The Committee will meet at 10.00 am in Committee Room 4 to consider the following agenda items:

1. **Accountability and Governance inquiry:** The Committee will take evidence from—
   - Jane Ryder, Scottish Charity Regulator;
   - Professor Lorne D Crerar, Convener, Standards Commission for Scotland; and
   - Jacquie Roberts, Chief Executive, Scottish Commission for the Regulation of Care.

2. **Inquiry into the Cost of the Local Authority Single Status Agreement:** The Committee will consider the Scottish Executive’s response to the Committee’s report on the cost of the Local Authority Single Statement Agreement.

3. **Adoption and Children (Scotland) Bill (in private):** The Committee will consider its draft report on the Financial Memorandum of the Adoption and Children (Scotland) Bill.

Susan Duffy
Clerk to the Committee
Room T3.60
Extn 85215
The papers for this meeting are:

**Agenda Item 1**

Submissions from:
- Office of the Scottish Charity Regulator;
- Standards Commission;
- Care Commission; and
- Scottish Executive.

PRIVATE PAPER

**SPICe Briefing: Regulatory and Investigatory Bodies created by the Parliament since Devolution** (previously circulated to Members, available from Scottish Parliament website)

**Agenda Item 2**

Paper from the Clerk attaching the Scottish Executive response

PRIVATE PAPER

**Agenda Item 3**

Additional submissions from:
- Scottish Executive; and
- COSLA.

PRIVATE PAPER
Finance Committee

15th Meeting 2006, Tuesday 23 May 2006

Accountability and Governance Inquiry

1. The Committee launched its Accountability and Governance Inquiry on 1 March 2006. The remit of this inquiry is to:

- examine the growth in the number of independent, regulatory and investigatory bodies and the associated growth in funds allocated since devolution;
- examine the adequacy of processes for setting and scrutinising the annual budgets of such bodies;
- examine the appropriateness of existing lines of accountability and how this process works in practice; and
- identify whether there are any potential overlaps in remits and responsibilities of independent, regulatory and investigatory bodies and any financial implications of such overlaps.

2. A call for evidence was issued and all submissions which have been received can be found on the Committee’s webpage.

3. The Committee began formal evidence taking with a session on 16 May involving the Auditor General and Audit Scotland, the Scottish Commission for Public Audit and the Scottish Legal Services Ombudsman.

4. The Committee meeting on 23 May will involve taking evidence from a selection of investigatory and regulatory bodies that are financed by the Scottish Executive - these are the Office for the Scottish Charity Regulator (OSCR), the Standards Commission for Scotland, and the Care Commission (Scottish Commission for the Regulation of Care). At its meeting on 6 June, the Committee will take evidence from parliamentary commissioners and the public services ombudsman and will take evidence from the Scottish Executive and the Scottish Parliamentary Corporate Body (SPCB) on 13 June.

5. The written submissions provided by witnesses for the evidence session on 23 May are attached as follows:

- Office of the Scottish Charity Regulator
- Care Commission
- Standards Commission for Scotland

6. In addition, the submission from the Scottish Executive is also attached.
Submission from the Office of the Scottish Charity Regulator

1. OSCR was established in December 2003 following publication and consideration of the 2001 McFadden Report, which clearly articulated the need for modernisation of charity law and regulation in Scotland. The background to the establishment of OSCR included public and charity sector concerns about the absence of adequate regulation, such that the number and names of operational charities were unknown and lack of regular monitoring gave opportunities for abuse. These concerns were focused by two well publicised fund raising scandals, which again highlighted the need for a modern Scottish charity regulator.

2. OSCR was established as an Executive Agency operating under a Framework Agreement. As an Executive Agency, OSCR has exercised the powers of the Lord Advocate under the Law Reform (Miscellaneous) Provisions (Scotland) 1990, previously exercised by the Scottish Charities Office. OSCR’s objectives set by Ministers were to:
   - Develop a regulatory framework in which the public have confidence and in which charities can grow and flourish, clear in the knowledge of their rights and responsibilities.
   - Manage the transition of the organisation from an Executive Agency to a statutory public body following the enactment of the proposed charity legislation.

3. The Charities & Trustee Investment (Scotland) Act 2005 was passed by the Scottish Parliament and received Royal Assent in July 2005. The Act established the Office of the Scottish Charity Regulator on a statutory footing, creating a body corporate which is an office holder within the Scottish Administration. The fact that the office holder is a body corporate, rather than an individual, is a new model of governance in Scotland.

4. A series of commencement orders has established the body corporate on 1 March and made necessary transition orders. The statutory Register which OSCR is obliged to maintain came into being on 1 April, which is the date when a number of OSCR’s new statutory responsibilities commenced, while other new responsibilities and powers commence on 24 April. There still remain a series of Regulations to be laid before remaining sections can commence, and the Scottish Executive will be consulting on these after 24 April.

Accountability

5. As a Non Ministerial office holder, OSCR is directly accountable to the Scottish Parliament and is under a statutory obligation to lay a copy of its Annual Report before Parliament, as well as sending a copy to Scottish Ministers. OSCR accounts are not consolidated with the Scottish Executive’s. The Chief Executive is appointed the Accountable Officer.
6. As part of the Scottish Administration, OSCR is under a duty to carry out its functions in the public interest and is subject to the jurisdiction of the Public Services Ombudsman, the Freedom of Information Commission and the Commission for Scotland and the Chief Investigating Officer. OSCR has a statutory responsibility to take account of the principles of Best Regulation, and also to promote equal opportunities.

7. A key principle of modern regulation is that the regulator should have operating independence free of political or undue sector influence. The constitutional form of Non Ministerial office holder was chosen because it is free from Ministerial control and direction. OSCR will have operating independence in making regulatory policy and making regulatory judgements in the context of its statutory responsibilities to observe the principles of good regulatory practice. As a Non Ministerial office holder, OSCR reports directly to the Parliament.

Establishing & Scrutinising Budgets

8. OSCR commences its statutory functions with a baseline resource figure of £3.6m. This figure was approved by Ministers after submission by the Executive Agency of a detailed Resource Impact Assessment which offered a range of options. The figure of £3.6m reflected a pragmatic option based on an estimated case load, but identifying a number of key variables which will be tested over the next 2 – 3 years. The Resource Impact Assessment was based on a recognised business model, the European Framework for Quality Management (EFQM Model) which allows objective comparison across essential areas of infrastructure and operations. The Resource Impact Assessment was approved by the Development Department, in consultation with the Finance Department, before a recommendation for approval was put to Ministers.

9. We anticipate that OSCR’s future budget requirements will be proposed to the Scottish Executive as part of the spending review process. The Accountable Officer has been in discussion with the Head of Development Department about the appropriate formal mechanism for submission of the business case.

Avoiding Duplication

10. In the course of the consultation on the Bill and passage of legislation, there was considerable discussion of the potential for “dual regulation” and overlaps between OSCR and other regulatory and investigatory bodies. The legislation has taken this into account by:
   - Delegating investigation and intervention powers in respect of Registered Social Landlords to Communities Scotland, although OSCR remains responsible for reviewing decisions.
   - Requiring OSCR to “seek to secure co-operation between it and other relevant regulators”.
   - Giving OSCR the power to disclose any information to any public body or office holder in Scotland or elsewhere and empowering any
Scottish public body to disclose information to OSCR for relevant purposes.

11. The Executive Agency already had in place a Concordat of Understanding with the Crown Office as well as with the Charity Commission in England. Co-operation with the Charity Commission to date has included the issue of joint guidance for cross border charities. The Agency had also been working with Communities Scotland to develop a Concordat.

12. At its first Board meeting, the Board of the Non Ministerial Department endorsed the principle of co-operation with related bodies and agreed that OSCR should proceed with operational Concordats firstly with the Charity Commission, Communities Scotland, HMRC and the Crown Office. In due course OSCR expects to enter into Concordats with a range of other regulators including the Public Services Ombudsman, the Care Commission, the Financial Services Authority and other public bodies as appropriate.
Submission from the Care Commission

Introduction
The Care Commission (Scottish Commission for the Regulation of Care) was established by the Regulation of Care (Scotland) Act 2001 as a national independent care regulator. The overall aims being:

- To further improvements in the standards of care provided in Scotland and protect people who use these services by:
  - effective regulation
  - encouraging improvement in the quality of services
- To keep Ministers and the public informed about the quality of care services, including early education
- To balance income and expenditure, so far as is reasonably practicable

The intention is to develop a modern approach to the regulation of care which will promote the delivery of progressive, innovative and integrated care services.

The Care Commission was set up as a non-departmental public body to act as an independent regulator of care services across public, voluntary and private sectors. It operates under the general supervision of Scottish Ministers, but is independent in its day to day operation.

The Care Commission currently regulates over 15,000 services, serving approximately 320,000 people (children and adults). The registered services are complex and diverse and include childminders, care homes, housing support services, independent schools and private hospitals.

Its operating budget for 2006-07 is £29.1m with £17.8 funding from the Scottish Executive and £11.3m income from fees charged to regulated services.

1. General Financial Considerations
The Care Commission has a clearly defined framework of financial accountability and performance management with which it must comply. This is set out in the Management Statement and Financial Memorandum, which describes the functions, duties and powers of the Care Commission and in particular the financial management required of the Care Commission.

The Chief Executive of the Care Commission is designated as the Accountable Officer. She is personally responsible for safeguarding the public funds, ensuring propriety and regularity, and securing Best Value. In addition, the Board of the Care Commission has a duty to ensure that it operates within its statutory and delegated authority and takes positive action where required.

The Scottish Ministers are ultimately accountable to the Scottish Parliament for the activities and performance of the Care Commission.
2. Questions

(1) How can budgetary control be balanced with independence?

(2) Is it possible to implement section B2 of the Paris Principles which seek to ensure that the independent bodies are not subject to financial controls which might affect this independence and retain suitable budgetary controls?

These two questions are similar in concept so a combined response to both is given below.

It has been accepted that through the NDPB arrangement there is a need for the organisation to exercise a degree of independence financially. However, because the body is sponsored by the Scottish Executive and is funded by the taxpayer and through fees which the registered services have to pay, Ministers will wish to satisfy themselves that the financial affairs of the Care Commission are being managed prudently and effectively.

Key to this are robust and reliable budgetary control procedures which the Departmental Accountable Officer can rely upon to provide the level of assurance required.

It is agreed by the Scottish Executive that it is possible for Ministers and Departments to exercise financial controls over NDPB’s whilst permitting bodies to exercise their functions independently. It is an important principle that Government should remain at arm’s length from the operation and design of particular regulatory regimes because directing regulators and determining their priorities could potentially undermine the credibility of the regulator’s judgement.

It could be argued that the principle of independence as a regulator is challenged by all the current financial controls determined by the Sponsor Department of the Scottish Executive.

We list a few factors which potentially challenge independence:

- Lack of flexible budgeting. Our budget is controlled on the basis of gross expenditure rather than net expenditure after income. This can sometimes make it difficult to respond to changes in volume of activity even though this can be financed through additional income. Changes to gross budget have to be agreed with the sponsor department. This particular principle is a potential barrier to engaging in Shared Services, a key ministerial policy initiative.

- Use of balances. At present there is no automatic authority for NDPB’s to retain and carry forward surplus balances between financial years (although there is end year flexibility to carry-forward surpluses with the approval of the sponsor Department). This position is inconsistent with some other public bodies, for example local authorities, and does little to encourage forward financial planning.
• According to its Financial Memorandum, the Care Commission is responsible for determining the number of staff required and the most appropriate organisational structure to deliver to its remit economically, but significant changes must be approved in advance by the Department. In practical terms therefore the Care Commission has limited scope to make staffing changes to meet regularly changing requirements.

• Pay and conditions of service. The Public Sector Pay Policy Unit issues guidance in relation to overall public sector pay policy which is generally interpreted as binding on all public sector bodies including the Care Commission. The Care Commission has therefore little or no room to enter into meaningful negotiations with staff representatives.

Relatively minor adjustments to the Management Statement and Financial Memorandum would afford the Care Commission the level of independence which it requires to carry out its function effectively, but still retain sound budgetary control.

3. (3) What are your views on the adequacy of existing budgetary controls?

The Care Commission is subject to a robust set of budgetary controls, both internal to the organisation and from the Sponsor Department. The controls centre on two main areas:

• Budget setting, and
• Budgetary control and management.

Budget setting: before any budget proposals are submitted, initial discussions take place with the Sponsor Department to obtain guidance on overall budget policy. This guidance includes:

• Ministerial expectations in relation to service developments or overall strategy.
• Guidance on likely policy on fees to be determined by the Minister (which does not however affect the gross budget).
• Pay remit and inflation assumptions to be included in the budget and efficiency savings required.

The Budget is submitted to the Board for its agreement and then to the Minister, who gives final approval for funding purposes. In this way the Care Commission budget is effectively determined annually by the Minister.

Budgetary control: budget monitoring reports are compiled monthly and submitted to the Finance Committee and the Sponsor Department. There are bi-monthly Sponsor Review meetings at which any issues of concern can be discussed. At the end of each year the Annual Report and Accounts is compiled and audited by Audit Scotland. This is submitted to the Sponsor Department and is placed before Parliament each year.
The Care Commission is therefore subject to a comprehensive set of financial controls, both internally and externally and we would not propose any significant change to the present arrangements.

4. (4) Are there potential overlaps in remits and responsibilities of independent regulatory and investigatory bodies?

The care services regulated by the Care Commission cover a wide range in the health education and social care sector. It is therefore inevitable that the Care Commission has overlapping interests with a number of inspectorates or other scrutiny bodies. It is important to be clear that where there is overlap with other scrutiny agencies, there are only elements of overlap and the functions and remit of each body are very different and distinct.

Whilst the Care Commission is fully committed to the principles of better regulation and working with care service providers on improvement, the vulnerability of many of the care service users needs to be taken into account. The distinct purpose of providing safeguards through regulation cannot be lost, and is still the assurance sought by many members of the public.

It is important to note that while we can identify potential overlaps with a number of agencies the Care Commission’s statutory function as the independent regulator of a range of care services is not carried out by any other body.

The Care Commission is keen to avoid unnecessary duplication and where there is a potential overlap we are working alongside other regulators, inspectorates and scrutiny bodies to develop a joint approach to scrutiny as part of an improvement agenda. The main bodies where there is potential overlap include:

- Her Majesty’s Inspectorate for Education: there are shared responsibilities and overlaps in the scrutiny of some education and children’s services. In this case an integrated inspection regime has been set up, supporting joint inspections and shared inspection reports.
- the Social Work Inspection Agency: there are overlaps in terms of the registered care services directly provided by local authorities and those purchased by local authorities
- NHS QIS: there are overlaps in terms of registered independent hospitals providing care to NHS patients
- Communities Scotland: there are overlaps in terms of the registered Housing Support and Care at Home services provided by Registered Social Landlords
- Mental Welfare Commission: there are overlaps in terms of the registered care services provided for individuals with mental impairment
- Local Authorities: duplication of effort has been identified in certain authorities who undertake to ensure compliance through their contracting regime for specific types of care services. We are currently working with COSLA to develop a national agreement to clarify
respective roles and responsibilities to eradicate duplication. Health and Safety Executive: investigations may coincide with a Care Commission complaints investigation.

For all these bodies an MOU, Concordat or Protocol has been or is in the process of being agreed to eradicate unnecessary duplication and ensure appropriate targeting of scrutiny. Information sharing and integrated inspections have already produced financial efficiencies.

Following a review of registration and inspection methodology the Care Commission has developed an ‘annual return’ which is intended to replace much of the current pre-inspection information requested and also enable the Scottish Executive to reduce the number of requests they make for similar information. It is intended that the annual return collects information from all care services for one point in time each year. This will allow an accurate picture of data on care services in Scotland to be built up over time and give the Care Commission useful information which can be shared with other regulators, inspectorates and scrutiny bodies and the Scottish Executive.

5. It is important to emphasise that all the bodies mentioned (and others) have been set up at different times in response to different demands and priorities.

The Care Commission believes that there should be a stable coherent framework for the regulation of services which includes the private and voluntary sector and which is determined by Scottish Ministers. Any changes to the framework of regulation should be infrequent, transparent and clearly explained and consistent with government policy priorities.
Submission from the Standards Commission for Scotland

Thank you for your letter of 01 March 2006 in which you invite the Commission to make a written submission to the inquiry.

I enclose the Commission’s submission in which we respond to the three questions you asked us to address.

The Commission would be pleased to assist further in this inquiry if required.

Yours sincerely

PROFESSOR LORNE D CRERAR
Convener

Can you outline the internal process which occurs to establish what your required budgets are for each financial year?

1 The Standards Commission for Scotland determines its budgetary requirement over a three year cycle. Funding requirements are calculated using three individual departmental budgets, which are subject to robust internal processes before being amalgamated into one composite organisational budget for each of the three years.

2 The first financial year’s budget is supported with a narrative report which details the rationale and requirements applied in calculating the organisation’s requirements during this period.

3 The Standards Commission for Scotland’s budget comprises of three separate Departmental budgets:

   - Office of Administration and Hearings;
   - Office of the Chief Investigating Officer; and
   - Standards Commission Members Budget*

*The Office of Administration and Hearings is responsible for the Commission Members budget.

4 During January draft budgets are initially determined by each office manager, by using source information as detailed within Appendix A, who calculate the estimated monthly requirement for each budget heading appropriate to their office requirements. Following completion of this process the budget of the Office of the Chief Investigating Officer is reviewed by Chief Investigating Officer and all budgets by the Secretary to the Commission.
5 The budgets are then submitted for the consideration and approval of the Commission’s Accounting and Monitoring Sub Committee before final approval is sought for the overall budget profiles from the Members of the Standards Commission. It is only at the conclusion of this final approval stage that the composite budget is submitted for consideration of the Scottish Executive.

6 During February the Scottish Executive sponsor division writes to the Secretary of the Commission to confirm the baseline budget allocated to the Commission in totality. Currently the baseline budgets allocated to the Commission do not meet operational requirements. Therefore, the Budget profiles, as approved by the Members of the Commission, are submitted for the scrutiny and agreement of our Scottish Executive sponsor division during February.

7 Throughout the financial year the following monitoring and reporting activities occur:

**Monthly**
- Expenditure on the combined and individual budget reports for the current year is monitored and reported on a monthly basis to the Chief Investigating Officer and Secretary to the Commission
- A Monthly financial report is provided to sponsor division detailing expenditure incurred in month and also expenditure requirement for the following month – (Grant in Aid application)
- Sponsor division is informed about the projected combined budget outturn as part of the monthly reporting process.

**Quarterly**
- The Accounting and Monitoring Sub Committee given quarterly budget / expenditure reports. In addition, an update provided to all Members of Standards Commission during appropriate monthly meeting
## Methodology Used to determine budgetary requirements

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Can you outline the process for the Scottish Executive scrutinising and approving this budget bid?

8 The budget, as approved by the Members of the Standards Commission, is submitted with a supporting narrative to the Public Bodies and Relocation Division, Finance and Central Services Department, Scottish Executive. As scrutinising and approving the budget bid is the responsibility of the Scottish Executive we are not aware of the detail of the process. However, we understand that Sponsor Division officials scrutinise the budget, if applicable ask the Commission to revise the budget submission and, following agreement and acceptance of the proposed budget, submit to Scottish Ministers for approval.

Do you consider there to be any overlaps between your remit and the remit of any established or proposed independent, regulatory or investigatory body.

9 There are no overlaps between the Commission’s remit and the remit of any established or proposed independent, regulatory or investigatory body.

10 The Commission’s remit is to encourage high ethical standards in public life through the promotion and enforcement of Codes of Conduct for Councillors and Members of Devolved Public Bodies. Alleged breaches of these Codes are investigated by the Chief Investigating Officer (“CIO”) who operates independently of the Commission when undertaking investigations.

11 For the assistance of the Committee a one page background sheet outlining the functions of the Commission and CIO is attached at Appendix B
Background information

1. The Standards Commission for Scotland ("the Commission") was appointed by Scottish Ministers on 27 January 2002 in terms of the Ethical Standards in Public Life etc. (Scotland) Act 2000 ("the 2000 Act") and has been set up to encourage high ethical standards in public life through the promotion and enforcement of Codes of Conduct for Councillors and Members of Devolved Public Bodies.

2. The 2000 Act also established the post of the Chief Investigating Officer ("CIO") who is appointed by Ministers.

3. The CIO’s functions as provided for by the Act are to:
   - investigate cases in which a councillor or member of a devolved public body may have or is alleged to have contravened the Councillors' or, as the case may be, the Members' Code
   - decide whether to report the outcome of any investigation to the Commission
   - report to the Commission on the outcome of investigations.

4. The Commission’s functions as provided for by the Act are to:
   - receive reports from the CIO on the outcome of his investigations and determine whether to:
     - direct the CIO to carry out further investigations
     - hold a hearing or
     - take no action
   - hold a hearing to determine whether a councillor or member of a devolved public body may have or is alleged to have contravened the Councillors', or as the case may be, the Members’ Code
   - where the members of the Commission find that a councillor or member has breached the relevant Code, to determine, in accordance with the Act, the sanction to be applied
   - issue guidance to councils and devolved public bodies:
     - to assist them in promoting high standards of conduct; and
     - on the Commission’s relationship with them in carrying out its functions under the Act.

5. The Commission and the CIO are separate bodies who each operate independently. However, the CIO reports to the Commission on the outcome of his investigations and the Commission then determines, in the case of a finding of breach, whether or not to hold a hearing. Their combined statutory duties under the Act provide for investigation and adjudication in relation to alleged breaches of the Codes of Conduct.
Response from the Permanent Secretary, The Scottish Executive

1. I note the Committee’s concerns relating to the statutory independence of Parliamentary commissioners and ombudsmen versus their accountability for expenditure of public funds and the Committee’s desire to establish, for bodies which are set up to have some degree of independence, whether different accountability mechanisms exist and the reason for any differences.

2. I note the remit of your inquiry to:
   - examine the growth in the number of independent, regulatory and investigatory bodies and the associated growth in funds allocated since devolution;
   - examine the adequacy of processes for setting and scrutinising the annual budgets of such bodies;
   - examine the appropriateness of existing lines of accountability and how this process works in practice; and
   - identify whether there are any potential overlaps in remits and responsibilities of independent, regulatory and investigatory bodies and any financial implications of such overlaps.

3. The Executive welcomes this inquiry and I hope that I will be able to assist by providing an explanation of the Executive’s general approach in these matters and by addressing the specific questions you have asked.

4. As will be clear from the following response, the existing arrangements have grown up through consideration of what is appropriate for each body, principally at the time of its creation. The arrangements for any particular body should take account of what is being done elsewhere and of changes which time and experience may suggest are useful or necessary.

Review of Regulation, Audit, Inspection and Complaints Handling

5. The Committee will also wish to be aware that Scottish Ministers are considering establishing a review of regulation, audit, inspection and complaints handling for devolved public services. Any review would focus on whether there are any potential overlaps in remits and responsibilities of the various regulatory and investigatory bodies and on the financial and practical implications of such overlaps, so the findings of your Inquiry will be of considerable assistance to Ministers in helping progress this work.

General Considerations

6. As the Committee has acknowledged, there are a number of different constitutional and governance models for the various and prospective Ombudsmen, Commissions, Commissioners, Inspectorates and other regulatory bodies in Scotland (including some which operate on a UK or GB basis but, for simplicity, I will not address them here). The pattern of organisational arrangements is diverse, reflecting the spread of activity required in the exercise of devolved functions. While provision is made for
each body according to its role and functions, public bodies including regulatory and scrutiny bodies broadly fall into categories in each of which the governance arrangements strike a different balance between independence and accountability – they differ mainly in the degree of operational freedom conferred on or delegated to each type of body. This is often referred to as the “arm’s length relationship”, and the main categories of bodies are discussed in more detail below.

7. In each case, the governance and accountability arrangements surrounding the activities of statutory office-holders and other regulatory and investigatory bodies have been arrived at after a careful consideration by Ministers, and often by Parliament, of the particular arrangements that should apply in each case. The chosen framework of controls must be proportionate to the role and functions of the office-holder or body and must take into account the need for proximity to Ministers.

8. Scottish Ministers expect all arm’s length bodies for which they have responsibility to be able to demonstrate that the public funds they are responsible for are:

   (a) used properly, observing propriety and regularity; and
   (b) used in a way that maximises value for money.

9. The exact means by which the expenditure of bodies is agreed and monitored, and their activities scrutinised, differs according to the degree of independence from Ministers it is judged necessary or desirable for each body to have. The different categories of public body which currently perform regulatory or investigatory functions are described in turn below. Further details and a classification of the bodies in which the Committee has expressed an interest are provided in Annex A.

Departments of the Scottish Executive

10. In some cases, the Departments of the Scottish Executive themselves provide support for statutory office-holders in the execution of their regulatory or investigative functions. For example, the Chief Inspector of Prosecution in Scotland plays an important part in the continuous improvement of the prosecution service – he and his staff are set up as a free-standing team within the Finance and Central Services Department, to ensure independence from the Crown Office and Procurator Fiscal Service and from the Justice Department. In the same way, the Drinking Water Quality Regulator is supported in his work to ensure that Scottish Water meet water quality standards by a small team within the Environment and Rural Affairs Department. Both these teams account for their financial activities to their respective Departmental Accountable Officers. Departments are directly accountable to Ministers. Departmental Accountable Officers are accountable to me, as Principal Accountable Officer for the Scottish Administration, for the regularity, propriety and value for money in relation to their budgets.
Executive Agencies

11. Inspection and regulatory activities are also lodged within the Executive Agencies that form part of the Scottish Executive Departments. Since devolution, four regulatory bodies have been established, or re-classified, as Executive Agencies: Communities Scotland; Her Majesty’s Inspectorate of Education; the Buildings Standards Agency and the Social Work Inspection Agency. The annual budgets of the agencies are set and scrutinised as part of the annual budgeting exercise for the responsibilities of their parent Departments within the Executive. Direct lines of accountability to Ministers and parent Departments are clearly set out in agency framework documents.

Non-Ministerial Departments

12. In a small number of cases, the need to demonstrate operational independence from Ministers is such that bodies are established as Departments in their own right. The Office of the Scottish Charity Regulator (OSCR) has been operating as an executive agency, but, alongside its new powers, it will have a new status as a Non-Ministerial Department (NMD). As a NMD, OSCR will determine its operational practices, manage its own financial affairs and report directly to Parliament. OSCR’s budget is determined by the Executive as part of the Spending Review process and is considered by Parliament through the Budget process.

Non-Departmental Public Bodies

13. As the Committee has noted, since devolution the Parliament has approved legislation providing for the establishment of a number of new regulatory and investigatory bodies to operate with a much greater degree of independence from Scottish Ministers. Some of these new bodies (e.g. the Scottish Commission for the Regulation of Care, and the Water Industry Commission) have the status of Non-Departmental Public Bodies (NDPBs). Bodies classified as NDPBs operate within a clearly defined framework of financial accountability and performance management. Key features of the framework for NDPBs include:

- management statements
- financial memoranda
- corporate plans
- business/operating plans
- annual report and accounts
- Accountable Officer/Audit arrangements
- Annual budget letter

14. NDPBs are accountable to Ministers; and a key part of the framework is also the role of sponsoring Departments and teams within those Departments in supporting Ministers to exercise that accountability. The annual budgets for NDPBs are set and scrutinised as part of the annual budget exercise for the responsibilities of their sponsor Departments. The sponsor teams within Departments ensure that there are adequate
procedures in place to give assurance to the Departmental Accountable Officers in relation to the regularity and propriety of the public finances under the stewardship of the sponsored bodies for which they are responsible.

15. The Standards Commission for Scotland (which comprises the Office of the Chief Investigating Officer and the Office of Administration and Hearings) is an independent statutory body funded directly by Ministers (who appoint its Members) and accountable to them for its financial and operational performance. The Commission is entirely independent of government when considering alleged contraventions of the Councillors Code of Conduct and the Code of Conduct for Members of Devolved Public Bodies and in its decisions on complaints. Although it is not currently classified as an NDPB – its classification is currently under review – the framework of accountability and financial controls in place follows the NDPB model.

Public Bodies reporting to the Scottish Parliament

16. In a few cases, as is seen in other Parliamentary democracies, it has been deemed appropriate – because of functions relating to the protection of individuals rights or to the challenge of the legislature – to establish public bodies which operate with complete independence from Scottish Ministers. This category, which has grown as the natural consequence of devolution, includes the Scottish Information Commissioner, the Commissioner for Public Appointments in Scotland, the Scottish Public Services Ombudsman, and the Commissioner for Children and Young People in Scotland. The annual budgets of these bodies are set by the Scottish Parliament. In addition, the Scottish Parliamentary Corporate Body is responsible for the nomination to Parliament of the appointment of the Parliamentary Standards Commissioner whose role is carried out independently of Parliament.

17. Audit Scotland is an independent statutory body providing services to the Auditor General for Scotland and the Accounts Commission. The Auditor General is a statutory office holder appointed by the Crown and reports to the Scottish Parliament. He is responsible for securing the audit of the Scottish Executive – and is therefore independent from Ministers – and most other public sector bodies except local authorities and fire and police boards. The Accounts Commission is an NDPB and secures the audit of local authorities and joint boards (including police and fire services). The Auditor General is the Chief Executive of Audit Scotland and is its Accountable Officer. The Public Finance and Accountability Act 2000 provides for the Scottish Commission for Public Audit to examine Audit Scotland’s expenditure proposals and to report to the Parliament on these.

Financial Accountability of NDPBs and other Public Bodies

18. Turning now to a key area of concern to the Committee, I would like to describe in greater detail the general provisions for ensuring that all Executive-sponsored public bodies are held financially accountable.
19. Under section 15 of the Public Finance and Accountability (Scotland) Act 2000, in my role as the Principal Accountable Officer for the Scottish Administration – which, for the avoidance of doubt, does not include bodies who report to Parliament – I may appoint as Accountable Officers members of staff of the Scottish Administration or any other body the accounts of which are subject to audit by the Auditor General for Scotland. In practice this includes the heads of Scottish Executive Departments, senior officials in Non-Ministerial Departments, and the chief executives of Scottish Executive Agencies and executive NDPBs. Accountable Officers have a personal responsibility to the Parliament for the propriety and regularity of the finances under their stewardship and for ensuring that the resources for which they are answerable are used economically, efficiently and effectively. In addition the heads of Scottish Executive Departments, in their capacity as Departmental Accountable Officers, must ensure in relation to NDPBs funded from their departmental budgets that:

- appropriate financial and other management controls are in place to safeguard public funds and that compliance with those controls is effectively monitored;
- the financial relationship between the department and the NDPB or Agency is clearly set out in a framework document and kept under regular review;
- the conditions attached to the funding of the NDPB conform with the terms of the Budget Act and that compliance with those conditions is monitored;

20. As a development of these long-established formal mechanisms, Scottish Ministers are currently extending new policies to ensure that arm’s length bodies are held fully accountable for their activities. As the Committee is aware, we are rolling out Best Value to the wider public sector by placing a duty on Accountable Officers; we are also promoting a vigorous Efficient Government agenda which applies no less to the scrutiny sector than to other parts of the public sector.

21. Scottish Ministers are determined to ensure that all publicly funded bodies are able, so far as is possible without compromising their essential functions, to demonstrate that they are best value organisations and are properly run, efficient and effective and deliver value for money. Arm’s length bodies should only have stand-alone support services where there is clear evidence that it is more efficient than shared provision.

Proposals to Establish New Regulatory Bodies

22. The Committee is aware of the proposals to establish the Scottish Civil Enforcement Commission as an NDPB and to appoint a Scottish Commissioner for Human Rights. In addition, I am aware that Scottish Ministers are currently considering three other proposals which may give rise to new regulatory bodies or ombudsmen:
the Legal Complaints Commission is proposed as a new NDPB to replace the Scottish Legal Services Ombudsman;
- a new Police Complaints Commissioner is proposed as an independent statutory office holder; and
- a new Roadworks Commissioner is proposed, also as an independent statutory office holder.

Specific Questions

23. The general explanation above has sought to address many of the issues that are relevant to your inquiry. It may, however, be helpful to the Committee to address the specific questions raised in your letter by means of cross-references, or by supplying additional information:

- **What accountability mechanisms exist for such regulatory bodies?**
  See paragraphs 6-15 above, and Annex A.

- **How are the budgets for these bodies scrutinised and agreed by the Executive?**
  Bodies which fall under the responsibility of the Executive are controlled either under the Executive Agency or NDPB framework of controls.

- **What (if any) differences are there between these bodies in terms of accountability and budget setting and what is the reason for any differences?**
  The general principles are discussed at paragraphs 6 & 7.

- **What degree of independence from the Executive are these bodies expected to have and why?**
  Again, see paragraphs 6 & 7. Bodies set up to carry out regulatory functions on behalf of Ministers need to have operational independence but remain accountable to Ministers for performance and expenditure of public funds (NDPBs and Agencies). By comparison, and as is recognised in the Paris Principles, bodies which protect the rights of individuals or which perform challenge functions which may sometimes involve the scrutiny of Ministers and/or the Executive, require independence from Ministers to avoid compromising their ability to discharge their functions.

- **What are your views on the appropriateness of having some bodies within the control of the Parliament and some within the control of the Executive?**
  As outlined above, there are clearly circumstances where it would not be appropriate for certain types of body to be subject to Ministerial control (see para 16). Where bodies need to be beyond the Scottish Executive’s direct funding and influence, it is for the Scottish Parliamentary Corporate Body to exercise financial control.
In relation to commissioners and the Scottish Public Sector Ombudsman, how do you believe budgetary control can be balanced with independence?
This is a matter for the Parliament.

Is it possible to implement section B2 of the UN Paris Principles and retain suitable budgetary controls?
The Paris Principles relate specifically to national institutions for the promotion and protection of human rights, and we have noted the views of the Finance Committee in its recent consideration of the proposals contained in the Scottish Commissioner for Human Rights Bill. The central issue is the extent to which the operation of the body in question is open to influence by government. As the Committee have highlighted, Paris Principle B2 states that:

“The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect this independence.”

The Executive’s experience is that it is possible for Ministers and Departments to exercise adequate financial controls over arm’s length bodies for which it is accountable, whilst permitting the bodies to exercise their functions free from political interference. The bodies which need to enjoy a greater degree of freedom (so that, for example, they may be properly critical of the activities of Scottish Ministers and/or the Executive) have been established in such a way as to place them beyond Ministerial influence at an operational level, but they should not be outwith proper scrutiny for their expenditure. As noted above, it is for the Scottish Parliamentary Corporate Body to exercise financial control over bodies which report to Parliament.

In this respect I note that Audit Scotland’s expenditure proposals (like those of the SPCB and ombudsmen/commissioners funded by the SPCB) represent a prior call on the Scottish Budget. The Public Finance and Accountability Act 2000 provides for the Scottish Commission for Public Audit (SCPA) to examine Audit Scotland’s expenditure proposals and to report to the Parliament on these.
Conclusion

24. I hope that this account of our general approach on accountability and governance, illustrated with reference to a number of bodies in which the Committee has expressed an interest, taken together with our answers to the specific questions posed by the Committee will be helpful to your in your Inquiry.

John Elvidge
Permanent Secretary
The Scottish Executive
April 2006
## Independent Statutory Office Holders supported by Scottish Executive Departments

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Key Characteristics</th>
<th>Comments</th>
<th>Regulatory and Investigative Bodies established since 1999</th>
</tr>
</thead>
</table>
| Single person office holders set up to carry out statutory functions | • Appointed by Ministers (or the Monarch on the advice of Ministers).  
• Functions set out in legislation.  
• Functions reside in an individual rather than a body corporate.  
• Normally appointed in line with SCS recruitment procedures.  
• Size and number of staff involved do not warrant a separate structure - normally set up as a stand alone unit within a Department.  
• Operationally independent from Ministers in carrying out statutory functions.  
• Office holders may be civil servants.  
• Accounts are normally consolidated into those of the parent department. | • Staff are usually seconded civil servants. | • Drinking Water Quality Regulator  
• Chief Inspector of Prosecution  
• Scottish Legal Services Ombudsman (status under review) |

23
### Executive Agencies

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Key Characteristics</th>
<th>Comments</th>
<th>Regulatory and Investigative Bodies established since 1999</th>
</tr>
</thead>
</table>
| To carry out a service or function within Government, by a well-defined business unit that has a clear focus on delivering specific outputs and a framework of accountability to Ministers. | • Directly accountable to Scottish Ministers, but Ministers do not concern themselves with the day to day running of the agency  
• Flexible and responsive framework, able to cover a wide range of organisational sizes and responsibilities.  
• Part of the Scottish Administration  
• Chief Executive is answerable on delegated operational issues to a Minister in the parent Department  
• The Chief Executive is a civil servant employed by the Scottish Executive and is normally recruited through open competition.  
• All staff (except secondees) are civil servants employed by the Scottish Executive.  
• Accounts are consolidated into those of the parent department. | Best suited in cases where:  
• It is appropriate for Ministers to have direct strategic and policy control but it is neither realistic nor appropriate for Ministers to take personal responsibility for day-to-day decisions  
• The function is predominantly concerned with the delivery of services to the public or arms of Government but can also, in some cases, have an important advisory role  
• The number of staff involved is large enough to justify a separate structure  
• The function can be independently accountable within the parent Department (i.e. it is possible to have specific targets and separate annual reports and accounts). | • Communities Scotland  
• HM Inspectorate of Education  
• Social Work Inspection Agency  
• Scottish Building Standards Agency |
## Non Ministerial Departments (NMDs)

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Key Characteristics</th>
<th>Comments</th>
<th>Regulatory and Investigative Bodies established since 1999</th>
</tr>
</thead>
</table>
| Small government departments in their own right, established to deliver a specific service and not funded by a sponsor department. | - Usually headed by a statutory office holder, commissioner or a board with statutory responsibilities.  
- Some NMDs may have links to Ministers in other interested Departments but that Minister will not be responsible for the NMD’s overall performance or delivery (eg Forestry Commission)  
- Staff are civil servants employed by the Scottish Executive  
- Usually responsible for their own accounts | | - Office of the Charity Regulator |
### Non-Departmental Public Bodies (NDPBs)

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Key Characteristics</th>
<th>Comments</th>
<th>Regulatory and Investigative Bodies established since 1999</th>
</tr>
</thead>
</table>
| To permit a service or function to be carried out at arm's length from the Government. | - Are established by statute such as an Act of Parliament or Royal Charter or set up under the companies Act as companies limited by guarantee.  
- Carry out administrative, commercial, executive or regulatory functions on behalf of, and accountable to, Ministers.  
- Can provide specialist advice to Ministers and others.  
- The Chief Executive is accountable to a board whose members are appointed by Ministers or by the Queen on the advice of Ministers.  
- Have a national remit.  
- Ministers are answerable to Parliament for the body and have the power to wind it up (subject to, where appropriate, the approval of Parliament or, where a Royal Charter has been previously granted, the Queen). | NDPBs function deliberately at one stage removed from Ministers, with a considerable measure of policy independence within strategic Ministerial direction and Ministerial target setting.  
Ideally suited in areas where:  
- political considerations should play little part in decisions (e.g. exercising some regulatory functions, or managing public services such as museums and art galleries) but where it is agreed that the function should still be carried out in the public sector.  
- it is desirable to involve many people, including the general public and representative groups, in decisions about delivery of the service  
- it is desirable to underwrite the body’s independence, powers and obligations through legislation.  
Funding for NDPBs is subject to Departmental financial planning and the spending review process. Within these overall requirements and any | - Scottish Commission for the Regulation of Care  
- Scottish Environment Protection Agency  
- Scottish Social Services Council  
- Water Industry Commission for Scotland  
- Standards Commission (classification under review) |
- Staff are not civil servants and are employed directly by the body itself.
- Most NDPBs are funded by grant in aid but some are funded by levies on particular sectors and receive no central funding.
- An NDPB has an Accountable Officer with a personal responsibility to the Parliament for the propriety and regularity of the finances under their stewardship and for ensuring that resources are used economically, efficiently and effectively.

relevant legislation, the financial regime for each NDPB needs to be tailored to meet the individual circumstances. Most NDPBs will be financed by a grant-in-aid, appropriate where the Government has decided that the recipient body can operate at arm's length, though subject to controls from the relevant Government Department and those from Parliament.
Finance Committee

15th Meeting 2006, Tuesday 23 May 2006

Inquiry into the Financial Implications of the Single Status Agreement – Response from the Scottish Executive

1. The Committee has received a response from the Executive to its report on the Financial Implications of the Single Status Agreement.

2. The Convener wrote to COSLA and to the relevant trade unions as the report also contained recommendations for those organisations and invited comment on the report. To date, no responses have been received.

Susan Duffy
Clerk to the Committee
Dear Des

I am writing in response to the Finance Committee’s report on the Financial Implications of the Single Status Agreement for Local Authorities. I would like to thank the Committee for its report and I welcome the recommendations it makes.

The majority of recommendations are for local authorities and I would encourage councils to act promptly on these. I now turn to each of the recommendations in turn.

Recommendation 1: To ensure that the necessary financial planning takes place in the future, the Committee recommends that the Accounts Commission examine whether enhancements can be made to disclosure arrangements in the context of its interest …… in having clarity and transparency through clear and explicit policies which set out why reserves are held and their intended use.

This is a recommendation for the Accounts Commission and not for the Executive. However, I would comment that it is our understanding that the Committee’s Report may not fully reflect the more technical accountancy distinction between what local authorities record in their statements of accounts and what they record in the notes to their accounts. The Accountancy Code states that contingent liabilities should not be recognised in the accounting statements, that is, no monies should be set aside as a provision. Local authorities have quite correctly been, in the notes to their accounts, disclosing: the nature of the contingency, a brief description, an estimate of its financial effect, an indication of the uncertainties relating to the amount or timing of any outflow and the possibility of any reimbursement.

Recommendation 2: The Committee recommends that the relevant parties must engage in realistic negotiations, recognising the imperative to reach a solution, within current financial constraints taking into account any commitments of financial support from the Executive.

We welcome this recommendation and would encourage local authorities to make progress towards an expeditious solution. While our overall spending plans up to 2007-08 have already been published and will not be reopened, we have said that, within the overall total budget, we remain prepared to look again at the funding position for local government for 2007-08. We stand by that commitment and I expect discussions with COSLA to continue over the coming months.

Recommendation 3: The Committee recommends that councils examine ways in which reserves can be topped up. However, there should be clear rules and guidance given to councils to prevent - a short term fix -
the sale of assets simply being used to fund back-pay - leading to longer term problems.

Legislation currently controls the type of reserves that local authorities can have and what they can be used for. The Local Authority Accounting Code of Practice governs how reserves are accounted for and how monies are moved between reserves. Local authority statutory accounts are required to contain a statement showing the transactions for each reserve. This ensures transparency. Legislation and the Accounting Code also governs how monies raised from the sale of assets (capital receipts) can be used. Using money from the sale of assets to fund back pay (a revenue cost) would be in breach of existing legislation and the Accounting Code which restricts the use of capital receipts to acquiring or enhancing assets (capital expenditure). Scottish Ministers do have a statutory power to specify what can be treated as capital expenditure. So Ministers could agree to allow back pay to be treated as capital expenditure. This would allow the capital receipt to be applied to the back pay. However, this action would not be in line with previous ministerial support for proper accounting practice and could attract severe criticism from Audit Scotland, HM Treasury and Accounting Standards bodies. It would also reduce the monies available to invest in enhancing or acquiring new assets.

Recommendation 4: The Committee recommends that the Executive enter into discussions with COSLA or with individual councils to identify whether funding can be made available and whether efficiencies and modernisation can be achieved to provide value for that money, taking into account the requirement to ensure that staff are paid on an equitable basis.

I have indicated in my response to Recommendation 2 above that we remain prepared to look again at funding for local government for 2007-08 against the background of further demonstrable progress on our Efficient Government initiative. The recently reported efficiency savings, estimated at £122 million for 2005-06, show that local authorities have made an excellent start. The Executive is already in discussion with local authorities on a number of issues around efficiencies and modernisation, many of these discussions are taking place as part of the wider Public Service Reform agenda and those discussions will continue.

Recommendation 5: The Committee recommends that the cost of implementing Single Status agreements and equal pay settlements should be considered along with performance on Efficient Government and other funding pressures, in determining next year's local government settlement.

I refer you to the answer to the previous recommendation.

Recommendation 6: The Committee further believes that there is no reason why, in the interests of employees, council taxpayers and
service users, this issue cannot be resolved within 12 months. The Committee calls on the councils, unions and COSLA to enter urgently into discussions at local and national level, facilitated by the Executive where necessary, to ensure implementation within this timescale and to consider what lessons must be learned from the failure to progress agreement on Single Status.

We would also welcome a swift resolution to this issue. As the Committee notes, local authorities have had since 1999 to implement this Agreement. While we will of course respond to direct representations, it is formally a matter for the various parties within local government to take forward and conclude these negotiations. As I indicated to the Committee when I gave evidence on 21 February, we will continue to explain to those councils which make representations to us how we would like their situations to be resolved. If they bring forward proposals to address the various aspects I described in my evidence, including the importance of striking a balance between what is fair and equitable not just for the staff concerned but also for council tax payers, we will continue to consider them case by case. I will meet Trade Unions in the near future to discuss this issue. Whenever possible, the Executive will of course facilitate discussions between all interested parties’.

If you have any questions about the response, or require any additional information, then you are very welcome to contact me.

I am copying this letter to the President of COSLA, Councillor Pat Watters.

TOM MCCABE
Finance Committee

15th Meeting 2006, Tuesday 23 May 2006

Adoption and Children (Scotland) Bill – Supplementary information

1. During the evidence session on 9 May on the above Bill, Scottish Executive officials agreed to provide supplementary information on a number of issues raised. The Executive’s response is attached at Annexe A.

2. In addition, COSLA has also provided a submission for the Committee’s scrutiny of the Adoption and Children (Scotland) Bill. This response is attached at Annexe B.

Roz Wheeler
Senior Assistant Clerk
Supplementary submission from the Scottish Executive

1. We were grateful for the opportunity to give evidence to the Finance Committee on the Adoption and Children (Scotland) Bill at its meeting on Tuesday 9 May 2006. At that meeting the Convener indicated that it would be helpful if we wrote with any supplementary evidence and this letter meets that request.

2. Before addressing some of the detailed points that were raised, it may be worth reiterating two of the general points that we made at the meeting.

3. First, in drawing up the Financial Memorandum we focused on the financial consequences of the Bill itself. This not to say that overall financial requirements for residential care, fostering and adoption will not be affected by other social, economic and policy developments such as the Hidden Harm report to which the Convener referred. Obviously this will be an issue of considerable interest to us in working towards the next Spending Review and we will be looking to refine our understanding of the financial factors further, in partnership with local authorities and other stake-holders, to inform our thinking in that context and in relation to the Bill.

4. Second, where in the Financial Memorandum we have used phrases such as ‘cost-neutral’ this is not meant to imply ‘cost-free’ as some submissions to the Committee might be read as implying. In essence what we had in mind was that there is a certain number of children for whom it is necessary for the state to intervene so that they are looked after away from their birth parents, whether in residential care, foster care or through adoption. The Bill will not affect the number of such children. Insofar as it encourages any move of children from residential care into foster care, or from foster care into adoption, or increases the stability of foster care placements through Permanence Orders, the results in any particular case should at worst be cost-neutral. This is not to say, for example, that children with disabilities for whom a Permanence or Adoption Order is made will cease to need support but that need for support will not increase. In some cases the stability marked by a Permanence Order may justify a less frequent approach to reviewing the child’s position (at present regulations require that the position of looked after children is reviewed three months after placement, and every six months thereafter, which can be disruptive where a stable placement is achieved). Similarly for some adopted children there will be a prospect of a diminished requirement for financial support: on average this is the case at present although we would accept that the average differential between foster care and adoption may diminish if more challenging children are adopted.

5. Turning to more specific points raised in Committee, it seems appropriate to say more about court proceedings (raised particularly in the submission from the Scottish Legal Aid Board (SLAB)), costs associated with support for adoption, and the implications for costs if children from residential care into foster care, or from foster care into adoption.
Court Proceedings

6. We have considered the written evidence submitted by the Scottish Legal Aid Board (SLAB), and have found this to be helpful. In particular, SLAB’s comments about the different elements of the court process which may attract Legal Aid funding were useful in identifying costs as a result of the Bill than identified in the Financial Memorandum.

7. It may be helpful to differentiate between civil and criminal proceedings.

Civil Proceedings

8. As regards civil proceedings, our estimate of an additional cost of £50,000 per year was based on the assumption that the Bill’s main impact would be in the number of applications for permanence orders and s.11 orders. The Bill allows joint adoption by unmarried couples, which we argue will reduce the number of applications overall (one application from the couple rather than one application from one partner for the adoption order and a second application from the other partner for a s.11 order). Against that the greater simplicity of going for a single order rather than two may make adoption a more attractive option for some unmarried couples than at present.

9. While the permanence order may be a more attractive option for some children, we do not believe that there will be a significant overall increase in the number of applications being made for orders relating to child protection. It is important to note that the Permanence Order replaces existing orders, rather than complementing them. The reduction in costs associated with the abolition of the Freeing Order and Parental Responsibilities Order will be balanced against the costs of the Permanence Order. The Permanence Order may also see a reduction in the number of applications for section 11 orders, since parental responsibilities and rights and contact arrangements for all interested parties can be encapsulated in the Permanence Order and it will not be possible to seek a section 11 order for matters that can be covered in the Permanence Order.

10. We stated in the Financial Memorandum that only a small number of adoption cases are contested; this statement was questioned by several organisations who provided evidence. In our suggestion that contested cases are comparatively rare, we drew on the response to our consultation from retired Sheriff Peter G. B. McNeill QC, the leading expert on legal aspects of adoption in Scotland. Sheriff McNeill suggests that around 5 – 10% of adoption cases in Scotland are contested, which equates to between 10 and 20 cases each year. Sheriff McNeill makes the point that, while small in number, contested cases can take considerably longer to dispose of than uncontested cases. We agree with this, and accept that contested cases have increased financial costs for local authorities and SLAB. Nonetheless,
the small proportion of contested cases means that the financial burden of this should not be overstated.

11. We concluded that although the introduction of the Permanence Order may lead to an increase in applications, there would be a downturn in other applications. In that we expect that the Permanence Order will prove a more useful, flexible legal instrument than the orders that it replaces, we would expect that overall there would be some increase. Therefore, our estimated increased costs was based on there being a small net increase in the number of applications. Our suggested increase of £50,000 per year was based on the figures quoted in SLAB’s consultation response, but was an extrapolation based on the predicted impact of the permanence order and partial knowledge of the range of elements which could attract Legal Aid support. We accept that there were other costs that we did not consider, but which will, as SLAB have indicated, have an impact on costs. We are arranging to meet SLAB to further discuss costs.

Criminal Proceedings

12. Turning to criminal proceedings, SLAB suggests that the Bill contains some provisions which will introduce new legal costs which were not discussed in the Financial Memorandum. In fact, most of the offences contained in the Bill are restatements of existing offences contained in the Adoption (Scotland) Act 1978, as outlined in Appendix 1. This, of course, is not evident from reading the Bill itself and we can readily see why SLAB interpreted the Bill as implying greater changes in relation to criminal law than is, we believe, the case. The explanatory notes which accompanied the bill detailed the effect of these offences, but did not make clear that these were restatements of existing provisions rather than new offences.

13. There will be potential new costs associated only with two sections: 29 and 71. Section 29 relates to offences relating to sections 30 to 36 of the Adoption and Children Act 2002, which concern the removal of children and are similar to sections 20 to 25 of the bill. Section 71 relates to regulations which may be made by Scottish Ministers in relation to preventing overseas adoptions from particular countries (should adoptions from that country be halted). It is unlikely that either of these sections will have significant financial implications for SLAB.

14. Other provisions cited by SLAB as being new are actually existing provisions in the 1978 Act. Section 26 replicates s.29 of the 1978 Act; s.65 replicates s.49(1) of the 1978 Act; and s.74 replicates s.47. There are two new sections. Section 72 relates to the power for Scottish Ministers to charge for handling overseas adoption casework and will have no impact on SLAB. Section 79 relates to the provision of adoption services and is intended to allow a local authority to provide a payment where it is unable to provide a service. The policy intention is that this will enable a local authority to pay money to a family to obtain a service (for example, counselling or therapeutic care) that the local authority is unable to provide. This is unlikely to affect SLAB.
Adoption Support

15. We have indicated that there may be only a small increase associated with improved support for adoption and fostering, and that, in some circumstances, it may lead to savings. This was rejected by some organisations who provided evidence. Our position was based on the argument that improved support at an early stage in a placement (whether adoption or fostering) may help to prevent the placement from breaking down and may reduce the need for continued support for the placement’s duration. We accept that adopted and fostered children (and their families) require support and are likely to do so for some years after a placement has been made. The bill contains provisions which will ensure that such support is always available, and we are not seeking to place time constraints on the availability of support. However, in seeking to provide greater security and stability for children, we hope that early intervention may reduce the need for long-term support.

16. It should be noted that under section 1(2)(bb) and (c) of the Adoption (Scotland) Act, local authorities currently have a duty to provide counselling and assistance to children who have been adopted and to persons who have adopted a child and counselling for other persons if they have problems relating to adoption. The Children (Scotland) Act 1997 Regulations and Guidance (vol. 3, Adoption and Parental Responsibilities Orders) provide further information on post-adoption support. Guidance advises that ‘long-term support may be required in some cases,’ and notes that ‘Agencies should be flexible in considering how to meet the needs of adoptive families and a range of options needs to be developed.’ The guidance also notes that ‘Birth parents may also require support at various times after the adoption order is granted.’

17. We consider that the existing legislation provides sufficient scope for local authorities to provide any support that is considered necessary. In this way, the bill does not introduce any new support services which cannot already be provided, although it does widen the field of people who can apply for support or an assessment of their need for support. Research conducted by the Scottish Adoption Association indicates that many adoptive families are unaware of what support they are entitled to, how they can access support and are unsatisfied with local authority responses to requests for services and information. We intend to issue guidance to ensure that local authorities make prospective adopters aware of the services that are available to adoptive families.

18. We acknowledge that the more explicitly stated eligibility of a wider range of people, coupled with increased awareness of support services, is likely to see an increased demand on local authorities, with a commensurate

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increase in costs. We have calculated that an additional £2.35 million per year should be sufficient to meet this increased demand for support. This figure is based on the £70 million DfES made available over three years to support the implementation of the Adoption and Children Act 2002. This equates to around £23 million per year. We have scaled this down by a factor of 10 to represent the approximate difference in population size between England and Scotland.

19. Another approach is to look at numbers of looked after children and adoptions in England and Scotland. In 2004-05, 3,800 looked after children were adopted in England, which represents 6.24% of the total number of looked after children (60,900 at 31 March 2005).\(^4\) In Scotland, 117 looked after children were adopted in 2004-05 which is 0.96% of all looked after children (12,185 at 31 March 2005).\(^5\) The fact that a child has been looked after prior to adoption particularly indicates a need for support, which is not to say that adopted children not previously looked after, or their birth or adoptive families, will not need support. Based on these figures, we believe that an additional £2.35 million per year should meet the increased costs brought about by the bill.

**Comparative Costs**

20. There was some discussion of levels of costs for fostering allowances and other costs associated with foster care, and the comparison with costs for residential care. As discussed during the meeting, the presentation of ‘highest rate’ and ‘lowest rate’ savings in relation to residential care in the table at the end of the Financial Memorandum was less clear than it might have been. They were simply meant to provide illustrative figures if 10 or 100 children respectively moved from residential care into foster care. Although it is difficult accurately to predict the number of children who may move from residential accommodation to a foster placement, we wished to illustrate possible savings for different numbers of children. In practice we would hope that improved fostering allowances, in the context of a wider fostering strategy, might provide opportunities for more than 100 children to move from residential to foster care. We have provided an updated table at Appendix 2. This shows the different data available on levels of fostering allowances, on overall costs of fostering, and on costs of residential care, and where we have derived them. These indicate a current average fostering allowance of £121 and an overall fostering cost of £249 per child per week, set against an average cost in non-secure residential accommodation of £1,647, a difference of £1,398 per child per week (or £72,696 per year). Even if, for example, fostering more challenging children who had previously been in non-secure residential care meant that fostering costs for them were above average, it seems unlikely that they would be anywhere close to the costs of residential care.


Conclusion

21. I hope that this supplementary evidence is of assistance to the Committee.

PETER WILLMAN
Head of Adoption & Permanence Branch
Appendix 1: Offences contained in the Bill

<table>
<thead>
<tr>
<th>Bill section</th>
<th>1978 Act section</th>
<th>Commentary</th>
</tr>
</thead>
<tbody>
<tr>
<td>20(3)</td>
<td>27</td>
<td>Same penalty</td>
</tr>
<tr>
<td>21(7)</td>
<td>28</td>
<td>Same penalty</td>
</tr>
<tr>
<td>27(8)</td>
<td>30</td>
<td>Same penalty</td>
</tr>
<tr>
<td>29</td>
<td>New</td>
<td>Contravention of ss.30-36 of 2002 Act: imprisonment for not more than 3 months, fine not exceeding level 5 or both</td>
</tr>
<tr>
<td>66</td>
<td>50</td>
<td>Same penalty</td>
</tr>
<tr>
<td>67</td>
<td>50A(1)</td>
<td>Increases penalty from imprisonment not exceeding 3 months or a fine not exceeding level 5 or both to (for a summary conviction) imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum or both, or (for a conviction on indictment) imprisonment not exceeding 12 months or a fine or both</td>
</tr>
<tr>
<td>71</td>
<td>New</td>
<td>Bringing a child into the UK in contravention of regulations which may be imposed by Scottish Ministers: (for a summary conviction) imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum or both, or (for a conviction on indictment) imprisonment not exceeding 12 months or a fine or both</td>
</tr>
</tbody>
</table>
Appendix 2: Fostering Allowances and Residential Care Costs

Fostering Allowances

<table>
<thead>
<tr>
<th>Age Range</th>
<th>Average local authority rate (£)</th>
<th>COSLA (£)</th>
<th>The Fostering Network (£)</th>
<th>DfES (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-4 years</td>
<td>86</td>
<td>67</td>
<td>112</td>
<td>106</td>
</tr>
<tr>
<td>5-10 years</td>
<td>101</td>
<td>83</td>
<td>128</td>
<td>106</td>
</tr>
<tr>
<td>11-15 years</td>
<td>128</td>
<td>103</td>
<td>159</td>
<td>106</td>
</tr>
<tr>
<td>16+</td>
<td>162</td>
<td>134</td>
<td>193</td>
<td>118</td>
</tr>
<tr>
<td>Average Rate</td>
<td>121</td>
<td>97</td>
<td>148</td>
<td>109</td>
</tr>
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</table>

In terms of the estimates of costs of fostering allowances set out in paragraph 390 of the Financial Memorandum, and in the table after paragraph 399, the fact the latest data on fostering allowances indicate that average rates paid by local authorities are above those suggested by COSLA and consulted on by DfES indicates that there would be a saving rather than costs if these were used (the Financial Memorandum suggested that moving to the COSLA rate might cost an additional £1.17m, and to the DfES rate an additional £2.5m). In practice it would be impractical to expect rates to diminish. Multiplying the number of children in non-respite foster care (3,493) by the difference between the local authority average of £121 and the Fostering Network rate of £148 would suggest additional costs over a year of £4,904,172 (against £8.14m in the Financial Memorandum).

In addition to these figures, local authorities spent £45.292 million on non-respite foster care in 2004-05. This includes all foster carers fees, expenses and allowances and staff and other costs for foster carer recruitment, training and support. This amounts to approximately £871,000 per week or to £249 per week, per child (dividing by 3,493). This is an approximate cost, which assumes that the number of children in foster care stays the same throughout the year. The figure of 3,493 children in non-respite foster care is a snapshot as at 31 March 2005. These figures do not take into account the total number of children in foster care throughout the year, nor their changing situation. These figures are gathered from local authority returns to the Scottish Executive.

Residential Care Costs

Secure residential accommodation cost £3,408 per week per child in 2004-05. Non-secure residential accommodation costs £1,647 per week per child in

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6 These are updated figures provided by TFN, based on rates paid in all 32 local authorities.
7 These figures are based on recommended COSLA rates for 2005-06. We have calculated these to include an increase of 2% for 2006-07. These are lower than the figures quoted in the Financial Memorandum. COSLA advised us that the figures in the financial memorandum were incorrect.
2003-04.\(^9\) (These are the most recent figures available.) Thus, the potential saving that would result by moving one child from non-secure residential care to fostering would be £1,398 per week (£72,696 per year). In terms of the ‘lowest rate (£0.58m)’ and ‘highest rate (£5.7m)’ in the table after paragraph 399, the corresponding figures would be £726,960 and £7,269,600 although with hindsight using the terms ‘lowest rate’ and highest rate’ may give a misleading impression that we expect an absolute minimum of 10 children to move from residential to foster care and an absolute maximum of 100. The intention was more to give illustrative figures for savings if certain numbers of children did move in this way, rather than to claim a greater precision about the extent of such a trend than we possess.

Submission from COSLA

Introduction

1. COSLA welcomes the Adoption and Children (Scotland) Bill. We support the twin aims of the Executive to increase the number of adopters and to improve stability for children who cannot live with their original families but for whom adoption is not an option.

2. Our biggest concern is that the Bill appears to assume that all is well in fostering care services, except for allowances for fostering and the lack of adequate arrangements in planning for permanence. This is not the case. If the Bill is to realise its contribution, further developments are required to improve fostering services. There seems to be an assumption that the number of looked after children, the complexity of their histories, and the consequences that these have, are all static parts of the adoption, fostering and residential care world. This is not borne out by our members experience, where complexity of need is increasing as is the number of children requiring care. The absence of the anticipated National Fostering Strategy, the range of outstanding issues from the Adoption Policy Review Group, and to a lesser extent the unpublished kinship fostering report, provide the Bill with an opportunity to address these matters. While regulation and guidance can fill some of the gaps, professionals suggest some primary legislation may be required.

3. COSLA appreciates that the Executive sees the content of the Financial Memorandum as likely to evolve. This is welcomed as its description of where we are, and what we attribute the pressures within the system to, lack robustness. Our concerns about the content of the Financial Memorandum could have been reduced, had more time been made available to respond to it, or even better, had member authorities been actively involved in its preparation, including the assumptions that have been made. We appreciate that to some extent the new modelling work that the Executive has indicated it is embarking on will add to both the evolving nature of the financial assessment of the Bill’s impact, as well as to a broader description of where we are. We are hopeful that pressures not addressed in the financial memorandum will be addressed through the spending review process, but would wish to have a firm statement of intent in this regard.

General Principles

4. The underlying theme of the Bill is to modernise the adoption and fostering framework, and to increase the number of adoptive parents. Section 66 of the Policy Memorandum makes clear the new duty to provide a wider range of adoption support services (our preferred term) to a wider range of people, with an expectation that this will lead to an increase in the services provided. COSLA agrees that both these objectives are necessary. However, COSLA is not able to comment on whether the projected £2.35m will be adequate in meeting the additional costs likely to result from the right to request assessment, the need to respond to the political pressure that will result from the increased expectations from such assessments, the provision
of cash in lieu of services, the possibility of adoption allowances, and so forth. While the Bill should mean that more children are placed for adoption, the suggestion that this will result in significant savings elsewhere is stretching the point.

5. It is important that the degree of support envisaged for families that could, and do, adopt children is similarly available to children who are in foster care and the families that provide it. COSLA welcomes the proposed permanence order as a means of achieving security and stability for children in long term fostering care. While permanence orders will stabilise arrangements in one part of the foster care field it will make even clearer the need to recruit more families able to offer shorter term foster care, as families who currently provide the short term care are no longer available. In Scottish local government the children’s placement system is under considerable stress. There are already cases where children who have been assessed as needing foster care are without placements, and families providing fostering care have more than the number of children we would normally be happy with. The Bill is likely to add to the pressure on fostering arrangements that are already an area of under resourced social work.

6. Section 39 of the Policy Memorandum raises two needs that adoption serves. The first is unarguable and shared with fostering arrangements, to meet the needs of children to be looked after outside the original parental home. However, the second, to meet “the desire for a parental experience on the part of those people who for whatever reason are unable to produce children naturally”, appears dated and unnecessarily complicates the primary purpose of social work children’s services. It is not easy to see why it was included as there is no follow through of this in the Bill.

Financial Memorandum

7. COSLA is concerned about the assumptions of the Financial Memorandum. The pressure on current budgets has been a longstanding concern of our members, and has featured prominently in our previous spending review submissions. Budgetary constraints make it difficult to meet current need in the context of the rising costs. The Executive’s acknowledgement that existing children’s services are benefiting from additional funding from the Executive illustrates the case. As you already have comments from ADSW on sections 380 – 388 of the Financial Memorandum, these will not be replicated here. Instead, the remainder of this response concentrates on the opening comments of the financial memorandum, and the fostering rates.

Volume and Trends (367 – 374)

8. While it is true that COSLA and its member authorities have been closely involved in the development of the policies (372) included in the Bill, it was always going to be difficult, if not impossible, to provide detailed estimates of costs for these new policies. A lot depends on the detail. In a complex area, such as adoption, fostering and residential child-care, we are clear that trying to produce a robust methodology to arrive at the cost of the
Bill is extremely difficult. Had the Executive engaged us in discussions over their assumptions and forward projections of the number of children in care it may have been easier to produce better estimates of costs. Unfortunately, COSLA has had very limited time to consider the financial memorandum, let alone canvass our members for their own estimates.

9. In the absence of a detailed canvas, COSLA is surprised to see that the “Cost of Foster Care” report produced by BAAF and The Fostering Network (TFN) in 2005, was not used. The report has been considered and endorsed by COSLA’s members. It provides a comprehensive approach over the resources that are needed to provide a fostering service that can meet current needs of all stakeholders.

10. COSLA understands from its member authorities and from ADSW that the numbers of children needing to be accommodated across Scotland is rising at a significant rate. We support TFN’s point where it estimates the growth in children in foster homes at roughly 3% or 100 extra children a year. It can therefore be seen that any estimated savings from the Financial Memorandum are likely to be more than offset by the increase in numbers. If there is to be a decrease in the use of residential care it will be achieved primarily as a result of our members developing greater support to children directly and through the development of fostering arrangements. It will not be unambiguously the result of the provisions of the Bill.

11. It consequently follows that we view sceptically the suggestion that the Bill’s objective of improving and extending existing services will in any material way be offset by a reduction in costs for fostering and residential care (368). While it is a truism to say that the costs of adoption are much lower compared to fostering and residential care, COSLA is sceptical over the use of this fact in the financial memorandum to claim that the Bill will result in savings to the child care sector. While a loving and stable family relationship undoubtedly boosts the life chances of fostered and adopted children, the children who are cared for in the three different groups do not have an equal share of older children, children with disabilities and sibling groups. The different weekly costs between adoption allowances, fostering allowances and fees and the cost of residential care can be taken as reflecting broad differences in the services required and level of need being met (369). Furthermore, while admittedly generalising, a plausible explanation over the different levels of attainment achieved by the different care arrangements is that it reflects the starting point at which the children come into the relevant arrangements, and the broad differences in their need at that point. It is clear that further work is merited on outcomes, levels of need and the beneficial effects of the different types of care so as to avoid confusing correlation with cause. In the longer term, if more children with complex needs are placed for adoption, the initial differences in costs between fostering and adoption are likely to decrease.

12. When long-term foster carers adopt children, financial planning should make room for a significant transition period in which adoption support allowances replace the family income previously supplemented by fostering allowances and fees. It is likely that the need for this form of compensation,
in lieu of lost earnings, may be required for a number of years as the new 
relationships settle in and the non waged parents reintegrate into the 
employment market. COSLA members are trying to arrive at arrangements 
that deliver both quality and timely support, and by so doing reduce the need 
for costly long term services. As said above, where the longer term costs of 
meeting need are achieved, the contribution of the Bill is likely to be 
secondary to councils’ forward planning and investment in foster 
arrangements.

**Introduction of national fostering allowances**

13. COSLA accepts that the wide variation in fostering allowances needs 
to be addressed. Competition for fostering families, resulting from the 
increasing presence of private companies, and the need to acknowledge the 
effect of fostering on family income has meant that an increasing proportion of 
our members have decided to use the Fostering Network recommended 
rates. Because of this, the rates being paid by member councils have 
developed quite independently of what we were recommending, at the 
expense of other budgets. The financial year 2004/2005 was the last year 
that COSLA recommended foster allowance rates to our members. What had 
been a simple arithmetical process, of increasing the old rates by the annual 
public sector inflation rate, was becoming increasingly difficult to justify 
without a thorough review of what the rates themselves were intended to 
support.

14. COSLA acknowledges the research carried out across 10 local 
authorities. However, given the diversity in rates being paid, and the more 
comprehensive material available from the joint work between BAAF and the 
TFN, if an updated baseline is to be used to assess the financial impact of the 
Bill, it is only appropriate that this material is used or a new full survey is 
undertaken. COSLA is also critical of the table in its use of a simple 
arithmetical mean of all the values for the different rates recommended by 
ourselves, the Fostering Network, and the DfES. It is not justified. Children 
are unlikely to be distributed evenly across these age groups. To arrive at 
real costs, the values need to be weighted with actual numbers of children in 
each age grouping.

15. COSLA is also concerned that the investment of councils who have 
moved towards meeting the Fostering network rates might not be recognised 
in any arrangements to meet the additional burdens arising from the Bill. We 
believe that the fairer way of estimating the costs of the Bill, and any minimum 
rate that may be set by Ministers, would be to use the last recommended 
COSLA rate (sent in January 2005 for the following financial year), with an 
annual increase of 2% as a baseline. This would have given the following 
weekly figures for this year, £67 for 0 – 4 years, £83 for 5 – 10 years, £103 for 
11 – 15 years, and £134 for 16 plus. These are all well below the rates 
attributed to COSLA by the SE in the financial memorandum. The incorrect 
data throws out the subsequent calculations in the SE table. The revision to 
the table supports COSLA’s contention that councils pay above what would 
have been the suggested COSLA rate. It provides evidence of the cost 
pressures in the system, as well as our members’ desire to pay something
more in line with the cost of care. COSLA is working with the Fostering Network and ADSW to get more up to date figures. Unfortunately, we do not expect to have these until mid to late June.

16. A further burden on local authorities may arise from the Executive’s approach to Kinship care. If the Executive is to require payments of allowances to grandparents and other members of the extended family, using the powers contained in the Bill, this will be a major policy shift, with considerable costs. COSLA is hopeful that both the Finance Committee’s consideration of the Bill and the anticipated spending review will provide opportunities to address the financial implications of the chronic underfunding of social care services for young people and children.

Yours sincerely

Anil Gupta
Policy Manager