The Committee will meet at 10.00 am in Committee Room 4.

1. **Dangerous driving and the law:** The Committee will consider correspondence relating to closed petitions PE29, PE55, PE299 and PE331 and consider whether there are any issues arising from those petitions that remain outstanding.

2. **Emergency vehicles and the law:** The Committee will consider correspondence relating to closed petition PE111.

3. **Protection from Abuse (Scotland) Act 2001:** The Committee will undertake further post-legislative scrutiny of the Act.

4. **Former Justice 1 Committee inquiry into the regulation of the legal profession and public petition PE763:** The Committee will examine what progress has been made in relation to implementing the recommendations made by the former Justice 1 Committee in its *11th Report 2002: Report on Regulation of the Legal Profession Inquiry* and how the recommendations relate to petition PE763 by the Consumers' Association.

5. **Transparency of legal fees:** The Committee will consider further correspondence relating to the transparency of legal fees and the role of the auditor of court.

6. **European Union justice and home affairs:** The Committee will consider recent progress with proposals relating to alternative dispute resolution, parental responsibility and applicable law in divorce and its approach to other recent developments in the area of European Union justice and home affairs.

Alison Walker
Clerk to the Committee
Tel: 0131 348 5195
Papers for the meeting—

Agenda item 1
Note by the clerk (TO FOLLOW) J1/S2/04/37/1

Agenda item 2
Note by the clerk J1/S2/04/37/2

Agenda item 3
Note by the clerk J1/S2/04/37/3

Agenda Item 4
Note by the clerk J1/S2/04/37/4

Agenda item 5
Note by the clerk J1/S2/04/37/5

Agenda Item 6
Note by the clerk J1/S2/04/37/6
Scottish Executive, Ministerial Priorities for the Dutch Presidency J1/S2/04/37/7
Council of the European Union, 4-5 November 2004, Presidency J1/S2/04/37/8
Conclusions
Correspondence from the Scottish Executive enclosing— J1/S2/04/37/19
European Commission proposal for a directive on certain aspects of mediation in civil and commercial matters;
European Commission annex to the proposal;
Department for Constitutional Affairs explanatory memorandum on the proposal

Papers for information—
Scottish Executive, Post Council Report on the Justice and Home Affairs Council of EU Ministers, 19 November 2004 J1/S2/04/37/10
European Commission, Green Paper on mutual recognition of non-custodial pre-trial supervision measures J1/S2/04/37/12
European Commission, Green Paper on Maintenance Obligations J1/S2/04/37/14
Scottish Executive, Guidance For Integrated Children’s Services Plans 2005-2008 J1/S2/04/37/16
Correspondence from the Lord Advocate about the Constitutional Reform Bill (UK legislation) J1/S2/04/37/17
Correspondence from the Deputy Minister for Justice about the draft Maximum Number of Judges (Scotland) Order 2004 J1/S2/04/37/18
Forthcoming meetings—
Wednesday, 8 December 2004, CR4*;
Wednesday, 15 December 2004, CR2;
Wednesday, 22 December 2004, CR1*.

*denotes a change from the venue or date indicated previously.
GUIDANCE FOR INTEGRATED CHILDREN’S SERVICES PLANS 2005-2008

Introduction & Summary

1. This guidance provides advice for local authorities, NHS Boards and other planning partners (the police, Scottish Children’s Reporter Administration, voluntary organisations, etc.) on preparing integrated Children’s Services Plans covering the 3 year period from April 2005 to April 2008. The guidance is issued within the context of the obligations on Scottish Ministers and local agencies to promote and participate in Community Planning, as set out in the Local Government in Scotland Act 2003 and statutory guidance: http://www.scotland.gov.uk/library5/localgov/cpsg-00.asp.

2. This guidance asks agencies to draw together their existing separate plans for school education, children’s social work, child health and youth justice into integrated Children’s Services Plans from April 2005. Integrated Plans should help agencies rationalise existing planning activity and agree consistent improvement objectives and delivery strategies across universal and targeted services for children and young people.

Vision

3. Planning processes must add value to the outcomes for children and young people. Scottish Ministers have identified expectations and aspirations relevant to all Scotland’s children and young people, applying across agency, service and professional boundaries and consistent with the principles enshrined in the United Nations Convention on the Rights of the Child - http://www.unicef.org/crc/crc.htm:

   Children and Young People in Scotland should be valued by ensuring that they are:

   • **Safe**: Children and young people should be protected from abuse, neglect and harm by others at home, at school and in the community.

   • **Nurtured**: Children and young people should live within a supportive family setting, with additional assistance if required, or, where this is not possible, within another caring setting, ensuring a positive and rewarding childhood experience.

   • **Healthy**: Children and young people should enjoy the highest attainable standards of physical and mental health, with access to suitable healthcare and support for safe and healthy lifestyle choices.

   • **Achieving**: Children and young people should have access to positive learning environments and opportunities to develop their skills, confidence and self esteem to the fullest potential.

   • **Active**: Children and young people should be active with opportunities and encouragement to participate in play and recreation, including sport.

   • **Respected & Responsible**: Children, young people and their carers should be involved in decisions that affect them, should have their voices heard and should be encouraged to play an active and responsible role in their communities.
• **Included**: Children, young people and their carers should have access to high quality services, when required, and should be assisted to overcome the social, educational, physical, environmental and economic barriers that create inequality.

Local partners will want to consider how best to respond to the above statements when developing their vision statements and Plans, with appropriate reference to local priorities and national priority frameworks. Partners will also want to ensure wide dissemination of their local vision and plans amongst all agencies, departments, staff and volunteers working with children, young people and families.

**Integrated Children’s Services Plans**

4. The *For Scotland’s Children* report (2001) identified the preparation of a joint Children’s Services Plan as a key requirement for ensuring the effective integration of children’s services ([http://www.scotland.gov.uk/library3/education/fcsr-00.asp](http://www.scotland.gov.uk/library3/education/fcsr-00.asp)). Scottish Ministers believe the time is right to ask local agencies to draw existing separate planning arrangements and processes together into an integrated Children’s Services Plan. These integrated Plans should combine the following existing core statutory and other planning requirements into a single Plan:

- Children’s Services Plans: required under the Children (Scotland) Act 1995;
- Statements of Education Improvement Objectives and Progress Reports: required under the Standards in Scotland’s Schools etc. Act 2000;
- Child health elements of Local Health Plans, Joint Health Improvement Plans & Child Health Strategies - as set out in *Our National Health* (2000); *Our Community’s Health* (2000) and the *Template for Child Health Services within Unified NHS Board Areas* (2001);
- Youth Justice Strategies - as recommended in the *National Standards for Scotland’s Youth Justice Services* (2002).

5. There is an on-going statutory requirement for local authorities to prepare and publish annually, by the end of January each year, a Progress Report outlining their success in meeting the objectives set out in their previous Statement of Education Improvement Objectives (SIO). The next Progress Report is due to be published by the end of January 2005 on the SIO published in December 2003. Under legislation the next SIO is required to be published by end December 2004. Authorities are asked to submit by end-December a copy of their published SIO either as part of an outline Children’s Services Plan or with a letter confirming that the SIO objectives will be embedded into the final integrated Plan to be submitted to the Executive by 1 April 2005. The Progress Reports due to be published in January 2005 will not be affected by these revised arrangements. For future years, evidence towards meeting the objectives set out in the SIO can be published within the annual Children’s Services Plan update. The Executive intend to better align the statutory timescale for publication of annual Statements of Education Improvement Objectives and Progress Reports to the 3-year integrated planning cycle. Further advice on this will form part of the support arrangements for preparing the new Plans.

6. For NHS Boards, the Children’s Services Plans will now form an integral part of the preparation and assessment of local health planning. Local Health Plans and implementation plans for the NHS National Priorities should refer to the local Children’s Services Plans as the core planning documents for health services and health improvement activities for
children and young people and should identify clearly that the specific improvement objectives within the Children’s Services Plans are incorporated within wider NHS plans and delivery. This guidance, therefore, will cross-refer with guidance on the preparation of Local Health Plans.

7. Integrated Children’s Services Plans must continue to include appropriate specific reference to services for vulnerable children and children in need, including arrangements for early intervention and support within universal services and targeted additional support where required. Annex A attached provides a list of indicative categories of “children in need”, as defined in the Children (Scotland) Act 1995 – these are examples only. Children’s Services Plans should also form part of local activity to tackle poverty and inequality – this is covered in more detail below.

8. The aim of this guidance is not to establish an additional layer of plans but to help rationalise and replace existing planning activity for services and support for children and young people and to ensure consistent priorities and integrated strategies for delivery. Scottish Executive Departments will use the integrated Plans as the core documents for considering local activity and performance in delivering services, existing national priority frameworks and other commitments for children and young people, before any additional information and returns are requested. The Scottish Executive will look to draw together and rationalise existing accountability and quality assurance arrangements across services for children and young people. Consideration of integrated Plans should also form part of the joint inspection of children’s services and Best Value scrutiny.

**Purpose, Format and Content of Plans**

9. Integrated Children’s Services Plans are primarily local planning documents. They should be active drivers for improvement in the delivery of services and outcomes for children and young people in each area. They and other related plans form part of local processes for relevant agencies and organisations to come together to:

- assess local needs;
- identify priorities and objectives;
- agree implementation strategies and resources to deliver these;
- engage staff, service users and the public in these decisions; and
- ensure arrangements for monitoring progress.

10. There is no prescribed format for integrated plans. However, plans should contain a brief outline of relevant local context and information on the process through which the plan has been prepared and will be delivered, including:

- local partners’ shared vision for children and young people in their area;
- a concise summary of the context within which the Plan is developed, including cross reference to relevant sources of information about local service needs and current provision;
- a brief description or diagram of the area’s joint planning structure, including all relevant partners;
- confirmation of the processes for engaging with children, young people and their families and the wider public in the planning process;
- a brief description or diagram showing the local and regional structures in place or planned to ensure multi-agency delivery across children’s services, incorporating
relevant elements, e.g. integrated community schools, Community Health Partnerships, Sure Start services, local area planning forums, etc. (this could cross-refer with other more detailed strategies and service documents).

However, the primary focus and content of plans should be to establish an agreed:
- description, table or display of local partners’ agreed improvement objectives for services and support for children and young people with, for each of these, clear strategies for delivery; outcomes, measures of performance and timescales.

11. The content of integrated Plans should meet the statutory and other planning requirements set out at paragraph 4 above and summarised in the following table, although it is open for partners to cover other issues, e.g. leisure and recreation provision, transport, etc.:

**TABLE: CHILDREN’S SERVICES PLANS – CURRENT REQUIRED COVERAGE**

<table>
<thead>
<tr>
<th>Current Source</th>
<th>Service/Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children’s Services Plans</td>
<td>– Services for ‘children in need’ (see Annex A).</td>
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<td></td>
<td>– Child Protection.</td>
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<td></td>
<td>– Services for children affected by disability.</td>
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<td></td>
<td>– Services for looked after or formerly looked after children and young people.</td>
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<tr>
<td></td>
<td>– Adoption, Fostering &amp; Residential Care.</td>
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<tr>
<td></td>
<td>– Targeted and universal Early Years and Childcare Services (including Sure Start Scotland, Pre-school Education, Childcare and Out-of-School Care services).</td>
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<td></td>
<td>– Youth Work Services.</td>
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<tr>
<td></td>
<td>– Support for the Children’s Hearings system.</td>
</tr>
<tr>
<td>Statement of Education Improvement Objectives&lt;sup&gt;1&lt;/sup&gt;</td>
<td>As set out in the Standards in Scotland’s Schools Act 2000:</td>
</tr>
<tr>
<td></td>
<td>– Specific and measurable improvement objectives linked to the National Priorities in Education (see Annex B):</td>
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<tr>
<td></td>
<td>• Achievement &amp; Attainment;</td>
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<td></td>
<td>• Framework for Learning;</td>
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<td></td>
<td>• Inclusion &amp; Equality;</td>
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<td></td>
<td>• Values and Citizenship; and</td>
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<td></td>
<td>• Learning for Life.</td>
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<td></td>
<td>– Local proposals to:</td>
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<tr>
<td></td>
<td>• promote the involvement of parents in their child’s education;</td>
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<tr>
<td></td>
<td>• ensure observance of Equal Opportunities requirements in the provision of school education;</td>
</tr>
<tr>
<td></td>
<td>• provide or to develop existing Gaelic medium provision.</td>
</tr>
</tbody>
</table>

<sup>1</sup> The 7 key policy themes which education authorities have been asked to consider as part of their planning and reporting under the 2000 Act will be revised as part of the planned review of the National Priorities in Education, due to take place in 2005.
Local Health Plans/Joint Health Improvement Plans/Child Health Strategies

- Local aspects of Health Improvement (including objectives relevant to children and young people from local Joint Health Improvement Plans/Community Plans);

- Measures to improve local health services, including:
  - primary care;
  - community nursing;
  - community paediatric;
  - therapy services;
  - out-patient and hospital based services;
  - sexual health;
  - child and adolescent mental health services and promoting emotional well-being.

- Implementation plans for the NHS Priorities (see Annex B), relevant to children and young people.

Youth Justice Strategies

- Performance in achieving the National Standards for Scotland’s Youth Justice Service.

- Area-wide development of inter-agency measures on key themes, including:
  - Preventing youth offending
  - Early intervention
  - Restorative youth justice work
  - Tackling and reducing persistent re-offending.

12. Although it is important that plans cover the range of children’s services, the aim is not merely to include the above elements in a single document. The way in which local partners identify the links and key transitions between services in setting their improvement objectives will be crucial to the effectiveness and impact of integrated Plans. Annex D sets out how the above planning requirements and other related services can be linked with the Vision statements at paragraph 3 above and a list of outcomes, performance measures and quality indicators. These are drawn largely from existing national priorities and policy commitments, e.g. the National Priorities in Education, NHS Performance Assessment Framework, etc. These groupings are indicative only to assist agencies in considering possible approaches in preparing their integrated Plans and setting their improvement objectives. Detailed definitions and guidance on the various indicators continue to be available in familiar formats through relevant web links, e.g.:


13. Improvement objectives should be set for the 3 year period April 2005 to April 2008, although the aims may extend beyond then. Annual updates should be prepared to report on progress and to update objectives and indicators as required. The updates will also meet the statutory requirements for Statements of Education Improvement Objectives and Records of Achievement; link with local health planning; report on certain funding streams; etc. (see below).
14. Existing national priority frameworks, including their associated measures and indicators, are subject to ongoing review through dialogue with delivery agencies – for example a review of the National Priorities in Education performance measures and quality indicators will commence shortly, while the Audit Scotland statutory performance indicator for child protection has been identified as being in need of revision. The Scottish Executive will use these opportunities to better link and rationalise the different performance measures and indicators relevant to outcomes for children and young people within an integrated planning process.

Additional Information

15. In addition to the above specific requirements, integrated Children’s Services Plans should also include reference to the following issues:

- Links with wider Community Planning.
- Arrangements for Integrated Planning.
- Engagement with children, families and carers.
- Joint Assessment & Information Sharing.
- Arrangements for wider Integrated Delivery.
- Budgets & Commissioning
- Training & Workforce Development.
- Links with Closing the Opportunity Gap activity.
- Commitment to mainstreaming Equality.

Community Planning and Links with Other Plans

16. Integrated Children’s Services Plans should form part of Community Planning. The integrated Plans should confirm links with Community Planning partnership priorities and other relevant planning processes. Local partners should ensure consistency and appropriate cross reference with other plans and strategy documents relevant to children and young people (either directly or as part of families), e.g.:

- Partnership in Practice Agreements for people with learning disabilities;
- Community Learning Strategies;
- Local Drug Action Strategies;
- Joint Health Improvement Plans;
- Community Safety Plans;
- Criminal Justice Strategies;
- Anti-Social Behaviour Strategies;
- Domestic Abuse Strategies;
- Community Care Plans and Joint Futures Local Partnership Agreements;
- Carers Strategies/Services for Carers;
• Regeneration Outcome Agreements;
• Local Housing and Homelessness Strategies;
• Joint Local Implementation Plans for the Mental Health (Care and Treatment) (Scotland) Act 2003;
• Local Suicide Prevention Action Plans;
• Local cultural and leisure strategies;
• Local Road Safety Plans.

Planners may consider it appropriate to absorb certain plans or sections of plans into the integrated Children’s Services Plans.

Integrated Planning

17. Integrated Children’s Services Plans should be joint productions, between local authorities and NHS Boards but also with other relevant agencies and organisations. For example, the contribution of local Scottish Children’s Reporter Administration Authority Reporters will be key in ensuring effective links between the Children’s Hearings system and wider children’s services; and Early Years and Childcare Partnerships (building on the previous contribution of Childcare Partnerships) should have an active role in developing aspects of early year’s services – these are examples only. Local authorities have a continuing statutory duty in preparing Plans to consult with NHS Boards, relevant voluntary organisations; the Scottish Children’s Reporter Administration; the Police; chairs of children panels and relevant housing bodies and with representatives of school pupils and their parents on their education plans. However, wide consideration should be given to the contribution of other agencies and organisations, e.g. Child Protection Committees; Drug Action Forums; Youth Justice Strategy Groups, Domestic Abuse Multi-Agency Groups, Local Enterprise Companies; Careers Scotland, etc. This is not an exhaustive list. As far as possible, there should be clear shared understanding and ownership of the priorities, objectives, targets and delivery strategies within the Plans.

18. Specific consideration should be given to arrangements for engaging across the range of voluntary sector organisations working with children, young people and families. Some areas have established a Voluntary Sector Forum to assist the sector’s contribution to the planning processes. The Scottish Executive, COSLA and the Scottish Council of Voluntary Organisations will further encourage the development of local partnership arrangements, following the Strategic Funding Review of the Voluntary Sector, jointly undertaken and due to publish later this year. Further consideration should also be given to the role of voluntary organisations within the planning and delivery of services. This will be supported through the Scottish Executive’s forthcoming programme to support social economy organisations in Scotland. The duty to make arrangements that secure Best Value also underlines the importance of improving the commissioning process in a way that appropriately recognises the contribution of the voluntary sector and the importance in sustainable development.

Engagement with Children, Young People and Families

19. Engagement with children, young people and families is a vital component in ensuring Best Value in the planning and delivery of children’s services. Local agencies should already be considering these requirements as part of Community Planning and their individual planning and delivery processes. Integrated children’s services planning offers the potential to help better co-ordinate these arrangements across agencies. Community Planning
Advice Notes (http://www.scotland.gov.uk/library5/localgov/cpan-00.asp.) provide links to a range of resources and advice on effective engagement with communities and client groups. Consideration is also being given at national level to further activity that might help support the sharing of experience and effective practice in engaging with children, young people and families, including for hard to reach groups.

Management Information/Mapping Need & Provision

20. Integrated Children’s Services Plans should be based on robust local management information about service needs and current service provision. This information should come from a range of relevant sources within agencies and from other local partners, e.g. voluntary organisations, local SCRA Authority Reporters, etc., or may require specific mapping activity. It is not necessary or practicable to include the full range of this information within the main body of the Plan. However, local partners should be able to demonstrate a clear link between sources of information about local service needs, existing provision, improvement objectives and planned service delivery.

Assessment and Information Sharing

21. Local arrangements for needs assessment and the sharing of information between professionals and agencies about individual children are central to children, young people and families’ experiences of services, for example in ensuring that they do not have to undergo repeated assessments or the un-coordinated provision of services. The Scottish Executive is working with national and local agencies to develop an integrated framework for assessment of children applying to both universal and targeted services. Further information on this key issue is provided in Annex C.

Service Delivery

22. Children’s Services Plans are not an end in themselves. They should identify clearly local models for translating integrated working at strategic level into multi-agency delivery. This will be reflected in the delivery strategies for individual improvement objectives and quality assurance approaches, but partners will also want to set out how these different multi-agency arrangements fit together into a coherent local structure for integrated service delivery. Some areas use a locality or community-based model, for example, built around Integrated Community School clusters. Others use a client group approach, organising services around specific client groups, e.g. children affected by disability; or a combination of approaches.

23. A number of key developments will inform and support local arrangements for multi-agency delivery, including:

- establishment of Community Health Partnerships (CHPs): CHPs will be key drivers for joint working on health services and health improvement activity - with devolved responsibilities and budgets from NHS Boards. The coverage of CHPs will take account of local authority boundaries and must include appropriate representation from and consideration of child health services. Statutory guidance on the establishment of CHPs is issuing separately.

- phase II of the Child Protection Reform programme;
The 3 year programme is progressing with dissemination of the Children’s Charter and Framework for Standards for Child Protection; revised guidance on the role of Child Protection Committees and pilot joint inspection of child protection services.

- phase II of the review of the Children’s Hearings system:
  Consideration is being given to the responses to the *Getting it Right for Every Child* consultation pack and events prior to the launch of phase II of the review later this year.

- development of the integrated Framework for Assessment and Information Sharing:
  As outlined above, work is progressing to establish the integrated Framework for Assessment. This will link with other relevant initiatives, including:

- implementation of the Additional Support for Learning (Scotland) Act 2004:
  The 2004 Act is likely to commence in autumn 2005, establishing a new statutory framework and new duties on local authorities and other agencies for children with additional support needs. The Executive will consult on a Code of Practice and Regulations under the 2004 Act later this year.

- the roll-out of the Integrated Community School and Health Promoting School approaches:
  The role of schools is key in the planning and delivery of integrated services. The Scottish Executive will continue to support the roll-out of the ICS and HPS approaches to all schools by 2007, in particular drawing from the HMIe report on the joint inspection of ICSs published in September.

- implementation of the Integrated Early Years Strategy – *Starting Together*:
  The Strategy will draw together existing policy and activity relevant to children in their early years and their families. The Scottish Executive will work with local agencies to implement the approaches set out in the Strategy.

- implementation of the National Strategy to Tackle Domestic Abuse:
  Separate advice for local planners will issue shortly, drawing together the action points and recommendations from the National Strategy and related documents with particular reference to the needs of children and young people affected by domestic abuse.

- the Scottish Executive response to the *Hidden Harm* report on children affected by parental substance misuse:
  Scottish Ministers will issue shortly a separate response to the above report, building on the *Getting Our Priorities Right: Good practice guidance for working with children and families affected by substance misuse and other related activity*.

- development of a National Youth Work Strategy:
  The Scottish Executive is engaging with key stakeholders in establishing the review of youth work services. An announcement will be made later this year.

- the development of a framework for 16-19 year olds not in Employment, Education and Training (the ‘NEET’ group)
The Employability Framework for Scotland is being developed to support the *Closing the Opportunity Gap* target to reduce unemployment levels: reducing the ‘NEET’ group will be a priority within the framework. This will build on the Beattie report, *Implementing Inclusiveness: Realising Potential*, which lead to a number of developments aimed at improving transitions to post-school and tackling the barriers to learning and employment such as few or no qualifications, low basic skills, poor motivation, physical disabilities or learning difficulties. Key developments to date include: Careers Scotland key worker support services, building the capacity of the Further Education sector, the BRITE Initiative at Stevenson College which promotes the use of assistive technologies to support learning, the extension of Educational Psychological Services to post-school through 12 Pathfinders.

- the development of 3 year Regeneration Outcome Agreements (ROAs) (2005-08); Guidance was issued on the development of ROAs on 11th August 04. The requirements of the guidance apply to the new Community Regeneration Fund (CRF) announced by the Minister for Communities on 12th July 04 (replaces Social Inclusion Partnership, Better Neighbourhood Services and Tackling Drugs Misuse Funding). The CRF will drive the delivery of the Closing the Opportunity Gap objective of “regenerating the most disadvantaged neighbourhoods, so that people living there can take advantage of job opportunities and improve their quality of life”. Community Planning Partnerships will submit final ROAs by 20th December 04. Outcomes must relate directly to the national priorities for community regeneration including “Raising educational attainment” and “Engaging young people”.

- the National Planning Framework for Service Change in the NHS; An expert group was appointed in April 2004 to look at how the NHS can plan and deliver better health care services in Scotland for the longer term. The group will develop a national framework for service change in line with the aims of the White Paper *Partnership for Change* to develop sustainable specialist services along with more local services delivered in community settings. It will report by March 2005.

- implementation of the 4th *Health for All Children* (Hall4) report recommendations; Following consultation on draft guidance earlier this year, Scottish guidance on the implementation of Hall4 - on child health surveillance and screening activity - will issue later this year.

- Evaluation of phase I and implementation of phase II of the national health demonstration project ‘Starting Well’; Ministers have committed to a second phase of this health demonstration project with fuller details due in the autumn.

- publication of a Child and Adolescent Mental Health (CAMH) Template; The Template will publish later this year, following from the SNAP *Assessment Report on Child and Adolescent Mental Health Services*.

- development of An Action Framework for Children and Young People’s Health in Scotland; This will involve pulling together all the different policy strands in relation to child health to produce an action framework and will include the appointment of a National Clinical Lead for Child Health.
the rollout of NHS Regional Planning as part of the NHS Reform(Scotland) Act 2004; This will make the planning of NHS services a statutory requirement for NHS Boards and will have an impact across a range of service providers.


Youth Justice policy; A significant programme of co-ordinated work is being taken forward to modernise and improve youth justice services and outcomes, including through the Executive’s 10 point Action Plan to reduce Youth Crime and other work to support local activity to reduce youth crime and re-offending. This will link with the review of the children’s Hearings system.

Anti-Social Behaviour Strategies Part 1 of the Anti-social Behaviour etc. (Scotland) Act 2004 places a statutory duty on each local authority, jointly with relevant chief constables, to prepare a strategy for dealing with anti-social behaviour in the authority’s area. This includes setting out what local services are in place for young people aimed at preventing ASB; and what the arrangements will be for consulting young people on action to tackle ASB, particularly in the hardest pressed areas. Draft guidance on preparing Anti-Social Behaviour Strategies issued for consultation on 9 July 2004.

Family Support Early intervention - to increase family stability and to reduce harm to children from parental separation - is an important part of an integrated agenda to meet children's needs and promote the vision underpinning this guidance. The Executive is now looking at ways to take a more holistic approach to the development of family support and to exploit linkages into existing programmes; and will be engaging closely with local government as this work proceeds. Meantime, authorities may wish to consider how any current investment in family support relates to other work on early intervention and children's services; and whether delivery partners in, for example, voluntary sector relationship counselling and family mediation could serve a wider agenda on family stability and child protection.

24. Local partners should take account of these developments, as appropriate, in describing their local and regional structures for multi-agency delivery, alongside their own local context, structures and priorities. Annex E attached provides a fuller list of current national initiatives relevant to services for children and young people and links to documents and further information. The Children and Young People Cabinet Delivery Group is working to ensure connections and consistency across the range of initiatives relevant to children and young people.

Resources/Budgets

25. Budget setting and commissioning is a key element of the process of integrated planning and delivery. There is increasing experience and expertise amongst local agencies in drawing together funding streams and resources. There is existing practical advice on joint
resourcing for Community Care Services, much of which is also relevant to children’s services (http://www.scotland.gov.uk/about/HD/CCD2/00017673/PracticalAdviceFeb03.pdf). The integrated planning process for children’s services should provide an opportunity for open discussion and agreement between agencies about the total resources available locally - not only funding, but also staff, facilities, etc. - and how best these can be deployed to respond to local needs. The Executive will consider the requirement for additional practical guidance or measures to facilitate joint budgeting and commissioning. The Scottish Executive is looking to better align the allocation and monitoring arrangements for national funding streams around the new integrated planning cycle. Specific advice will issue later in the year on those elements of the recent Spending Review relevant to children and young people.

Training /Workforce Development

26. At national level, the Children and Young People Cabinet Delivery Group has identified workforce development, training and support as vital components in the move towards more integrated approaches. A range of activity is proposed or on-going in this area, e.g. the review of social work and review of the early years and childcare workforce. Local partners should consider training and workforce development needs as part of their integrated planning approach, including the development of multi-disciplinary training programmes as a key feature in promoting understanding and commitment to integrated delivery.

Closing the Opportunity Gap & Community Regeneration

27. Integrated Children’s Services Plans should identify specific links between services and support for children and young people and local activity for community regeneration and closing the opportunity gap to help individuals and families escape poverty. Scottish Ministers have set six specific objectives to drive future anti-poverty initiatives (see Annex B). Further announcements on these will be made later in the year. The timescales and indicators for local Regeneration Outcome Agreements and the closing the opportunity gap objectives will allow for effective cross-reference with areas’ improvement objectives for services for children and young people.

Mainstreaming Equality

28. Children’s Services Plans should reflect local activity to mainstream equality and diversity for children, young people and their families. The Scottish Executive’s Equality Strategy aims to ensure that policy makers and those delivering services, at all levels, take account of and reflect the diverse needs of individuals and that no one is disadvantaged because of their race or ethnicity, disability, gender, sexual orientation, age or religion. Information and resources are available from the Scottish Executive’s Mainstreaming Equality Web Site. http://www.scotland.gov.uk/mainstreaming/?pageid=403

Timescales & Annual Updates

29. During this first year of the integrated planning arrangements, the Scottish Executive will seek information, by end-December 2004, from local agencies about their progress in preparing integrated plans. This should not be a significant burden or distraction, but should merely provide confirmation from local authority and NHS Board chief executives that
satisfactory progress is being made in preparing integrated Plans. This will form part of the support arrangements to assist the development of integrated Plans.

30. Local partners should copy their finalised integrated Children’s Services Plans to Ms Gita Jackson, Scottish Executive Education Department, Children and Families Division, Area 2-B, Victoria Quay, Edinburgh, EH6 6QQ (tel: 0131 244 7670, gita.jackson@scotland.gsi.gov.uk) by 1 April 2005. As well as a hard copy, local agencies should provide an electronic version of their finalised Plans. The Scottish Executive proposes to make copies of all the plans and updates available electronically to assist the sharing of information and effective practice.

31. Annual updates on the Plans should be prepared locally and sent to the Scottish Executive by 1 April in subsequent years. The updates should report on progress on the improvement objectives and related activity over the previous period and update improvement objectives and indicators, as required, for the future year. The annual updates will also form part of the monitoring arrangements for certain Scottish Executive funding streams – details will be announced later in the year.
## Integrated Planning Timescale

<table>
<thead>
<tr>
<th>Month</th>
<th>CSP</th>
<th>LHP/ NHS Priorities</th>
<th>Guidance</th>
<th>Local Health Plan Finalised</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sept. 2004</td>
<td>Spending Review Outcome</td>
<td>LHP/ NHS Priorities Guidance</td>
<td></td>
<td></td>
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<tr>
<td>November</td>
<td>CSP Guidance</td>
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<tr>
<td>December</td>
<td>CSP Update incorporating Statement of Education Improvement Objectives</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Jan. 2005</td>
<td>SiO Progress Report</td>
<td>HB Implementation Plan submitted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>April</td>
<td>3 Year CSP finalised</td>
<td></td>
<td>Local Health Plan Finalised</td>
<td></td>
</tr>
<tr>
<td>September</td>
<td></td>
<td>LHP/ NHS Priorities Guidance Issues</td>
<td></td>
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<tr>
<td>December*</td>
<td>Statement of Education Improvement Objectives*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan. 2006*</td>
<td>SiO Progress Report*</td>
<td>HB Implementation Plan submitted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>April</td>
<td>Annual CSP Update</td>
<td></td>
<td>Local Health Plan Finalised</td>
<td></td>
</tr>
<tr>
<td>September</td>
<td></td>
<td>LHP/ NHS Priorities Guidance Issues</td>
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<tr>
<td>December</td>
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<tr>
<td>Jan. 2007</td>
<td></td>
<td>HB Implementation Plan submitted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>April</td>
<td>Annual CSP Update</td>
<td></td>
<td>Local Health Plan Finalised</td>
<td></td>
</tr>
</tbody>
</table>

*N.B. The current legislative requirement for Statements of Education Improvement in December 2005 and Progress Reports in January 2006 will be reviewed – but details should continue to be embedded within CSP annual updates.

### Monitoring

32. Detailed monitoring and evaluation will be undertaken following submission of the finalised integrated Children’s Services Plans for each area in April. The integrated Children’s Services Plan and annual progress reports should form part of the Accountability Review process for NHS Boards and the arrangements for publication of the next round of Statements of Education Improvement Objectives, while the annual updates allow authorities to meet their statutory responsibility to publish annual National Priorities Progress Reports. The plans also support the assessment of progress in implementing the National Standards for Scotland’s Youth Justice Services and monitoring of progress on other key national policy commitments, e.g. child protection, support for looked after children; Integrated Early Years services. The Scottish Executive will look together to draw together and rationalise existing accountability and quality assurance arrangements across services for children and young people.
33. In addition, the Plans will also form part of streamlined monitoring arrangements for ring-fenced resources, such as the National Priorities Action Fund and Changing Children’s Services Fund. Further advice on this will issue later in the year.

34. The Plans will also contribute towards the evidence for the future joint inspection of children’s services and Best Value scrutiny.

**Key Contacts**

35. General enquiries about this guidance should be directed to Ms. Gita Jackson (tel: 0131 244 7670, gita.jackson@scotland.gsi.gov.uk). Additional information about existing planning requirements for children’s services is available from the following contacts and online resources:

- **Children’s Services Plans:** Gita Jackson, ED:Children & Families
  [http://www.scotland.gov.uk/about/ED/CnF/00017842/Planning.aspx](http://www.scotland.gov.uk/about/ED/CnF/00017842/Planning.aspx)

- **National Priorities in Education:** Ian Davidson, ED:New Education Developments (0131 244 0294)
  [http://www.nationalpriorities.org.uk/Resources/Eleanor/planning5.html](http://www.nationalpriorities.org.uk/Resources/Eleanor/planning5.html)

- **Local Health Plans:** Robert Stevenson, HD:Women & Children’s Unit (0131 244 4088)
  [http://www.show.scot.nhs.uk/](http://www.show.scot.nhs.uk/)

- **Youth Justice Strategies**
  Tom McNamara, ED:Youth Justice & Children’s Hearings Division (0131 244 5444)
  [http://www.scotland.gov.uk/Topics/People/Young-People/youth-justice](http://www.scotland.gov.uk/Topics/People/Young-People/youth-justice)

SCOTTISH EXECUTIVE

NOVEMBER 2004
EXAMPLES OF ‘CHILDREN IN NEED’,

The Children (Scotland) Act 1995 defines a child as being “in need” because:
• he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development;
• his health or development is likely significantly to be impaired, or further impaired, if services are not provided;
• he is disabled; or
• he is affected adversely by the disability of any other person in his family;

Some indicative examples of “children in need” are listed below (this is not an exhaustive list):
• Children looked after
• Children in need of protection
• Children/young people no longer looked after
• Young parents
• Children with disabilities
• Young carers
• Children adopted (or in adoption process)
• Children/young people who misuse substances/alcohol
• Children/young people affected by HIV/Aids
• Children/young people who are homeless
• Children/young people in poor housing
• Children who are carers for relatives or who are affected by disability
• Children who live in violent environments or are affected by domestic abuse
• Children whose parents suffer from a mental illness
• Children whose parents misuse substances/alcohol
• Children whose health & development is suffering
• Children with additional needs for learning (including those excluded)
• Children who have emotional behavioural and mental health problems
• Children/young people who are in conflict with the law because of offending behaviour (including those who offend against other children).
• Children affected by the imprisonment of a family member
• Young runaways
• Children abused through prostitution and sexual exploitation
• Traveller children
ANNEX B

NATIONAL PRIORITIES IN EDUCATION

• **Achievement and Attainment**: To raise standards of educational attainment for all in schools, especially in the core skills of literacy and numeracy, and to achieve better levels in national measures of achievement including examination results.

• **Framework for Learning**: To support and develop the skills of teachers, the self discipline of pupils and to enhance school environments so that they are conducive to teaching and learning;

• **Inclusion and Equality**: To promote equality and help every pupil benefit from education, with particular regard paid to pupils with disabilities and special educational needs, and to Gaelic and other lesser used languages;

• **Values and Citizenship**: To work with parents to teach pupils respect for self and one another and their interdependence with other members of their neighbourhood and society and to teach them the duties and responsibilities in a democratic society; and

• **Learning for Life**: To equip pupils with the foundation skills, attitudes and expectations necessary to prosper in a changing society and to encourage creativity and ambition.

NATIONAL PRIORITIES FOR THE NHS (2004-05)

• **Health Improvement**: To improve the health of everyone in Scotland and to reduce the gap between the health status of people living in affluent and more deprived communities.

• **Service Re-Design**: To modernise NHS services to better meet the needs of patients by promoting service re-design.

• **Patient Focus and Public Involvement**: To actively involve the people of Scotland, including communities, patients and carers, in planning and delivering NHS services.

• **48-Hour Access**: To ensure that anyone contacting their GP surgery has guaranteed access to a GP, nurse or other healthcare professional within 48 hours.

• **Waiting Times**: To reduce waiting times for in-patient, day case and out-patient treatment.

• **Delayed Discharges**: To ensure that patients who no longer need hospital treatment are discharged as soon as possible into appropriate care;

• **Healthcare Associated Infection**: To reduce healthcare associated infections and providing a clean hygienic healthcare environment.

• **Improving Mental Health Services**

• **Tackling Cancer**

• **Tackling Coronary Heart Disease/Stroke**

• **Workforce Development/Staff Governance**

• **Financial Break-Even**
CLOSING THE OPPORTUNITY GAP OBJECTIVES

• Regenerating the most disadvantaged neighbourhoods, so that people living there can take advantage of job opportunities and improve their quality of life;

• Increasing chances of sustained employment for vulnerable and disadvantaged groups - to lift them permanently out of poverty;

• Improving the confidence and skills of the most disadvantaged children and young people - to provide them with the greatest chance of avoiding poverty when they leave school;

• Reducing the vulnerability of low income families to financial exclusion and multiple debt - to prevent them becoming over-indebted and/or to lift them out of poverty;

• Increasing the rate of health improvement for people living in the most deprived communities - to improve their quality of life, including their employability prospects;

• Improving access to high quality services for the most disadvantaged groups and individuals in rural communities - to improve their quality of life and enhance their access to opportunity.
ANNEX C

INFORMATION SHARING AND INTEGRATED ASSESSMENT FRAMEWORK FOR CHILDREN

1. The Scottish Executive have established a multi-agency Assessment Working Group (AWG) chaired by Professor Norma Baldwin, whose task is to prepare an overarching framework for assessment (and related information sharing) for use by all agencies and individuals working with children, both in universal and targeted services.

2. The aims of the Assessment Working Group are to:
   - Provide policy guidance on information sharing, the dimensions which assessment must cover and the characteristics, requirements and procedures of an integrated system
   - Outline the strategy needed in order to develop the integrated framework in practice.

3. To ensure the assessment framework will lead to improved services for children and families, the outline strategy for the developing framework will cover the scope of:
   - guidance for and expectations of different agencies and individuals;
   - the joint agreements and mechanisms, which need to be in place to ensure that all agencies working with adults and families – where the well-being of a child may be affected – take appropriate responsibility and action;
   - local practice development and support for implementation, including shared language definitions and understanding of assessment;
   - change management and the support which will be needed for practitioners; and
   - implications for systematic recording, information sharing and data protection.*

* Guidance on the legal background to information sharing is being issued to local authorities and other agencies.

4. The working group has been asked to prepare a report by November 2004 for the Children and Young People Cabinet Delivery Group. Thereafter, materials relating to the Integrated Assessment Framework will be issued for consultation in early 2005.

5. More information is available about the work of the group at www.iaf.intranets.com

Other issues

6. Other major policy initiatives will inform the development of the Framework, in particular the implementation of the action points from For Scotland’s Children, and the recommendations from It’s Everyone’s Job to Make Sure I’m Alright.

7. Within schools, changes to the assessment arrangements for children will arise from the Education (Additional Support for Learning) (Scotland) Act 2004, when it is implemented (expected autumn 2005). The Executive’s Additional Support Needs Division is working with a multi-agency advisory group and development officers on secondment from local authorities to develop a code of practice for use by professionals across education, health and social work. A draft version of the code will be available for consultation towards the end of 2004/early 2005. The code will reflect the work being taken forward on an integrated assessment Framework.

Information is available on the work of the Additional Support Needs Advisory Group at http://sh45inta/about/ED/ASND/00019094/page1040569097.aspx
### LOCAL PLANNING AND DELIVERY ACTIVITY FOR CHILDREN, YOUNG PEOPLE AND FAMILIES

<table>
<thead>
<tr>
<th></th>
<th>National Priorities in Education (see Annex B)</th>
<th>NHS Priorities</th>
<th>Children's Services Plans / Youth Justice Strategies</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAFE</td>
<td></td>
<td>Child Protection</td>
<td>Child Protection</td>
<td>Road Safety and Safer Routes to Schools Initiatives</td>
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<td>Children's Hearings system</td>
<td>Children's Hearings system</td>
<td>Local Action to Tackle and Prevent Domestic Abuse</td>
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<td>Services for Children Affected by Adult Substance Misuse</td>
<td>Services for Children Affected by Adult Substance Misuse</td>
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<td>Services for Children Affected by Domestic Abuse</td>
<td>Services for Children Affected by Domestic Abuse</td>
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<tr>
<td>NURTURED</td>
<td></td>
<td>Health Promoting Schools</td>
<td>Services for Children in Need (see Annex A)</td>
<td>Carers Strategies</td>
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<td>Adoption &amp; Fostering</td>
<td>Adoption &amp; Fostering</td>
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<td>Residential Accommodation</td>
<td>Residential Accommodation</td>
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<tr>
<td>HEALTHY</td>
<td></td>
<td>Health Improvement – including sexual health</td>
<td>Drug Action Strategies</td>
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<td></td>
<td>Child and Adolescent Mental Health</td>
<td>Mental Health (Care &amp; Treatment) Scotland Act 2003 Implementation Plans</td>
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<td>Primary, secondary and tertiary health services</td>
<td>Local Suicide Prevention Plans</td>
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<td></td>
<td>Implementation of other NHS Priorities as they relate to children and young people (see Annex B)</td>
<td></td>
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<tr>
<td>ACHIEVING</td>
<td>National Priority: Attainment &amp; Achievement</td>
<td>Health Promoting Schools</td>
<td>Universal Childcare Services / Out of School Care</td>
<td>Community Learning Strategies</td>
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<td>National Priority: Framework for Learning</td>
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<td>Early Education</td>
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<td>National Priority: Learning for Life</td>
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<tr>
<td>ACTIVE</td>
<td>National Priority: Learning for Life</td>
<td>Health Promoting Schools</td>
<td>Youth Work Services</td>
<td>Promoting participation in cultural activities</td>
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<td>Leisure &amp; Recreation</td>
</tr>
<tr>
<td>RESPECTED &amp; RESPONSIBLE</td>
<td>National Priority: Values and Citizenship</td>
<td>Patient Focus &amp; Public Involvement</td>
<td>Youth Justice Strategies</td>
<td>Community Engagement – children, young people and families</td>
</tr>
<tr>
<td></td>
<td>Involving Parents in their Child’s Education</td>
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<td></td>
<td>Anti-Social Behaviour Strategies</td>
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<td>Community Safety</td>
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<td></td>
<td>Criminal Justice Strategies</td>
</tr>
<tr>
<td>INCLUDED</td>
<td>National Priority: Inclusion &amp; Equality</td>
<td>Fair For All</td>
<td>Sure Start Scotland</td>
<td>Community Regeneration Outcome Agreement</td>
</tr>
<tr>
<td></td>
<td>Providing &amp; Developing Gaelic Medium Education</td>
<td>Reducing Health Inequalities</td>
<td>Services for children with and affected by disability / Accessibility</td>
<td>Closing the Opportunity Gap for children and young people to tackle the impact of poverty</td>
</tr>
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<td>Support for Young People Not in Employment, Education of Training (NEET)</td>
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<td>Concessionary Travel for Young People</td>
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<td>Housing &amp; Homelessness Strategies</td>
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</tbody>
</table>
The following tables identify indicative outcomes, indicators and measures linked to the Scottish Executive's high level vision for children and young people. These are indicative only to assist planner partners in setting and measuring their specific improvement objectives. They are drawn from existing sources – National Priorities for Education, NHS Performance Assessment Framework, Integrated Early Years Strategy, existing Children's Services Planning guidance, Accounts Commission Performance Indicators. These various sources and measures are under continuing development (*) or review – stakeholders will be involved in and informed of any update to the various indicators. For example, the proposed outcomes in the Integrated Early Years Strategy will be discussed with stakeholders to ensure they are measurable and achievable.  

N.B. WHILE IT IS NOT NECESSARY TO COVER ALL THESE INDICATORS WITHIN THE CHILDREN'S SERVICES PLAN, LOCAL AUTHORITIES AND NHS BOARDS SHOULD AS A MINIMUM REPORT AGAINST THOSE REQUIREMENTS SUMMARISED IN THE TABLE AT PARAGRAPH 11 OF THE GUIDANCE.

**SAFE: Children and young people should be protected from abuse, neglect and harm by others at home, at school and in the community.**

<table>
<thead>
<tr>
<th>OUTCOMES</th>
<th>INDICATORS/MEASURES</th>
<th>SOURCE</th>
</tr>
</thead>
</table>
| Reduce the neglect and abuse of children and young people.              | − Self-Assessment: Local multi-agency child protection arrangements including implementation of Children's Charter and Framework of Standards, information sharing and guidance for Child Protection Committees.  
  [New statistical measures for Child Protection being developed]          | N/A                                                                         |
| Effective support for the Children’s Hearing’s system.                 | − % of social background reports submitted to the Reporter within 20 days.                                                                                                                                               | Accounts Comm. P.I.          |
|                                                                         | − % of children seen by a supervising officer within 15 days                                                                  | Accounts Comm. P.I.          |
  [Separate advice note being prepared]                                    | N/A                                                                         |
| Reducing the number of serious and fatal road and other accidents for   | − Child injuries and fatalities relative to total population for all accidents, road traffic accidents, home accidents and other accidents per 1,000 population.                                                                 | Early Years Strategy        |
| children and ensuring safer routes to school.                           | − Self Assessment Implementation of safer routes to school schemes and 20mph zones around schools.                                                                                                                     |                               |
**NURTURED:** Children and young people should live within a supportive family setting, with additional assistance if required, or, where this is not possible, within another caring setting, ensuring a positive and rewarding childhood experience.

<table>
<thead>
<tr>
<th>OUTCOMES</th>
<th>INDICATORS</th>
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</thead>
</table>
| **Ensure integrated package of education, health and care for looked after/accommodated children** | - % of children looked after on 31 March:  
  - At home  
  - In other community placements  
  - In residential care  
  - % of looked after children aged 5-18 in full-time education at 31 March.  
  - % of looked after children with an individual education plan at 31 March.  
  - Exclusions of looked after children relative to total exclusions during previous year.  
  - % of looked after/accommodated children at 31 March who have received a health assessment during the previous year  
  - % of accommodated children with three or more placements in preceding year.  
  - For each child accommodated at 31 March the length of stay. | CLAS Table 4  
  Existing CSP guide  
  Existing CSP guide  
  CLAS Table 6  
  CLAS Table 6 |
| **Improve support for adoptive and foster parents** | - Number of foster carers and places available at 31 March  
  - % of accommodated children in foster care at 31 March  
  - Average duration of time from child care review decision for adoption to granting of adoption order in preceding year. | Existing CSP guide  
  CLAS Table 6  
  Existing CSP guide |
| **Enhance support for those leaving care** | - Self assessment – Implementation of *Support for Young People Leaving Care* regulations and guidance. | N/A |
| **Increase support for children with or affected by disabilities and young carers** | - [All children with disabilities and special needs enabled to meet their full potential.]*  
  - Self-Assessment - Implementation of *Same As You?* report recommendations. | Early Years Strategy  
  N/A |
| **Ensure secure accommodation for those who need it** | - Admissions to secure accommodation as a proportion of total accommodated children at 31 March | SE Secure Accommodation Return and CLAS Table 1 |
| **Stronger families and communities** | - [Number of parents accessing support and learning opportunities, including parenting skills]*  
  - [Incidence of post-natal depression, self-harm and suicide in new mothers]* | Early Years Strategy  
  Early Years Strategy |
HEALTHY: Children and young people should enjoy the highest attainable standards of physical and mental health, with access to suitable healthcare and support for safe and healthy lifestyle choices.

<table>
<thead>
<tr>
<th>OUTCOMES</th>
<th>INDICATORS</th>
<th>SOURCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enhance school environments (NPinE2.3)</td>
<td>% of schools classified as Health Promoting Schools</td>
<td>NPinE 2.3B</td>
</tr>
<tr>
<td>Health Improvement</td>
<td>% of low birth weight babies</td>
<td>NHS PAF 1.03.01</td>
</tr>
<tr>
<td></td>
<td>% of women still breastfeeding at 6 weeks</td>
<td>NHS PAF 1.04.02</td>
</tr>
<tr>
<td></td>
<td>% of 5 year olds with no experience of dental disease</td>
<td>NHS PAF 1.05.01</td>
</tr>
<tr>
<td></td>
<td>% of target population vaccinated for seven childhood immunisation programmes, excluding MMR/ % of target population vaccinated for MMR</td>
<td>NHS PAF 1.06.01</td>
</tr>
<tr>
<td></td>
<td>% of women who smoke at time of booking first antenatal visit</td>
<td>NHS PAF 1.06.02</td>
</tr>
<tr>
<td></td>
<td>% of population aged 0-17 registered with an NHS dentist</td>
<td>NHS PAF 1.08.01</td>
</tr>
<tr>
<td></td>
<td>Frequency and level of drinking among 12-15 year olds.</td>
<td>NHS PAF 2.07.01</td>
</tr>
<tr>
<td></td>
<td>% of people under 25 reporting use of illegal drugs in the last month and previous year and heroin use.</td>
<td>Early Years Strategy</td>
</tr>
<tr>
<td></td>
<td>incidence of exposure to second hand smoke by children*</td>
<td>Early Years Strategy</td>
</tr>
<tr>
<td></td>
<td>[% of children achieving the 5-a-day target for fruit and vegetable consumption]*</td>
<td>Early Years Strategy</td>
</tr>
<tr>
<td></td>
<td>% of obese and overweight children*</td>
<td>Early Years Strategy</td>
</tr>
<tr>
<td>Mental Health: Improve services for people with mental health problems</td>
<td>Suicide rates for young people aged 10-24</td>
<td>PAF Self-Assessment</td>
</tr>
<tr>
<td></td>
<td>Self Assessment of implementation of the SNAP report on <em>Child and Adolescent Mental Health Needs Assessment recommendations</em></td>
<td>PAF Self-Assessment</td>
</tr>
<tr>
<td></td>
<td>Compliance with section 23 of the Mental Health (Care &amp; Treatment) (Scotland) Act 2003 for children and young people admitted to hospital for treatment of a mental disorder.</td>
<td>PAF Self-Assessment</td>
</tr>
<tr>
<td>Waiting Times: Reduce waiting times for in-patient, day case and out-patient treatment</td>
<td>Average waiting times for child access to therapy services (Speech &amp; Language; Occupational and Physiotherapy).</td>
<td>PAF Self-Assessment</td>
</tr>
<tr>
<td>NHS Health Service Re-Design</td>
<td>Self assessment of key issues for the provision of acute and specialist care for children and young people.</td>
<td>PAF Self-Assessment/PAF 4.01.01</td>
</tr>
<tr>
<td></td>
<td>Regional planning and commissioning arrangements for child health services</td>
<td>PAF Self-Assessment/PAF 4.01.01</td>
</tr>
<tr>
<td></td>
<td>Self Assessment of Implementation of <em>Nursing for Health, the Framework for Nursing, and Health for All Children Hall 4 recommendations.</em></td>
<td>PAF Self-Assessment/PAF 4.01.01</td>
</tr>
<tr>
<td>Improving Sexual Health</td>
<td>Pregnancy rate amongst 13-15 year olds</td>
<td>NHS PAF 1.07.01</td>
</tr>
<tr>
<td></td>
<td>Incidence of sexually transmitted diseases</td>
<td>NHS PAF 1.07.02</td>
</tr>
</tbody>
</table>
ACHIEVING: Children and young people should have access to positive learning environments and opportunities to develop their skills, confidence and self esteem to the fullest potential.

<table>
<thead>
<tr>
<th>OUTCOMES</th>
<th>INDICATORS</th>
<th>SOURCES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flexible childcare provision accessible to all</td>
<td>− Parents Access To and Demand for Childcare survey and Annual Census of Pre-School Education and Childcare show that childcare need is being met and no major gaps.</td>
<td>Local Survey and Pre-School Census</td>
</tr>
<tr>
<td>Free part-time pre-school education provision for all 3 and 4 year olds whose parents wish it</td>
<td>− % of 3 and 4 year olds attending pre-school provision.</td>
<td>Pre-School Census</td>
</tr>
</tbody>
</table>
| Raised standards of education for all, especially in the core skills of numeracy and literacy. (NPInE1.1) | − % of combined P3, P4, P6 and P7 rolls meeting or exceeding the appropriate 5-14 level for their age – reading, writing and maths.  
− % of S2 who have met or exceeded level E in reading, writing and maths.  
− % of original S4 cohort who, by end of S6, have attained SCQF level 3 or better in English and Maths.  
− Performance Measure 1.1D: % of schools which have met all their IEP targets | NPInE 1.1A  
NPInE 1.1B  
NPInE 1.1C  
NPInE 1.1D |
| Improved examination results or other measures of achievement (NPInE1.2) | − 3 year average (2000-2003) of the national examination results of 3 separate S4 cohorts up to the end of S6  
− Overall quality of attainment (HGIOS)  
− Expectations and promoting achievement (HGIOS) | NPInE 1.2A-F  
NPInE 1.2G  
NPInE 1.2H |
| Continuing professional development of teachers (NPInE2.1)               | − EA summary of local progress and locally-defined targets in relation to CPD.  
− Staff review and development (HGIOS)                                    | NPInE 2.1A  
NPInE 2.1B |
| Enhanced school environments which are more conducive to teaching and learning (NPInE2.3) | − Pupil: adult ratio in primary schools  
− % of schools with a quality award or applying a quality model  
− Accommodation and facilities (report to include number of schools with pupil support bases) (HGIOS) | NPInE 2.3A  
NPInE 2.3C  
NPInE 2.3D |
| Pupils are equipped with the necessary foundation, skills, attitudes and expectations to prosper in a changing society (NPInE5.1) | − % of original S4 cohort who achieved the core skill (1) IT and (2) Problem Solving in NQ framework, by the end of S6 at levels 3, 4, 5 and 6.  
− % of school leavers destined for employment, training, education and other.  
− Pupils’ learning experience (HGIOS)  
− Range of education for work and enterprise activities offered to pupils – types of activities to be defined locally. | NPInE 5.1A  
NPInE 5.1B  
NPInE 5.1D  
NPInE 5.1F |
<table>
<thead>
<tr>
<th>Increased levels of creativity and ambition in young people (NPinE5.2)</th>
<th>– Range of opportunities offered to pupils that encourage and support the development of creativity – type of opportunities to be defined locally.</th>
<th>NPinE 5.2A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improving children’s cognitive, social and emotional development</td>
<td>– [Improved capacity to take full advantage of next stage in development and learning at age 5]* – [% of pupils attaining age-appropriate levels of reading, writing and mathematics by end P3]*</td>
<td>Early Years Strategy</td>
</tr>
</tbody>
</table>

* Early Years Strategy
**ACTIVE: Children and young people should be active with opportunities and encouragement to participate in play and recreation, including sport.**

<table>
<thead>
<tr>
<th>OUTCOMES</th>
<th>INDICATORS</th>
<th>NPinE 5.1C</th>
<th>NPinE 5.1E</th>
<th>Activity Strategy</th>
<th>Sport21</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pupils are equipped with the necessary foundation, skills, attitudes and expectations to prosper in a changing society (NPinE5.1)</td>
<td>% of pupils participating in cultural, sporting and learning activities outside the core curriculum – types of activities to be locally defined as appropriate.</td>
<td></td>
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<tr>
<td></td>
<td>The range of activities offered to pupils that encourage health-related levels of physical activity.</td>
<td></td>
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</tr>
<tr>
<td>Health Improvement</td>
<td>% of children and young people, including children with disabilities, taking part in at least one hour a day of physical activity</td>
<td></td>
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<tr>
<td>Participation in cultural and sporting activities</td>
<td>Participation in Active Schools Staff network</td>
<td></td>
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<tr>
<td></td>
<td>% of those aged 13-17 taking part in sport in addition to the school curriculum more than once a week</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>% of those aged 14 plus in Social Inclusion Partnership areas taking part in sport at least once a week.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Access to Youth CAFES and other alcohol free activities</td>
<td>Local information</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Youth Work</td>
<td>Local information</td>
<td></td>
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</tbody>
</table>
**RESPECTED & RESPONSIBLE:** Children, young people and their carers should be involved in decisions that affect them, should have their voices heard and should be encouraged to play an active and responsible role in their communities.

<table>
<thead>
<tr>
<th>OUTCOMES</th>
<th>INDICATORS</th>
<th>NPinE</th>
</tr>
</thead>
</table>
| Increased self-discipline of pupils (NPinE2.2)                          | − EA levels of attendance and/or targets expressed as a % of total number half-day openings in EA.  
− Number of days lost per 1000 pupils through exclusion.  
− Number and % of pupils participating in buddying, mentoring or similar schemes to be defined locally as appropriate.  
− Climate and Relationship (HGIOS)                                      |       |
| Increased respect for self and others (NPinE4.1)                        | − % of original S4 cohort who achieve the core skill ‘working with others’ in new NQ framework, by the end of S6 at levels 3, 4, 5 and 6.                                                                   |       |
| Increased awareness of interdependence with other members of neighbourhood and increased awareness of the duties and responsibilities of citizenship in democratic society (NPinE4.2) | − Links between Community Planning and Education*                                                                                                                                                        |       |
| Patient Focus/Public Involvement: Actively involve communities, patients and carers in planning and delivering NHS services. | − Self assessment – NHS Board progress in implementing Patient Focus and Public Involvement across key themes of building capacity and communication; patient information; involvement; and responsiveness – with specific reference to children and young people.  
− Ensuring staff have the core skills and competencies for engaging children and young people | NHS PAF 5.01/PAF Self-Assessment |
| Ensuring children and parents are involved and consulted about key decisions that affect them. | − Self-Assessment - Potential link with draft pilot Standards for Community Engagement, with reference to children and young people                                                                 |       |
| Combat the anti-social behaviour of a minority of young people and ensure parents act in the best interests of their children. | − Self-assessment of progress in developing and implementing local Anti-Social Behaviour Strategy.                                                                                                      | ASB Statutory Guidance |
| Reducing the number of persistent young offenders                      | − % of re-referrals to the Children's Panel on offence grounds during year to 31 March, within six months of previous Hearing.  
− % of young people referred on offence grounds and seen by a children's hearing within 75 days of referral  
− Self-Assessment – Implementation of the National Standards for Scotland's Youth Justice Services | National Standards for Youth Justice |
INCLUDED: Children, young people and their families should have access to high quality services, when required, and should be assisted to overcome the social, educational, physical, environmental and economic barriers that create inequality.

<table>
<thead>
<tr>
<th>OUTCOMES</th>
<th>INDICATORS</th>
<th>NPinE</th>
<th>NPinE 3.1A</th>
<th>NPinE 3.1B</th>
<th>NPinE 3.1C</th>
<th>NPinE 3.1D</th>
<th>NPinE 3.1E</th>
</tr>
</thead>
</table>
| Every pupil benefits from education. (NPinE3.1)                          | Number and % of looked after young people leaving care who have attained SCQF level 3 or above in English and Maths  
|                                                                           | Average tariff score of the lowest-attaining 20% of S4 pupils in the authority.  
|                                                                           | % of pupils (primary and secondary separately) who are entitled to free school meals and % who take them up.  
|                                                                           | Equality and Fairness (HGIOS).  
|                                                                           | % of schools adopting the Integrated Community School approach.                                                                                                                                              |       |            |            |            |            |            |
| Every pupil benefits from education, with particular regard paid to pupils with disabilities and special education needs (NPinE3.2) | Access to education for pupils with disabilities.*  
|                                                                           | Breakdown of placement of primary and secondary school pupils with SEN by proportion of time spent there.  
|                                                                           | Learning Support (HGIOS)  
|                                                                           | Implementation of Legislation Relating to SEN and Disabilities (HGIOS)  
|                                                                           | Placement of pupils with SEN and disabilities (HGIOS)                                                                                                                                                        |       |            |            |            |            |            |
| Every pupil benefits from education, with particular regard to Gaelic and lesser languages. (NPinE3.3) | No. of written requests for Gaelic medium teaching and the % of these which are met.                                                                                                                                                  |       |            |            |            |            |            |
| Health Improvement: Reducing Health Inequalities                           | % of pregnant women smoking (inequalities)  
|                                                                           | % of 5 year olds with dental cavities (inequalities)                                                                                                                                                                  |       |            |            |            |            |            |
| Reduction in Child Poverty                                                | % of children living in workless households  
|                                                                           | Increase in number of parents accessing suitable childcare provision in disadvantaged areas and groups (including lone parents, parents on low income and parents with other stresses in the household such as disability, mental health issues, drug and alcohol problems).  
|                                                                           | % of children within families living in temporary accommodation.                                                                                                                                                  |       |            |            |            |            |            |
| Reduce proportion of 16-19 year olds not in education, employment or training (NEET) | % of 16-19 year olds not in education, employment or training  
|                                                                           | % of 16-19 year olds from low income families not in education, employment or training.                                                                                                                                               |       |            |            |            |            |            |
## ANNEX E

### SUMMARY OF NATIONAL INITIATIVES & DOCUMENTS RELEVANT TO CHILDREN AND YOUNG PEOPLE

#### GENERAL

- **For Scotland’s Children**
  

- **Starting Together – Integrated Early Years Strategy**
  Strategy will issue shortly

- **The Way Forward – Information Sharing and an Integrated Framework for the Assessment of Children**
  [http://www.scotland.gov.uk/about/ED/CnF/00018058/Informationsharing.aspx](http://www.scotland.gov.uk/about/ED/CnF/00018058/Informationsharing.aspx)

#### SAFE: Children and young people should be protected from abuse, neglect and harm by others at home, at school and in the community.

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Children’s Hearings System</td>
<td>Review of the Children’s Hearings System: Getting it Right for Every Child consultation pack launched March 2003. Second phase of the review, later in 2004, will consider what detailed changes to structures and legislation might be necessary.</td>
</tr>
<tr>
<td></td>
<td>Children’s Hearings web link: <a href="http://www.childrens-hearings.co.uk/">http://www.childrens-hearings.co.uk/</a></td>
</tr>
</tbody>
</table>
NURTURED: Children and young people should live within a supportive family setting, with additional assistance if required, or, where this is not possible, within another caring setting, ensuring a positive and rewarding childhood experience.

Adoption & Fostering
Adoption Policy Review: on-going review to improve procedures, services and support for adoptive and foster parents.
http://www.scotland.gov.uk/about/ED/YPLAC/00017972/policy.aspx

Family Law
Family Matters: Improving Family Law In Scotland – Consultation on proposed reform of Family Law in Scotland (closed June 2004).

Looked After Children
Learning with Care: The Education of Children Looked After Away from Home by Local Authorities – including specific recommendations for social work and educational services provided by local authorities.
http://www.scotland.gov.uk/library3/education/lacr-00.asp

Care Leavers
Supporting Young People Leaving Care in Scotland: Regulations and Guidance on Services for Young People Ceasing to be Looked After by Local Authorities.
http://www.scotland.gov.uk/library5/education/syplc-00.asp

HEALTHY: Children and young people should enjoy the highest attainable standards of physical and mental health, with access to suitable healthcare and support for safe and healthy lifestyle choices.

Health Care Services
National Framework for Service Change in the NHS in Scotland- A review of the NHS in Scotland which will include a specific section on services for children and young people covering primary care, secondary care, emergency care and specialist services. This part of the National framework is being led by the Child Health Support Group and will report in May 2005.
http://www.show.scot.nhs.uk/chsg/Index.htm

Health Promoting Schools
http://www.healthpromotingschools.co.uk/files/beingwelldoingwell.pdf

Community Health Partnerships
Community Health Partnerships – CHPS are key vehicles for partnership, integration and service re-design between primary and secondary care and between health and social care. Draft statutory guidance and regulations for CHPs were published in March 2004.
http://www.show.scot.nhs.uk/publicationsindex.htm

Road Safety
Safer Routes to Schools: How to Run a Successful Safer Routes to School (December 1999)
http://www.saferoutestoschools.org.uk/?c=1010&t=arcnewslist.htm;

Guidance for 20mph Speed Zones Around Schools (April 2004)
http://www.scotland.gov.uk/library2/doc08/srs-00.htm
Dental Health  Dental Health - Draft *National Standards for Dental Services* (March 2004), including for children and young people.  
http://www.scotland.gov.uk/consultations/health/dnids-02.asp#15

Health Improvement  *Eating for Health: Meeting the Challenge* – following on from ‘Improving Scotland’s Health – the challenge’ this document is a review of progress made to date and includes case studies of organisations who have successfully implemented healthy eating plans.  
*Evidence in Action – Nutrition in the Under Fives*: published by NHS Scotland, this is a concise synthesis of research in the area of nutrition and the under fives, drawing out the implications for policy, practice and research in Scotland.  
http://www.hebs.co.uk/researchcentre/pdf/Infant_nutrition_Evidence_into_action.pdf


http://www.scotland.gov.uk/library5/education/sfns-00.asp

Sexual Health  *Enhancing Sexual Wellbeing In Scotland: A Sexual Health & Relationship Strategy* – Consultation on a draft National Sexual Health and Relationships Strategy.  

Child Health Surveillance & Screening  *Health for All Children*: Draft guidance on the implementation of the 4th edition of the Royal College of Paediatrics and Child Health (RCPCH) *Health for All Children* report, on child health surveillance and screening activity across the UK. Final guidance will be issued later this year.  
http://www.scotland.gov.uk/consultations/health/hfac-00.asp

Child and Adolescent Mental Health  National Programme for Improving Mental Health and Wellbeing: an action plan tied to the health improvement and social justice agendas, setting out aims and areas of activity for national work plus a suggested outline for local areas.  

Therapy Services  
*Scottish Executive Review of Speech and Language Therapy, Physiotherapy and Occupational Therapy for Children and Speech and Language Therapy for Adults with Learning Disabilities and Autistic Spectrum Disorders* (2003): a report making recommendations on effective provision of services, largely focused on integrated working, increased access and better user involvement in service planning.

http://www.scotland.gov.uk/library5/health/rsltm-00.asp

Substance Misuse  

This offers guidance on delivering services for those under 16 who have problems with drugs and/or substance misuse. It follows from the 2002 Research Review on Young People’s Treatment Services and also draws on a seminar with managers and practitioners from a range of services in June 2002.

http://www.scotland.gov.uk/library5/health/yppdm-00.asp

**ACHIEVING: Children and young people should have access to positive learning environments and opportunities to develop their skills, confidence and self esteem to the fullest potential.**

**Assessment is for Learning**  
*Assessment is for Learning Programme*: a coherent system designed to give parents, teachers and other professionals the information they need on pupils’ learning and development needs. Includes a unified system of recording and reporting, brings together current assessment arrangements and offers staff development and support.

http://www.ltscotland.org.uk/assess/f

**School Estate**  
*Building Our Future*: Scottish School Estate Strategy – sets out a vision for the school estate and outlines the steps needed to achieve this, including collaborative working between the Scottish Executive and local authorities.

http://www.scotland.gov.uk/library5/education/bofs-00.asp

**Early Years Services**  
*Care and Learning for Children: Birth to Three*: guidance for adults involved in caring for babies and young children. Based on the concept of care and learning being inseparable.


*Child at the Centre – Self-Evaluation in the Early Years* (2000): a self-evaluation tool for all centres providing care and education to 3-5 year olds. A chance to use performance indicators which will then be used by HMIE in pre-school centre inspection.

http://www.scotland.gov.uk/library2/doc16/cac2-00.asp

*Curriculum Framework for Children 3 to 5*: an extension of the advice offered in ‘A Curriculum Framework for Children in their pre-school year’, with additional advice for practitioners on the learning and developmental needs of younger children plus guidance on an effective approach to the curriculum.

National Care Standards for Early Education and Childcare: these cover services for children and young people up to the age of 16 years which are to be regulated under the Regulation of Care (Scotland) Act 2001. Applicable to services in public, private and voluntary sectors, and in domestic or non-domestic premises which provide services for over two hours a day and for six days or more each year.


Childcare

Childcare Strategy - Meeting the Childcare Challenge: A Childcare Strategy for Scotland (1998), set out strategy to make high quality, accessible and affordable childcare available in every neighbourhood. This activity is co-ordinated at local level through the work of local Early Education and Childcare Partnerships.


Out of School Care

School’s Out – Framework for the Development of Out of School Care – advice for childcare partnerships, local authorities, local enterprise companies, childcare umbrella organisations, service providers and schools to promote good quality, accessible and sustainable out of school care.

http://www.scotland.gov.uk/library5/education/sofd-00.asp

Education

Educating for Excellence: Choice and Opportunity – Scottish Executive response to the National Debate on Education, setting out an action plan for improvement based upon responses from teachers, parents and young people.

http://www.scotland.gov.uk/library5/education/ndser-00.asp

National Priorities in Education: set of strategic objectives for schools and local authorities to work towards. First stage of the improvement framework as set out in Standards for Scotland’s Schools etc. Act 2002.

http://www.scotland.gov.uk/education/nationalpriorities/default.asp

Review of the Curriculum 3-18: follows the commitment made in ‘Educating for Excellence’ and strengthened in A Partnership for a Better Scotland in May 2003. The first stage of the review got underway in November 2003 and the steering group is due to publish a paper by autumn 2004, outlining the draft principles and framework for a reviewed curriculum. Following this, a second stage will begin, in which the content of the curriculum will be reviewed, based on the principles and framework which emerge from the first stage.

How Good is Our School?: self-evaluation tool for schools and education authority officials based on a set of quality indicators. Also used by HMIe in their external evaluations.


Enterprise in Education

Determined to Succeed: Through Determined to Succeed, our strategy for enterprise in education, the Executive is providing resources for more enterprising teaching and learning, for specific entrepreneurial opportunities, and for work-based vocational learning for all our young people. Each local authority has developed a plan for delivering Determined to Succeed in its area, setting out how it will make these opportunities available in its schools, in partnership with the Executive, and with local and national businesses.

http://www.scotland.gov.uk/library5/education/dtsr-00.asp
Lifelong Learning

*Life Through Learning Through Life, the Lifelong Learning Strategy for Scotland.* This strategy is principally concerned with post-compulsory education, training and learning. Lifelong learning policy in Scotland is about personal fulfilment and enterprise; employability and adaptability; active citizenship and social inclusion. It encompasses the whole range of learning: formal and informal learning, workplace learning, and the skills, knowledge, attitudes and behaviours that people acquire in day-to-day experience. [http://www.scotland.gov.uk/library5/lifelong/llsm-00.asp](http://www.scotland.gov.uk/library5/lifelong/llsm-00.asp)

### ACTIVE: Children and young people should be active with opportunities and encouragement to participate in play and recreation, including sport.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Active Schools Programme</th>
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<table>
<thead>
<tr>
<th>Culture</th>
<th>Celebrating Scotland - National Culture Strategy.</th>
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</table>

Guidance on implementing the National Culture Strategy was issued to local authorities in March 2003.  

<table>
<thead>
<tr>
<th>Youth Work</th>
<th>The Scottish Executive is committed to engaging with young people to facilitate their personal, social and educational development and enable them to gain a voice, influence and place in society.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><a href="http://www.scotland.gov.uk/Topics/People/Young-People/youth-work">http://www.scotland.gov.uk/Topics/People/Young-People/youth-work</a></td>
</tr>
</tbody>
</table>

### RESPECTED & RESPONSIBLE: Children, young people and their carers should be involved in decisions that affect them, should have their voices heard and should be encouraged to play an active and responsible role in their communities.

| Anti-Social Behaviour | Anti-Social Behaviour: statutory guidance is due to issue shortly. Background information at [www.scotland.gov.uk/about/ED/YPLAC/00017927/ASB.aspx](http://www.scotland.gov.uk/about/ED/YPLAC/00017927/ASB.aspx)  
Consultation can be seen at [www.scotland.gov.uk/consultations](http://www.scotland.gov.uk/consultations) |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------|

<table>
<thead>
<tr>
<th>Discipline in Schools</th>
<th>Discipline Task Group Report: Better Behaviour, Better Learning – recommendations made for improving discipline in schools and supporting teaching staff to provide effective learning</th>
</tr>
</thead>
</table>
| Youth Crime | National strategy for youth crime in Scotland: Scotland’s action programme to reduce youth crime 2002  
National standards for Scotland’s Youth Justice Services  
http://www.scotland.gov.uk/library5/justice/nssyjs-00.asp  
10 point Action plan on Youth Crime  
Youth Justice web-page including annual youth justice mapping exercise  
http://www.childrens-hearings.co.uk/youthjustice.asp |
|---|---|
| Proof of Age | The Licensing (Scotland) Bill: A consultation on Liquor Licensing launched on 17 May 2004 in response to the Nicholson Committee independent review of Scotland's liquor licensing laws and includes proposals for a national no proof no sale requirement for all licensed premises.  
http://www.scotland.gov.uk/about/JD/JD-BSU/00019533/introduction.aspx |
| Engaging children, families and communities | *NHS Patient Focus and Public Involvement* (2001): response to Our National Health: a plan for action, a plan for change. Sets out a framework for achieving cultural change across NHSScotland, focussing on patient involvement, increased capacity, better communications and enhanced responsiveness.  
http://www.scotland.gov.uk/library3/health/pfpi-00.asp  
*Parentzone:* website offering information for parents, carers and other responsible for school-age children  
http://www.parentzonescotland.gov.uk/  
The Standards in Scotland's Schools etc. Act 2000 includes provisions to ensure that parents are consulted on key issues at both school and local authority level  

**INCLUDED:** Children, young people and their families should have access to high quality services, when required, and should be assisted to overcome the social, educational, physical, environmental and economic barriers that create inequality.

| Children Not in Employment, Education or Training | *Developing Post-School Psychological Services, interim report from the National Development Officers.* Outlines the key roles of psychological services in supporting transition to post-school and better outcomes for young people, the proposed portfolio of services and preferred service delivery model to be tested through 12 PSPS Pathfinders, building on local authority services.  
http://www.scotland.gov.uk/about/ELLD/TTW/00016581/dev_psps_interim.pdf  
A summary of responses to the interim report will be available online shortly.  
*Moving on from School to College: Helping young people with additional support needs to make a successful transition.* Outlines the principles and characteristics of good practice, case studies, and a |
framework for self-evaluation of transition arrangements for use in
school and college.
http://www.hmie.gov.uk/documents/publication/more.htm

*Beattie Committee Report, Implementing Inclusiveness: Realising Potential.* The Beattie National Action Group is leading work to take
forward the report’s recommendations for improving the transition
process and removing the barriers to lifelong learning and employment
faced by young people between the ages of 16 and 24 with additional
support needs. The single unifying principal at the core of all the
Beattie Committee recommendations is inclusiveness and that it should
underpin the policies and practice of the agencies and institutions which
offer guidance, education and training.
http://www.scotland.gov.uk/library2/doc04/bere-00.htm

*Inclusiveness – Being implemented; Potential – Being realised.* Sets
out progress in implementing the Beattie report and future priorities.
http://www.scotland.gov.uk/library5/lifelong/ibipb-00.asp

Beattie Website giving information and updates on inclusiveness
activities:
http://www.scotland.gov.uk/about/ELLD/TTW/00016581/page350604987.aspx

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**Community Regeneration**

*Better Communities in Scotland: Closing the Gap* (June 2002) - The Scottish
Executive’s Community Regeneration Statement for regenerating deprived
communities.

*Community Regeneration Fund: Guidance on Regeneration Outcome
Agreements* (Aug 2004)

**Education Inclusion**

Count us in: HMIE document on achieving inclusion in Scottish schools

Education Maintenance Allowances: website explaining the EMAs, which
provide support to young people from low income families
http://www.emascothand.com/

Integrated Community Schools approach - addressing barriers to learning and
the needs of the child through an integrated provision of services.
http://www.scotland.gov.uk/about/ED/PSI/00018930/Foreword.aspx

*Moving to Mainstream:* Audit Scotland/HMIE performance audit into the
inclusion of pupils with special educational needs in mainstream schools

*Moving Forward: Additional Support for Learning* (January 2003) -
developing a strong framework for supporting learning, based on inclusion
and equality, and which welcomes diversity in schools.
http://www.scotland.gov.uk/about/ED/NED/00018091/page1220737319.aspx

**Equality**


22
Closing the Opportunity Gap / Social Inclusion

Sure Start Scotland: government programme providing support to families with very young children, particularly vulnerable families and those in deprived communities.

http://www.surestart.gov.uk/surestartservices/surestartlocalprogrammes/ssscotland/

Working for Families – additional resources and guidance for local authorities to help provide additional childcare support in areas of high unemployment in order to help those in work, training or education.

http://www.scotland.gov.uk/about/DD/20017414/page450969632.aspx

<table>
<thead>
<tr>
<th>Housing &amp; Homelessness</th>
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http://www.scotland.gov.uk/Topics/Housing/Homelessness

Housing – Activity to deliver good quality, sustainable and affordable housing, with appropriate housing management and support services.

http://www.scotland.gov.uk/Topics/Housing/Housing

<table>
<thead>
<tr>
<th>Disabilities</th>
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<tbody>
<tr>
<td><em>Same As You? A Review of Services for People with Learning Disabilities</em> – including recommendations for improving services and support for children and adults with learning disabilities and/or autistic spectrum disorder.</td>
</tr>
</tbody>
</table>

http://www.scotland.gov.uk/lds/docs/tsay-00.asp
Dear Chief Executive

INTEGRATED CHILDREN’S SERVICES PLANNING 2005-2008: GUIDANCE

Our aim is for world class services for our children. That means a commitment not just to invest but also to reform – to cut through bureaucracy, simplify funding and ensure services are focused on the needs of children and young people. (Partnership for a Better Scotland: A Partnership Agreement)

Our vision is for a Scotland where all our children and young people are safe, nurtured, healthy, achieving, active, included, respected and responsible.

In order to achieve that vision and deliver these commitments we need to work together to ensure vulnerable children and their families get the help they need when they need it; provide high quality health, education and other services to all children, closing the opportunity gaps that exist in all of these services; and empower children, their families and their communities. Effective planning of children’s services and their delivery is crucial.

The attached paper describes more fully our vision for children and young people and outlines revised integrated planning requirements for children’s services which should result in a significant reduction in the planning burdens on you and your community planning partners. It also discusses how the new integrated planning process will help make it easier for you and all your partners to work together to achieve that vision.

This guidance is issued within the context of Scottish Ministers’ and local agencies’ responsibilities to promote and participate in Community Planning and our continuing commitment to achieving better integrated services for children and young people, as set out in For Scotland’s Children.
Integrated Children’s Services Plans

As indicated in the joint Education and Health letter of 27 May 2004, we think the time is right for local authorities and NHS Boards to draw together their existing planning requirements for children and young people - including Statements of Education Improvement Objectives, Children’s Services Plans for children in need, Youth Justice Strategies and the child health elements of Local Health Plans/NHS Priority implementation statements - into a single integrated Children’s Services Plan from April 2005. **The integrated Plan will replace the requirement to submit separate plans for these areas.**

Integrated Children’s Services Plans should be overarching documents that describe local objectives and strategies, across agency boundaries, for improving services and outcomes for children and young people. The aim is not to establish an additional layer of planning, but to rationalise existing planning processes and to focus activity on the delivery of effective child-centred services.

In line with existing statutory requirements for Children’s Services Plans and Community Planning, we expect local authorities to have the lead role in co-ordinating the preparation of integrated plans, but these should be joint productions with NHS Boards and all other local partners.

Integrated Service Delivery

Integrated Plans are not an end in themselves, but form part of the process for ensuring the effective delivery of integrated services. At national level, Scottish Ministers are progressing a number of key initiatives to support effective integrated delivery – these are listed in the guidance along with links to relevant documents. The Children and Young People Cabinet Delivery Group, including Ministers from all relevant portfolios, aims to ensure effective co-ordination across policies and initiatives for children and young people. However, one size does not fit all: local agencies need to consider how these national developments will fit within their local structures for integrated service delivery.

As indicated in the letter of 27 May, as part of the Spending Review process, consideration has also been given to issues, including the sustainability, flexibility and co-ordination of national funding streams for children’s and young people’s services. Separate advice about the outcomes relevant to children and young people will issue shortly.

Monitoring

Annual updates on the Plans will help monitor progress on local strategies and outcomes for children and young people.

Support

The guidance has been developed in consultation with all relevant contacts across delivery agencies, including planning pilots in two areas. We do not underestimate the challenges for local partners in preparing integrated Children’s Services Plans. Officials have written separately inviting those co-ordinating children’s services planning in each area to participate in regional networks, which the Executive will facilitate, to help share experience and effective practice.
Timescales

The guidance asks local authorities and NHS Boards to submit their integrated Children’s Services Plans, including an electronic version, to Miss Gita Jackson, Children & Families Division, 2B(N) Victoria Quay, Edinburgh EH6 6QQ (gita.jackson@scotland.gsi.gov.uk), by 1 April 2005.

For this first year, we will ask local authorities and NHS Boards to provide, around end-December 2004, an update on their progress in preparing integrated plans. Specific advice on what will be required will issue following discussion with the local networks.

Contacts

The guidance includes details for all Scottish Executive contacts. Any general questions about this guidance should be directed to Gita Jackson (tel: 0131 244 7670) at the above address.

Yours faithfully

PETER J PEACOCK ANDY KERR CATHY JAMIESON
Dear Pauline,

CONSTITUTIONAL REFORM: SUPREME COURT

The Constitutional Reform Bill including proposals for the establishment of a UK Supreme Court was introduced by the UK Government into the House of Lords in February of this year. At Second Reading of the Bill, it was referred to a Special Select Committee for the purpose of giving detailed consideration to and hearing evidence about the Government’s proposals. The proposal to create a new Supreme Court was debated in the Parliament on an Executive Motion on 29 January.

In parallel with the evidence taken by the Special Select Committee in the UK Parliament, the Justice 2 Committee took evidence from a number of witnesses (including myself) before issuing a report to the Parliament on its findings (SP Paper 163). I am writing to you due to the interest of both Justice Committees in this Bill.

Due to the unusual nature of the Parliamentary process at Westminster in relation to this Bill, I felt that it was premature to lodge the Sewel Motion and Memorandum as would normally be the case.

As consideration of the UK Bill by the Special Select Committee has now been completed and the provisions in relation to the Supreme Court have been debated, the content of the Bill is now much clearer, at least as it stands towards the end of its consideration by the House of Lords.

Therefore, it is at this stage appropriate for the Executive to proceed with the lodging of the Sewel Motion and I confirm that this has been done today. A copy of the Sewel Motion and Memorandum is enclosed with this letter.
The Minister for Parliamentary Business will discuss the finding of an appropriate date for the Sewel debate with the Parliamentary authorities. I have asked that they ensure that every opportunity is given to the Justice Committee 2 to resume its consideration of the Bill and to enable Justice 1 Committee to have regard to the Bill. I am mindful too of the desirability of giving an opportunity for a Sewel Motion to be considered by the full Parliament before the Constitutional Reform Bill leaves the House of Lords.

In order to assist consideration of the Bill, I would set out briefly some comments on the changes to the Bill since last considered by the Justice Committees and make some comments on the report to the Parliament made by the Justice 2 Committee. I hope these comments are of value to Justice 1 Committee too.

In relation to the Bill itself:

a. The system of judicial appointments originally introduced in the Bill has been amended and can now be seen from clauses 20 to 25 and Schedule 9. The Memorandum to the Sewel Motion summarises the procedure at paragraphs 6 to 9.

b. In response to concerns of the Executive and of others on the question of the appropriate number of Scottish appointees, I would draw the Committees' attention to clause 21(5) which obliges the ad hoc Supreme Court Selection Commission to “ensure that between them the Judges will have knowledge of, and experience of practice in, the law of each part of the United Kingdom”. I remain of the view that this strikes the right balance in ensuring adequate Scottish representation on the Bench without imposing inflexible quotas.

c. Following discussions between the DCA, my officials and the Lord President the drafting is well advanced for the tabling of an amendment putting beyond doubt that the decisions of the Court should respect the separate and distinctive legal systems within the UK. This was a matter of concern to the Lord President and I welcome the willingness of the DCA to agree the benefit of clarification of this point.

The Scottish Executive
In relation to the report of the Justice 2 Committee, this was a good opportunity for the Committee to hear from a range of witnesses holding diverse views on the main line issues of the case in principle for the creation of a Supreme Court; the merits and demerits of changing the present system whereby civil but not criminal non-devolution cases can progress to a final UK Court of Appeal; and whether there was a risk of longer term dilution of the separate identity of Scots law. The evidence taken and the report that followed also went on to consider more detailed issues as to the practical operation of the new Court, including the question of how many Scottish Judges there should be.

I welcome the Committee’s agreement that the case is made for the establishment of a Supreme Court and that appeals to the Supreme Court should be on the same range of cases as can currently be taken to the House of Lords. I also agree that no requirement for leave for appeals should be introduced for Scottish cases.

The Committee called for an amendment to clarify that a decision in an appeal emanating from England shall not be determinative of Scots law. As I indicate above, I too support such an amendment. The text of that amendment is not available as of today’s date but I hope that this can be made available to you very shortly.

In relation to the number of Scottish Judges, I set out above what I consider to be the right way forward on this issue. Clause 21(5) as it now stands, does not rely simply on convention alone but builds in a flexible appointments system of ensuring that permanent members of the Supreme Court with Scottish qualifications are available for allocation to cases.

I must say though that I do not agree with the conclusion reached by the Committee that a majority of Scottish Judges in all Scottish cases should be an absolute requirement in proceedings involving devolution issues. The Constitutional nature of devolution issues (often including human rights issues) have UK wide significance and I do not believe that an institutionalised and separate court within a court is consistent with the concept of a UK wide Supreme Court.

Furthermore, as far as allocation of judges to individual cases is concerned, where it is considered that (in the circumstances of the case) there ought to be a Scottish majority, having regard to the subject matter of the case, there is and will remain the option of bringing in additional members to sit in such cases. For Scottish purposes, these additional members would be Inner House Court of Session Judges.
The Committee in its report raises questions in relation to the Scottish position on funding. I would draw the attention of the Committees to paragraphs 25 to 27 of the Sewel Memorandum which sets out those arrangements.

Lastly, an amendment was made during House of Lords consideration in relation to Part I of the Bill, which had the effect of leaving questions of independence of Judges to a Scottish Parliamentary Bill. This was done in the context of amendment to Clause 1. I agree with the Report of Justice 2 Committee that this is appropriate and can confirm that the intention of the Executive is to bring forward legislation in that respect, at the earliest appropriate opportunity.

I hope that these comments are of assistance for the Committee in its consideration of this Bill.

I am writing in similar terms to the Chair of the Justice 2 Committee.

Yours sincerely,

COLIN BOYD

The Scottish Executive
Memorandum

Constitutional Reform Bill- Supreme Court

Motion: That the Parliament endorses the principle of having a clear and transparent separation between the judiciary and the legislature and agrees that provisions in the Constitutional Reform Bill establishing a Supreme Court (and provisions consequential thereto), so far as they relate to matters within the legislative competence of the Parliament, should be considered by the UK Parliament.

Introduction

1. The provisions of the Constitutional Reform Bill relating to the proposed establishment of a UK Supreme Court flow from the consultation document Constitutional Reform - 'A Supreme Court for the United Kingdom, issued by the Department for Constitutional Affairs (DCA) in July 2003. The consultation period ended on 7 November 2003. The provisions as they affect Scotland were debated before the Scottish Parliament on a Motion of the Executive on 29 January 2004. The Bill had its First Reading in the House of Lords on 24 February 2004 and at Second Reading was referred to a Special Select Committee of the House of Lords for detailed consideration. That Committee completed its consideration of the Bill in June. The Bill was then subject to consideration by the House of Lords sitting as a Committee of the whole House, which is not as yet complete. This note sets out the background to and content of the Bill, as it stands at present.

Background

2. Part 2 of the Bill makes provision for the setting up of a Supreme Court for the United Kingdom exercising the same appellate jurisdictions as currently exercised by the Appellate Committee of the House of Lords and the Judicial Committee of the Privy Council. It also makes provision for the appointment of judges to the Court including the number of judges and their terms and conditions of employment and in relation to the funding and administration of the court. It disqualifies judges holding office in the proposed new Supreme Court and other judges in full time employment from sitting and voting in the House of Lords.

3. At present the exercise of the highest level of jurisdiction in the United Kingdom is shared between the Appellate Committee of the House of Lords and the Judicial Committee of the Privy Council. The Appellate Committee of the House of Lords receives appeals in civil and criminal cases from the courts in England and Wales and Northern Ireland, and in civil cases, from Scotland. The Judicial Committee of the Privy Council, in addition to its overseas and ecclesiastical jurisdiction, considers questions as to whether the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly are acting within their legal powers. That jurisdiction, in relation to Scotland, was established by virtue of the Scotland Act 1998.
Detailed content of the Bill

4. Parts 1 and 3 of the Bill, which are not the subject of this Memorandum, make provision to abolish the office of the Lord Chancellor and redistribute the responsibilities of that office (including in relation to the organisation of the Courts in England and Wales) (clauses 1 to 16); to create a Judicial Appointments Commission (clauses 52 to 89); and to create a complaints procedure and a procedure for disciplining judges in England and Wales (clauses 90 to 98).

5. Part 2 of the Bill at clause 17 establishes a Supreme Court for the United Kingdom which will consist of a maximum of 12 judges, including a President and Deputy President. The judges are to be known as "Justices of the Supreme Court". The number of judges may be increased by Her Majesty by Order in Council, laid before each House of the UK Parliament. The Bill provides that those judges holding office as Lords of Appeal in Ordinary at the commencement date of the Act will become the first judges of the Supreme Court (clause 18). Qualification for appointment in future as a judge will remain unchanged (clause 19).

6. This Part of the Bill goes on to set out a system of Judicial appointments for the Court (clauses 20-25 and Schedule 9). The system involves the Secretary of State for Constitutional Affairs establishing an ad hoc selection commission, when a vacancy is imminent or has occurred, comprising the President and Deputy President of the Court and one member of the Judicial Appointments Commission/Boards for each of Scotland, England and Wales, and Northern Ireland. The member of the selection commission from each of the Judicial Appointments Commission/Boards is to be appointed on the recommendation of that particular Commission/Board.

7. The selection commission will be chaired by the President of the Court. It must ensure that selection is made on merit and, in doing so, must ensure that the Judges appointed appropriately reflect knowledge and experience of the different legal jurisdictions within the UK (clause 21(5)). The selection commission must consult the senior judiciary in each jurisdiction including the Lord President of the Court of Session and the First Minister as part of the selection process (whether or not the vacancy arises in respect of a Judge who met the criterion at clause 21(5) in relation to Scotland).

8. The selection commission will make a recommendation to the Secretary of State for consideration. He or she may accept or reject the recommendation or may require the commission to reconsider the selection. Again, an obligation is imposed to consult with the Lord President and First Minister, on receipt of the recommendation.

9. The Bill further specifies the tenure of judicial office and re-enacts the current requirement to take the oath of allegiance and the judicial oath. It specifies the entitlement of judges to salaries and makes provision for their removal, resignation, pension and retirement at the age of 75, as is currently the case (clauses 26-31).

10. The Bill makes provision for the Court to be able to call upon additional judges as necessary and appropriate, either from among senior serving judges or from a supplementary panel of judges (clauses 32 and 33). A person who holds office as a senior territorial judge may act as a judge at the request of the President of the Supreme Court. "Senior territorial judge" includes a judge of the Inner House of the Court of Session. A person becomes a
member of the supplementary panel on ceasing to hold office as a judge of the Supreme Court, or as a senior territorial judge, provided that his or her membership of the panel is approved in writing by the President of the Supreme Court and provided that the President of the Court gives the Secretary of State notice in writing of such approval. There is also provision for the membership of the supplementary panel on commencement: in effect, those (other than the Lords of Appeal in Ordinary) who are at present eligible to sit in judicial proceedings in the House of Lords and do not at present also hold office as senior territorial judges.

11. Clause 34 deals with the jurisdiction of the Court. It states at subsection (3) that “An appeal lies to the Court from any order or judgment of a court in Scotland if an appeal lay from that court to the House of Lords at or immediately before the commencement of this section.” Subsection (4) (as read with Schedule 10) makes provision for transferring other jurisdiction (including in appeals from Northern Ireland, and in devolution issues) from the House of Lords to the Supreme Court. Taken together, these provisions have the effect of transferring to the Supreme Court jurisdiction to hear those Scottish Appeals formerly heard by the Appellate Committee of the House of Lords and the Judicial Committee of the Privy Council. Only the former falls within devolved competence.

12. In order to reflect and respond to concerns as to the jurisdiction in relation to Scotland, the Executive is exploring the possibility of making an express provision ensuring that a decision in a case emanating from one part of the UK is binding only in the jurisdiction from which it came, reflecting present House of Lords jurisprudence. The Executive is in consultation with the Lord President of the Court of Session in relation to the detail of such a provision.

13. The Bill provides that the Court will be duly constituted where there are a minimum of three judges, consists of uneven numbers and has at least one permanent judge. The Bill also makes provision for the appointment of specialist advisers to assist the Court, for the making of procedural rules of court by the President of the Court, and to permit photography subject to the control of the Court, mirroring the position of the higher courts in Scotland (clauses 35-40).

14. There is placed on the Secretary of State for Constitutional Affairs a duty to ensure that there is an efficient and effective system to support the carrying on of the business of the Supreme Court and that appropriate services are provided. This includes power to appoint such officers and staff as is considered appropriate, the provision of accommodation and the preparation of an annual report (clauses 41-48).

Devolved matters

15. Regulation of the civil court system in Scotland is a devolved matter. This Part of the Bill, insofar as it amends the rights of parties to appeal from the Inner House of the Court of Session by providing for an appeal to the Supreme Court instead of to the Appellate Committee of the House of Lords seeks to legislate in a devolved area. The Bill modifies those rights in that way by the provisions of clause 34(3) (jurisdiction). At present, section 40 of the Court of Session Act 1988 governs appeal rights to the House of Lords. That Act would require to be amended, in consequence of clause 34(3). Provision to make such amendment is contained in paragraph 47 of Schedule 10 of the Bill.
16. For these reasons, the consent of the Parliament under the Sewel Convention is necessary.

17. In addition to that need to make amendment to the Court of Session Act 1988 consequential to clause 34, there will be a need to make changes to other legislation which also are consequential to the Bill in the establishment of the Supreme Court. Most are simply changes to nomenclature to change references to the House of Lords to references to the Supreme Court. Particular attention is drawn to the need for amendments in the devolved matter of legal aid. Amendments are needed to the Legal Aid (Scotland) Act 1986 and the Solicitors (Scotland) Act 1980. These amendments relate to the provision of legal aid for parties appearing before the new court and the rights of Scottish Solicitors to appear before it.

18. The Legal Aid (Scotland) 1986 contains provisions which allow legal aid to be made available in relation to civil proceedings in the Judicial Committee of the Privy Council, in references, appeals and applications for special leave to appeal under paragraphs 10, 12 and 13(b) of Schedule 6 to the Scotland Act 1998 and in relation to civil proceedings in the House of Lords, in appeals from the Court of Session. It also allows criminal legal aid to be made available in connection with any reference, appeal or application for special leave to appeal to the Judicial Committee of the Privy Council under paragraph 11 or 13(a) of Schedule 6 to the Scotland Act 1998.

19. Section 25A of the Solicitors (Scotland) Act 1980 enables Scottish solicitors to acquire rights of audience in the Court of Session, the High Court of Justiciary, the House of Lords and the Judicial Committee of the Privy Council. Any solicitor who wishes to acquire such extended rights of audience must satisfy the Council of the Law Society of Scotland as to their professional conduct and reputation, their competency in the practice and procedure of these Courts and pass an examination. As those solicitors who satisfy the existing criteria to become solicitor advocates are to have extended rights of audience in relation to the Supreme Court, references in section 25A of the 1980 Act to the House of Lords and the Judicial Committee of the Privy Council are to be replaced by references to the Supreme Court.

20. For the reasons set out at paragraphs 25 to 28 below, it will be necessary to make provision in the Bill empowering the Executive to make a contribution towards the ongoing operating costs of the court. Such an amendment has been agreed in principle between the Executive and DCA and will be tabled at a later Parliamentary stage. So far as relating to a contribution in connection with non-devolution issues, the consent of the Parliament under the Sewel convention is necessary. See paragraph 15 above.

Discussion

21. As set out by the Executive during the debate on 29 January, it supports the underlying reasoning for the creation of a new Supreme Court for the UK that there should be a transparent separation between the House of Lords sitting as a court and the House of Lords sitting as a legislature. The Executive recognise the importance of maintaining the integrity of Scots Law. The amendments on jurisdictional balance and in relation to the binding nature of decisions were respectively made and agreed by the UK Government to meet the concerns of the Executive in these respects. There are no provisions in the Bill
ANNEX B

which prejudice the independence of Scots Law in either of those ways. The Bill therefore does not contravene the Act of Union.

22. It is not possible to create a new Supreme Court having jurisdiction throughout the UK by the means of an Act of the Scottish Parliament. The Scottish Parliament does not enjoy legislative competence in relation to appeals from England, Wales or Northern Ireland.

23. It would be possible, within Parliamentary competence, to create a new court in Scotland which would hear appeals from the Inner House of the Court of Session, but that is not what is proposed. The DCA have a legislative opportunity to carry out their proposals to legislate in relation to Constitutional Reform and, although it would be possible to introduce a Scottish Bill which did no more than amend the relevant parts of the Court of Session Act 1988, doing so would not present a coherent package of reform. There is no immediate space in the legislative programme of the Executive for such a Bill which would complement the DCA proposals.

24. It should also be noted that, under the Scotland Act, it is necessary that Scottish cases regarding devolution issues require to be determined by appeal to the Judicial Committee of the Privy Council (JCPC). As such matters raise matters of UK wide constitutional importance, it is necessary that a right of appeal to a UK wide court exists. Devolution issues (as defined in the Scotland Act) are issues where a question arises as to whether the Scottish Parliament has legislative competence or the Scottish Executive has devolved competence to legislate or act. These concern, for example, legislation or acts which contravene ECHR, fail to comply with Community law or deal with matters which are reserved to the UK Parliament. The proposal is that the new Supreme Court takes on the JCPC’s jurisdiction (which was established at and in consequence of Devolution) in those respects. That jurisdiction is transferred by clause 34(4)(b) and Schedule 10. The Bill contains consequential amendments to the Scotland Act at paragraphs 91 to 105 of Schedule 10.

Financial Consequences

25. It is the policy of the Executive and UK Government that the costs of operating the civil courts should be recovered in full through a system of charging fees to those who use the courts. There is no reason in principle why the costs of the United Kingdom Supreme Court attributable to civil business should not be treated in the same way.

26. The number of individual users of the House of Lords however is at present too low to justify the proposition that users of the new Supreme Court should alone bear the full costs of the new system, through court fees. The Executive do not consider that it is appropriate that the operating costs of the new court (over and above those costs which can fairly and reasonably be recovered from litigants in the Supreme Court), should fall on other users of the lower courts. Rather, the Executive are of the view that such costs should be borne from the Justice Department budget in general. This will require the empowering provision referred to in paragraph 20 above.

27. The proposition is that the Scottish budget should bear a share of the running costs of the new court in proportion to the current usage of the House of Lords for hearing Scottish cases. The best estimate is that the overall annual impact for Scotland should be in the range £500,000-£700,000. Scotland will not be expected to meet any share of the costs of acquiring

CRBSewelMemo 5.
a building and making it fit for purposes of hosting the Supreme Court. All of these costs will be met by the Department for Constitutional Affairs.

28. There are no other estimated financial implications for Scotland of the proposals.
24 November 2004

Dear Pauline

JUSTICE 1 COMMITTEE, 27 OCTOBER 2004 – THE DRAFT MAXIMUM NUMBER OF JUDGES (SCOTLAND) ORDER 2004

Thank you for your letter of 11 November 2004 about the Committee’s consideration of the draft Maximum Number of Judges (Scotland) Order 2004.

I confirm that the 2 new appointees created by this Order would enable the High Court to effectively operate the new arrangements recommended by Lord Bonomy. There will be no further appointments of temporary judges in respect of the increase in workload. It is the assessment of the Lord President of the Court of Session that, subject to approval of the Order, the overall resources available to him constitute an appropriate workforce to deal with the current level of business of the High Court and the Court of Session. It is the Lord President who has the statutory responsibility for managing the business of the superior courts and Ministers are content to accept his current view of the total resources required to assist him in this task.

Yours sincerely,

Hugh Henry

HUGH HENRY
Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on certain aspects of mediation in civil and commercial matters

{SEC(2004) 1314}

(presented by the Commission)
EXPLANATORY MEMORANDUM

1. SCOPE AND OBJECTIVES OF THE PROPOSAL

1.1. Objective

1.1.1. Ensuring better access to justice

Better access to justice is one of the key objectives of the EU’s policy to establish an area of freedom, security and justice, where individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States. The concept of access to justice should, in this context, include promoting access to adequate dispute resolution processes for individuals and business, and not just access to the judicial system.

The proposed directive contributes to this objective by facilitating access to dispute resolution through two types of provisions: first, provisions that aim at ensuring a sound relationship between mediation and judicial proceedings, by establishing minimum common rules in the Community on a number of key aspects of civil procedure. Secondly, by providing the necessary tools for the courts of the Member States to actively promote the use of mediation, without nevertheless making mediation compulsory or subject to specific sanctions.

Provisions touching the mediation process or the appointment or accreditation of mediators have been excluded from the proposed directive. Having regard to the reactions to the Green paper of 2002 and current developments at national level, it is not clear that legislation is the preferred policy option as regards this type of provision. While excluding regulatory measures concerning the mediation procedure itself from this proposal the Commission has instead sought to encourage self-regulatory initiatives and is seeking to continue to do so through the proposed directive also.

In the consultations on the preliminary draft of this proposal most respondents endorsed the overall approach of the draft concerning the issues covered as well as the issues excluded from it. Compared to the preliminary draft certain changes, mainly of a technical nature, have been made to specific provisions and are further explained in the annex.

1.1.2. A sound relationship between mediation and civil proceedings

What have been retained for this proposal are essentially matters which cannot be adequately addressed through market-based solutions. This concerns notably civil procedural rules which may impact on the use of mediation as well as on its effectiveness. The interaction between mediation and traditional civil proceedings can take place at several occasions, for example:

– The parties consider use of mediation immediately after the dispute has arisen, as an alternative to launching civil proceedings; if the parties do chose to use
mediation and fail to reach a settlement agreement, civil proceedings are launched after the termination of the mediation;

– If a settlement agreement is reached through mediation, one of the parties may fail to honour the agreement, calling for civil proceedings to be launched anyway;

– The parties launch civil proceedings immediately after the dispute has arisen, without having (yet) considered the possibility of mediation.

At present the interaction between mediation and civil proceedings presents a number of uncertain elements, due to the absence of or discrepancies between national procedural laws, elements which make themselves known with particular force in situations involving cross-border elements. Even if mediation may be the most suitable form of dispute resolution in a given case the parties may therefore opt for traditional civil proceedings in view of these uncertainties. A stable and predictable legal framework should contribute to putting mediation on an equal footing with judicial proceedings where factors related to the specific dispute play the most significant role for the parties in determining their choice of dispute resolution method. Such a framework should also help to preserve the possibility for the parties to solve their dispute through judicial proceedings even if mediation is attempted.

1.1.3. Promoting the use of mediation

The value of increasing the use of mediation rests principally in the advantages of the dispute resolution mechanism itself: a quicker, simpler and more cost-efficient way to solve disputes, which allows for taking into account a wider range of interests of the parties, with a greater chance of reaching an agreement which will be voluntarily respected, and which preserves an amicable and sustainable relationship between them. The Commission believes that mediation holds an untapped potential as a dispute resolution method and as a means of providing access to justice for individuals and business.

The role of the Community in directly promoting mediation is however by necessity limited and the only concrete measure to promote mediation contained in the proposal is the obligation for Member States to allow courts to suggest mediation to the parties. Ensuring a sound relationship between mediation and judicial proceedings will however indirectly contribute to promoting mediation also.

The pursuit of the objectives of this proposal can not take in place in isolation without regard to the very provision of mediation services. The question of quality of mediation services must therefore be addressed together with, and as a function of, the other provisions of the proposed directive which must operate with a sufficient level of mutual trust between the Member States in cross-border situations.

1.1.4. The relationship with the organisation of the judicial systems of the Member States

One of the often quoted benefits of mediation is that its increased use can offload pressure on the court system, thereby reducing what are often long delays in case-handling and possibly allowing for savings of public resources. As the proposed directive seeks to promote the use of mediation, it could indeed have a positive
impact in this sense. This is however not pursued as an independent objective, for several reasons. First, the organisation of the judicial system is the sole competence of the Member States. Secondly, and most importantly, mediation has a value in itself as a dispute resolution method, to which citizens and business should have easy access and which deserves to be promoted independently of its value in off-loading pressure on the court system. The Commission does not see mediation as an alternative to court proceedings; it is rather one of several dispute resolution methods available in a modern society and which may be the most suited for some, but certainly not all, disputes. Moreover, it should be stressed that the availability of ADRs in general can not in any way detract from the obligation of Member States to maintain an effective and fair legal system that meets the requirements of the European Convention of Human Rights, which forms one of the central pillars of a democratic society.

1.1.5. Impact assessment

A preliminary impact assessment of this proposal was carried out in the context of the Commission’s annual policy strategy for 2004. The proposal has not been selected for an extended impact assessment. The proposed directive aims at increasing the use of mediation in the EU, which will have beneficial economic effects by lowering transaction costs for individuals and business, through a quicker and more cost-efficient resolution of disputes. Mediation can also contribute to more sustainable economic and social trends in preserving the relationship between the parties after the dispute has been solved, in contrast to the often disruptive effects of solving a dispute through an adjudicatory process. The consultation process and other preparatory steps are described in the annex. In terms of alternative policy options the proposed directive contains mainly rules on civil procedure, and the results can not be achieved using another policy instrument.

1.2. Legal basis

The objective and content of this proposed directive fall squarely within the scope of Article 65 TEC since it concerns civil procedural rules, where the provision on quality and training in Article 4 is ancillary to the other provisions. The proposed directive is necessary for the proper functioning of the internal market in view of the need to ensure access to dispute resolution mechanisms for individuals and business exercising the four freedoms and in view of the need to ensure the freedom to provide and to receive mediation services.

As has been stressed in the description of the objectives of the proposal the need for Community action in this field stems from the need to ensure legal certainty throughout the duration of a dispute regardless of the presence of cross-border elements at one stage or another. To ensure a coherent legal framework it is therefore necessary to address key aspects of the whole chain of possible events that can follow after the dispute has arisen, having regard to any possible scenario (success/failure of the mediation, settlement agreement followed by both parties or not, etc).

In the context of ADR the impact of cross-border elements is potentially greater than when considering measures relating to civil proceedings in isolation, since it is necessary to have regard to relevant factors at the time of the mediation as well as at
the time of any subsequent civil proceedings, including the circumstance that these factors may change in the meantime. For example, cross-border elements may come from the domicile or place of business of one or both of the parties, the place of the mediation, or the place of the competent court. The agreement to mediate may in itself be governed by a different law than that which governs the original legal or contractual relationship between the parties, and an ensuing settlement agreement may be governed by the law of yet another third country. The settlement agreement may have to be enforced in yet another Member State depending on, for example, the location of the debtor’s assets at the time when enforcement is sought.

However, it would not be feasible to restrict the scope of the proposal so as to only aim at removing obstacles created by cross-border elements or to ease the resolution of only those disputes displaying a cross-border element, however defined.

In assessing the suitability of mediation as a dispute resolution method for a given dispute, cross-border elements make up for only one of several relevant circumstances to be taken into account. Other circumstances include the nature of the dispute and the merits of the case as well as factors related to costs, delay and prospects of success. Promoting mediation in relation to those disputes that display a cross-border element only would therefore be arbitrary and create a risk of discriminatory effects, since the courts would suggest mediation to some parties only depending on their place of residence. A restriction of this type will undoubtedly entail a substantial reduction in the practical impact of the proposed directive also. Making the applicability of the civil procedural rules contained in the proposed directive subject to the presence of cross-border elements would rather lead to increased legal uncertainty. Alternatively such a restriction in scope may leave the applicability of the directive in the hands of the parties, who could introduce cross-border elements through their choice of mediator or court for the dispute in order to benefit from the rules laid down by the directive.

The proposed directive will form an important part of the legal framework for mediation services in the Community, as concerns the freedom to provide services in another Member State as well as the freedom to receive services. A limitation in scope to cross-border situations would lead to the creation of two parallel legal regimes, possibly even different standards as concern the provision and receipt of mediation services, with a risk of discriminatory effects for users as well as providers of mediation services. Such effects run counter to the principles of the internal market as well as the efforts of the Community to simplify the regulatory framework for individuals and business.

In conclusion the Commission considers that introducing an explicit condition of cross-border implications would invalidate the objectives of the proposed directive and be counterproductive to the proper functioning of the internal market. The directive must therefore apply to all situations regardless of the presence of cross-border elements at the time of the mediation or at the time of the judicial proceedings.

### 1.3. Subsidiarity and proportionality

In view of the need for legal certainty and predictability in situations involving the relationship between mediation and civil proceedings in situations displaying a cross-
border element and the need to ensure the proper functioning of the internal market for the provision of and receipt of mediation services the objectives of this proposal cannot be sufficiently accomplished by the Member States. Measures taken at Community level will be more effective compared to individual initiatives taken by each Member State, for reasons of coherence and reasons of providing certain basic uniform rules applicable in cross-border situations as well as in domestic cases.

The provisions of the proposal are strictly limited to what is necessary to reach the objectives. A directive has been chosen as the most appropriate instrument since the provisions are designed to achieve certain specific objectives while leaving the means for how to reach those objectives to Member States’ discretion. The proposal also confines itself to issues which can only be solved through legislation while inversely issues where market-based solutions are feasible have been excluded from the scope.

2. BACKGROUND TO THE PROPOSAL, CONSULTATION WITH INTERESTED PARTIES, AND COMMENTS ON MAIN PROVISIONS

The staff working paper annexed to this proposal provides further information on these issues.
Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on certain aspects of mediation in civil and commercial matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61 (c) and the second indent of Article 67(5) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, inter alia, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.

(2) The European Council meeting in Tampere on 15 and 16 October 1999 called for, in relation to better access to justice in Europe, for alternative, extra-judicial procedures to be created by Member States.

(3) The Council adopted conclusions on alternative methods of settling disputes under civil and commercial law in 2000, stating that the establishment of basic principles in this area is an essential step towards enabling the appropriate development and operation of extrajudicial procedures for the settlement of disputes in civil and commercial matters so as to simplify and improve access to justice.

(4) The European Commission presented a Green paper in 2002, taking stock of the existing situation as concerns ADRs in Europe and initiating wide-spread consultations with Member States and interested parties on possible measures to promote the use of mediation.

(5) The objective of ensuring better access to justice, as part of the policy of the European Union to establish an area of freedom, security and justice should encompass access to

1 OJ C , p.
2 OJ C , p.
3 OJ C , p.
judicial as well as extra-judicial dispute resolution methods. This directive should contribute to the proper functioning of the internal market, in particular as concerns the provision and receipt of mediation services.

(6) Mediation can provide a cost-efficient and quick extra-judicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Settlement agreements reached through mediation are more likely to be enforced voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements.

(7) Framework legislation, addressing key aspects of civil procedure in particular, is therefore necessary to promote the further use of mediation and to ensure that parties having recourse to mediation can rely on a predictable legal framework.

(8) This directive should cover processes where two or more parties to a dispute are assisted by a mediator to reach an amicable agreement on the settlement of the dispute, but exclude processes of an adjudicatory nature such as arbitration, ombudsmen schemes, consumer complaint schemes, expert determination or processes administered by bodies issuing a formal recommendation, be it legally binding or not, as to the resolution of the dispute.

(9) A minimum degree of compatibility of civil procedural rules is necessary as concerns the effect of mediation on limitation periods and how the confidentiality of the mediator will be protected in any subsequent judicial proceedings. The possibility for the court to refer the parties to mediation should also be covered, while retaining the principle that mediation is a voluntary process.

(10) Mediation should not be regarded as a poorer alternative to judicial proceedings in the sense that settlement agreements are dependant on the good will of the parties for their enforcement. It is therefore necessary to ensure that all Member States provide for a procedure whereby a settlement agreement can be confirmed in a judgment, decision or authentic instrument by a court or public authority.

(11) Such a possibility will allow for a settlement agreement to be recognised and enforced across the Union, under the conditions laid down by Community instruments on mutual recognition and enforcement of judgments and decisions.

(12) To ensure the necessary trust between the Member States in the respect of confidentiality, suspension of limitation periods, and recognition and enforcement of settlement agreements, effective quality control mechanisms must be put in place concerning the provision of mediation services and training of mediators.

(13) These mechanisms and measures, which shall be defined by the Member States and may include having recourse to market-based solutions, should aim at preserving the flexibility of the mediation process and the private autonomy of the parties. The Commission shall encourage self-regulatory measures at Community level through, for example, development of a European code of conduct addressing key aspects of the mediation process.
In the field of consumer protection, the Commission adopted in 2001 a formal recommendation which establishes minimum quality criteria that out-of-court bodies involved in the consensual resolution of consumer disputes should offer to their users. It is advisable that any mediators or organisation concerned by the recommendation respect its principles. In order to ensure the dissemination of information concerning these bodies, the Commission is setting up a database of out-of-court schemes that Member States consider as respecting the principles of the recommendation.

This directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect for the right to a fair trial as recognised in Article 47 of the Charter.

Since the objectives of this directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

[In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive. / In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom and Ireland do not take part in the adoption of this Directive, which is therefore not binding on those Member States.]

[In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive, and is therefore not bound by it or subject to its application.]

HAVE ADOPTED THIS DIRECTIVE:

Article 1 – Objective and scope

1. The objective of this directive is to facilitate access to dispute resolution by promoting the use of mediation and by ensuring a sound relationship between mediation and judicial proceedings.

2. This directive shall apply in civil and commercial matters.

3. In this directive, “Member State” shall mean Member States with the exception of Denmark.

Article 2 – Definitions

For the purposes of this Directive the following definitions shall apply:

(a) “Mediation” shall mean any process, however named or referred to, where two or more parties to a dispute are assisted by a third party to reach an agreement on the settlement of the dispute, and regardless of whether the process is initiated by the parties, suggested or ordered by a court or prescribed by the national law of a Member State.

It shall not include attempts made by the judge to settle a dispute within the course of judicial proceedings concerning that dispute.

(b) “Mediator” shall mean any third party conducting a mediation, regardless of the denomination or profession of that third party in the Member State concerned and of the way the third party has been appointed or requested to conduct the mediation.

Article 3 – Referral to mediation

1. A court before which an action is brought may, when appropriate and having regard to all circumstances of the case, invite the parties to use mediation in order to settle the dispute. The court may in any event require the parties to attend an information session on the use of mediation.

2. This directive is without prejudice to national legislation making the use of mediation compulsory or subject to incentives or sanctions, whether before or after judicial proceedings have started, provided that such legislation does not impede on the right of access to the judicial system, in particular in situations where one of the parties is resident in a Member State other than that of the court.

Article 4 – Ensuring the quality of mediation

1. The Commission and the Member States shall promote and encourage the development of and adherence to voluntary codes of conduct by mediators and organisations providing mediation services, at Community as well as at national level, as well as other effective quality control mechanisms concerning the provision of mediation services.

2. Member States shall promote and encourage the training of mediators in order to allow parties in dispute to choose a mediator who will be able to effectively conduct a mediation in the manner expected by the parties.

Article 5 – Enforcement of settlement agreements

1. Member States shall ensure that, upon request of the parties, a settlement agreement reached as a result of a mediation can be confirmed in a judgment, decision, authentic instrument or any other form by a court or public authority that renders the agreement enforceable in a similar manner as a judgment under national law,
provided that the agreement is not contrary to European law or to national law in the Member State where the request is made.

2. Member States shall inform the Commission of the courts or public authorities that are competent for receiving a request in accordance with paragraph 1.

Article 6 – Admissibility of evidence in civil judicial proceedings

1. Mediators, as well as any person involved in the administration of mediation services, shall not in civil judicial proceedings give testimony or evidence regarding any of the following:

(a) An invitation by a party to engage in mediation or the fact that a party was willing to participate in mediation;

(b) Views expressed or suggestions made by a party in a mediation in respect of a possible settlement of the dispute;

(c) Statements or admissions made by a party in the course of the mediation;

(d) Proposals made by the mediator;

(e) The fact that a party had indicated its willingness to accept a proposal for a settlement made by the mediator;

(f) A document prepared solely for purposes of the mediation.

2. Paragraph 1 shall apply irrespective of the form of the information or evidence referred to therein.

3. The disclosure of the information referred to in paragraph 1 shall not be ordered by a court or other judicial authority in civil judicial proceedings and, if such information is offered as evidence in contravention of paragraph 1, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence

(a) to the extent required for the purposes of implementation or enforcement of a settlement agreement reached as a direct result of the mediation,

(b) for overriding considerations of public policy, in particular when required to ensure the protection of children or to prevent harm to the physical or psychological integrity of a person, or

(c) if the mediator and the parties agree thereto.

4. The provisions of paragraphs 1, 2 and 3 shall apply whether or not the judicial proceedings relate to the dispute that is or was the subject matter of the mediation.

5. Subject to paragraph 1, evidence that is otherwise admissible in judicial proceedings does not become inadmissible as a consequence of having been used in a mediation.
Article 7 – Suspension of limitation periods

1. The running of any period of prescription or limitation regarding the claim that is the subject matter of the mediation shall be suspended as of when, after the dispute has arisen:
   
   (a) the parties agree to use mediation,
   
   (b) the use of mediation is ordered by a court, or
   
   (c) an obligation to use mediation arises under the national law of a Member State.

2. Where the mediation has ended without a settlement agreement, the period resumes running from the time the mediation ended without a settlement agreement, counting from the date when one or both of the parties or the mediator declares that the mediation is terminated or effectively withdraws from it. The period shall in any event extend for at least one month from the date when it resumes running, except when it concerns a period within which an action must be brought to prevent that a provisional or similar measure ceases to have effect or is revoked.

Article 8 – Implementing provisions

The Commission shall publish information on the competent courts and authorities communicated by the Member States pursuant to Article 5(2).

Article 9 - Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 September 2007 at the latest. They shall forthwith inform the Commission thereof.

2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 10 – Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
Article 11 - Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.10.2004
SEC(2004) 1314

COMMISSION STAFF WORKING PAPER

Annex to the
Proposal for a directive of the European Parliament and of the Council
on certain aspects of mediation in civil and commercial matters

{COM(2004)718 final}
1. **INTRODUCTION**

This working paper forms an annex to the Commission’s proposal for a directive on certain aspects of mediation in civil and commercial matters and provides further explanations on the background to the proposal, including the consultations with the public that preceded it, and also provides further explanations on the individual provisions of the proposal in the article-by-article commentary.

1.1. **Background**

With the entry into force of the Treaty of Amsterdam the European Union has set itself the objective of establishing an area of freedom, security and justice where the free movement of persons is ensured. The Tampere European Council of 1999 called for, in relation to better access to justice in Europe, alternative, extra-judicial procedures to be created by Member States.

The Council adopted conclusions on alternative methods of settling disputes under civil and commercial law in 2000. The Council considered that the establishment of basic principles in this area is an essential step towards enabling the appropriate development and operation of extrajudicial procedures for the settlement of disputes in civil and commercial matters so as to simplify and improve access to justice. The Council invited the Commission to present a Green Paper taking stock of the existing situation and initiating wide-ranging consultation to prepare the measures to be taken.

1.2. **Other Community provisions on alternative dispute resolution (ADR) and consistency with other policies**

Since the entry into force of the Amsterdam Treaty the Community has adopted a series of legislative instruments to create a European area of civil justice with the principle of mutual recognition at the forefront. This proposal situates itself in this context, seeking to supplement the Community’s policy on ensuring access to justice in judicial proceedings with measures pursuing the same objective in relation to extra-judicial procedures.

A large number of Community acts call for the promotion of extra-judicial procedures for the solution of disputes arising under their application, such as the recently adopted Brussels IIbis Regulation on matrimonial matters and parental
responsibility\(^1\) as well as in the field of the internal market. Two recommendations have been adopted by the Commission in the context of consumer policy.\(^2\) The Community has not yet taken any initiative that focuses on the very framework conditions for the development of mediation in general and the link between mediation and judicial proceedings in particular. This proposal will support the implementation of other Community acts by further promoting the use of ADRs and improving the legal framework for such dispute resolution methods in the EU.

1.3. **Consultations with interested parties**

1.3.1. *The Green paper of 2002 – outcome and follow-up consultations*

The Commission responded to the invitation of the Council of 2000 by presenting a Green Paper\(^3\) on alternative dispute resolution in civil and commercial law on 19 April 2002. The Green Paper pursued the two objectives suggested by the Council: taking stock of the existing situation at national, European and International level, building in part on the study undertaken by the Council, and launching a wide consultation on possible measures to be taken at Community level. The Green Paper attracted substantial interest from Member States and other countries, mediation organisations, professional associations and researchers and other groups. Around 160 replies were received, and following the expiry of the consultation period the Commission organised a public hearing in February 2003 to further debate the issues raised, which was attended by some 130 persons.

The following points can be highlighted from the replies:

- The practically unanimous agreement as to the value of ADRs as a dispute resolution method and as to the potential to develop its use further;

- The rapid developments seen at national as well as at international level in this field, in terms of market-driven developments as well as regulatory and/or policy initiatives from governments and international organisations;

- A widely shared view that the Community could and should take measures to further stimulate the use of ADRs in the EU, but widely differing views as to exactly what measures should be taken.

The latter concerned especially the possibility of legislation at Community level on the mediation process as such and on the role of mediators. Some respondents cautioned against any legislative initiative on these issues, considering that it would threaten some of the distinguishing features of mediation such as its flexibility and scope for private autonomy. Others considered that a harmonised European mediation procedure would be beneficial for the further development of mediation,

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especially in order to increase confidence in the use of mediation in cross-border situations.

The European Parliament welcomed the Green Paper stressing the potential value and advantages of ADRs. It advised the Commission to adopt a cautious approach and prepare carefully any legislative initiatives, and to promote self-regulatory initiatives and avoid any approach which would reduce the flexibility of the process and the autonomy of the parties.

A preliminary draft of this proposal was made available on the internet for a second public consultation during the spring 2004. Some 30 comments were received from similar groups as responded to the Green Paper. The same draft text was used for the purpose of an expert meeting with Member State representatives in May.

1.3.2. Other follow-up initiatives to the Green Paper – a European code of conduct

Besides the preparation of this proposal the Commission has also organised a number of meetings with stakeholders to stimulate self-regulation of mediation in Europe, which have resulted in the development of a first code of conduct for mediation in the EU. The work on the code of conduct was finalised in July 2004 and the code has been made available on the Commission’s website in order to promote its take-up and use by practitioners. The code could serve to raise the quality of mediation in the EU as well as to spread best practices between the Member States. The code has been developed for purely self-regulatory purposes only and does not represent the position of the Commission. The Commission is not taking any responsibility for monitoring the respect of the principles contained in it.

In the field of consumer protection, the Commission adopted in 2001 a formal recommendation 4 which establishes minimum quality criteria that out-of-court bodies involved in the consensual resolution of consumer disputes should offer to their users. It is advisable that any mediator or organisation concerned by the recommendation respect the principles of the recommendation.

2. COMMENTS ON THE MAIN PROVISIONS

Article 2 defines “mediation” and “mediator” for the purposes of this directive. The intention is to aim for a wide application of the directive and the definitions have therefore been left rather general. A second intention has been to avoid introducing subjective elements, since the application of the directive to a given situation should be triggered by the nature of the process in question and not by who has acted as a mediator and how. No reference is therefore made to qualifying criteria such as the independence or neutrality of the mediator. Adjudicatory processes are excluded from the scope, and so are also processes where the third party issues a recommendation, be it binding or not, on the resolution of the dispute. Attempts made by the judge to conciliate the parties in the context of civil proceedings are excluded also, since those attempts rather form part of the case management techniques available to the judge and since most of the substantive provisions of the

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4 See footnote 2.
The purpose of Article 3 is to ensure that the parties, as a general rule, consider the possibility of using mediation for solving the dispute. The parties retain the right to decide whether to actually have recourse to mediation or not, since the article does not introduce any obligation. However, the court shall have the right to oblige the parties to attend an information session on what mediation is all about, for example, in cases where the court considers that the dispute as such would be suitable for mediation but it appears that the parties reject this possibility due to a lack of knowledge of mediation. The provision of information sessions themselves is the responsibility of the Member States. While the proposed directive does not make mediation compulsory it does not exclude the possibility for Member States to provide for such rules, provided they do not impede on any of the parties’ right to access to the judicial system, especially in cross-border situations.

In view of the other provisions of the proposed directive certain measures are necessary as concerns the quality of mediation services offered in the Community. The proposed directive leaves a large degree of freedom to the Member States as to how the provision of quality mediation services should be ensured. Article 4 puts emphasis on the promotion of self-regulation, which the Commission, at this stage, has found to be the most appropriate policy instrument for this purpose. As explained above the Commission has already sought to stimulate the development of a European code of conduct for mediators, and it will continue to see what further measures could be taken to contribute to the implementation of this Article.

As concerns Article 5, the possibility to enforce settlement agreements have been subject to discussion even before the Green paper was launched, notably in relation to the negotiations of the Bruxelles I Regulation. The issue at hand concerns the direct enforcement of a settlement through use of the enforcement procedures available in the Member State where enforcement is sought, and not the question of whether the settlement is to be regarded as enforceable in the sense of a binding contract on a matter which is amenable to an amicable out-of-court settlement.

The possibility for rendering a settlement agreement enforceable already exists in a number of Member States: either by submitting the agreement to a notary to have it confirmed in an authentic instrument, or by submitting it to a court, in spite of that the dispute has been extinguished, for a specific procedure usually referred to as homologation, whereby the agreement is rendered enforceable in the same way as a judgment. In family law matters similar possibilities exists in certain Member States involving other public authorities or courts.

Both procedures result in that the settlement agreement can be recognised and enforced in another Member State under other Community instruments, within their respective scope. A settlement agreement will, following a homologation procedure, be enforceable in accordance with the Regulation establishing a European Enforcement Order without the need for any intermediate proceedings in the Member State of enforcement. The same applies for an authentic instrument, which in addition could be enforced under the Brussels I Regulation also. The recognition and enforcement of settlements falling within the scope of the Brussels IIbis Regulation
is expressly foreseen by that regulation (which foresees also the recognition and enforcement of settlement agreements considered enforceable under national law even without having been approved or confirmed by a public authority or court).

The possibility for making settlement agreements enforceable is of particular interest in cross-border situations, where the non-respect of a settlement agreement may force the parties to launch judicial proceedings in another Member State. The possibility to prevent this risk by rendering the settlement enforceable directly after the mediation can therefore be very valuable for the parties and help put mediation on an equal footing with judicial proceedings as an effective dispute resolution method.

The proposed directive therefore foresees that such a possibility shall be put in place in all Member States. This solution has been preferred since the conferment of enforceability should always rest with a public authority and not flow directly from any requirements of form or process.

Member States may choose whether, for example, all courts or certain courts only should be competent for receiving such a request. Where this possibility already exists – such as in Member States with a notary system or where the homologation procedure is already in place - there is no need for further implementing measures.

Regarding Article 6, it must be stressed that the possibility for the parties to agree on the confidentiality of the process belongs to the key advantages of mediation, and can be vital for the effectiveness of the process itself. There are however certain limits to which an agreement of the parties, and a commitment of the mediator, can effectively protect confidentiality. This is notably the case in subsequent judicial proceedings, where the court may not respect the agreement of confidentiality and consequently admit, for example, the mediator to be heard as a witness. This is due to the basic rule of civil procedure found in most Member States that any evidence may be brought forward by the parties, provided it is relevant for the case, and that persons called to testify are under an obligation to do so by law.

While the parties may make use of contractual remedies in case one of them does not respect the confidentiality of the mediation this can be regarded as an insufficient sanction if the mediator is called as a witness by one of the parties. A further justification for such provisions is the need to provide a level playing field for mediators. Some mediators belong to regulated professions who are bound by professional secrecy, while others do not. This gives an unfair competitive advantage to the former group, and therefore calls for specific provisions to be introduced to protect certain aspects of the confidentiality of the process regardless of the profession of the mediator.

The protection of confidentiality outside any subsequent judicial proceedings does not call for a regulatory intervention. It is purely a question of a contractual rule, which would be made mandatory if it were to be laid down in law (possibly subject to if the parties have agreed otherwise), and there is not sufficient public interest to establish binding rules on this issue at Community level.

The article has been modelled upon the corresponding provision of the UNCITRAL model law on commercial conciliation, which not only provides a good model in
itself but also allows for promoting consistency between different rules on mediation. In particular, the construction chosen with an enumeration of specific points which are covered by the confidentiality, instead of a more generic rule, is more appropriate having regard to the unregulated nature of mediation and the mediator. It should be recalled that the directive, and consequently this provision, only applies in civil matters and evidence from the mediator would therefore be admissible in criminal proceedings. An exception has been provided for as concerns the interpretation and enforcement of a settlement agreement. This may involve questions concerning the validity of the settlement agreement or its compliance with national law if enforceability is sought, and a court or authority seized with such questions must be able to rely on evidence from the mediator to make a proper assessment of the case. Further exceptions for overriding considerations of public policy can be made, where the most important examples have been spelled out in the Article.

The aim of Article 7 is to ensure that the decision of the parties to use mediation will not detract from or diminish their possibilities to launch judicial proceedings at a later stage, should the mediation fail or should one of the parties realise that mediation was not an appropriate dispute resolution method in a particular case. To retain this possibility to the full it is therefore necessary that any limitation periods do not continue to run when the mediation is on-going. This should also avoid that the parties launch judicial proceedings at the same time for no other reason than to stop the limitation period from running, which may be counterproductive for an amicable resolution of the dispute itself or represent a potential waste of resources of the competent court, which may never be called upon to decide the case.

It should be noted that the provision will require the agreement of both parties to operate, since both parties must agree on the use of mediation in the first place. On the other hand one party can unilaterally terminate the mediation, in view of its voluntary nature, and thereby allow the limitation period to resume. In this light the risk of abuse of the provision for tactical reasons is less than the risk of abuse in its absence.
Dear Ms Walker,

**EC Directive on certain aspects of mediation in civil and commercial matters**

I refer to the Minister for Justice’s letter dated 28th June 2004 to Pauline McNeill MSP regarding the proposal for a directive on mediation. In her letter the Minister welcomed the Justice 1 Committee’s active involvement in this area and advised that the Committee would be kept updated about developments in this area.

As the Committee may be aware, the proposal for the Directive was issued on 29th October. Please find attached for the Committee’s information a copy of the proposal and the working paper which is an annex to this proposal. I have also attached the Explanatory Memorandum on the Directive which has recently been lodged by the Department for Constitutional Affairs at the UK Parliament. This document was approved in advance by the Scottish Executive.

The next meeting of the Working Group for this Directive is planned for 30 November. The Scottish Executive will be represented by an official at that meeting. The Executive is not undertaking a formal consultation exercise on this Directive but it is drawing it to the attention of relevant interests such as certain legal and mediation organisations. The Executive welcomes any comments that these organisations would like the Executive to consider regarding this proposal as this will help inform the formal negotiations.

I hope these papers are of assistance to the Committee and please contact me if you require any further information.

Yours sincerely,

Lesley Napier
EXPLANATORY MEMORANDUM ON EUROPEAN COMMUNITY LEGISLATION

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND COUNCIL ON CERTAIN ASPECTS OF MEDIATION IN CIVIL AND COMMERCIAL MATTERS

Submitted by the Department for Constitutional Affairs 12 November 2004

SUBJECT MATTER


2. The European Council at Tampere in October 1999 drew attention to the need for Member States to create alternative, extra-judicial dispute resolution mechanisms (ADR) as part of an overall strategy to promote access to justice across European borders and to create a “genuine European area of justice”.

3. The Commission has decided to pursue ADR in two strands – first by way of the promotion of self-regulation and best practice through a voluntary Code of Conduct and secondly through a Directive. The Code of Conduct was developed by a group of mediators brought together by the Commission and was formally launched by that group in July. Although the development of the Code was facilitated by the Commission it is not a Commission document.

4. The proposed Directive does not cover all forms of ADR. It is restricted to mediation only in both civil and family matters and includes two types of provision. The first is the establishment of minimum common procedure rules; the second the promotion of non-compulsory mediation. In terms of procedure rules the proposed Directive requires a mediated agreement to be capable of confirmation as a court judgment or order if requested by the parties; it imposes a duty of confidentiality on mediators so that matters regarding or raised during the mediation cannot be used as evidence in civil judicial proceedings subject to overriding considerations of public policy such as child protection matters; and it requires the suspension of limitation periods regarding a claim which is the subject of mediation.

5. The Commission has not limited the scope of this proposed Directive to cross-border mediations. It says the procedure should apply in all situations regardless of the presence of cross-border elements at the time of the mediation or at the time of the judicial proceedings.
SCRUTINY HISTORY
6. None.

MINISTERIAL RESPONSIBILITY
7. The Secretary of State for Constitutional Affairs has the leading interest in England and Wales and Northern Ireland, and the Scottish Justice Minister has responsibility in Scotland. The Secretary of State for Trade and Industry has an interest. The Scottish Executive has seen and approved this Explanatory Memorandum.

LEGAL AND PROCEDURAL ISSUES
(i) Legal basis
8. The legal basis for this proposal is Article 61(c) TEC – measures in the field of judicial co-operation in civil matters having cross border implications as provided for in Article 65 TEC.

(ii) European Parliament procedure
9. Pursuant to the second indent of Article 67(5) TEC, the co-decision procedure applies to this proposed Directive.

(iii) Voting procedure
10. QMV (however, see under Policy Implications, below). Denmark is not participating. It will be for the United Kingdom to consider, pursuant to its Protocol on Title IV measures, whether it wishes to opt in.

(iv) Impact on United Kingdom law
11. Minor amendments to rules of court although the provision on statutory limitations may require changes to primary legislation.

(v) Application to Gibraltar
12. If the United Kingdom opts in, the proposed Directive would apply to Gibraltar.

APPLICATION TO THE EUROPEAN ECONOMIC AREA
13. The proposed Directive will operate only as between the Member States of the EU.

SUBSIDIARITY
14. The Government takes the view that measures aimed at facilitating the promotion and provision of mediation across European borders would comply with the principle
of subsidiarity. The issue of whether the procedure should apply to purely national mediations as well will need further consideration (see below).

POLICY IMPLICATIONS

15. The Government supports measures which improve access to justice and is keen to encourage mediation as a low cost, user friendly way of settling disputes and which will be of benefit to consumers, businesses and families. It believes that improving redress mechanisms for cross border disputes between consumers and traders will encourage consumers and businesses to take full advantage of the single market in goods and services.

16. The Government believes that legislation on ADR should not be unnecessarily prescriptive given that flexibility is an important feature of ADR and that mediation should be based on consensus. In general terms the Government is satisfied with the content of this proposal which it believes applies a sufficiently light touch to regulation in this field. It is pleased that the proposed Directive takes account of the particular sensitivities of family mediation in terms of child protection issues.

17. There are issues that will require further exploration during the negotiations. For example how the provisions for confirming a mediation agreement through a court judgment (Article 5) or the suspension of limitation periods (Article 7) might work in practice. The Government will want to ensure that both provisions respect the fundamental principles of mediation described above. In addition the Government will pursue the issue of the Commission’s legal authority to propose a measure which is not limited to cross-border mediations. Lastly, the Government will consider, in the light of legal advice, whether the fact that the proposal touches on (rather than has as its primary focus) family mediation attracts the exception in Article 67.5 TEC, so that unanimity is required.

REGULATORY IMPACT ASSESSMENT

18. It is not expected that adoption of this proposed Directive would have a significant regulatory impact. By providing a framework to facilitate mediations with cross-border implications the introduction of this proposed Directive is likely to be of benefit to both mediators and parties to mediation.

FINANCIAL IMPLICATIONS

19. Adoption of this proposed Directive would not be expected to have any significant implications for the United Kingdom.

CONSULTATION

20. The Government will be seeking the views of interested stakeholders in this proposal, such as the judiciary, lawyers, ADR providers, court users, business organisations, consumer groups, family mediation providers, voluntary organisations
and the Legal Services Commission. These views will inform the formal negotiations.

TIMETABLE

21. The first Council working group meeting to consider this proposal was held on 29 October. The United Kingdom has three months to indicate its intention to opt-in to the proposed Directive. It is unlikely that the Directive will be finalised until at least the UK Presidency in the latter half of 2005.

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