly the integration of Health and Social Care helps deliver on some of these objectives, but it also places the policy in the wider context of public service reform, and of a wider transition of services towards prevention and early intervention.

It is important to all of us that the different strands of the Scottish Government's public service reform programme are effectively aligned. We would therefore welcome greater clarification from the Scottish Government about the relationship between these regulations and the wider programme of public service reform in Scotland. In particular we

2 Scottish Government, Common Core of Skills, Knowledge & Understanding and Values for the "Children's Workforce" in Scotland, 2012

have some concerns, which we have outlined in specific sections of our response, about how the regulations will relate to the recently passed Children and Young People (Scotland) Act 2014.

In the sections below we have set out our responses to each of the sets of regulations that are being consulted upon.

PROPOSALS FOR PRESCRIBED INFORMATION TO BE INCLUDED IN THE INTEGRATION SCHEME 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 Integration Scheme?

Yes

No

2. If no, please explain why:

As stated in our introduction, we are concerned that there should be measures in the regulations which help to ensure that services for children and young people remain a focus, alongside other services, in an Integration Scheme. There is a distinctive policy background to services for children and young people, and that creates a practical reason why there must be a specific and separate focus on services for children, alongside the evidence-based broad recognition that public services need to focus on early intervention and early years services.

As currently drafted, we do not feel that the regulations take advantage of the opportunities that exist in the Integration Scheme, to address our concerns, as highlighted in our introduction.

3. Are there any additional matters that should be included within the regulations?

Yes

No

4. If yes, please suggest:

In order to address our concerns about the safeguarding of the position of children's services, when services are being integrated, we have a number of potential suggestions that would strengthen the regulations:

- If children's services are being delegated, there could be a requirement that the integration joint board should include a head of children's services, as a member.
- In the event that children's services are being integrated, there could also be a requirement that the integration board creates a sub-committee responsible for children's services. Such a committee could include specific requirements about representation from third sector organisations that have a relevant interest in children's services, and indeed a representative of young people themselves.
- In addition, this section also has the potential to be an opportunity to link health and social care integration to the wider programme of public service reform. For example, there could be a requirement in this section that the integration scheme sets out how it will contribute to the Children's Services Plans required by Part 3 of the Children and Young People (Scotland) Act 2014.
- When children's services are not being integrated, there could be a requirement that the integration scheme sets out how the integration board will facilitate positive and smooth transitions for young people moving from children's services to adult services.

As a different issue, there is nothing in the regulations about how the Scheme should be published. We believe that this should be added.

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

We think that the section entitled 'participation and engagement' could be strengthened.

Currently, the focus is primarily on 'consultation', we believe that there could be more emphasis on involvement in decision making and co-design of services. Arnstein's Ladder of Participation¹ is helpful in this respect, setting out the difference between consultation and participation, and, in our view, public services should be striving to move as far up the ladder as possible.

In addition, to help achieve this shift in emphasis, there could be a requirement for the Integration Scheme to set out if and how the Standards for Community Engagement² would be used when engaging with communities.

Lastly, we would suggest that the regulations should make it clear that when children's services are being integrated, the Integration Scheme should describe how children have been involved and consulted in its development.

¹ Arnstein, Sherry R. "A Ladder of Citizen Participation," JAIP, Vol. 35, No. 4, July 1969, pp. 216-224 <http://lithgow-schmidt.dk/sherry-arnstein/ladder-of-citizen-participation.html>

² Communities Scotland, National Standards for Community Engagement, 2005: <http://www.scotland.gov.uk/Resource/Doc/94257/0084550.pdf>

PROPOSALS FOR PRESCRIBED FUNCTIONS THAT MUST BE DELEGATED BY LOCAL AUTHORITIES RELATING TO THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

CONSULTATION QUESTIONS

1. Do you agree with the list of Local Authority functions included here which must be delegated?

Yes

No

2. If no, please explain why:

We do not feel suitably able to comment on this list, as the contents of this list only apply to young people over the age of 18.

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

As stated in our introduction, whilst we support the principles of health and social care integration, we are concerned about the unforeseen consequences that may occur as a result of the difficulty, in practice, of making clear distinctions between services that are children-only and adult-only, when, in practice, there are many overlaps, and many examples of services that sometimes operate as 'whole family' services.

As an example, this draft regulation includes Section 28 of the Social Work (Scotland) Act 1968 in the 'must be integrated' category. Section 28 of the Social Work (Scotland) Act 1968 requires local authorities to arrange for the burial or cremation of people who die whilst in their care, including looked after children. We think that it could be helpful to have further reflection on this section, given the sensitivity of this time for all involved. In particular, whether the requirement that this duty is integrated is appropriate, given that the looking after of a child (which can extend beyond the age of 18), is a duty that does not require to be integrated, so could be a service that is being delivered by another agency. The death of a young person in care is a time of great sadness for all involved; nevertheless it is those closest to the young person who are best able to treat the situation with the sensitivity and appropriate loving care that it requires. Therefore, it may not be appropriate to insist that this duty is integrated, or to resolve this issue in guidance to accompany the Act and regulations.

More generally, we think that it is important that guidance that accompanies this Act and these Regulations must support health boards and local authorities with the challenges thrown up by the distinct policy situation for children's services, in terms of legislation. So, guidance should make it clear that there are fundamental links between all adult services and children's services, and these should be maintained, not least through the Children's Services Plans required by the Children and Young People Act. Transitions should not be made more complicated through health and social care, and the relevant guidance should draw attention to the good transitions documents produced by the Scottish Transitions Forum¹.

¹ See Arc Scotland, Principles of Good Transitions #1, 2013, <http://scottishtransitions.org.uk/wp-content/uploads/Principles-of-good-transitions-planning-April-2013.pdf> and Arc Scotland, Principles of Good Transitions 2, 2014, <http://scottishtransitions.org.uk/wp-content/uploads/principlesofgoodtransition-arc-scotland.pdf>

PROPOSALS FOR REGULATIONS PRESCRIBING FUNCTIONS THAT MAY OR THAT MUST BE DELEGATED BY A HEALTH BOARD UNDER THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

CONSULTATION QUESTIONS

1. Do you agree with the list of functions (Schedule 1) that may be delegated?

Yes

No

If no, please explain why:

2. Do you agree with the list of services (Schedule 2) that must be delegated as set out in regulations?

Yes

No

If no (i.e. you do not think they include or exclude the right services for Integration Authorities), please explain why:

We have concerns that health visiting is included in this section, as something that must be integrated. Firstly, health visiting for young children and their parents is in practice a very different service to community nursing for the elderly. Secondly, it is very difficult to separate out distinct child and adult related parts of the health visiting service for young children and their parents– when is it a service for the parent (and therefore must be integrated) and when is it a service for the baby or child (and therefore does not necessarily need to be integrated)? Given the important role that the Children and Young People (Scotland) Act 2014 ascribes to health visitors, as the named persons for children who have not yet started school, it is important that this section is clear, and does not allow local discretion to extend to unsatisfactory, half-in, half-out solutions.

Given that pre-birth services for parents (midwifery) have been treated as 'may be integrated' (rather than 'must be'), it might be appropriate to do the same for health visiting.

3. Are you clear what is meant by the services listed in Schedule 2 (as described in Annex A)?

Yes
No

If not, we would welcome your feedback below to ensure we can provide the best description possible of these services, where they may not be applied consistently in practice.

See above, our concerns in relation to the description of health visiting in the Table in Annex A

4. Are there any further comments you would like to offer on these draft regulations?

**PROPOSALS FOR NATIONAL HEALTH AND WELLBEING
OUTCOMES RELATING TO THE PUBLIC BODIES (JOINT
WORKING) (SCOTLAND) ACT 2014**

CONSULTATION QUESTIONS

1. Do you agree with the prescribed National Health and Wellbeing Outcomes?

Yes

No

If no, please explain why:

We have two sets of major concerns about the Outcomes as drafted.

Applicability of draft outcomes to children and young people

Firstly, it is our understanding that the Outcomes are intended to apply for all service users of health and social care. Indeed we noted that the Cabinet Secretary had the following to say during Stage 3 of the Act's consideration in the Parliament, in response to a question from Bob Doris MSP about how health and social care integration would impact on children:

"Similarly, the national health and wellbeing outcomes must be applied and taken into account for all users of services within the integrated arrangement when reviewing an integration scheme."

On that basis, we looked at whether we considered each of the draft Outcomes to be equally applicable to children, as they would be for people of any age. That is, whether they could be considered to be 'age-proof', and equally applicable whether the person in question was a child or an adult.

Whilst the majority of the Outcomes *could* apply to children, we felt that Outcome 1 and Outcome 2 might not be fully applicable to *some* children.

Where children have capacity (and we believe that wherever possible there should be a rights-based approach to the definition of capacity and evolving capacities as referred to throughout the UN Convention on the Rights of the Child (UNCRC), rather than a definition that says capacity occurs at a particular age) we fully support the intention of empowering and supporting children to take charge of their own health and wellbeing, and indeed all decisions that affect their life. Indeed in the definition of wellbeing included in the Children and Young People (Scotland) Act 2014 ([SHANARRI](#)), there are several references that relate to the concept of responsibility and empowerment to be able to make decisions.

However, there are clearly some circumstances where Outcome 1 would not be appropriate. For example, the goal of being 'able to look after their own health and wellbeing' does not necessarily seem to be an appropriate outcome for a newborn baby in the short-term. This has largely been recognised in the SHANARRI framework through recognising the role of the family, and recognising that the family's wellbeing has a direct impact on the wellbeing of the child.

We felt that Outcome 2 might not be suitable for some children with a disability, and for some children who were looked after or at risk of becoming looked after.

For disabled children, we felt that Outcome 2 was insufficiently ambitious, and did not reflect a wider sense of wellbeing, beyond good health, for disabled children. With a focus on living as long as possible in the community, it does not take account of the ambitions that disabled young people often have of being in employment, having active social lives, participating in sport and so on. Essentially, particularly for a young disabled person, we did not feel it focussed sufficiently on a fulfilling, active and included life, which might be more appropriate and holistic goals.

Secondly, it is our view that Outcome 2 may need further consideration, in the context of current approaches to decision making about taking children into care. Given that the duty to look after children (Section 17 of the Children (Scotland) Act 1995) is one of the duties of local authorities which may become integrated, we would welcome further clarification of how the Scottish Government expects this outcome to interrelate with processes that decide whether a child should be taken into care. The terms of 'living independently at home' or 'in a homely setting in their community' do not relate to the current definitions of care settings for children. We would be concerned, if this Outcome, as currently worded, was interpreted to mean that there should be an absolute prioritisation, in all cases, of children becoming looked after at home, whether this was the care setting that was in their best interest or not. It is also not clear what 'in their community' would mean in the context of the looked after children system, particularly for children in care who are currently placed out of their local authority area. Having said that, it is certainly our view, and our understanding of current best practice that, making settings for Looked After and Accommodated Children homely, with a sense of community and connection to local communities should be a priority. Lastly, there is a strong emphasis in the Children's Hearings System on the voice of the child when a decision is being made about where a child is cared for. This Outcome, as drafted, would not reflect the child's voice, if it did lead to the assumption, in the eyes of the authorities, that one type of care was always preferable.

Relationship of outcomes to other recent legislation

Our second major concern is about how these National Health and Wellbeing Outcomes relate to other outcomes that exist or are in development. For example, the Community Empowerment Bill, as drafted, creates a power for the Scottish Government to create new national outcomes.

However, our most significant concern is about how these outcomes are expected to relate to the definition of wellbeing, the related service planning processes and the related wellbeing promotion processes that are created by the Children and Young People (Scotland) Act 2014. The 2014 Act creates a definition of wellbeing in primary legislation, abbreviated to SHANARRI, that is to be used whenever public bodies (including health boards, local authorities, and presumably integration authorities) are required to assess whether the wellbeing of a child is, or would be, promoted, safeguarded, supported, affected or subject to an affect, under the 2014 Act.

It seems very unclear to us how services are supposed to use the SHANARRI framework of wellbeing in conjunction with the Health and Wellbeing Outcomes set out here. For example, the Children and Young People (Scotland) Act 2014 requires a health board and local authority to work together to develop children's services plans, with a view to safeguarding, supporting and promoting the wellbeing of children (sections 8 & 9 of the Act). The Act is clear that wellbeing in this context should be interpreted as meaning SHANARRI. On the other hand, where the local authority and the health board decide that they should integrate some children's services, the preparation of a strategic plan by an integration authority (under section 29 of the Public Bodies (Joint Working) (Scotland) Act 2014) requires them to set out how the activities of the authority will meet the national health and wellbeing outcomes. It is not clear to us, from the draft regulations, how local authorities and health boards ought to resolve these two different requirements, nor what the implications (intended or otherwise) for children and the services that support them would be.

Furthermore, in our analysis, there were significant differences between the SHANARRI framework, and the national health and wellbeing outcomes as drafted. We attempted to map the SHANARRI wellbeing outcomes on the national health and wellbeing outcomes. However, we could not see how the following SHANARRI outcomes were reflected in the draft national health and wellbeing outcomes:

- Achieving
- Nurtured
- Active
- Responsible

On that basis, we consider that the national health and wellbeing outcomes are narrower in scope than the SHANARRI framework, and reflect to a lesser extent a broader definition of wellbeing.

A further advantage of the SHANARRI framework is that the Scottish Government has already done work to set out the relationship between SHANARRI and the UN Convention on the Rights of the Child (UNCRC). We are not clear about the relationship between the national health and wellbeing outcomes and human rights approaches, including the rights of children under the UNCRC. This is particularly important when the Children and Young People (Scotland) Act 2014 requires Ministers to take steps to secure better or further effect in Scotland of the UNCRC requirements, and requires public bodies (including health boards and local authorities) to report what steps they have taken to secure the further effect of the UNCRC.

Specific Wording Issues

We have a number of more minor comments about specific details of the outcomes, as drafted.

We were pleased to see the outcome about health inequalities, particularly given the importance of early intervention and support in the early years of life to addressing health inequalities.

In Outcome 8 the wider policy background text talked about the engagement of staff with the people that staff are working with, however, this is not reflected in the actual outcome which seems like an anomaly.

Summary

Overall, in summary, we feel that, at the very least, the Outcomes, as drafted, need major revision in order to properly reflect the rights and wellbeing of children, and to effectively interrelate with other aspects of the Scottish Government's programme of public service reform and other legislative requirements of health boards and local authorities. Alternatively, our preference would be that additional outcomes were developed to be in effect when children's services become integrated. Additional outcomes for children and young people could be developed on the basis of the wellbeing definition in the Children and Young People (Scotland) Act 2014.

2. Do you agree that they cover the right areas?

Yes

No

3. If not, which additional areas do you think should be covered by the Outcomes?

Given that there is already a working definition for the wellbeing of children in primary legislation (the SHANARRI framework, as described in the section above, appears in the Children and Young People (Scotland) Act 2014), there are a number of aspects of the SHANARRI framework that, in our view, are not reflected in the Outcomes as drafted. In particular:

- Achieving
- Nurtured
- Active
- Responsible

We suggest that outcomes which reflect these aspects are, at the very least, developed. However, overall, our preference is that additional outcomes are developed which will apply when children's services are integrated.

We were also surprised that there was not an Outcome that reflected the desire across the political spectrum to focus the activities of public services more on early intervention and prevention. An additional outcome which would help deliver that shift is an important addition that should be made to the list of outcomes.

4. Do you think that the National Health and Wellbeing Outcomes will be understood by users of services, as well as those planning and delivering them?

Yes

No

5. If not, why not?

Work is already being undertaken by the Scottish Government, local authorities, health boards and the third sector to improve understanding amongst practitioners and the public (including children and young people, and parents/carers) to improve understanding of the GIRFEC approach to children's services, including the understanding of the SHANARRI definition of wellbeing.

So, whilst it might be possible to word the national health and social care outcomes to make them understandable to children, young people and their parents/carers, there seems to be a significant possibility that confusion will only be increased by introducing a new set out of outcomes, particularly when there is so little in common between the two sets, and little indication about how they are intended to interrelate.

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