

**Health and Social Care Integration**

# **Statutory Guidance**

**Directions from Integration Authorities  
to Health Boards and Local Authorities**

**Public Bodies (Joint Working) (Scotland) Act 2014**

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# DIRECTIONS FROM INTEGRATION AUTHORITIES TO HEALTH BOARDS AND LOCAL AUTHORITIES UNDER THE PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

## 1. What is this guidance about?

1.1 The Public Bodies (Joint Working) (Scotland) Act 2014 (the Act) places a duty on Integration Authorities to develop a strategic plan, also known as a strategic commissioning plan, for integrated functions and budgets under their control for which we have published statutory guidance:

<https://www.gov.scot/publications/strategic-commissioning-plans-guidance/pages/9/>.

Integrated functions and budgets are those delegated by the Health Board and Local Authority. The legislation sets out what functions and budgets must be delegated and those that may be delegated:

<http://www.legislation.gov.uk/asp/2014/9/contents/enacted>.

1.2 Each Integration Authority must produce a strategic commissioning plan that sets out how they will plan and deliver services for their area over the medium term, using integrated budgets under their control. Stakeholders must be fully engaged in the preparation, publication and review of the strategic commissioning plan, in order to establish a meaningful co-production approach, to enable Integration Authorities to deliver the national outcomes for health and wellbeing, and achieve the core aims of integration.

1.3 Integration Authorities require a mechanism to action their strategic commissioning plans and this is laid out in sections 26 to 28 of the Act. This mechanism takes the form of **binding directions** from the Integration Authority to one or both of the Health Board and Local Authority. Directions are also the means by which a record is maintained of which body decided what and with what advice, which body is responsible for what, and which body should be audited for what, whether in financial or decision making terms.

1.4 In the case of an Integration Joint Board (IJB), a direction **must** be given in respect of every function that has been delegated to the IJB. In a **lead agency** arrangement, the Integration Authority **may** issue directions or may opt to carry out the function itself. In either case, a direction must set out how each integrated function is to be exercised, and identify the budget associated with that. Not unexpectedly, only IJBs have made directions to delivery partners to date and this guidance is therefore mainly aimed at IJBs and their delivery partners in Health Boards and Local Authorities.

1.5 Put simply, directions are the means by which an IJB tells the Health Board and Local Authority what is to be delivered using the integrated budget and for the IJB to improve the quality and sustainability of care, as outlined in its strategic commissioning plan.

1.6 Directions are also the legal basis on which the Health Board and the Local Authority deliver services that are under the control of the IJB. If directions are not being provided or they lack sufficient detail, Health Boards and Local Authorities should be actively seeking directions in order to properly discharge their statutory duties under the Act.

1.7 This guidance sets out how to improve practice in the issuing (by IJBs) and implementation (by Health Boards and Local Authorities) of directions issued under the Public Bodies (Joint Working) (Scotland) Act 2014. It supersedes the Good Practice Note on Directions issued in March 2016.

## **2. Why are we publishing this guidance now?**

2.1 Directions are a key aspect of governance and accountability between partners. This has previously been largely unrecognised, with the effect that there is a lack of transparency, governance and accountability for integrated functions that are under the control of IJBs, and delivered by Health Boards and Local Authorities. This must be a matter of concern for all parties, each of which is responsible for ensuring that they are complying with their individual duties under the Act.

2.2 Scottish Government has worked closely with IJB Chief Officers to better understand the diversity of practice across Scotland surrounding directions and to identify good practice. We have also discussed the use of directions with a range of local systems at our regular partnership engagement meetings, including with Health Board and Local Authority Chief Executives.

2.3 In February 2019 the Ministerial Strategic Group for Health and Community Care (MSG) published its report on the review of progress with integration: <https://www.gov.scot/publications/ministerial-strategic-group-health-community-care-review-progress-integration-health-social-care-final-report/>. This contains 25 proposals intended to increase the pace and effectiveness of integration. One of these proposals was that statutory guidance on directions would be published to support improved practice in issuing and implementing directions.

2.4 Chairs and Vice Chairs of IJBs have expressed a keen interest in improving practice and in better understanding how they can take responsibility for improvement, and in collaborating with partners to ensure accountability and effective governance. IJBs, Local Authorities and Health Boards must each take individual and several responsibility for complying with their statutory duties, and for being clear about lines of accountability between one another.

2.5 One issue appears to have been that directions have previously been regarded as being issued by Chief Officers to themselves as senior operational directors in Health Boards and Local Authorities. The Act confers the duty of issuing directions on the Integration Authority to constituent authorities. Directions may be issued on behalf of the IJB by an IJB Chief Officer, in their role as the accountable officer to the IJB, to Chief Executives in the Health Board and Local Authority in their roles as accountable officers to the Health Board and Local Authority. These are senior executives acting on behalf of the three statutory public bodies. It may also be helpful to copy the relevant IJB Chair, Council Leader and the NHS Chair into directions. See Appendix 1 on roles and responsibilities of each of the statutory partners and their accountable officers, under integration.

2.6 Directions are a legal mechanism and are intended to clarify responsibilities and requirements between partners, that is, between the IJB, the Local Authority and the Health Board. They are the means via which clarity on decision making is achieved under integration. Directions are therefore both a necessary and important aspect of governance under integration, providing a means by which responsibilities are made clear and evident.

2.7 As a legal requirement, the use of directions is not optional for IJBs, Health Boards or Local Authorities, it is obligatory. How local systems are using them will be subject to internal and external audit and scrutiny. At the time of publishing this guidance, practice is evidently variable and needs to be improved, with any impediments overcome jointly by partners using a collaborative approach that properly acknowledges the roles of the different partners.

### 3. Process for issuing directions

3.1 It is essential that directions are understood to be the **end point** of a process of decision making by the IJB. Directions should not contain surprising or completely unknown information about service change or redesign and should follow a period of wider engagement on the function(s) that are the subject of the direction. This would normally be part of the service planning and design phase of strategic commissioning.

3.2 While directions are not a means of launching unheard-of service change onto delivery partners in the Health Board and Local Authority, nor are they something that can be ignored by delivery partners in the Health Board and Local Authority.

3.3 Directions are binding, which is why they come at the end point of a process of planning and decision making. The delivery partners are required to comply with all directions received from the IJB, and the law is clear that they may not amend, ignore, appeal or veto any direction. Neither the Local Authority nor the Health Board may use resources allocated via the Integration Authority in pursuit of a direction for any other purpose than that intended. This demands a mature and collaborative approach to the planning and delivery of change in health and social care services that delivers sustainability. **It is designed to help local partners improve quality and outcomes for local populations.**

3.4 Integration Authorities have been established to put in place plans to improve the health and wellbeing of their local populations and to make best use of the total resource available to them, hitherto managed and allocated separately by Health Boards and Local Authorities. They have an agenda of change and improvement, working in partnership with their delivery partners. It can therefore reasonably be expected that a number of decisions made by IJBs will impact on delivery partners that will require directions to be issued. Otherwise, nothing would be changing – which would not help integration's purpose to improve the sustainability and quality of care.

3.5 It has been the practice of most IJBs to issue generic directions to delivery partners at the point of agreeing their budgets for the following financial year. However, it is not possible for IJBs to make all decisions about all service change at this juncture, although they will still require to allocate funding across the functions they are responsible for.

3.6 IJBs make decisions about service change, service redesign, and investment and disinvestment at many of their meetings. Such decisions will necessitate directions to the Health Board or Local Authority, or both, and may indeed require the delivery partners to carry out a function jointly. The issuing of directions should be taking place at any time throughout the year, as well as at the start of the financial year.

3.7 Some duties conferred on IJBs also relate directly to duties on Health Boards and Local Authorities, such as Equalities, Best Value and Climate Change. This further enhances the need for collaborative working on a formal basis between the partner bodies.

3.8 To assist with the determination of when a direction should be issued, a number of IJBs have added a short section to their report format that requires the author to decide and record if the report requires a direction to be issued to the Local Authority, the Health Board, to both, or that no direction is required. This provides an initial prompt and should be adopted as standard practice across IJBs.

3.9 Directions should not be issued unnecessarily and should be proportionate. A direction should always be prompted by a decision made by the IJB. It would be helpful for IJBs to develop a directions policy, based on this guidance. The following might be considered when thinking about when a direction requires to be issued and what it might include:

- Scope and scale of the function
- Finance involved
- Scale and nature of change
- Those impacted by the change
  - Patients
  - People who use services
  - Carers
  - Local communities
  - Staff
  - Others
- Timescale for delivery

3.10 Overly general or ambiguously worded directions will not be helpful to delivery partners in understanding what they have to deliver. They will also cause problems in identifying whether a direction has been progressed or completed and therefore need to remain on a log of directions indefinitely and be unable to be closed off. This should be avoided by issuing clear directions, thoughtfully constructed and capable of being monitored effectively with delivery timescales, milestones and outcomes.

3.11 Any direction issued by the IJB must meet all clinical and care governance requirements and standards to ensure patient safety and public protection as well as ensure staff and financial governance. Every IJB has senior professional, clinical and financial advisors as part of their core membership to provide scrutiny of these aspects and to provide assurance. This does not require to be remitted for additional checking through Local Authority of Health Board systems: Local Authorities and Health Boards should ensure that the professional and clinical advisors tasked to provide advice to IJBs are appropriately experienced and supported in their role.

#### **4. Form and content of directions**

4.1 Directions must be in writing and should be sufficiently detailed to ensure the intention of the IJB is adequately captured and effectively communicated. The direction should include information on the required delivery of the function, for example changing the model of care, as well as the financial resources that are available for carrying out the function. The direction may specify in some detail what the Health Board, the Local Authority or both are to do in relation to carrying out a particular function. A lack of detail or specificity in a direction may cause difficulties in performance monitoring and hamper the effective delivery of a function.

4.2 The primary purpose is to set a clear framework for the operational delivery of the functions that have been delegated to the IJB and to convey the decision(s) made by the IJB about any given function(s).

4.3 Directions must clearly identify which of the integrated health and social care functions they relate to. The IJB can direct the carrying out of those functions by requiring that a particular named service or services be provided. Where appropriate, the same document can be used to give directions to carry out multiple functions.

4.4 Directions must include detailed information on the financial resources that are available for carrying out the functions that are the subject of the directions, including the allocated budget and how that budget (whether this is a payment or a sum set aside and made available) is to be used. However, directions should not be seen as a mechanism only to advise the delivery partners of resources available to them. Rather, directions are intended to provide clear advice to delivery partners on the expected delivery of any given function, together with the identified resource available.

4.5 The exercise of each function can be described in terms of delivery of services, achievement of outcomes and/or by reference to the strategic commissioning plan.

4.6 The financial resource allocated to each function in a direction is a matter for the IJB to determine. The Act makes particular provision for the allocation of budgets for the sum “set aside” in relation to large hospital functions, which gives flexibility for the IJB to direct how much of the sum set aside is to be used for large hospital services and for the balance to be used for other purposes. This requires mature and collaborative working to achieve agreement on the best use of this budget, particularly with those responsible for the delivery of acute services, however the decision about the use of this budget lies with the IJB. The statutory guidance on finance issued in 2015 provides detailed advice on set aside:

<https://www.gov.scot/publications/finance-guidance-health-social-care-integration/>

4.7 The content of a direction should be informed by the content of a report on the function(s) submitted to and approved by the IJB. For example, where an IJB discusses and approves a report that makes changes to arrangements for the provision of day services for people with a learning disability, the direction would draw on the report’s content. The direction should be contained in the same report, using a standard format, in order that it can be approved by the IJB at the same time as the report and its recommendations are approved. There should also be a process in place where the IJB is able to raise queries about the clarity or content of a direction and for these queries to prompt action by officials to make any necessary amendments to the direction.

4.8 The issuing of a direction following such a decision by the IJB is the means by which the IJB will let its delivery partners in the Local Authority, Health Board, or both, know what has been agreed and what is to change in the delivery of the function, together with any concomitant change to the allocation of resources.

## **5. Process for issuing and revising directions**

5.1 Directions should be issued as soon as is practicable following their approval by the IJB.

5.2 A direction will remain in place until it is varied, revoked or superseded by a later direction in respect of the same functions. A log of all directions issued, revised, revoked and completed should be maintained, ensuring that it is checked for accuracy and kept up-to-date. This log should include, as a minimum, the function(s) covered, any identifier (such as a log number), date of issue, identify to which delivery partner(s) issued, any delivery issues and the total resource committed. The log should be regularly monitored and reviewed by the IJB and used as part of performance management, including audit and scrutiny. This should include monitoring the implementation and/or status of directions that have been approved by the IJB.

5.3 To assist with monitoring and reviewing directions issued, the IJB may seek information from either the Health Board or the Local Authority, or both, about the delivery of a function that is the subject of a direction, including, but not exclusively, when issues are identified in implementation and delivery of a direction.

5.4 The Act does not set out fixed timescales for directions. This flexibility allows directions to ensure that the delivery of integrated health and social care functions is consistent with the strategic commissioning plan and takes account of any changes in local circumstances. In contrast with the strategic commissioning plan, there is therefore scope for directions to include detailed operational instructions in respect of particular functions.

5.5 A level of detail and specificity is highly desirable in directions, especially where a service is new or to be radically redesigned, or where a complex set of interdependent changes is planned.

5.6 Directions issued at the start of the financial year should subsequently be revised during the year in response to ongoing developments, including as a consequence of decisions made in year about service change by the IJB.

5.7 For example, should an overspend be forecast in either of the operational budgets for health or social care services delivered by the Health Board and Local Authority, the Chief Officer will need to agree a recovery plan to balance the overspending budget (this must be done in line with the Integration Scheme, which will detail arrangements for managing the balance of any over or underspends, and statutory guidance for finance under integration). This may require an increase in payment to either the Health Board or Local Authority funded by either:

- Utilising underspend on the other part of the operational integrated budget to reduce the payment to that body; and/or
- Utilising the balance of the general fund, if available, of the Integration Joint Board.

5.8 A revision to the directions will be required in either case.

## **6. Multi-partnership co-ordination**

6.1 Effective co-ordination arrangements between contiguous IJBs within a Health Board area is essential where directions for acute care are under consideration. This will assist in effective planning for services that may be destabilised by conflicting or incompatible directions from different IJBs within the one area.

6.2 When unscheduled acute care is being planned, Chief Officers and their senior teams from across local partnerships should be meeting regularly in a joint forum with colleagues from the acute system. This will ensure effective co-ordination and collaboration across the multi-partnership area. This will also enable a joint plan to be developed that recognises the context, complexity or features relevant to each IJB. There may be other services and functions that also require this level of co-ordination.

6.3 Detailed directions will be necessary and particularly important where one Chief Officer is the lead for operational delivery of any given function on behalf of other Chief Officers, usually within the confines of a Health Board area and often referred to as “hosted services” or less often, lead partnership arrangements.

6.4 In such arrangements, all decisions about delegated functions still require to be made by constituent IJBs, whatever the operational delivery arrangements are in place for hosting services. Detailed directions will facilitate a feedback loop and IJBs should be seeking from the delivery partners any necessary information regarding progress with service change, investment or disinvestment. The issuing of more detailed directions will also be important for any other services not under the direct operational management of the Chief Officer.

6.5 In addition to officer level co-ordination, IJBs also require a degree of co-ordination in terms of governance and decision making when considering plans and therefore directions that span more than their area of jurisdiction. An IJB cannot delegate its responsibilities to another IJB or back to a Health Board or Local Authority. This, therefore, may be best managed by the same report being considered by each relevant IJB supplemented with any additional information or reflections required by each to ensure very localised matters are taken account of. The sequencing and co-ordination of this will require the full support of relevant IJB Chief Officers and others.

6.6 It is essential in pursuing effective co-ordination and collaboration on operational arrangements for managing delegated services and functions through the Chief Officer that this is not conflated with the statutory duties of the IJB for governance, decision making and resource allocation.

6.7 IJBs should maintain active consideration of whether the effect of delivery partners carrying out any direction they propose to issue would have an undesirable impact on another IJB (and its population) or for the local health and social care system more broadly. A process of co-ordination and mitigation will be needed in circumstances where issues of this nature are identified.

## 7. Improving practice and summary of key actions

7.1 This guidance is intended to provide impetus to improving practice in the issuing of directions by IJBs and their implementation by Health Boards and Local Authorities, and to deliver the proposal made in the MSG review about providing statutory guidance on directions.

7.2 The importance of directions as a vital aspect of governance and accountability between partners cannot be overstated. The need to learn from and implement good practice is evident. Chief Officers, through their network, are well placed to facilitate the sharing of practice and are key to implementing this locally.

7.3 As practice develops further, IJBs should continue to develop and improve their practice in respect of issuing directions. Local Authorities and Health Boards as the key delivery partners also need to accept and work with these new arrangements, and respond positively to direction issued to them, including the provision of any information regarding the delivery of a function that is the subject of a direction.

7.4 This guidance has been prepared as part of wider work to accelerate the pace and impact of integration. This can only be achieved by the partners working closely together, in mutual regard, and demonstrating a strong, shared commitment to integration through concerted action to deliver sustainable, and improved health and social care services, capable of delivering good outcomes for the people of Scotland.

7.5 Key actions identified throughout this guidance, which should be implemented as consistent practice include:

- A standard covering report format, which includes a brief section requiring the report author to decide and record if the report requires a direction to be issued to the Health Board, the local Authority or both, or that no direction is required.
- Directions should include detail on the required delivery of the function and financial resources.
- The content of a direction should be informed by the content of a report on the function(s) approved by the IJB and should be contained in the same report, using a standard format.
- Directions should be issued as soon as practicable following approval by the IJB, usually by the IJB Chief Officer to the Chief Executive of either the Health Board or the Local Authority, or both. Each in their role as accountable officers to the relevant statutory body.
- A log of all directions issued, revised, revoked and completed should be maintained. This log should be periodically reviewed by the IJB and used as part of performance management processes, including audit and scrutiny.

## APPENDIX 1

### **Statement of responsibilities and accountabilities of Integration Authorities, Health Boards and Local Authorities and their accountable officers under integration.**

Integration Authorities bring together Health Boards, Local Authorities and others to ensure the delivery of efficient, integrated services. Demographic change, rising demand and growing public expectations means that radical service redesign is required in health and social care in order to deliver sustainable services that meet these challenges and improve outcomes for people.

The Public Bodies (Joint Working) (Scotland) Act 2014 establishes governance and financial arrangements, together with principles and a set of outcomes. It is predicated on a collaborative approach between Integration Authorities, Local Authorities and Health Boards, each with their own accountabilities and responsibilities, to ensure effective delivery of integration.

**Integration Authorities** - are responsible for planning, designing and commissioning services in an integrated way from a single budget in order to take a joined up approach, more easily shifting resources to best meet need. They have a duty to publish a strategic (commissioning) plan for integrated functions and budgets under their control. Collectively, Integration Authorities manage almost £9 billion of resources that Health Boards and Local Authorities previously managed separately, and they have the power and authority to drive real change.

All requirements for quality and safety apply to the Integration Authority just as they do to the Local Authority and Health Board. Integration Authorities have available clinical and professional advice from a range of advisors to assist them in making decisions and explore issues of quality, supported by integrated clinical and care governance arrangements.

Directions are vitally important in clarifying responsibilities and requirements between partners, that is, between the Integration Authority, the Local Authority and the Health Board. Directions are the legal mechanism by which Integration Authorities action their strategic commissioning plans. These binding directions are issued to one or both of the Health Board and Local Authority. They are the means via which clarity and transparency on decision making and budgets is achieved under integration.

**Chief Officers** – are the chief accountable officer to the Integration Joint Board. Chief Officers also accountable to each of the constituent authorities, and report jointly to the relevant Chief Executive of the Health Board and Local Authority as senior operational directors.

**Health Boards** – are responsible for delegating functions and budgets to the Integration Authority. The legislation sets out what functions and budgets must be delegated and those that may be delegated. They are jointly responsible with the Local Authority for the development of an Integration Scheme and for submitting these to Scottish Ministers for approval.

Health Boards must comply with all directions received from the Integration Authority and they may not amend, ignore, appeal or veto any direction. The Health Board may not use resources allocated via the Integration Authority in pursuit of a direction for any other purpose than that intended.

**Health Board Chief Executives** – are the chief accountable officer to the Health Board. They are jointly responsible, together with the relevant Chief Executive of the Local Authority, for the line management of the Chief Officer. They should ensure that directions issued to the Health Board by the Integration Authority are implemented and remain responsible for the delivery of services that are delegated.

**Local Authorities** - are responsible for delegating functions and budgets to the Integration Authority. The legislation sets out what functions and budgets must be delegated and those that may be delegated. They are jointly responsible with the Health Board for the development of an Integration Scheme and for submitting these to Scottish Ministers for approval.

Local Authorities must comply with all directions received from the Integration Authority and they may not amend, ignore, appeal or veto any direction. The Local Authority may not use resources allocated via the Integration Authority in pursuit of a direction for any other purpose than that intended.

**Local Authority Chief Executives** – are the chief policy adviser to the Local Authority and are the link between Local Authority officials and elected members. They are jointly responsible, together with the relevant Chief Executive of the Health Board, for the line management of the Chief Officer. They should ensure that directions issued to the Local Authority by the Integration Authority are implemented and remain responsible for the delivery of services that are delegated.



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