

Corporate Policy and Strategy

10am, Tuesday, 10 June 2014

Public Bodies (Joint Working) (Scotland) Act: Update

Item number	7.1
Report number	
Executive/routine	
Wards	All

Executive summary

This report provides an update on the progress of the Public Bodies (Joint Working) (Scotland) Bill since the report to the Corporate Policy and Strategy Committee on 6 August 2013.

The Bill was passed on 25 February 2014 and became an Act when it received Royal Assent on 1 April 2014. Over the course of spring and summer 2014 the Scottish Government will draft and consult on detailed regulations and guidance that will underpin the Act.

The Act requires that a Draft Integration Scheme be produced by parent bodies (the Council and NHS Lothian) to establish the Integration Authority. The Scheme must be consulted upon widely. Following the consultation it can be submitted to Scottish Ministers and, on approval, will formally establish the new Integration Authority.

The work required to produce the Integration Scheme and establish the Integrated Authority has been scoped by Council staff and work is progressing apace. The soonest an Integration Authority can be established is April 2015 and all Integration Authorities must be in place to meet legislative requirements by April 2016.

NHS Lothian has requested that Draft Integration Schemes be prepared by early December. It is anticipated that it will be submitted to full Council during December 2014 for approval. These timescales are dependent on the release of Scottish Government regulations and guidance.

Links

Coalition pledges	<u>P12 and P43</u>
Council outcomes	<u>CO10, CO11, CO12, CO13, CO14, CO15</u>
Single Outcome Agreement	<u>SO2</u>

Public Bodies (Joint Working) (Scotland) Act: Update

Recommendations

- 1.1 Note the Bill has progressed through the parliamentary process and, following amendments, was passed on 25 February 2014. It was granted Royal Assent on 1 April 2014.
- 1.2 Agree that the preferred option for the creation of the Integration Authority is option a. the Integration Joint Board.
- 1.3 Note that work is in hand to progress the establishment of the Edinburgh Integration Authority and is reported formally through the Corporate Programmes Office Major Projects arrangements.
- 1.4 Note that the Draft Integration Scheme will be submitted to full Council for approval prior to consultation and submission to Scottish Ministers.

Background

- 2.1 The Corporate Policy and Strategy Committee was provided with an executive summary of the Public Bodies (Joint Working) (Scotland) Bill on 6 August 2013.
- 2.2 This report updates the Corporate Policy and Strategy Committee on the progress of the Bill through the parliamentary process, likely timelines, and the programme of work being undertaken.

Main report

Public Bodies Act – Progression through Parliamentary Process

- 3.1 The Bill was passed on 25 February 2014. The majority of the Bill is as expected but with a number of amendments made at Stage 2 and 3 of its passage through the parliamentary process.
- 3.2 It was granted Royal Assent on 1 April 2014. The Act now puts in place the framework for integrating health and social care in Scotland and has cross party political support in the Scottish Parliament. Appendix 1 provides an outline of the Act.

- 3.3 Over the course of the Spring and Summer 2014 the Scottish Government will draft and consult on detailed legislation (“secondary legislation” which may be in the form of either Regulations or an Order) that will underpin the Act, and the broader statutory guidance that will further support integrated service provision.
- 3.4 One element of the detailed legislation will, for example, specify which NHS functions/services will be included in the Integrated Authority. All adult health and social care services are already specified.
- 3.5 It is anticipated that the Regulations will be complete by late 2004. Latest guidance indicates that Integration Authorities can ‘go live’ from 1 April 2015 and require that all integration arrangements are to be in place for 1 April 2016.
- 3.6 The main proposal is the requirement to create an Integration Authority for the **governance, planning and resourcing** of adult health and social care for Edinburgh. The Act offers two main options for creation of the new Authority:
- a. The ‘body corporate’ model - The health board and local authority choose to deliver integrated services through delegation to **an Integration Joint Board** established as a body corporate. This will require the appointment of a Chief Officer as the jointly accountable officer.
 - b. The delegated authority model which has three permutations and will be accountable through the ‘lead’ agency Chief Executive.
 - i. the health board and local authority choose to deliver services through delegation to the health board in a delegation between partners arrangement and establish a **Joint Monitoring Committee**;
 - ii. the health board and local authority choose to deliver integrated services through delegation to the local authority in a delegation between partners arrangement and establish a Joint Monitoring Committee; or
 - iii. the health board and local authority choose to deliver integrated services through delegation to the health board and the local authority in a delegation between partners arrangement and establish a Joint Monitoring Committee.
- 3.7 The advantages of option a. are:
- The Integration Joint Board will have half its members from the NHS and half from the Council and will therefore be a 50/50 partnership;
 - Governance, planning and resourcing decisions will be undertaken jointly;
 - Staff remain employed by their current employers and there is no need to transfer employment;

- Operational management reverts back to the NHS and Council as it currently stands and the Chief Officer reports to both chief executives for operational matters; and
- The Council's S95 Officer remains operationally accountable for the management of Council funds,

3.8 The disadvantages of option a. are

- A separate partnership governance body is created to which funds much be delegated and which oversees governance, planning and resource decisions; and
- Governance arrangements may, at first, be complex compared to existing arrangements.

3.9 The advantages of option b. i) ii) and iii) are:

- All planning and resourcing will be undertaken within one body.
- Oversight by the delegating body will be via a Joint Monitoring Committee.

3.10 The disadvantages of option b. i) ii) and iii) are:

- The Council delegates functions, resources and staff wholly to the NHS; or
- The Council has delegated to it NHS functions, resources and staff; and
- The TUPE of staff must take place;
- The Council/ NHS will no longer retain operational management responsibility of services (depending on direction of transfer) but will have a Joint Monitoring Committee for overseeing the governance, planning and resourcing of services.

3.11 Given the distinct disadvantages of option b. the option preferred by officers for Edinburgh is option a. Shadow governance arrangements have been in place since autumn 2012 based on an Integration Joint Board and have been developing well.

Work Programme

3.12 The Integration Scheme (formerly called a Plan) is the document which will be submitted to Ministers and, when approved, will formally establish the creation of the new Integration Authority and will include key elements relating to the delegation of functions and resources. The Draft Integration Scheme must be consulted upon widely.

- 3.13 NHS Lothian has requested that all Draft Integration Schemes for the local authority areas within its boundaries are submitted to its 2 December Board meeting. It is anticipated that Council approval of the Draft Integration Scheme will also be sought in December 2014. An estimated timeline is attached at Appendix 2.
- 3.14 It should also be noted that this timescale will be subject to the release of the regulations and guidance by Scottish Government as outlined in paragraph 3.5 above.
- 3.15 In order to meet these timescales and allow necessary sign off and to meet Council agenda planning deadlines, the Draft Integration Scheme will be required for late September 2014.
- 3.16 A detailed programme plan has been developed which covers the work streams and milestones in order to develop the Integration Scheme and meet the timescales laid down by NHS Lothian. The work is substantial and the timescales demanding.
- 3.17 The work streams are Governance; Finance and Resources; Communications and Engagement; HR/Organisational Development; Information Sharing; Localities; Performance Management; Performance Management, Quality and Risk; Strategic Commissioning; Joint Equalities Arrangements; and Information Technology. Given the nature of the programme most of these are joint work stream. The parts of the governance and finance and resources work streams, however require large portions of the work to be handled separately to support the delegation of functions and the development of ongoing oversight and monitoring.
- 3.18 A resource requirements plan has been put together on the back of the detailed programme plan. This has been used to support a bid to Scottish Government for 'transition' funds. The bid was submitted on 21 March and we expect a decision in late April/early May.
- 3.19 The programme is being managed with oversight from the Corporate Programmes Office Major Projects reporting framework. This has ensured that:
- reporting is bi-monthly to Committee. In addition monthly reporting takes place to Corporate Management Team, to Finance and Resources Committee and to the Shadow Health and Social Care Partnership.
 - a formal Quality Assurance Review has been undertaken in late 2013 as a 'health check' on progress through the 'initiation' phase of the project. A report on this was submitted to Finance and Resources Committee in April/May. The recommendations of this are currently being progressed.

- Governance arrangements have recently been reviewed and the proposals agreed by Corporate Management Team on 26 March. NHS Lothian approval is awaited. The proposals incorporate a Joint Leadership Group, chaired jointly by the Chief Executives, and a Steering Group for the monitoring of progress against the programme plan. Appendix 3 outlines the proposals.

Key Risks

- 3.20 There are a number of significant health, care and financial risks associated with the current system which have triggered the provision of new legislation. In particular these are:
- a. it does not align with the resource models required by the Christie Commission;
 - b. local clinicians, elected members, users, carers and other stakeholders are unlikely to engage in locality planning if budgets associated with unplanned hospital capacity are not included;
 - c. the demand pressures from demographic change are biased to reactive care in institutional settings and, without the Act, this would continue leading to a vicious cycle of spending more and more money on services that do not support people to best effect;
 - d. it does not explicitly recognise the reality of the integrated nature of health and social care services, particularly for frail elderly people and those with complex needs such that it is not possible to plan overall expenditure for defined populations and user groups or to use budgets flexibly to best effect.
- 3.21 There are also many risks associated with a programme of change of this scale. The Act specifically mentions the following financial risks:
- a. health board and local authority flexibility to allocate their resources across the full range of their budgets may be constrained by 'ring-fencing' of their previous allocations to the integration authority. The risk will be proportional to the extent of the minimum scope of services to be included;
 - b. there is a risk that health boards may be left to manage any overspends in hospital based budgets whilst being unable to direct under-spends in community health budgets to offset these; and
 - c. parent bodies may be limited in their options for managing compensating in-year under-spends to those from within and out of scope budget.
- 3.22 The Act envisages that these risks will be mitigated through the joint nature of the governance of the integration authority and the provisions of the Integration

Plan and Strategic (Commissioning) Plan and through the direct accountabilities and responsibilities of the chief officer.

- 3.23 Finally, there are a number of risks to the delivery of the programme plan for the production of the Integration Scheme to time. The work streams are complex and demanding, particularly governance and finance, and proposals must be agreed jointly. Risks are managed through the programme arrangements and it is proposed that major risks and issues are escalated through the revised governance arrangements referenced in paragraph 3.19 (third bullet point) above.

Resources Bid

- 3.24 The Scottish Government has made available a sum of £7 million, nationally, for transition funding for the year 2014/5 only. This is non-recurring spend and is prior to the establishment of a Transition Fund in 2015/16.
- 3.25 The Partnership bid of c£900k was submitted to NHS Lothian for an overall bid to be made to Scottish Government by 21 March 2014. We understand that the bid will not be allocated by size of area/parent body but considered on its merits.
- 3.26 Scottish Government intends to distribute the funds for Partnerships through NHS Boards. A suitable approach will be required to transfer this resource, as required, to the Council during 2014/15 to deliver on the work programme.

Measures of success

- 4.1 The Scottish Government have issued draft National Outcomes for the delivery of integrated Health and Social Care. The Programme Sub Group on Performance and Quality is tasked with establishing local outcomes for measuring the success of the new Health and Social Care Partnership in relation to the national outcomes. A joint baseline has been developed and work is continuing on a joint framework for the future.

Financial impact

- 5.1 It is estimated that the new Health and Social Care Partnership will encompass a combined budget of around £4-500 million. This brings together existing budgets from the Health and Social Care Service in the Council as well as those from NHS Lothian's Community Health Partnership.

Risk, policy, compliance and governance impact

- 6.1 The Integration Programme monitors and addresses risks through its programme arrangements. In addition, major integration risks are identified in NHS and Council enterprise risk registers such as Corporate Management Team risk register.
- 6.2 Part of the performance monitoring and quality work stream also involves combining NHS and Council operational risk reporting to the Edinburgh Health and Social Care Partnership.

Equalities impact

- 7.1 The integration of health and social care services aims to overcome some of the current 'disconnects' within and between existing health and social care services for adults, to improve pathways of care, and to improve outcomes.
- 7.2 Furthermore, the intention is to improve access to the most appropriate health treatments and care. This is in line with the human right to health.
- 7.3 Work is in progress to develop a combined EqHRIA procedure between NHS Lothian and Health and social Care Services. This will be used for all EqHR impact assessments as required across the joint service once the Integrated Joint Board is fully established.

Sustainability impact

- 8.1 The proposals in this report will help achieve a sustainable Edinburgh because:
 - joint health and social care resources will be used more effectively to meet and manage the demand for health and care services
 - they will promote personal wellbeing of older people and other adults in needs of health and social care services; and
 - they will promote social inclusion of and care for a range of vulnerable individuals.

Consultation and engagement

- 9.1 Consultation and engagement form a key work stream in the programme. A number of events have taken place and mechanisms are being established to ensure the Shadow Health and Social Care Partnership is engaging at all levels. This includes the work in hand to recruit a service user and carer as members of the Shadow Health and Social Care Partnership to bring their own perspective to the discussions.
- 9.2 A comprehensive engagement programme is also underway to engage with a range of staff and practitioners across health and social care services, including

the Professional Advisory Committee whose Chair and Vice Chair are voting members of the Partnership). Finally, the Strategic Commissioning Plan process will adopt a co-production approach to developments to ensure timely and productive engagement with key stakeholders.

Background reading/external references

Finance and Resources Committee - 7 May 2014 - Health and Social Care Integration Update

Corporate Policy and Strategy Committee – 6 August 2013 – City of Edinburgh Council proposed Response to Public Bodies (Joint Working) (Scotland) Bill.

Finance and Budget Policy Development and Review Subcommittee - 22 May 2013 – Health and Social Care Integration: Update

Corporate Policy and Strategy Committee – 16 April 2013 –Health and Social Care Integration – Scottish Government Response.

Corporate Policy and Strategy Committee – 2 October 2012 – Integration of Health and Social Care – Proposals for Interim Governance Arrangements.

Corporate Policy and Strategy Committee – 4 September 2012 –Scottish Government Consultation on the Integration of Health and Social Care – Joint Response.

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Links

Coalition pledges	Ensuring Edinburgh and its residents are well cared for.
Council outcomes	Health and Wellbeing are improved in Edinburgh and there is a high quality of care and protection for those who need it.
Single Outcome Agreement	Edinburgh’s citizens experience improved health and wellbeing, with reduced inequalities in health.
Appendices	Appendix 1: Outline of the Bill Appendix 2: Estimated timelines for legislation, integration schemes, the strategic commissioning plans and the NHS strategic plan. Appendix 3: Proposals for Revised Governance Arrangements

Appendix1

Outline of the Act

1. The Act

- a) Permits ministers to **require integration** of, as a minimum, adult health and social care services.
- b) Describes the partnership arrangements as '**integration authorities**'. Each health board and local authority will be required to establish an integration authority and to delegate functions and resources to them. Details of the functions for NHS will be prescribed in regulations.

Model of Integration and Governance

- c) Will **require** local authorities and health boards to choose one of four options for the establishment of the integration authority as follows
 - a. The 'body corporate' model - The health board and local authority choose to deliver integrated services through delegation to **an Integration Joint Board** established as a body corporate. This will require the appointment of a Chief Officer as the jointly accountable officer.
 - b. The delegated authority model which has three permutations and will be accountable through the 'lead' agency Chief Executive.
 - i. the health board and local authority choose to deliver services through delegation to the health board in a delegation between partners arrangement and establish a **Joint Monitoring Committee**;
 - ii. the health board and local authority choose to deliver integrated services through delegation to the local authority in a delegation between partners arrangement and establish a Joint Monitoring Committee; or
 - iii. the health board and local authority choose to deliver integrated services through delegation to the health board and the local authority in a delegation between partners arrangement and establish a Joint Monitoring Committee.
- d) Establishes **Integration Joint Boards** and **Integration Joint Monitoring Committees** as the partnership arrangements for the governance and oversight of health and social care services depending on the integration authority model chosen from the four options above.
- e) **Requires** health board and local authority partners to enter into arrangements **to delegate functions and appropriate resources** to ensure the effective delivery of services through;
 - i. the body corporate model - an **Integration Joint Board** established as a body corporate - in this case the health board and the local authority agree the amount of resources to be committed by each partner for the delivery of services to support the functions delegated; and
 - ii. delegated model –a **Joint Integration Committee**. In this case the health board and/or local authority delegates functions and the corresponding amount of resource, to the other partner.
- f) Will **remove Community Health Partnerships** from statute.

Integration Scheme

- g) **Requires** local authorities and health boards to set out the terms of establishing their chosen model in **an Integration Scheme** for joint approval by Council and Health Board and Ministers.
- h) Will require the Integration Scheme to include;
 - i. the model of integration to be used and associated governance arrangements;

Appendix1

- ii. the functions and budgets/resources to be delegated to the integration authority and the method of calculating money to be delegated to support delivery of the functions/ financial model of integration;
 - iii. outcomes to be achieved; and
 - iv. a number of other aspects which will be specified in regulations, e.g. dispute resolution, clinical and care governance etc.
- i) Health boards and local authorities will be required to consult widely on the Integration Scheme and the Scheme will be agreed by full Council and the Health Board and approved by Ministers. It will also be made publicly available.

National Outcomes

- j) Provides for **the Scottish Ministers to specify national outcomes** for health and wellbeing, and for delivery of which, health boards and local authorities will be accountable to the Scottish Ministers and the public. These will be set out in Regulations such that they can be amended in future to keep pace with the needs and aspirations of health and social care in Scotland. Scottish Ministers must consult appropriately.
- k) National outcomes will be reflected in Single Outcome Agreements;
- l) Sets out principles for planning and delivery of integrated functions, which local authorities, health boards and joint integration boards will be required to have regard to:
- a. improving the wellbeing of recipients,
 - b. the requirement to balance the needs of individuals with the overall needs of the population;
 - c. anticipation and prevention of need;
 - d. effective use of the available facilities, people and other resources;
 - e. is integrated from the point of view of service users
 - f. takes account of the particular needs of different service users
 - g. takes account of the particular needs of service users in different parts of the area in which the service is being provided;
 - h. takes account of the dignity of service users;
 - i. takes account of the participation by service users in the community in which service users live;
 - j. protects and improves the safety of service users; and
 - k. is planned and led locally in a way which is engaged with the community (including in particular service users, those who look after service users and those who are involved in the provision of health or social care).

Chief Officer

- m) **Requires integration joint boards to appoint a chief officer**, who will be jointly accountable, through the board, to the constituent health board and local authorities, and responsible for the planning, resourcing and management of services for the Integrated Joint Board. The appointment will be made in consultation with the health board and the local authority. The responsibilities of the Chief Officer will be subject to agreement by Scottish Ministers;
- n) Minister may, in future and by regulation, enable integration joint boards to appoint staff other than a Chief Officer;
- o) The Chief Executive of the 'lead' agency will be the jointly accountable officer in the delegated model;

Strategic Plan and Performance Report

- p) **Requires the integration authority**, i.e. joint boards, and health boards or local authorities to whom functions are delegated **to prepare a Strategic Plan for the**

Appendix1

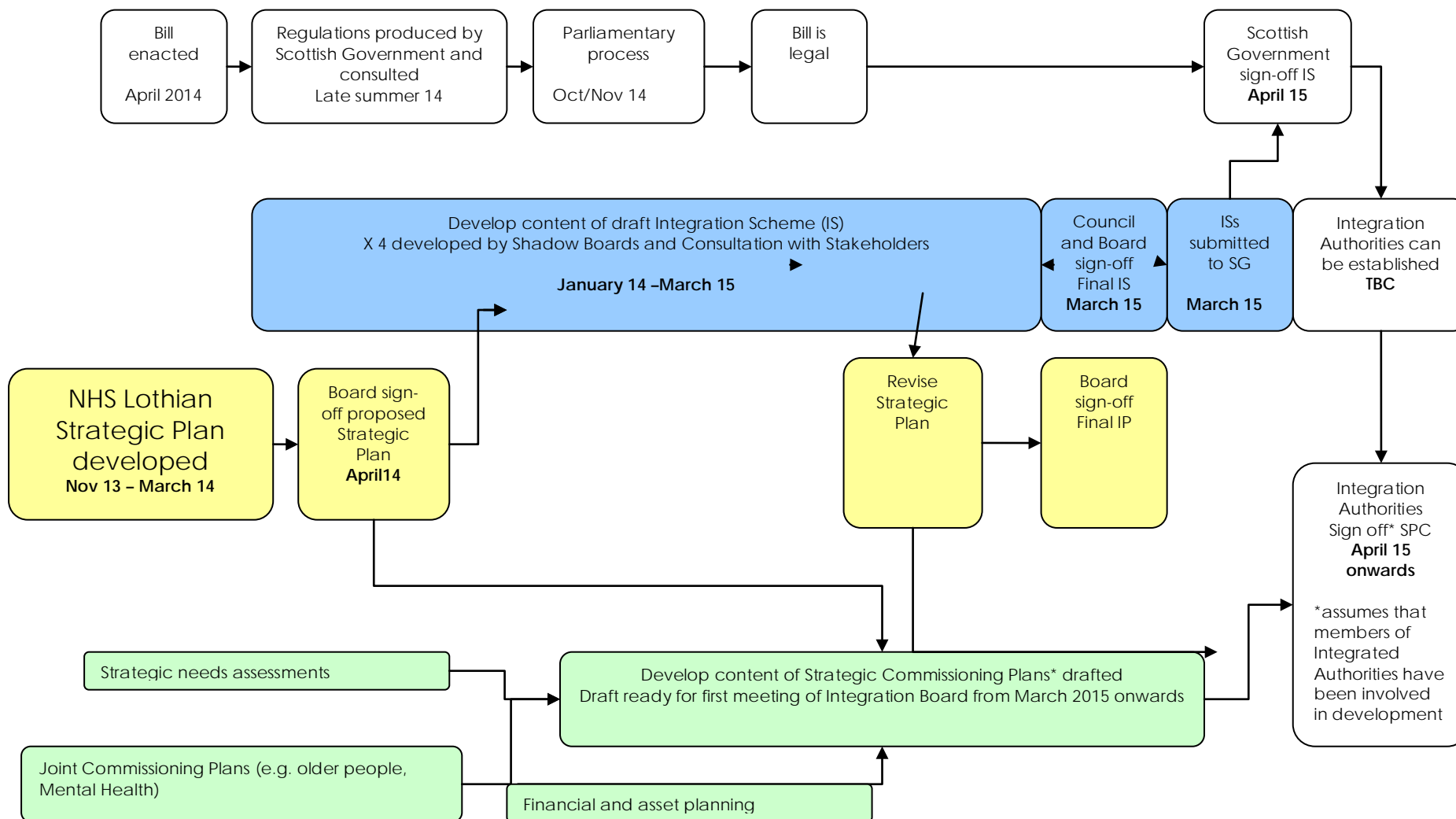
area, which sets out arrangements for delivery of integrated functions and how it will meet the national health and wellbeing outcomes. This will be led by either the Chief Officer of the 'lead' agency Chief Executive.

- q) **The Strategic Plan will also be a financial plan** as it will define in-year operational budgets across the Integration Authority for services in scope which will, as a minimum include community health care, adult social care, and in-scope hospital services. It will be scrutinised jointly by the Care Inspectorate and Health Care Improvement Scotland.
- r) The integration authority will be required to involve a range of partners in the development of the plan and consult widely. In addition, locality planning duties will require the integration authority to make suitable arrangements to consult and plan locally for the needs of its population.
- s) Places a duty on integration authorities to work with local professionals the third and independent sectors to determine how best to put in place arrangements for planning local service provision, to put these arrangements in place and to support, review and maintain them. Localities must be empowered to make decisions to achieve outcomes.
- t) Each Joint Integration Board must prepare **an annual performance report**. The first will be from the date of establishment and the year thereafter to ensure a full year report.

Further Points

- 2. In both models services will continue to be delivered by the health board, local authority, third and independent sectors. Staff will continue to be employed by the health board and local authority. The Act does however contain the power for Ministers to permit (by Regulation) the Integration Joint Board to employ staff itself should, in the future, if it were considered appropriate.
- 3. For the body corporate model, further guidance will be provided to describe the relationship between the Chief Officer of the Integration Authority and the Chief Executives of the health board and local authorities.
- 4. Regulations will set out the details of these arrangements. However it is important to note that **the Joint Board will be conferred the same duties, rights and powers in relation to them as the health board and local authority have, including the ability to enforce rights in connection with the carrying out of functions as well as liability in respect of any liabilities incurred.**
- 5. The minimum scope of budgets/resources to be included in scope will be defined in regulations and statutory guidance and the Act permits Ministers to make directions on this matter. It is noted that the minimum scope will target specialities that are predominantly for unplanned care.
- 6. Information sharing is enabled as part of the function of the Joint Integration Board and Chief Officer for the purposes of integration and strategic planning as well as delegated functions without breaching the duty of confidentiality.

Appendix 2: Estimated Timelines for legislation, Integration Schemes, the Strategic Commissioning Plans and the NHS Lothian Strategic Plan in Lothian



Appendix 3: H&SC Integration Revised Programme Governance

