Education Committee

21st Meeting, 2005

Wednesday 23 November 2005

The Committee will meet at 9.30 am in Committee Room 4

1. **Subordinate Legislation:** The Committee will further consider the following negative instruments—

   the Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005 (SSI 2005/501)
   
   
   the Additional Support for Learning (Placing Request and Deemed Decisions) (Scotland) Regulations 2005 (SSI 2005/515)
   
   
   
   the Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (SSI 2005/518)

2. **Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill:** The Committee will take evidence at Stage 1 from—

   **Panel 1**
   
   Morgan Jamieson, National Clinical Lead for Children and Young People’s Health in Scotland
   
   Dr David Love, British Medical Association (Scotland)
   
   Ms Jane O’Brien, Head of Standards and Ethics, General Medical Council
   
   Dr Jenny Bennison, Deputy Chair (Policy), Royal College of General Practitioners (Scotland)
3. Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill: The Committee will consider issues arising from the evidence and the scope of its Stage 1 report and agree whether to discuss its draft report in private.

Eugene Windsor
Clerk to the Committee
Room T3.40, Committee Office
Ext. 0131 348 5204

The following papers are enclosed for the meeting:

Agenda item 1
Clerk’s note and extracts of Subordinate Legislation Committee reports
ED/S2/05/21/1

Agenda item 2
Clerk’s paper on Joint Inspections Bill
ED/S2/05/21/2

Written submission from BMA
ED/S2/05/21/3

Subordinate Legislation Committee Stage 1 report on Joint Inspections Bill
ED/S2/05/21/4

Written submission from HMIC
ED/S2/05/21/5

Written submission from HMIE
ED/S2/05/21/6
Papers not circulated:

Agenda item 1
The SSIs were circulated as papers for the 19th meeting of the Education Committee on 9 November. Members are reminded to bring with them copies of the SSIs and members may also wish to refer to the Official Report of the meeting when oral evidence was taken from Scottish Executive officials.
1. The Subordinate Legislation Committee has completed its consideration of the SSIs listed under agenda item 1.

2. The Subordinate Legislation Committee has determined that it did not need to draw attention of Parliament to SSI 2005/501 and SSI 2005/17 on any of the grounds within its remit.

3. The Subordinate Legislation Committee had continued its consideration of SSI 2005/514, SSI 2005/515, SSI 2005/516 and SSI 2005/18 and had sought clarification from the Scottish Executive on certain issues within its remit on 1 November.

4. The Subordinate Legislation Committee has received a response from the Scottish Executive and concluded its consideration of the outstanding SSIs at its meeting on 8 November.

5. Extracts from the relevant section of the Subordinate Legislation Committee’s 39th report 2005 are attached. These detail the Subordinate Legislation Committee’s comments and recommendations arising from the Scottish Executive’s response for each of the outstanding SSIs.

6. The Subordinate Legislation Committee’s queries on the SSIs and the subsequent Scottish Executive responses are attached as Annexe 1. The Subordinate Legislation Committee’s recommendations on each instrument made at its meeting of 8 November are attached as Annexe 2.
Subordinate Legislation Queries and Scottish Executive Responses


On 1 November 2005 the Committee asked the Executive for an explanation of the following matters:

The Committee asks the Executive for explanation of the vires of the following provisions:

- Rules 24(4) and 33(3) – it appears to the Committee that provision for the payment of expenses of persons other than Tribunal members or staff is already provided for in a substantive provision of the Act, namely paragraph 17 of schedule 1;
- Rule 28(5) – the Committee seeks further clarification of the vires of this rule, given that paragraph 14 of schedule 1 makes specific provision with regard to decisions of the Tribunal;
- Rule 37(1) - the Committee seeks further clarification of the vires of this rule given the provisions of paragraph 14 of schedule 1, as read with paragraph 4 of that schedule makes specific provision with regard to decisions of the Tribunal;
- Rule 37(2) – paragraph 14(1)(b) of schedule 1 to the Act seems to rule out the words from “save as” to the end and appears to allow no exceptions; and
- Rules 39(2)(b) and (5) in the light of paragraph 10 of schedule 1 to the Act which states that it is the Scottish Ministers who are to pay any expenses reasonably incurred by the President in the exercise of his or the Tribunal’s functions.

Finally, the Committee seeks explanation of why, in paragraph 37(3)(a), a requirement to send out a copy of the decision was thought necessary, given that such a requirement is already to be found in paragraph 14 of schedule 1 to the Act.

The Scottish Executive responds as follows:

First question – bullet point 1 (Rules 24(4) and 33(3))

1. Rule 24 makes provision enabling the Tribunal to appoint an expert to enquire into and report on any matter. Rule 24(4) provides that the Secretary shall pay such reasonable fees, expenses or allowances as the President may determine to any person so appointed. Rule 33(2) enables the Tribunal to appoint a person with appropriate skills or experience in facilitating the giving of evidence by children. Rule 33(3) provides that the Secretary shall pay such reasonable fees, expenses or allowances as the President may determine to any person so appointed.
Annexe 1

2. Paragraph 17 of Schedule 1 provides that a Tribunal may pay (a) such allowances or expenses as the President may determine in connection with any person's attendance at hearings of the Tribunal and (b) such amounts as the President may determine in connection with any report prepared in pursuance of rules made under paragraph 11(2)(q). Paragraph 11(2)(q) provides that the rules may include provision “enabling a Tribunal to commission medical and other reports in specified circumstances”.

3. In relation to both rules, Executive’s position, under reference to section 34(2)(a) (Orders, regulations and rules), is that it is making an “incidental” or “supplemental” provision considered to be expedient and necessary to specify as a matter of practice and procedure that the administrative responsibility for actually making payment is that of the Secretary on behalf of the Tribunal.

4. In relation to Rule 33(3) the further point is made that it is likely that a person appointed under that Rule is likely to have responsibilities other than merely being in attendance at a hearing. For example such a person would be likely to meet with the child witness beforehand and might be involved in assisting the child with written evidence or with the giving of evidence in terms of Rule 23 (Evidence by telephone, video link or other means). It is also the case that a person appointed under Rule 33 is unlikely to prepare a report and so will not come within the ambit of 11(2)(q).

5. The Executive considers that there is vires for these rules in terms of section 34(2)(a) and in terms of the general rule making power under para 11(1).

First question – bullet point 2 (Rule 28(5))

1. Rule 28 (5) makes provision for the eventuality of a member of a Tribunal, other than the convener, being or becoming absent. It provides that, with the consent of the parties, the hearing may continue before the convener and the remaining member, that a Tribunal so constituted is deemed to be validly constituted and that the decision of the Tribunal shall be taken by the convener and the remaining member.

2. Paragraph 14(1)(a) of Schedule 1 provides for decisions of Tribunals to be made by a majority. In other words it provides that the decision need not be unanimous. It does not relate to the constitution of Tribunals and does not appear to the Executive to preclude the possibility of proceedings before a Tribunal from which a member other than the convener is absent.

3. The vires for rule 28(5) lies in paragraph 11(2)(j) of Schedule 1 in terms of which rules may include provision enabling Tribunal proceedings to be conducted in the absence of any member of a Tribunal other than the convener. It is considered “proceedings” falls to be interpreted as a reference to the whole proceedings of the Tribunal from the making of the reference to the final decision and includes not only the conduct of a hearing but also the deliberations leading to a decision.
First question – bullet point 3 (Rule 37(1))
1. Rule 37(1) provides that where a Tribunal is constituted by a convener and one member in terms of Rule 28(5) the convener shall have a second or casting vote. Paragraph 14(1)(a) of schedule 1 provides that decisions of Tribunals may be reached by a majority. Paragraph 4(2) of schedule 1 provides that Tribunals constituted by the President under para 4(1) must comprise the President or a convener plus two members.

2. Paragraph 11(2)(j) of Schedule 1 provides the vires to make rules providing for proceedings to be conducted by a Tribunal in the absence of one member other than the convener. This is consistent with the view that, while a Tribunal initially constituted by the President must comprise a convener plus two members, the supervening unavailability of one of the two members should not preclude further procedure.

3. To avoid the possibility of a Tribunal becoming deadlocked in the absence of a member, it is considered under reference to section 34(2)(a) that Rule 37(1) is “incidental” or “supplemental” provision considered to be expedient and that there is accordingly vires for it.

First question – bullet point 4 (Rule 37(2))

First question – bullet point 5 (Rules 39(2)(b) and(5))
1. The Executive is most grateful to the Committee for drawing these points to its attention. It considers that the Committee’s observations in relation to these rules are well founded and undertakes to bring forward amending rules to address the points raised.

Second Question
1. The Committee seeks an explanation as to why in Rule 37(3)(a), a requirement to send out a copy of the decision was thought necessary, given that such a requirement is already to be found in paragraph 14 of schedule 1 to the Act. The intention of the Executive was to clarify that, as a matter of practice the administrative responsibility for doing so rests with the Secretary.
On 1 November 2005 the Committee asked the Executive for an explanation of the following matter:

“Regulation 4 states that if the prescribed conditions apply, an appeal committee will be deemed “for the purposes of paragraph 6(6)(b)” of schedule 2 to have confirmed a decision of an education authority on a placing request. As paragraph 6(6)(b) is simply a regulation-making provision, following the wording of the enabling power itself, should the phrase in question not read “for the purposes of this Act”?”

The Scottish Executive responds as follows:

1. The Executive has considered the matter raised by the Committee and accepts that the phrase might have been as set out in the Committee’s letter.

2. It is explained that in drafting regulation 4 it had been thought helpful to make specific reference to that paragraph in the schedule. The validity of the instrument is not affected by this stance.

On 1 November 2005 the Committee asked the Executive for an explanation of the following matter:

“The Executive is asked for an explanation of article 3(2) and in particular the words “and that” at the end of the 4th line.”

The Scottish Executive responds as follows:

Article 3 of these regulations saves the effect of sections 60 to 65G of the Education (Scotland) Act 1980 for certain references to appeal committees. Article 3 (2) of this order specifies the references to which this article applies.

Article 3(2) also sets a final cut-off of 60 days from the appointed day for the lodging of any such reference under the 1980 Act.

The Executive accepts that the words “and that” are not essential. Those words were intended only to be of assistance in the reading of what we acknowledge is a lengthy sentence. We are however satisfied that this does not affect the validity of the instrument.

Minor and printing points

We note the concern raised by the Committee regarding the number of minor and printing points. The Executive regrets the additional work which this has entailed for the Committee.

On 1 November 2005 the Committee asked the Executive for an explanation of the following matters:

1. “The Committee asks why the title of the regulations does not follow the usual form for instruments of this nature. Given that the original regulations are replaced completely by these regulations, the Committee is concerned that this instrument should have (No.2) in the title rather than “amendment”.

2. The Committee also seeks confirmation that the instrument was made available free of charge to all known recipients of the original Regulations and if so why the regulations do not bear an italic headnote to that effect.

The Scottish Executive responds as follows:

The intention in using “amendment” in the title of the Regulations was to signal that the regulations contained amended provision from that in the earlier and now revoked regulations. In the light of the Committee’s comments the Executive accepts that this was misplaced but is satisfied that this does not affect the validity of the instrument.

The Executive regrets the oversight of the need for an italic headnote to the effect that this replacement instrument will be made available free of charge to all known recipients of the original Regulations. We are making enquiries of TSO as to how best to address this oversight and put in place arrangements for such distribution.
Subordinate Legislation Committee Recommendations


1. The Committee raised a number of points with the Executive in relation to this instrument.

Rules 24(4) and 33(3)

2. These rules authorise the payment of fees, expenses and allowances to certain persons appointed by the Tribunal for purposes relating to Tribunal hearings. However, it appeared to the Committee that provision for the payment of expenses of persons, other than tribunal members or staff, is provided for in paragraph 17 of schedule 1 to the Act. The Committee therefore asked for an explanation of the vires of these rules.

3. The Executive considers that the rules are making “incidental” or “supplemental” provision under section 34(2)(a) of the parent Act and are considered necessary to specify that the administrative responsibility for making payment on behalf of the Tribunal rests with the Secretary. However, the Committee considered that, as drafted, the Rules confer the power to make payment of expenses in certain cases and to this extent there may be doubt in relation to vires.

4. While the Committee is satisfied that the powers cited would be sufficient for the purposes intended by the Executive, the Committee is not persuaded that the drafting of these rules achieves this purpose and therefore remains doubtful as to whether the rules are intra vires.

Rule 28(5)

5. This rule provides that, in certain circumstances, a decision of the Tribunal may be taken by the convener and one member. The Committee asked the Executive for further clarification of the vires of this rule, given that paragraph 14 of schedule 1 to the Act appears to already make provision with regard to decisions of the Tribunal.

6. The Executive considers that the vires for this rule lies in paragraph 11(2)(j) of schedule 1 under which proceedings may be conducted in the absence of a member other than the convener. The Executive considers that “proceedings” includes the deliberations leading to a decision in addition to the conduct of the meeting.

7. While the Committee is satisfied that the Act allows for hearings of the Tribunal to take place in the absence of a member, the Committee remains doubtful as to whether this would also extend to decisions of the Tribunal, particularly given that the Act already makes specific provision for such purpose.
8. The Committee considers that, as provision in relation to decisions of the Tribunal is already made by a substantive provision of the parent Act, there are doubts as to whether rule 28(5) is *intra vires* and draws the instrument to the attention of the lead Committee and Parliament on this basis.

**Rule 37(1)**

9. As with rule 28(5), this rule makes provision in relation to decisions of the Tribunal and the Executive was asked for explanation of the *vires* of the provision.

10. The Executive has indicated that to avoid the possibility of a Tribunal becoming deadlocked in the absence of a member it is considered that rule 37(1) is making “incidental” or “supplemental” provision as provided for under section 34(2) of the Act.

11. The Committee accepts the Executive’s explanation and draws it to the attention of the lead Committee and Parliament for information only.

**Rule 37(2) and Rules 39(2)(b) and (5)**

12. At rule 37(2), it appeared to the Committee that paragraph 14(1)(b) of schedule 1 to the Act seems to rule out the words from “save as” to the end and allows no exceptions. The Executive was asked for further explanation.

13. The Committee also requested explanation as to the *vires* of rules 39(2)(b) and (5) in light of paragraph 10 of schedule 1 to the Act, which states that it is the Scottish Ministers who are to pay any expenses reasonably incurred by the President in the exercise of his or the Tribunal’s functions.

14. The Executive considers that the Committee’s observations in relation to rule 37(2) and rules 39(2)(b) and (5) are well founded and has undertaken to bring forward an amending instrument to address these points. The Committee draws the attention of the lead Committee and Parliament to this undertaking for information only.

**Rule 37(3)(a)**

15. The Committee asked for explanation of why a requirement to send a copy of the decision was thought necessary, given that such a requirement is already to be found in paragraph 14 of schedule 1 to the Act.

16. The Executive has explained that the intention was to clarify that, as a matter of practice, administrative responsibility for sending a copy of the decision rests with the Secretary.

17. As this rule appears to replicate a requirement already contained in a substantive provision of the parent Act, the Committee considers that there are doubts as to whether this rule is *intra vires* and reports to the lead Committee and Parliament on this ground.
18. Regulation 4 states that if the prescribed conditions apply, an appeal committee will be deemed “for the purposes of paragraph 6(6)(b)” of schedule 2 to have confirmed a decision of an education authority on a placing request. As paragraph 6(6)(b) is simply a regulation-making provision, following the wording of the enabling power itself, the Committee asked the Executive whether the phrase in question should not read “for the purposes of this Act”?

19. The Executive accepts that the phrase might have been set out as per the Committee’s suggested rewording, but indicates that it was thought helpful to make specific reference to the particular paragraph in the schedule. The Executive does not consider that the validity of the instrument is affected by this and has not undertaken to amend the instrument.

20. The Committee draws the attention of the lead Committee and Parliament to this instrument on the grounds of what it considers to be defective drafting, as outlined above.

21. The Committee asked the Executive for an explanation of article 3(2) and in particular the words “and that” at the end of the 4\textsuperscript{th} line.

22. The Executive has explained that article 3(2) sets a final cut-off of 60 days from the appointed day for the lodging of any reference under the 1980 Act. The Executive accepts that the words are not essential and explains that they were meant to be of assistance in the reading of a lengthy sentence.

23. The Committee notes the Executive’s explanation but considers that the meaning of article 3(2) could have been clearer and reports to Parliament and the lead Committee on this basis.

24. The Committee asked why the title of the Regulations did not follow the usual form for instruments of this nature.

25. The Executive has explained that the intention of using “amendment” rather than “(No.2)” was to make clear that the Regulations contained amended provision from that in the earlier, and now revoked, Regulations. The Executive accepts that the use of “amendment” was misplaced but does not consider that the validity of the instrument is affected.
Annexe 2

26. The Committee therefore draws the attention of the lead Committee and Parliament to the Regulations on the grounds of failure to follow proper legislative practice.

27. The Committee also asked the Executive to confirm that the Regulations were being made available free of charge to all known recipients of the original Regulations. The Executive regrets the oversight of an italic headnote to this effect and has confirmed that the appropriate arrangements are being made to put right this error.
Introduction

1. Today’s meeting is the last day when the Committee will hear oral evidence regarding Stage 1 of the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill.

2. There are three panels of witnesses:

   Panel 1
   
   Morgan Jamieson, National Clinical Lead for Children and Young People’s Health in Scotland, Dr David Love, British Medical Association (Scotland), Ms Jane O’Brien, Head of Standards and Ethics, General Medical Council, Dr Jenny Bennison, Deputy Chair (Policy), Royal College of General Practitioners (Scotland), Dr Helen Hammond, Royal College of Paediatrics and Child Health.

   Panel 2
   
   Jacqulie Roberts, Chief Executive and Ronnie Hill, Director of Children’s Service Regulation, Scottish Commission for the Regulation of Care.

   Panel 3
   
   Peter Peacock MSP, Minister for Education and Young People, Robert Brown MSP, Deputy Minister for Education and Young People, Maureen Verrall, Head of Children and Families Division, Education Department, Scottish Executive and Jackie Brock, Head of the Inspection and Quality Improvement Branch, Children and Families Division, Education Department, Scottish Executive.

3. A written submission from the British Medical Association is attached as paper ED/S2/05/21/3.

Written evidence

4. The call for written evidence on the general principles of the Bill closed on 18 November 2005. All written evidence received has been circulated to members and will be available on the Education Committee’s website.

Subordinate Legislation Committee

5. The Subordinate Legislation Committee has reported to the Committee and its report is included as paper ED/S2/05/21/4. It draws the lead committee’s attention to a number of issues.
Finance Committee

6. The Finance Committee conducted Level 1 scrutiny of the Bill and received responses to its standard questionnaire from HM Inspectorates of Constabulary and Education. These responses are included as papers ED/S2/05/21/5 and ED/S2/05/21/6.

Timetable

7. The Committee will discuss its draft Stage 1 report at its meeting on 30 November 2005. The Parliamentary Bureau has agreed that Stage 1 will be completed on 7 December 2005.

Eugene Windsor
Clerk
Education Committee
Joint Inspection of Services for Children and Inspection of Social Work Services (Scotland) Bill: Stage 1
Written submission from the British Medical Association
November 2005

Introduction

The British Medical Association (BMA) welcomes the opportunity to provide evidence on the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill.

The BMA supports the aims of the Scottish Executive to improve child protection services, especially in the case of very vulnerable children and young people. The medical profession is dedicated to their safety and wellbeing and is fully supportive of the introduction of measures that will improve communication between the various services for children.

Our interpretation of this legislation is that it will enable joint inspection teams to retrospectively review child protection measures and children’s services in local authority areas in order to be satisfied that comprehensive procedures are in place to manage such cases. It is not intended to be used to enable joint inspection teams to proactively become involved in individual ‘live’ cases. However, this is not entirely clear and we would welcome clarification that this is the case.

We would welcome clarity on the definition of children’s services, as we believe the proposed legislation would not simply cover child protection issues but other clinical services where quite different considerations should apply.

Patient Confidentiality

The BMA is deeply concerned that this legislation will enable access to patient identifiable data without the knowledge, consent or authorisation of the patient and that this erosion of confidentiality for children and young people could be detrimental to their care. The reasons for this are outlined below:

Confidentiality of personal health information is the cornerstone of the patient/doctor relationship. Young people need to be reassured that their health information, which they share in confidence with a doctor, will be treated confidentially otherwise they may feel unable to trust and seek help from healthcare professionals. If confidentiality is eroded by this proposed legislation, then it could have a drastic influence on whether young people report or seek help when they are at their most vulnerable.

There are circumstances where it is appropriate for a healthcare professional to breach confidentiality, for example where there is a suspicion that a child or young person is being abused. Under these circumstances, it is already legally permitted and indeed accepted in practice for the sharing of information between relevant professionals. The Scottish Executive’s proposals in this Bill do not appear to enhance the ability of professionals to act in these situations.

The proposals are instead much broader and effectively allow access to patient identifiable information, without consent, for audit purposes. Improving communication between the various services for children should not be achieved at the expense of children and young people’s confidentiality. The BMA would support the use of
alternative approaches such as seeking patient consent or the use of anonymised information, which are already commonly used in the NHS. In the case of General Practice a carefully considered agreement has been reached between the Scottish Executive Health Department and the Scottish General Practitioners Committee of the BMA on a Code of Confidentiality which we believe should be the basis of the procedures to access confidential health records. It would seem odd that after reaching agreement on this code following many months of intense discussion and consideration, it should be overridden almost immediately by this legislation. Our concerns on this matter are compounded by the fact that children and young people’s records will often contain sensitive, confidential clinical information about third parties, such as the child’s parents.

The SPICe briefing for this legislation states (page 15) that joint inspections based on a consent model for access to identifiable information is not appropriate because:

- “There is a risk that if consent were withheld in a number of cases, this could lead to a systematic bias in the final sample.”
- “…it would not be in the best interests of children who have experienced abuse to ask them for access to their records and, in so doing, revive memories of what they are trying to overcome.”

It is our understanding that all samples contain some degree of bias and it is difficult to argue that there will be systematic bias in the final sample without conducting an exercise to evaluate this assumption. In regards to the second point, no evidence has been provided to support this assumption.

While it may be that in a few cases involving abuse it might not be appropriate to seek consent, no such argument is advanced as to why consent should not be sought in the inspection of children’s services where there are no child protection issues.

The BMA does not believe the Scottish Executive has made a convincing case to justify the use of patient identifiable information without consent for the purposes of joint inspection. The Scottish Executive must clearly demonstrate that this degree of infringement of individual rights is necessary and justifiable or introduce measures to either seek consent or anonymise data.

Other issues for consideration

In addition to our primary concerns about confidentiality of patient information, the following issues must be addressed in order to ensure that this legislation is appropriate, effective and implementable:

1. **Medical records do not hold information that can directly contribute to assessment of the “quality indicators”**.

   The draft protocol that has been circulated for consultation by the Scottish Executive states that health records will only be accessed to verify specific areas relating to the relevant quality indicators. It is our belief that very few if any of these indicators could be assessed by inspecting medical records. The BMA would welcome clarification on the type of information that the joint inspection teams would be looking for in medical records. It may be that there are misconceptions about the type of information held in medical records and it may not be necessary to access individual patient records in order to gain the information required for inspections. The BMA would be happy to work with the Executive to help joint inspectorates accurately assess the quality indicators in child protection cases; however this may be better accomplished if doctors produced structured medical reports or undertook to be interviewed by members of the inspection team as part of the investigatory process.
2. **Safeguards on patient confidentiality in the protocol are not legally binding.**

   We welcome the inclusion of references to patient confidentiality in the draft protocol. However, as the protocol is not legally binding we would prefer that the issue of safeguards on patient confidentiality be written into the primary legislation to give patients and professionals confidence in this legislative proposal. We recognise however, that other aspects of the protocol require flexibility in order to deal with changing circumstances and should not be incorporated into the primary legislation or Regulations. Therefore, we would welcome reference to the protocol in the Regulations.

3. **There are no penalties for inspectorates who breach the Act or Regulations.**

   We are concerned that there is no reference to penalties for inspectorates who illegitimately breach confidentiality, particularly where inspectorates enter premises on “necessary or expedient” grounds (draft Regulations 5 and 6). The BMA would welcome such an inclusion to emphasise the duty of the Inspectorate to maintain confidentiality.

4. **There has been a lack of public consultation on this draft legislation.**

   The BMA is disappointed by the lack of consultation with patient organisations and the public on this proposed legislation. Allowing access to confidential patient records is a matter of public interest and we believe that the public should have a say in this matter. We are also concerned that there appears to have been no effort to seek the views of children, as it is their confidential medical information which could be accessed without their knowledge or consent. Older children may well consult doctors regarding sexual health problems and we feel it would be appropriate to seek their views on whether the possibility of joint inspection teams gaining access to this information would deter them from accessing care.

   The BMA would welcome consultation on the further drafting or Regulations and protocols as this legislation progresses through the Scottish Parliament.

   In conclusion, we understand the importance of improving child protection services and ensuring effective communication between the multi-disciplinary services for children and young people. However, we are deeply concerned that these measures will prove detrimental to the patient/doctor relationship and we would like to see the introduction of safeguards to ensure that consent or authorisation is sought before individual patient identifiable data is accessed. We are also concerned about the short timescale allowed for this legislation. A fine balance must be struck between the swiftness with which this legislation is created and allowing an adequate period to ensure it is of sufficient quality.

**For more information contact:**

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Subordinate Legislation Committee

Remit and membership

Remit:

1. The remit of the Subordinate Legislation Committee is to consider and report on-

   (a) any-

      (i) subordinate legislation laid before the Parliament;

      (ii) Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter,

   and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

   (c) general questions relating to powers to make subordinate legislation; and

   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

   *(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Dr Sylvia Jackson (Convener)
Mr Adam Ingram
Gordon Jackson (Deputy Convener)
Mr Kenneth Macintosh
Mr Stewart Maxwell
Murray Tosh

Committee Clerking Team:
Clerk to the Committee
Ruth Cooper

Senior Assistant Clerk
David McLaren

Assistant Clerk
Jake Thomas

Support Manager
Catherine Fergusson
Subordinate Legislation Committee

Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill at stage 1

The Committee reports to the lead Committee as follows—

Introduction

1. The Committee considered the delegated powers in the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill at its meetings of 8 and 15 November 2005. The Committee submits this report to the Education Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

2. The Executive provided the Committee with a delegated powers memorandum (a “DPM”) for the Bill, which is reproduced at Annex 1.

3. The Committee’s correspondence to the Executive and the Executive’s response to points raised are reproduced at Annex 2.

Delegated Powers Provisions

4. The Committee considered each of the delegated powers provisions in the Bill and reports as follows—

Section 1(6)(g) – Joint inspection of children’s services

5. This provision allows the Scottish Ministers to specify in an order persons or bodies, other than those listed in section 1(6)(a) to (f), to which section 1 of the bill applies. The Committee noted that the DPM states that “the power to amend the list by order will allow the list to be updated as required without recourse to primary legislation”. The power as drafted allows for the addition of persons or bodies but does not allow for the removal of those previously specified and the Committee therefore sought clarification. The Executive explained that it did not wish to take a power to remove persons or bodies from the list as, given the nature of the specified persons and bodies, this would only arise in the context of new primary legislation. Amendment of the list would therefore be dealt with by way of consequential amendment in new legislation. The Executive acknowledged that the DPM was misleading in this respect. The Committee was content with the Executive’s explanation of this matter.
Section 2 – Participation in inspections

6. The Committee noted that, under section 2, the bill confers power on Ministers to direct any person or body not listed or specified in an Order under section 1 to participate in the conduct of an inspection. The Committee considered this a very wide power to modify the inspection provisions of the bill.

7. In response to the Committee’s concerns, the Executive explained that the powers granted under this provision would be no greater than those available to the persons and bodies specified under section 1(6)(a) to (g). The Executive also pointed out that under section 2(2) Ministers may further limit the powers available.

8. The Committee remained concerned at the width of this power and in the absence of clarification from the Executive as to its use, agreed to draw it to the attention of the lead Committee for its consideration. The Committee considered that there may be policy considerations involved and that the lead Committee may wish to satisfy itself that the Executive’s has adequate reasons for taking this wide power.

Section 3(1) – Regulations for purposes of joint inspection

Section 5(3) – Functions of inspectors

9. The Committee was concerned at the level of delegation at these sections of the bill, where regulations will set out substantive parts of the legislation. The Committee noted the Executive’s justification that this was due to the evolving nature of the regulations and the need for flexibility as the joint inspection programme matures. The Committee, however, agreed to report on two points. Firstly, the Committee was concerned that the power to create offences for the enforcement of provisions of the regulations should be delegated to the regulations themselves, as provided for at sections 3(1)(f) and 5(3)(g) of the bill. The Committee considers it preferable for offences to be created in an Act itself and whilst accepting that there may be an argument for delegation, agreed that as a minimum, a limit to the extent of the penalties that can be imposed should be included on the face of the bill. The Committee therefore draws the attention of the lead Committee to these provisions.

10. Secondly, the Committee was concerned to note that there is not provision to cover matters of confidentiality at these sections of the bill. Whilst it may be possible for issues to be covered by existing Data Protection legislation, this has not been made clear. The Committee considered that the lack of a confidentiality provision was linked to its concerns on the level of delegation, and considered it a matter for its own report. However, the policy implications and how this might fit with the policy intention of the bill, the Committee considered a matter for the lead Committee. The Committee therefore draws this to the attention of the lead Committee as a matter that may require further clarification from the Executive.
11. The Committee wished to report to the lead Committee on areas of concern in advance of its evidence session with the Minister but due to the short timescales has also raised the above points in correspondence with the Executive. The Committee has requested a response from the Executive in advance of the stage 2 debate on the bill.

Section 7 – Interpretation

12. The Committee was concerned that the definition of “social work services functions” at section 7 was entirely left to subordinate legislation. The Executive clarified that this power relates to local authority functions and is therefore not unlimited. The policy intention is to catch a wide range of local authority functions and the Executive pointed out that any regulations will be subject to Parliamentary scrutiny under affirmative procedure. However, the Committee again remained concerned at this level of delegation and has issued correspondence to the Executive proposing that a definition is included on the face of the bill, with a power to amend via subordinate legislation.

13. The Committee has also requested a response on this point in advance of stage 2 of the bill and draws the matter to the attention of the lead Committee.

Section 8 – Consequential amendment and repeals

14. The Committee noted that section 8 of the bill makes a number of consequential repeals of other primary legislation that will be superseded by the bill but that there was no provision for consequential or transitional arrangements as a result of these repeals. The Executive is content that a transitional provision is not required but is currently considering whether to include a provision for the making of further consequential amendments. The Committee draws this to the attention of the lead Committee for its information.
Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill

Purpose
1. This Memorandum has been prepared by the Scottish Executive to assist the Subordinate Legislation Committee in its consideration, in accordance with Rule 9.6.2 of the Parliament’s Standing Orders, of the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill. It describes the purpose of those provisions conferring power to make subordinate legislation. The Memorandum explains why the matter is to be left to subordinate legislation and gives the reason for seeking the powers proposed.

Background to the Bill

Joint inspection of children’s services
2. The Scottish Executive set out in its Partnership Agreement of 2003 that it intends “to protect our most vulnerable children through a tough new inspection system for child protection services”. In March 2004 Ministers announced there would be a new multi-disciplinary children’s services inspection team led by Her Majesty’s Inspectorate of Education (HMIE). Its first tasks would be to undertake inspections of child protection services in all 32 local authority areas and to put in place integrated inspections for all services for children, both by 2008. The inspectorates and agencies involved are HMIE, Social Work Inspection Agency (SWIA), the Scottish Commission for the Regulation of Care (Care Commission), Her Majesty’s Inspector of Constabulary (HMIC), the NHS Quality Improvement Scotland; (NHS QIS) and, to a lesser extent, Her Majesty’s Chief Inspector of Prisons for Scotland (HMIP).

3. There are three levels of inspection: strategic, operational, and individual (at the level of the service user). At this latter level, information that can be drawn from records held on the individual will be a key source of evidence in the evaluation of the effectiveness of children’s services. The Executive considers that it is essential therefore for the success of the planned programme of child protection inspections that the joint inspection team can access individual records from appropriate agencies (including health records) and that the holders of individual records are empowered to release them. Primary legislation is required to allow inspectorates to obtain and share all information about individuals which may be relevant to the particular inspection in question.

Inspection of social work services
4. The Social Work (Scotland) Act 1968 gives SWIA extensive powers in relation to inspection of certain types of residential setting for looked after children, and a power of inquiry into the functions of a local authority. However, SWIA does not have an express power to inspect social work services generally. It is proposed that this Bill gives SWIA specific powers of inspection for all social work services.
Policy objectives
5. Our objectives in giving inspectorates the powers to work together jointly and to access and share information, for the purpose of inspecting children's services, are to support the improvement of children's services; to enable a joint inspection team to focus on the outcomes achieved for children and to respect the confidentiality of individual children and their families. Our objective in relation to SWIA is to give the inspection agency the full range of powers to inspect social work services provided by or on behalf of local authorities.

Summary of legislative provisions
6. Part 1 of the Bill makes provision to enable the inspection of children’s services jointly by any two or more of the persons or bodies which are either listed in section 1(6) of the Bill or directed to participate under section 2(1).

7. Part 1 provides in particular for:
   - The inspection to be of all children’s services or such children’s services as are specified; the inspection to cover services in the whole of Scotland or in whatever part of Scotland is specified; and for it to be in respect of the provision of those services generally or of how those services were provided to an individual child or group of children.
   - The purpose of the inspection which is to review and evaluate the effectiveness of the provision of the services being inspected.
   - A regulation making power to give powers for the purpose of the inspection.

8. Part 2 of the Bill makes provision in relation to persons to be appointed by the Scottish Ministers as social work inspectors to carry out inspections of social work services.

9. Part 2 provides in particular for:
   - A power to Scottish Ministers to appoint social work inspectors.
   - Giving such inspectors the functions of conducting inspections of and investigations into the provision of social work services and encouraging improvements in those services.
   - A regulation making power to make further provision concerning the exercise of the inspection functions.

10. Part 3 of the Bill makes provision in relation to regulations to be made under the Bill, amendment and repeals of certain enactments consequent on the provisions of Part 2 of the Bill, interpretation and commencement.
Provisions conferring power to make subordinate legislation

Part 1 – Children’s services
Section 1(6) (g) – power to specify a person or body as one to which section 1 of the Bill applies
Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

11. This provision allows the Scottish Ministers to specify in an order persons or bodies other than those listed in section 1(6)(a) to (f) as persons or bodies to which section 1 of the Bill applies. The effect of being so specified is that the person or body can then be required by the Scottish Ministers to conduct an inspection, jointly with another such person or body, relating to the provision of children’s services.

Reason for taking power
12. The Bill lists what are considered at present to be the appropriate persons and bodies to conduct the child protection inspections. This list may, however, need to be changed both to take account of changes in the constitution of the persons and bodies presently listed and as a result of developments in the way that possible joint inspections of children’s services may be delivered in future. The power to add to the list is also included in case it becomes apparent that we have omitted to include a body or person which should have been included.

13. The power to amend the list by order will allow the list to be updated as required without having to have recourse to primary legislation. We consider that this is a matter more appropriately dealt with by subordinate legislation.

Reason for choice of procedure
14. The power is subject to the negative resolution procedure. The addition of a particular person or body to the list in section 1(6) has only the reasonably limited effect of enabling Ministers to require that person or body to take part in conducting a joint inspection. The basic nature of joint inspections, or of the powers available to any joint inspection team, will not change in consequence and the negative resolution procedure is accordingly considered by the Executive to be appropriate.

Section 3(1) – power to make regulations for the purpose of a joint inspection
Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: draft regulations to be laid and approved by affirmative resolution of the Scottish Parliament

15. Section 3 provides that regulations can be made for the following matters:
• Requiring or facilitating the sharing or production of information (including medical records) for the purpose of an inspection under section 1 of the Bill. The term “medical records” is defined in section 7 of the Bill to mean “records relating to the physical or mental health of an individual”. The inclusion of the reference to “medical records" is intended to be an indication of the intention to use this regulation making power to allow access to this type of information.
It is considered necessary to avoid criticism of such use being an unexpected use of the power.

- Requiring any person to provide an authorised person with an explanation of information produced to the authorised person. This is intended to enable provision which will require persons with information to meet and discuss it with those conducting the joint inspection.
- Requiring information produced to an authorised person to be held in compliance with prescribed conditions and further disclosures to be made in compliance with such conditions. It is anticipated that provision will be made here in particular in relation to medical records. What is set down in regulations will have to be consistent with the terms of the Data Protection Act 1998. Such conditions as might be prescribed under this power will be relevant to this.
- Empowering an authorised person to enter any premises for the purposes of an inspection under section 1 of the Bill.
- Empowering an authorised person to disclose to a person prescribed any information of a prescribed nature which the authorised person holds in consequence of a joint inspection. It is anticipated that this will be used to enable information gathered in the joint inspection to be passed on to a relevant agency for further action if the joint inspection team uncovers (e.g.) evidence of abuse or misconduct in relation to which it considers that further action is required.
- Creating offences for enforcing any provision of the regulations.

**Reason for taking power**

16. This power is required to allow Scottish Ministers to provide those conducting the inspections with sufficient powers to enable them to do so. We have given further explanation of the individual provisions at paragraph 15 above. In addition the Executive will provide during the Parliamentary stages of the Bill a draft of the regulations which it is proposed to make under this power.

17. It is considered that these powers should be set out in subordinate legislation rather than being set out in the Bill. The reason for this is that while we can set out in general terms the kinds of powers which we anticipate will be required, we consider that the exact detail of the powers is best left to subordinate legislation. The Bill introduces a new type of inspection in terms both of the joint working and the range of services being inspected. In view of this, we consider that the conduct of such inspections will inform the detail of the powers required. While the methodology for the joint inspection of child protection services has been consulted on, a further round of consultation is planned over 2006 for the joint inspection of children’s services which is due to begin in 2008. Accordingly, we consider that the powers may have to be refined as the inspections proceed and it would be preferable to have the capacity to do this without having to have recourse to primary legislation.

**Reason for choice of procedure**

18. Regulations under section 3(1) may contain provisions concerning the obtaining and handling of sensitive information about individuals. The Executive therefore considers it appropriate that affirmative resolution procedure should apply to these regulations.
Part 2 – Social work services

Section 5(3) – power to make regulations for the exercise of functions under section 5(1) of the Bill

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by statutory instrument

Parliamentary procedure: draft regulations to be laid and approved by affirmative resolution of the Scottish Parliament

19. Section 5(3) provides that regulations can be made for the following matters:
   • As to the types of inspection or investigation which may be conducted.
   • Requiring or facilitating the production by a social work service provider to an inspector of information (other than “relevant medical records”). The provision in paragraph (b) is limited to information held by a social work service provider and cannot enable production of “relevant medical records” which are defined in section 7 to mean medical records which have been prepared by a registered medical practitioner (within the meaning of section 2 of the Medical Act 1983) who is or has been, responsible for the clinical care of the individual to whom the records relate. Provision can only be made (under paragraph (c)) requiring or facilitating the production of such “relevant medical records” to a medically qualified inspector.
   • Requiring an explanation of information to be provided to an inspector. Our comments in relation to the similar provision in section 3 are relevant here.
   • Empowering an inspector to enter any premises.
   • Empowering an inspector to disclose to a person prescribed for the purposes of this paragraph any information of a prescribed nature which the inspector holds in consequence of conducting an inspection or investigation under section 5(1). Again our comments in relation to the similar provision under section 3 are relevant.
   • Creating offences for enforcing any provision of the regulations.

Reason for taking power

20. This power is required to allow Scottish Ministers to provide those carrying out the functions under section 5(1) with sufficient powers to enable them to do so. We have given further explanation of the individual provisions at paragraph 19 above. In addition the Executive will provide during the Parliamentary stages of the Bill a draft of the regulations which it is proposed to make under this power.

21. As is the case with joint inspections, we consider that the powers in connection with the functions of social work inspectors under Part 2 of the Bill may have to be refined from time to time. Again, it would be preferable to have the capacity to do this without having to have recourse to primary legislation. We therefore consider that subordinate legislation is also appropriate here. Subordinate legislation under Part 2 will also be subject to affirmative resolution procedure.

Reason for choice of procedure

22. As with regulations under section 3(1), section 5 regulations may contain provisions concerning the obtaining and handling of sensitive information about individuals. Once again, the Executive therefore considers affirmative resolution procedure to be appropriate.
Part 3 – General
Section 7 (definition of “social work services functions”) – power to make regulations defining which local authority functions are to constitute “social work services functions”

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: draft regulations to be laid and approved by affirmative resolution of the Scottish Parliament

23. The definition of “social work services functions” in section 7 contains within it power to prescribe in regulations which local authority functions are to be constitute social work services functions. Part 2 of the Bill is concerned with inspections of, and investigations into, the provision of social work services. A service is a social work service if provided by a local authority in the exercise of any of their social work services functions or provided by another person in terms of arrangements made by an authority in exercise of those functions.

Reason for taking power
24. Leaving the definition of what is to constitute a social work service function to be set out in regulations allows suitable flexibility so that, as the exact nature of, and the statutory basis for, relevant local authority functions develops in future, the regulations can be amended and the appropriate definition readily kept in line with changes. This will ensure that the coverage of Part 2 inspections can be readily kept in line with developments in the social work services field.

Reason for choice of procedure
25. This power is subject to the affirmative resolution procedure. This is considered appropriate since the definition of what functions are to be social work services functions is central to determining the scope of inspections and investigations under Part 2 of the Bill and the consequent scope of any compulsory powers provided by way of regulations under section 5(3).
Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill at Stage 1

The Subordinate Legislation Committee today considered the above bill and asks the Executive for explanation of the following matters.

Section 1(6)(g) – power to specify a person or body as one to which section 1 of the Bill applies

The Committee noted that according to the Memorandum, this power is required to update the list without having recourse to primary legislation. However, the Committee noted that the power is not a power to amend the list but to add to it and therefore seeks clarification on the Executive’s policy intention in relation to this power. The Executive is asked to comment.

Section 2 – power to specify a person or body as one to which section 1 of the Bill applies

The Committee noted that section 2 of the bill confers power on Ministers to direct any person or body not listed in or specified in an Order made under section 1 to participate in the conduct of an inspection. It appears to the Committee that there is no limit on the powers that can be exercised by such a person, and therefore that this section seems to confer a very wide power to modify the provisions of the bill, albeit in relation to a particular inspection. The Executive is asked to clarify this power.

Section 3(1) – power to make regulations for the purpose of a joint inspection

Section 5(3) – power to make regulations for the exercise of functions under section 5(1) of the Bill

The Committee examined whether the correct balance between primary and subordinate legislation has been achieved at these sections, given that the regulations will set out substantive parts of the legislation. The Committee seeks explanation from the Executive as to why it was decided that so much of the legislation would be laid out in these regulations, rather than on the face of the bill. The Executive is asked for clarification.

The Committee’s attention was also drawn to 3(1)(f), which permits the regulations to create offences without any limitation on the penalties that may be imposed. The Committee considers it preferable for offences in relation to breaches of regulations under an Act to be created in the Act itself and the Executive is asked to comment.
Section 7 (definition of “social work services functions”) – power to make regulations defining which local authority functions are to constitute “social work services functions”

The Committee considered that the definition of “social work services functions” is a key provision of the bill and questioned whether it is acceptable to leave this matter entirely to subordinate legislation without any limitation. The Committee considered that such a definition should be on the face of the bill, as it considered that there was scope for the regulations to go beyond the intention of the Bill. The Executive is asked to comment.

Section 8

The Committee noted that Section 8 of the Bill makes a number of consequential repeals of other primary legislation that will be superseded by the bill, but that there is no provision for transitional arrangements or consequential amendments in relation to those repeals. The Committee therefore asks the Executive if it is content that no such power is needed in this instance.
Joint Inspection of Services for Children and Inspection of Social Work Services Bill

Thank you for your letter of 8 November and for the opportunity to comment on the Committee’s consideration of the above Bill.

Taking the Committee’s points in order:

**Section 1(6)(g) – power to specify a person or body as one to which section 1 of the Bill applies**

Para 2: Section 1(6)(g) provides for the addition to the list of persons or bodies that may be requested to carry out joint inspections of any other person or body specified by Scottish Ministers. The persons and bodies currently listed in section 1(6) (a) to (f) are all established in terms of primary legislation. In the case of Her Majesty’s inspectors of schools, social work inspectors and special Health Boards the primary legislation is referred to. The Scottish Commission for the Regulation of Care is constituted under section 1 of the Regulation of Care (Scotland) Act 2001. Her Majesty’s Chief Inspectors of Constabulary and of Prisons for Scotland are respectively appointed in terms of sections 33 of the Police Scotland Act 1967 and in terms of sections 4(1) and 7 of the Prisons (Scotland) Act 1989. Any amendment or alteration to the list arising by reason of a change of name or the abolition of one of the persons or bodies listed, or from the creation of a relevant new person or body, could accordingly only arise in the context of new primary legislation. Amendment of the list in such circumstances would invariably be dealt with by way of consequential amendment in the new legislation. It is not envisaged that there will be circumstances in which it will be necessary to amend the list by removal from it. In the event that a listed person or body is no longer considered as appropriate for participation in joint inspections that person or body will not be requested by Ministers to participate in joint inspections.

While the Executive is grateful to the Committee for drawing this matter to its attention (and apologises for the fact that the Memorandum on Delegated Powers was misleading as to the reasons for taking this power) it is considered that the provision as drafted is appropriate in the circumstances.

**Section 2 – power to specify a person or body as one to which section 1 of the Bill applies**

Para 3: The powers to be potentially available to authorised persons participating in joint inspections will be those specified in terms of regulations to be made under section 3 to which the affirmative procedure will be applicable. Section 2 (2) clarifies that an “authorised person” for that purpose includes an individual directed to participate in an inspection under section 2(1). The powers available to a person or body appointed under section 2(1) will accordingly be no greater than those available to the persons and bodies listed under section 1(6)(a) to (g). Those powers are
however subject to the additional constraint in terms of section 2(2) that Ministers, when making a direction to such a person or body to participate in a particular joint inspection, may further limit the powers available. It accordingly does not appear to the Executive that it can be said that there is “no limit” to the powers that can be exercised by such a person or that the powers potentially available are inappropriate.

**Section 3(1) – power to make regulations for the purpose of a joint inspection**

**Section 5(3) – power to make regulations for the exercise of functions under section 5(1) of the Bill**

Paras 4: The reasons why the Executive has decided on the current balance between primary and secondary legislation at S. 3(1) is that the arrangements for the Joint Inspection of Children’s Services by 2008 will need to evolve as the consultation and the pilot inspections are completed. The draft regulations, supported by the draft protocol, will be fit for purpose for the 2006-2008 joint inspection programme of child protection services. However some flexibility to return to Parliament to modify these regulations by affirmative resolution is required as the joint inspection programme matures.

Similarly, at S. 5 (3), SWIA has just embarked on a pilot Social Work Inspection programme. Some flexibility to modify these regulations is required to ensure that any lessons from the pilots can be introduced, if this would lead to a more effective inspection programme.

We recognise the concerns that the Committee may have but we suggest that the requirement to ensure that regulations are subject to affirmative resolution provides reassurance to Parliament that any changes will be subject to Parliamentary scrutiny.

Para 5 – Policy is not for every conceivable breach of whatever regulations may be made under section 3 in the future necessarily to constitute a criminal offence. The Executive therefore considers it appropriate that the details of criminal offences should appear within the regulations rather than in the Bill itself and of course the regulations are subject to affirmative resolution.

**Section 7 (definition of “social work services functions”) – power to make regulations defining which local authority functions are to constitute “social work services functions”**

Para 6. The regulations do not extend the powers of Social Work services in any way and there is no intention to extend the powers beyond those set out in regulations. The power relates to local authority functions and is therefore not unlimited and our policy intention is to catch a wide range of local authority functions. The Executive therefore considers that such a power is appropriate. As mentioned at Para 4, any modification would in any event be subject to Parliamentary scrutiny.

**Section 8**

Para 7: The Executive confirms that it is satisfied that, as the only substantive provision being repealed is section 6 of the Social Work (Scotland) Act 1968,
no requirement for a transitional provision. The Bill does not currently include provision for the making of further consequential amendments by way of subordinate legislation and consideration is being given to a possible amendment in this respect. The Executive is grateful to the committee for drawing this point to its attention.
Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill at Stage 1

The Subordinate Legislation Committee today considered the above bill and agreed the terms of its report to the lead Committee. In addition to matters it wishes to highlight in its report to the Education Committee, the SLC agreed to raise issues with the Executive, given the truncated timescale for this bill.

Section 3(1) – power to make regulations for the purpose of a joint inspection

The Committee raised in previous correspondence its concern in relation to 3(1)(f), which permits regulations to create offences without any limitation on the penalties that may be imposed. The Committee noted the Executive’s response in relation to this matter but remained concerned about this departure from usual practice. The Committee draws the Executive’s attention to a similar provision contained at section 54 of the Fire (Scotland) Bill at stage 1, which was withdrawn at stage 2 of the bill. The Committee asks for further comment in advance of stage 2.

Section 7 (definition of “social work services functions”) – power to make regulations defining which local authority functions are to constitute “social work services functions”

The Committee remained concerned that the definition of “social work services functions”, which is a key provision of the bill, has been left entirely to subordinate legislation. The Committee puts to the Executive the proposal that a definition of “social work services functions” should be included on the face of the bill, with the power to amend the definition delegated to subordinate legislation. The Executive is asked to comment.

The Committee would wish to consider the Executive’s views on these matters in advance of stage 2. I would therefore request that a response be submitted to the Committee by 1 December 2005.
JOINT INSPECTION OF CHILDREN’S SERVICES AND INSPECTION OF SOCIAL WORK SERVICES (SCOTLAND) BILL

FINANCE COMMITTEE QUESTIONNAIRE

Consultation

1 As one of the Inspectorate bodies involved in the Joint Inspection of Children’s Services, HMIC was included in the consultation process but made no individual comment. Accordingly, HMIC made no comment on the financial assumptions relating to the Bill.

2 Not relevant.

3 Yes.

Costs

4 I accept the comment at paragraph 26 of the Explanatory Notes, regarding the costs associated with the Bill. However, at paragraph 27, the issue of the need for additional resources for some inspectorates is discussed. While I fully support the broad principles behind the purpose of joint inspections, I believe it is important to recognise that the impact of joint inspections on the work of different Inspectorates will depend on the level of engagement of that body in the area of the activity being inspected. A good example of this is the current involvement of HMIC in the Joint Inspection of Children’s Services, where HMIC currently funds an additional police superintendent from within HMIC on secondment to the Children’s Services Unit and another police officer, on rotational short secondments, typically at inspector or chief inspector rank, is being funded by police forces, on behalf of the Association of Chief Police Officers, to contribute to the Child Protection Inspection currently being conducted by the Children’s Services Unit. Both these posts are new and, while the work of the Children’s Services Unit removes a small amount of police inspection time for HMIC, this saving can only be realised by the marginal increased opportunity for HMIC to scrutinise other priority areas of policing.

5 Yes.

6 Yes.

Wider Issues

7 I refer to my answer to question 4.

8 It is unlikely that there would be future costs associated with the Bill.
Dear Susan

JOINT INSPECTION OF CHILDREN’S SERVICES & INSPECTION OF SOCIAL WORK SERVICES (SCOTLAND) BILL – FINANCIAL MEMORANDUM

Further to your letter of 9 November, I enclose the completed questionnaire as requested and note it will be forwarded to the Education Committee, which is the lead committee on the above Bill.

Yours sincerely

Hazel Dewart

Hazel Dewart
Head of Business Management Unit
QUESTIONNAIRE

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the Financial Memorandum for the Joint Inspection of Children’s Services & Inspection of Social Work Services (Scotland) Bill. In addition to the questions below, please add any other comments you may have which would assist the Committee’s scrutiny.

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
   Yes to both parts of the question
2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
   Yes
3. Did you have sufficient time to contribute to the consultation exercise?
   Yes

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
   Yes
5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
   Yes
6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
   Yes

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
   N/A
8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
   There may be future costs relating to the development of health protocols, e.g. in the revision or updating of Patient Information leaflets but these are unlikely to be significant, or to fall to HMIE.