These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

PUBLIC SERVICES REFORM (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Public Services Reform (Scotland) Bill introduced in the Scottish Parliament on 28 May 2009:

   • Explanatory Notes;
   • a Financial Memorandum;
   • a Scottish Government Statement on legislative competence; and
   • the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 26–PM.
INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The overarching purpose of this Bill is to help simplify and improve the landscape of Scottish public bodies, to deliver more effective, co-ordinated government that can better achieve its core functions for the benefit of the people of Scotland.

5. In reforming Scotland’s public services landscape, the Scottish Government’s stated approach is:
   - to streamline decision making and improve transparency;
   - to bring together organisations with similar skills, expertise and processes;
   - to stop activity that no longer contributes to the public purpose; and
   - to apply tough tests to the creation of any new bodies.

6. The provisions in this Bill will facilitate those aims, by providing for the dissolution of certain public bodies; the transfer or delegation of certain specific functions between public bodies and the establishment of new national bodies, for health, care and social work scrutiny and for the arts and culture, bringing together and improving the functions of existing separate bodies. Beyond these specific improvements, the Bill also provides for general powers to effect organisational and other changes to the public sector landscape or to remove or reduce burdens throughout the Scottish economy which are identified as holding back economy, efficiency, productivity or profitability. The Bill will also place a duty on scrutiny bodies to co-operate with each other and to ensure an appropriate user focus in how they fulfil their functions.

THE BILL - OVERVIEW

7. The Bill is structured in the following parts:

   - **Part 1** makes provision for the purpose of simplifying public bodies, including the transfer and delegation of certain functions, the dissolution of certain bodies and provision in relation to the regulation of officers of court;

   - **Part 2** enables provision to be made for the purpose of improving the exercise of public functions and for removing and reducing burdens resulting from legislation;
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- **Part 3** establishes Creative Scotland with functions in relation to the arts and culture and industries and other activity the focus of which is the application of creative skills;

- **Part 4** establishes Social Care and Social Work Improvement Scotland with scrutiny functions in relation to care services and social work services;

- **Part 5** establishes Healthcare Improvement Scotland with scrutiny and other functions in relation to services provided under the National Health Service and independent health care services;

- **Part 6** makes provision about the exercise of scrutiny functions by certain bodies, including provision in respect of the involvement of users of scrutinised services, co-operation and joint inspections. It also amends Part 2 of the Public Finance and Accountability (Scotland) Act 2000 in relation to audit authorities and audit reports and examinations under that Part;

- **Part 7** makes provision in relation to indemnity insurance for charity trustees, and other miscellaneous and general provision.

**COMMENTARY ON PARTS**

**PART ONE – SIMPLIFICATION OF PUBLIC BODIES**

*Transfer of functions*

**Section 1 - Transfer to Scottish Natural Heritage (“SNH”) of functions of the Deer Commission for Scotland (“DCS”)**

8. Subsection (1) transfers all of the functions of DCS under the Deer (Scotland) Act 1996 and other legislation to SNH.

9. Subsections (2) and (3) dissolve DCS and transfer its property, rights, liabilities and obligations to SNH.

10. Subsection (4) provides that where something has been done by or in relation to DCS then it will be treated as if it was done by or in relation to SNH after this section comes into force.

11. Subsection (5) gives effect to Schedule 1 which sets out details of the various consequential amendments to legislation including provisions of the Deer (Scotland) Act 1996.

**Section 2 - Transfer to Scottish Natural Heritage (“SNH”) of functions of Advisory Committee on Sites of Special Scientific Interest (“ACSSSI”)**

12. Subsections (1) and (2) dissolve ACSSSI (also referred to as “the Advisory Committee” in the Nature Conservation (Scotland) Act 2004) and transfer its property, rights, liabilities and obligations to SNH.
13. Subsection (3)(a) inserts a new paragraph 16A into Schedule 1 to the Natural Heritage (Scotland) Act 1991. New paragraph 16A(1) has the effect of placing a duty on SNH to establish a committee for the purposes of considering representations made to it by any person with an interest in land. New paragraph 16A(2) provides that SNH may not use its power of direction in paragraph 16(3) in relation to advice given to it by the committee.

14. Subsection (3)(b) adds a new sub paragraph (3) to paragraph 17 of Schedule 1 to the Natural Heritage (Scotland) Act 1991. It provides that SNH cannot use its power in paragraph 17 of Schedule 1 to the 1991 Act which would allow SNH not to refer representations it receives to the committee.

15. Subsection (4) repeals the provisions of the Nature Conservation (Scotland) Act 2004 relating to ACSSSI. It also sets out various amendments that are required to be made to sections 21 and 58 of, and paragraphs 9 and 12 of Schedule 1 to, the 2004 Act to ensure that they apply to the committee to be established by SNH. This preserves the circumstances in which representations made to SNH are to be referred to that committee as specified in section 21 (6) and (7) of the 2004 Act.

16. Subsections (5) and (6) repeal references to ACSSSI in the Freedom of Information (Scotland) Act 2002 (Part 7 of schedule 1) and in the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (schedule 2).

**Dissolution of bodies**

**Section 3 - Dissolution of Scottish Records Advisory Council (“SRAC”)**

17. Subsections (1) and (2) dissolve SRAC and transfer its property, rights, liabilities and obligations to the Scottish Ministers.

18. Subsections (3) to (7) repeal references and provisions relating to SRAC in the Public Records (Scotland) Act 1937 (section 7), the National Heritage (Scotland) Act 1985 (section 19(1)), the Freedom of Information (Scotland) Act 2002 (section 70(2) and Part 7 of schedule 1), the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (schedule 2), and the Scottish Register of Tartans Act 2008 (section 15).

**Section 4 - Dissolution of Scottish Industrial Development Advisory Board (“SIDAB”)**

19. Subsection (1) dissolves SIDAB.

20. Subsections (2) to (5) repeal references and provisions relating to SIDAB in the Scottish Development Agency Act 1975 (section 20), the Enterprise and New Towns (Scotland) Act 1990 (paragraph 8 of Schedule 4), the Freedom of Information (Scotland) Act 2002 (Part 7 of schedule 1) and in the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (schedule 2).

**Section 5 - Dissolution of Building Standards Advisory Committee (“BSAC”)**

21. Subsection (1) dissolves BSAC.
22. Subsections (2) and (3) repeal references and provisions relating to BSAC in the Building (Scotland) Act 2003 (sections 1(2), 3(5), 31 and 56(1)) and in the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (schedule 2).

Section 6 - Historic Environment Advisory Council for Scotland (“HEACS”)

23. Subsections (1) and (2) dissolve HEACS (also referred to as “the Advisory Council” in the Public Appointments and Public Bodies etc. (Scotland) Act 2003) and transfer its property, rights, liabilities and obligations to Scottish Ministers.

24. Subsections (3) and (4) repeal references and provisions relating to HEACS in the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (sections 15, 16 and 20, and schedules 2 and 3) and the Freedom of Information (Scotland) Act 2002 (Part 7 of schedule 1).

Delegation of functions

Section 7 - Delegation of Ministerial functions under section 7 of the Industrial Development Act 1982

25. This section inserts subsections (4A) to (4E) into section 7 of the Industrial Development Act 1982 (selective financial assistance for industry in assisted areas). Section 7 of that Act allows Scottish Ministers to award Regional Selective Assistance grants and relates to financial and other assistance to industry.

26. Subsection (4A) enables the Scottish Ministers to delegate their functions relating to provision of financial assistance to such persons as they may determine.

27. Subsection (4B) provides that where the Scottish Ministers delegate under subsection (4A), they may also delegate to the same person their function of being satisfied that assistance cannot, or cannot appropriately, be given in any other way.

28. Subsection (4C) provides that it is not possible for the delegate to use a pre-existing company which the delegate has not set up as a vehicle to invest in another company.

29. Subsection (4D) provides that if the Scottish Ministers delegate under subsection (4A) or (4B), the Scottish Ministers can still carry out the function themselves, that is, the power is to be shared between the delegate and the Scottish Ministers.

30. Subsection (4E) provides that a delegation under subsection (4A) or (4B) can be varied or revoked at any time.

Section 8 - Delegation of Ministerial functions under section 5 of the Science and Technology Act 1965

31. This section inserts subsections (1A) to (1D) into section 5 of the Science and Technology Act 1965 (further powers of the Scottish Ministers). Section 5 of that Act enables the Scottish Ministers to make certain financial provision in relation to scientific research.
32. Subsection (1A) enables the Scottish Ministers to delegate their functions which are set out in section 5(1)(a) to (c) of the 1965 Act to such persons as they consider appropriate. Any expenses incurred by such persons in such activities can be paid out of the expenses defrayed by the Scottish Ministers out of monies provided by Parliament.

33. Subsection (1B) provides that where the power in paragraph (c) of subsection 1 is delegated, which relates to expenses incurred in specified payments to or in respect of any advisory body established for the purpose of assisting the Secretary of State or, in matters connected with scientific research, the Minister of Agriculture, Fisheries and Food, the paragraph is to be read with the words “Secretary of State” being replaced by reference to the delegate.

34. Subsection (1C) provides that if the Scottish Ministers delegate under subsection (1A), the Scottish Ministers can still carry out the function themselves.

35. Subsection (1D) addresses the potential limitations on the exercise of a delegate’s functions at the ‘conferring end’. This means that should a body be delegated the power, any restriction on its functions which might otherwise prevent it from exercising the power will not prevent the delegated power being exercised.

Regulation of officers of court

Section 9 – Regulation of officers of court

36. This section gives effect to schedule 2 which contains detailed amendments, principally to Part 3 of the Bankruptcy and Diligence etc. (Scotland) Act 2007, which is not yet in force, and Part V of the Debtors (Scotland) Act 1987.

37. Part 3 of the 2007 Act creates and defines the remit of the Scottish Civil Enforcement Commission (“the Commission”) to supervise the officers responsible to the courts for the enforcement of debts or diligence. The amendments made by the Bill prevent the Commission from being brought into existence.

38. The Bill also retains, repeals and amends some of the regulatory controls introduced by Part 3 of the 2007 Act. In particular, Part 3 of the 2007 Act replaces officers of court (messengers-at-arms and sheriff officers) with judicial officers. The Bill reverts all references to “judicial officer” in Part 3 of that Act so as to maintain the offices of messengers-at-arms and sheriff officers, usually with references to “officers of court”.

PART TWO – ORDER-MAKING POWERS

Section 10 - Public functions: efficiency, effectiveness and economy

39. This section allows the Scottish Ministers, by order, to restructure the discharge of public functions in Scotland by bodies listed in schedule 3 of the Bill (including the Scottish Ministers), by transferring functions, abolishing functions, modifying functions and conferring new functions. “Public functions” are defined as the functions of the scheduled bodies except to the extent specified (section 10(2) of the Bill). The power may also be exercised to amend the constitution of, or abolish, the bodies listed in schedule 3, subject to specified exceptions relating
to the Scottish Ministers, the Forestry Commissioners, companies, and persons listed by virtue of section 11(3)(e).

40. The overarching purpose of any restructuring must be to improve the exercise of public functions, having regard to (a) efficiency; (b) effectiveness; and (c) economy (see section 10(1)). The power is not generally exercisable in relation to local authority functions, except that functions may be transferred or delegated to local authorities (including as fire and police authorities) in terms of section 10(4)(c) of the Bill.

41. The bodies listed in schedule 3 include the Scottish Ministers, any other office-holder in the Scottish Administration, certain Scottish public authorities (as defined by section 126(1) of the Scotland Act 1998) with mixed or no reserved functions and a cross-border public authority with mixed functions (the Forestry Commissioners).

Section 11 – Public functions: further provisions

42. This section provides that bodies may be added to the list in schedule 3 (or removed). If bodies are added they must be of the type on the list, namely (a) Scottish public authorities (as defined by section 126(1) of the Scotland Act 1998) with mixed or no reserved functions, (b) cross-border public bodies with mixed functions. Two further categories may be added: (c) wholly owned subsidiaries of Scottish public authorities listed and (d) other bodies (not Scottish authorities with mixed or no reserved functions) appearing to the Scottish Ministers to be carrying out functions of a public nature or that otherwise provide a service under contract which is a function of a body listed in schedule 3. For category (d), the functions of a public nature or services being provided must be specified, and only these functions or services are public functions of the body for the purposes of section 10.

Section 12 - Preconditions

43. This section places formal preconditions on the use of the power in section 10(1). Subsections (2)(a) and (b) provide that the provisions must be proportionate to policy objectives and must not remove any necessary protections. The provisions in section 14 referred to below in respect of a burden removing power have the same rationale. Subsections (2)(c) and (d) also provide that functions that are modified and those conferred on bodies listed in schedule 3 (unless transferred without substantial modification) must be broadly consistent with the general objects or purpose of the body concerned. Subsection (2)(e) provides that any function conferred on a body created by virtue of section 10 must instead be broadly consistent with the general objects or purpose of a body (listed in schedule 3) which is abolished or whose functions are modified, or public functions that are abolished or modified by that section or otherwise.

Section 13 - Power to reduce or remove burdens

44. This section replicates and updates the power to remove burdens by order in respect of both the public sector and the private sector in terms of section 1 of the Deregulation and Contracting Out Act 1994, which will be repealed. Subsection (2) defines ‘burden’ to mean (a) a financial cost, (b) an administrative inconvenience, (c) an obstacle to efficiency, productivity, or profitability, or (d) a sanction, criminal or otherwise, which affects the carrying on of any lawful activity. In updating the power, sections 13 and 14 largely mirror the regime in section 1 of the
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Legislative and Regulatory Reform Act 2006, which is the update of section 1 in the Deregulation and Contracting Out Act 1994 as regards England and Wales and reserved matters in Scotland. Section 13 effectively provides a common regime for the removal or reduction of burdens in Scotland both in the devolved and the reserved areas.

Section 14 - Preconditions

45. This section sets out the preconditions for making an order under section 13(1). These are that: the policy objectives could not be secured by non-legislative means, the effect is proportionate to the policy objective, the provision strikes a fair balance between the public interest and the interests of anyone adversely affected, it does not remove any necessary protection and does not prevent anyone exercising a right or freedom which they could reasonably expect to exercise.

General restrictions

Section 15 - Subordinate legislation and powers of direction, appointment and consent

46. This section provides that an order under sections 10 or 13(1) can only confer a function of legislating on the Scottish Ministers, the First Minister or Lord Advocate and cannot delegate this function. In addition, an order under section 10 or 13(1) cannot transfer to other persons any function of giving directions, appointing a person to any office or position, or consenting to any thing, which is conferred by legislation on Scottish Ministers, the First Minister or the Lord Advocate.

Section 16 - Local taxation

47. This section provides that an order under section 10 or 13(1) cannot be used to impose, vary or abolish any local tax to fund local authority expenditure.

Section 17 - Criminal penalties

48. This section restricts the extent to which criminal penalties can be imposed by an order under section 10 or 13(1).

Section 18 - Forcible entry etc.

49. This section provides that an order under section 10 or 13(1) cannot authorise forcible entry, search or seizure, or compel the giving of evidence except where it merely extends an existing power for similar purposes or restates an enactment.

Section 19 - Prohibition on modification of this Part

50. This section provides that an order under section 10 or 13(1) may not make provision modifying any provision of Part 2 other than schedule 3.
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Procedure

Section 20 to 23 - Procedure, consultation and explanatory document

51. Sections 20 to 23 set out the procedure for making orders, specifying that representative interests must have been consulted, including Scottish public authorities and the Scottish Law Commission as appropriate. Any changes made to the proposals as a result of the consultation should also be consulted upon. The outcome of the consultation should be reported in the explanatory documents laid before Parliament with the order. This document should also explain the background to the order and why it is required.

Section 24 - Order-making powers: modifications of enactments

52. This section gives effect to schedule 4.

Section 25 - Interpretation of Part 2

53. This section defines certain terms that are used in this Part of the Bill.

PART THREE – CREATIVE SCOTLAND

Section 26 – Establishment of Creative Scotland

54. Section 26 establishes a body corporate called Creative Scotland and gives effect to schedule 5 which makes detailed provision about the status, membership, procedure etc. of Creative Scotland.

Section 27 – General functions of Creative Scotland

55. Subsection (1) lists the general functions of Creative Scotland.

56. Subsection (1)(a) gives Creative Scotland the functions of identifying, supporting and developing quality and excellence in the arts and culture from artists and creative practitioners, these being persons engaged in artistic and other creative endeavours. Creative Scotland might, for example, exercise these functions by selecting particular individuals or organisations whose practice they believe merits encouragement and advice, or financial support in the form of grants or loans (see also section 29(4)).

57. Subsection (1)(b) gives Creative Scotland the functions of promoting understanding, appreciation and enjoyment of ‘art for art’s sake’. Creative Scotland might, for example, exercise these functions by giving awards that celebrate the work of individual or groups of practitioners, or by encouraging and advising local authorities to make wider provision of cultural facilities in their area.

58. Subsection (1)(c) gives Creative Scotland the functions of improving access to and participation in the arts and culture. When Creative Scotland is pursuing these particular functions it must do so with regards to increasing the diversity of people who have access to and participate in the arts and culture (see subsection (2)). Creative Scotland might, for example,
exercise these functions by supporting projects which give persons from socially deprived areas opportunities to express themselves through the arts and culture that they would otherwise not have.

59. Subsection (1)(d) gives Creative Scotland the functions of making real, and bringing to fruition, the value and benefits of the arts and culture in Scotland. The value and benefits referred to include, in particular, the national and international value and benefits of the arts and culture to Scotland’s national culture. The value and benefits referred to also include personal enjoyment of aesthetic quality and the enjoyment involved in cultural participation, benefits in terms of unlocking creative and entrepreneurial potential, and benefits in terms of enhancing well-being and community pride. Creative Scotland might, for example, exercise these functions by supporting a significant play that will tour around Scotland, providing enjoyment and “food for thought” at home, and thereafter internationally, boosting Scotland’s repute as a locus of world-class creative activity.

60. Subsection (1)(e) gives Creative Scotland the functions of encouraging and supporting artistic and other creative endeavours which contribute to an understanding of Scotland’s national culture. Scotland’s national culture in this paragraph means Scotland’s distinctive way of life as a whole, and not only the artistic and cultural output of the arts and culture. Creative Scotland might, for example, exercise these functions by supporting a film project which depicts and challenges Scottish attitudes to drug and alcohol consumption.

61. Subsection (1)(f) gives Creative Scotland the functions of advocating for and supporting the creative industries. The creative industries are industries and other commercial activities which involve as a distinctive element a primary focus on the application of creative skills. These industries include advertising, architecture, arts and antiques, crafts, design, designer fashion, film, computer and video games, music, performing arts, publishing, television and radio. Creative Scotland might, for example, exercise these functions by leading a research and intelligence programme relating to the sustainable development of the computer and video games industry.

62. Subsection (3) provides that Creative Scotland may encourage and support other persons who perform functions similar to Creative Scotland. This may include, for example, Scottish Enterprise and Highlands and Islands Enterprise who have a significant economic development role as regards the creative industries, and local authorities who support the arts and culture in their areas. Subsection (4) defines “persons” to include groups of persons so that informal associations or groups can be provided with encouragement and support.

Section 28 – Advisory and other functions

63. Subsections (1) and (4) require Creative Scotland to provide the Scottish Ministers with any advice, information and assistance they require (and in the manner they require it) in relation to the arts and culture, the creative industries or Creative Scotland’s functions. Subsection (2) also allows Creative Scotland to provide such other advice and information as it considers appropriate.
64. Subsection (3) allows Creative Scotland to provide other persons with advice, information and assistance in relation to the arts and culture or the creative industries. Subsection (5) defines “persons” to include groups of persons so that informal associations or groups can also be provided with advice, information and assistance. For example, assistance could be given to persons involved in artistic or other creative endeavours by way of training or through the temporary secondment of an employee of Creative Scotland.

Section 29 – Grants and loans

65. Subsections (1) to (3) allow the Scottish Ministers to make grants to Creative Scotland including for particular purposes and subject to such terms and conditions as the Scottish Ministers think fit.

66. Subsections (4) and (5) allow Creative Scotland to make grants and loans to persons involved in artistic and other creative endeavours and other persons where the grant or loan relates to Creative Scotland’s functions (and subject to such terms and conditions as Creative Scotland think fit). “Persons” in subsection (4) does not include groups of persons because money will only be given to persons enjoying a legal personality.

67. Subsection (6) has effect that all financial assistance by Creative Scotland in relation to its functions is channelled through the mechanism of subsection (4).

Section 30 – Directions and guidance

68. Subsections (1) and (2) give the Scottish Ministers power to direct Creative Scotland as to the exercise of its functions, except in relation to Creative Scotland’s functions under section 27(1) (its primary functions relating to artistic and other creative endeavours), section 27(3) (its function to encourage and support persons performing functions similar to Creative Scotland), section 28(3) (its function to provide persons other than the Scottish Ministers with advice, information or assistance) or section 29(4) (its grant and loan making function) insofar as the direction relates to Creative Scotland’s artistic or cultural judgement.

69. Subsection (3) requires Creative Scotland to comply with any directions given to it by the Scottish Ministers under Part 3 of the Bill and to have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.

Miscellaneous and general

Section 31 – Dissolution of the Scottish Arts Council

70. This section dissolves the Scottish Arts Council and revokes its Royal Charter.

Section 32 – Transfer of staff etc.

71. Subsection (1) provides for the employees, property and liabilities of the Scottish Arts Council and Scottish Screen to transfer to Creative Scotland from the date on which the Scottish Arts Council is dissolved. Scottish Screen will be dissolved by non-legislative means.
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72. Subsection (2) provides that the transfer of Scottish Arts Council and Scottish Screen employees does not terminate their contracts of employment and has effect as if their contracts of employment were originally made with Creative Scotland. Subsection (3) provides that all rights, powers, duties and liabilities surrounding a transferred person’s contract of employment transfer to Creative Scotland. For example, an Employment Tribunal claim actionable against the Scottish Arts Council or Scottish Screen by an employee would transfer with the employee and become actionable against Creative Scotland (subject to the time limits and other rules for bringing such claims).

73. Subsection (4) provides that a transferred person’s right to terminate their contract of employment, where there is a substantially detrimental change to the person’s contract of employment, is not affected by the provisions of subsections (1) to (3). However, a change of the identity of a person’s employer from the Scottish Arts Council or Scottish Screen to Creative Scotland is not to be treated as a substantially detrimental change to the person’s contract of employment.

Section 33 – Creative Scotland: Modifications of enactments

74. This section gives effect to schedule 6, which modifies enactments that refer to the Scottish Arts Council and Scottish Screen and where a reference to Creative Scotland is required.

PART 4 – SOCIAL CARE AND SOCIAL WORK: SCRUTINY AND IMPROVEMENT

Chapter 1 – Social Care and Social Work Improvement Scotland

Social Care and Social Work Improvement Scotland

Section 34 – Social Care and Social Work Improvement Scotland

75. Subsection (1) establishes Social Care and Social Work Improvement Scotland (referred to as SCSWIS in the Bill and throughout these notes). It will be a statutory body corporate which will exercise the functions given to it by or under the Bill or other relevant legislation. Subsection (1)(b) provides that as part of its function, SCSWIS will be expected to further improvements in social services in Scotland.

76. SCSWIS will be a non-departmental public body. It will be independent in its day to day running but will be accountable to Scottish Ministers, given that, by virtue of subsection (2), it must act in accordance with directions and under the general guidance of Scottish Ministers

77. Subsection (2) provides that SCSWIS must act in accordance with directions and under the general guidance of Scottish Ministers

78. Subsection (4) gives effect to Schedule 7 which sets out general provisions for the establishment and operation of SCSWIS.
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Section 35 – General principles

79. This section sets out the "general principles" in accordance with which SCSWIS will be required to exercise their functions under the Bill. These are to protect and promote the safety and wellbeing and independence of people who use social services and to promote diversity and good practice in relation to those services.

Key Definitions

Section 36 – Social services

80. This section defines “social services” for the purposes of Part 4.

Section 37 – Care services

81. Subsection (1) sets out the range of "care services" which will be regulated by SCSWIS.

82. Subsection (2) gives effect to Schedule 8 which defines the care services listed in subsection (1).

Section 38 – Social work services

83. This section defines what is meant by “social work services” and “social work services functions” for the purposes of Part 4 of this Bill. It also gives effect to Schedule 9 which specifies enactments within which those social work services functions are contained.

Section 39 – Power to modify key definitions

84. This section gives Scottish Ministers a power, following consultation, to change, by affirmative order, the definition of any social service. The power may be used to add to or remove from the range of defined services and to amend the definitions themselves.

Miscellaneous

Section 40 – Standards and outcomes

85. This section gives Scottish Ministers a power to prepare and publish standards and outcomes applicable to care services and to social work services; to keep any published standards under review and to publish revised standards and outcomes when they consider it appropriate. Subsections (4) to (6) provide that both any published standards and outcomes applicable to care, adoption and social work services defined in the Bill and the Scottish Social Services Council's Codes of Practice must be taken into account by SCSWIS when making any decisions related to registration, inspection and enforcement in respect of these services. This section also ensures that consultation must be undertaken prior to the publication of the standards and outcomes or any amendment of them. Subsection (7) allows Scottish Ministers to make different standards and/or outcomes for different services. Subsection (8) allows Scottish Ministers to delegate the preparation and publication of such standards and outcomes to other persons (which includes other bodies), where appropriate.
Section 41 – Information and advice

86. Subsection (1) provides that SCSWIS must make available to the public information on the availability and quality of social services. Subsection (2) provides that this information should be made available in any format that may reasonably be requested. Information provided might include details about the location and types of services available as well as the results of SCSWIS's inspections of individual social services.

87. Subsection (3)(a) allows SCSWIS to provide advice to Scottish Ministers at any time, and requires it to do so in response to a request by Scottish Ministers. Subsection (3)(b) requires SCSWIS to provide advice to service providers, service users and carers and their representatives, local authorities, health boards, social service providers or prospective providers, and any other bodies set out in an order made under that subsection, about any aspect of its work. For example, SCSWIS might offer advice to service providers on how to meet any standards and outcomes.

88. Subsection (4) allows SCSWIS to charge a reasonable fee for any advice, forms or documents it provides in connection with its obligations under subsection (3)(b).

Section 42 – Dissolution of Scottish Commission for the Regulation of Care

89. This section dissolves the Scottish Commission for the Regulation of Care (“Care Commission”).

Chapter 2 – Social Services Inspections

Inspections

Section 43 – Inspections

90. Subsection (1) provides that SCSWIS may inspect any social service and the organisation and coordination of any social service. Subsection (2) sets out possible purposes of an inspection of any social service, namely to review and evaluate their effectiveness, to investigate particular aspects of a service, to encourage improvement in the provision of those services and to make any recommendations necessary for their improvement in reports prepared under section 46, and in the case of care services, whether any improvement or condition notice necessary.

91. Subsection (2)(d) makes provisions that an investigation may be undertaken by SCSWIS into any incident, event or cause for concern. This is separate from the provisions for an inquiry to be undertaken which are set out in section 82.

92. Subsection (3) provides that an inspection may be of any social service or combination of such services or of the services provided to a child, adult or grouping of children or adults and may be undertaken in any part of, or the whole of Scotland.

93. Subsection (4) provides that an inspection is to be conducted in accordance with a timetable approved by the Scottish Ministers.
94. Subsection (5) allows an inspection to take any form SCSWIS considers appropriate.

95. Subsection (6) provides that SCSWIS may require a person who provides a social service registered under the Bill to supply it with any information to enable SCSWIS to discharge its functions. This may include such aspects as self-evaluation returns or other information.

**Section 44 – Inspections at request of Scottish Ministers**

96. Subsections (1) and (2) enable Scottish Ministers to request SCSWIS to carry out an inspection of any social service or the organisation or coordination of any social services, to specify the purpose of any such inspection and to approve the timetable for such work. This would, for example, allow Scottish Ministers to ask SCSWIS to carry out an inspection of social services for people with learning disabilities, including any services which the local authority has contracted with another person to provide. Subsection (3) provides that an inspection is to be conducted in accordance with a timetable approved by the Scottish Ministers. Subsections (4) and (5) enable Scottish Ministers to request an inspection of some or all social services in an area or across areas of Scotland and of services provided to a particular individual or group of individuals.

**Section 45 – Inspections: authorised persons**

97. Subsections (1) and (2) provide that any inspection must be carried out by a person authorised by SCSWIS – an “authorised person” and that such a person may carry out inspections into any or all social services.

98. Subsection (3) provides powers for an authorised person to enter and inspect any premises being used to provide a social service.

99. Subsection (4) provides that any confidential information that a person acquires during such an inspection is not used or disclosed by that person other than for the purposes of the inspection, or if required under law or a court order to disclose, or to the extent that is necessary for the purpose of protecting the welfare of a child or adult at risk, or the prevention or detection of crime or the prosecution of offenders. Confidential information for these purposes is defined in section 88(3) and is information from which a person’s identity can be discovered, either on its own or when combined with other information, and in respect of which a duty of confidentiality is owed to that person.

**Section 46 – Inspections: reports**

100. Subsection (1) requires SCSWIS to prepare a report after carrying out an inspection under this Part and to send a copy of the report to the person providing the service being inspected. Subsections (2) and (3) provide that SCSWIS should give that person an opportunity to comment on a draft of that report and that SCSWIS must make the report available to the public.

101. Subsection (4) provides that regulations may make further provision relating to the preparation, content and effect of the reports, and in particular may require copies of the reports to be sent to Scottish Ministers or other persons specified in the regulations.
Regulations

Section 47 – Regulations: inspections

102. This section provides the power for Scottish Ministers to make regulations in relation to inspections of social services and in particular (but not exclusively), to make regulations in relation to the topics listed in section 47(2)(a) to (i) such as the types of inspection, their timing and frequency and who is authorised to carry out an inspection.

Chapter 3 – Care Services

Registration of care services

Section 48 – Registration of care services

103. This section sets out the framework for applications for registration of care services as defined in section 37 and specifies that such registration must be made to SCSWIS and must include details of the person who is to manage the service and such other matters as SCSWIS may reasonably request in addition to such matters as may be prescribed by order.

104. Subsection (4) provides that subsections (1) to (3) do not apply to local authority adoption and fostering services or any other care services registered under section 68(1)(c).

Section 49 – Grant or refusal of registration

105. Registration will only be granted if SCSWIS is satisfied that the applicant has demonstrated that they have complied with or will comply with the relevant standards and other relevant requirements. The burden of proof is with the applicant rather than SCSWIS.

106. Subsections (1) and (2) provide that an application under section 48 can be granted either unconditionally or subject to any conditions SCSWIS sees fit to impose, or refused. Specific conditions may be required to take account of the circumstances in an individual service, for example, a condition that a particular door is kept locked to prevent children from wandering directly onto a busy road, or that a particular ratio or skill mix of staff is needed.

107. Subsection (3) provides that if SCSWIS is satisfied that the applicant is complying with, or will comply with any applicable regulations under section 63, and the requirements of any other legislation that it considers relevant, it should give the applicant notice of its decision to grant registration either unconditionally or with agreed conditions under section 58(1) or subject to conditions to be agreed under section 56(1). Otherwise, it will give notice of its refusal of registration under section 56(2).

108. If SCSWIS grants the application, it must issue a certificate of registration (subsection (4)), which the service provider must display in a prominent position (subsection (5)), either in the premises where the care service is operated from, and if there is a separate management office, in that office too.
109. In making a decision under this section, SCSWIS must take any standards and outcomes published under section 40 and the Scottish Social Services Council's codes of practice into account.

Section 50 – Limited registration

110. Subsection (1) provides for SCSWIS to register on a limited basis residential accommodation which does not require to be registered as a care service, for the sole purpose of permitting the manager to apply to manage the finances of an adult with incapacity under the provisions of the Adults with Incapacity (Scotland) Act 2000. Applications so granted will be considered limited registrations.

111. Subsection (2) provides that the information to be supplied with such an application should be the same as for a care service seeking registration under section 48. Subsections (3) and (4) provide that various registration, inspection and enforcement provisions which apply to care services should also apply to those granted limited registration.

Improvement notices

Section 51 – Improvement notices: care services

112. This section gives SCSWIS the power to serve an improvement notice on a care service. Such a notice will specify the improvements required to bring a care service up to the standards required and the timescale for meeting these standards.

113. For care services registered under this Chapter, subsection (1)(a) provides for SCSWIS to warn that if the necessary improvements are not made within the time allowed SCSWIS intends to begin procedures under section 53 to cancel a service's registration. Subsection (1)(b) provides for SCSWIS to warn that if improvement notices served on local authority adoption and fostering services and other services registered under Chapter 4 are not complied with SCSWIS intends to make a report to Scottish Ministers under section 76.

114. There may be cases where a voluntary or private sector service commissioned by a local authority is essential to the fulfilment of a local authority duty. Subsection (2) therefore provides that when an improvement notice is given to a non-local authority service, the local authority should be informed.

Section 52 – Special provision for certain care services provided by local authorities

115. This section adds to the provisions on improvement notices for local authority services registered under this Chapter to cover cases where the local authority considers that withdrawal of registration would place it in breach of a statutory duty.

116. Subsection (1) requires such a local authority to inform SCSWIS of its view within 14 days of receiving an improvement notice, giving the reasons. Subsection (2) requires SCSWIS then to copy the improvement notice to Ministers with the local authority's argument and their views on it. Subsection (3) requires Ministers to decide whether the local authority's view is justified. If it is, the care service is deemed to be registered under Chapter 4 and the provisions in
that Chapter in relation to enforcement would apply. If it is not, the normal arrangements under Chapter 3 would apply.

Proposals and applications in relation to registered care services

Section 53 – Cancellation of registration

117. This section gives SCSWIS the power to cancel the registration of a care service registered under this Part that, having been issued with an improvement notice under section 51, is still not meeting the relevant requirements. This could be concern about how effectively the care standards are being taken into account or that a condition of registration has been breached or where a relevant offence has been committed. Further grounds for cancelling registration may be prescribed by order.

118. Subsection (2) provides that relevant offences for the purpose of this section are:

- an offence under this Part - for example, providing a care service while not being registered (section 65(1)(a)), knowingly making a false or misleading statement when applying for registration or variation or removal of a condition (section 65(1)(b)) or failing to display a current certificate of registration (section 65(2));
- an offence under regulations made under this Part;
- any other offence which in SCSWIS's view makes it appropriate to cancel a registration.

119. Registration can be formally cancelled if a provider closes a care service before the cancellation process is complete. This will ensure that the provider's record accurately reflects the situation and SCSWIS will be aware of previous history in dealing with any future applications. Again, SCSWIS must take the standards and outcomes established under section 40 and the Scottish Social Services Council's codes of practice into account in coming to its decisions.

120. Cancellation of registration would not normally be the first step in a formal enforcement action. It is only likely to be used where the service has not met conditions of registration over time and has ignored the serving of an improvement notice. If a care service provider is convicted of a relevant offence, such as obstructing an inspection and fails to remedy matters at fault, SCSWIS will be able to cancel registration.

121. Subsection (4) allows SCSWIS to cancel a registration, without first issuing an improvement notice, where the person providing a registered care services ceases to provide the service.

Section 54 – Condition notices

122. This section gives SCSWIS the power to notify the care service provider by way of a “condition notice” that a condition in force may be varied, removed or added to SCSWIS.
Section 55 – Applications under Chapter 3 in respect of conditions

123. Subsection (1) enables a provider of a care service to apply for a change to their conditions of registration, for example to change the maximum number of people accommodated in a care home, or to apply voluntarily for the cancellation of registration, for example, if they plan to close or sell the business. Subsection (2) prevents a person voluntarily cancelling their registration if SCSWIS has given notice of intention to, or decided to, cancel registration. Subsection (3) provides that an application shall be accompanied by the appropriate fee and that regulations shall say how the application is to be made and what particulars are to be stated in it. Subsection (4) provides that if SCSWIS grants an application for a change of conditions it must give notice in writing and issue a new certificate of registration.

Section 56 – Further provision as respects notice of proposals

124. Subsection (1) provides that if SCSWIS proposes to grant an application under section 48 but subject to a condition that has yet to be agreed by the applicant, it must give notice of the proposed condition to the applicant.

125. Subsection (2) requires SCSWIS to give notice if it intends to cancel a registration. Subsection (3) provides that SCSWIS must give notice of a proposal to cancel a registration to the person providing the services; except where the person providing the service has applied to SCSWIS for its cancellation under section 55(1)(b). Subsection (4) provides that SCSWIS must give a person who has applied under section 55(1)(a) for the variation or removal of any condition on their registration, notice of a proposal to refuse that application. Subsection (5) provides that any notice under this section must provide reasons for that proposal.

Section 57 – Right to make representations to SCSWIS as respects proposals under Chapter 3

126. Subsection (1) states that a notice given under section 56, or a condition notice must indicate that the recipient can, if they so wish, make written representations to SCSWIS within a time limit of 14 days. This ensures that the applicant has the opportunity to make their point of view known. Subsection (2) provides that SCSWIS may only implement a proposal that was the subject of a condition notice or a notice under section 56 if it has considered any representations made by the recipient of the notice, the recipient has indicated that they will not make any representations or the 14 day period referred to in subsection (1) has elapsed and subsection 3 provides that if no representation is made, or the 14 day period has elapsed, SCSWIS must implement the proposal unless it would be inappropriate to do so.

Section 58 – Notice of SCSWIS’s decision under this Chapter

127. Subsection (1) provides that SCSWIS should give notice when granting an application for registration unconditionally or subject to a condition that has been agreed in writing between SCSWIS and the applicant.

128. Subsections (3) to (6) deal with situations where the representations stage has been completed, requiring SCSWIS to serve a notice in writing of their decision on the applicant. The notice must explain the right of appeal conferred by section 60 and in the case of a decision to
grant an application subject to conditions or to vary conditions, set out those conditions. A decision to cancel registration, to grant an application subject to conditions which are not agreed, or to change conditions will take effect only after the outcome of any appeal has been determined, or after 14 days if no appeal is brought. In the case of a decision to grant an application subject to conditions which are not agreed, if the applicant decides not to pursue an appeal the decision will take effect immediately.

Section 59 – Conditions as to numbers

129. This section provides that SCSWIS can limit the number of people using certain services or to whom certain services are provided either on initial registration, through a subsequent condition notice or in association with an improvement notice. For example, it may be appropriate for a new provider to be restricted on numbers until they get fully established, or where a care provider is causing concern the power could be used as an alternative to enforcement action (i.e. withdrawing registration).

130. The services covered by this section are care homes, school care accommodation, secure accommodation, adult placement services, support services, child minding, day care for children and nurse agencies.

131. It is not appropriate to apply this condition where there is a statutory duty on the local authority to provide the service. This is why adoption and fostering services are not covered by this provision. Offender accommodation services and housing support services are also not covered by the provision. These are examples of where imposing a limit on numbers would mean there had to be a parallel limit on the local authorities' duty to provide such services.

Section 60 – Appeal against decision to implement proposal

132. This section provides for an appeal against a decision made by SCSWIS under section 58(3), based on a proposal made by SCSWIS under section 56. The appeal must be made to a sheriff within 14 days of the notice of decision. Subsection (2) provides for the sheriff's powers on considering an appeal.

Fees

Section 61 – Registration fees

133. This section sets out the fees which are payable to SCSWIS. Subsection (1) gives Scottish Ministers power to prescribe maximum levels of fees which may be imposed (following consultation with those who will or may be affected by the proposals) and to determine whether or not a fee is payable by order. Subsection (2) sets out the activities for which SCSWIS is able to impose fees and subsection (3) provides that SCSWIS consider its reasonable expenses in carrying out functions under chapter three when fixing fees, but may charge a nominal fee or remit the fee altogether where appropriate.

134. Subsection (3) requires SCSWIS to have regard to its own expenses in setting particular fees within the maxima set by Scottish Ministers. This subsection also allows SCSWIS to waive fees.
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

Regulations

Section 62 – Regulations: registers and registration

135. Subsection (1)(a) provides for Scottish Ministers to make regulations about how SCSWIS should maintain registers. Subsection (1)(b) allows regulations to be made about the information that should be provided in an application under Chapter 3 or 4 and what certificates of registration should include, for example the conditions of registration of a care service. Subsection (1)(b)(iii) provides for regulations specifying types of applicants who cannot make certain kinds of applications.

136. Subsections (1)(c) and (d) allow regulations to be made that define the circumstances and conditions, including the payment of a fee, under which SCSWIS should provide access to its registers. Subsection (1)(e) gives Scottish Ministers the power to make regulations conferring additional functions on SCSWIS in relation to registration under the Part.

137. Subsection (2) allows for regulations to be made setting out when fees should not be payable and provides that SCSWIS can give access to the register free of charge.

138. Regulations under this section could, for example, be used to prevent unrestricted access to the names and addresses of service users such as users of children’s services, where there might be a consequent risk to children. The regulations could contain a requirement for someone to show they had a legitimate interest before they could be granted access to certain registers.

Section 63 – Regulations: care services

139. This section gives Scottish Ministers the power to make regulations in respect of care services. Such regulations could cover matters such as the way in which care services are conducted and make further provisions in relation to their scrutiny and the protection of users; they could also be used to cover the normal day to day administrative matters required for well run care services such as provision in relation to management, staffing and premises.

140. Subsection (2) provides that regulations made under this section may make it an offence to fail to comply with specific provisions within the regulations, or with a condition of registration. Subsection (3) provides that a person guilty of such an offence would be liable to a fine not exceeding level 5 on the standard scale (£5,000 at present).

141. Subsection (4) requires the Scottish Ministers to consult such persons as they consider appropriate before making regulations under the powers in this section.

Complaints

Section 64 – Complaints about social services

142. Subsection (1) requires SCSWIS to establish suitable procedures for dealing with any complaints made to it about regulated care services by users, their relatives or advocates or staff. Subsection (3) requires that, before establishing such procedures, SCSWIS will be required to
consult local authorities and such other persons or groups of persons it considers appropriate and that it should submit proposals to Scottish Ministers for approval.

143. While local resolution of complaints by the provider will be the norm there is no requirement (under subsection (2)) for a user of a service to go through the provider's own system before approaching SCSWIS. Any procedures developed must be kept under review by SCSWIS. SCSWIS must also ensure that the established procedure is given the appropriate publicity.

Offences

Section 65 – Offences in relation to registration under Chapter 3

144. This section sets out offences under Chapter 3. Subsection (1) makes it an offence for a person to describe any service as a care service for the purposes of this Bill when it is not registered as such. This would catch, for example, an hotel owner who tried to pretend their hotel was a care home. If convicted of an offence under this subsection, the person would be liable to a fine not exceeding level 5 on the standard scale or up to three months imprisonment, or both.

145. Subsection (2) makes it an offence not to display a certificate of registration in a prominent place. The penalty on summary conviction is a fine not exceeding level 2 on the standard scale.

146. Subsection (3) provides that an individual or body, other than an adoption agency, making arrangements for the adoption of a child would be prosecuted under section 75 of the Adoption and Children (Scotland) Act 2007 (asp 4) rather than this Bill. This will ensure that there is not duplication of powers under this Bill and the 2007 Act.

Section 66 – False statements in application under Chapter 3

147. This section makes it an offence to knowingly give information which is false or misleading in a material respect when making an application for registration, or for variation or removal of a condition. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale.

Section 67 – Offences by bodies corporate etc.

148. This section provides that if an offence under Chapter 3 (or regulations made under Chapter 3) is committed with the consent or connivance of an officer of a body corporate, a local authority, a partnership, or an unincorporated association, or if that officer has been complicit or been negligent, then the officer as well as the organisation is guilty of the offence. Individual officers of a body corporate, partners of a partnership, or persons managing or controlling an unincorporated association who are complicit in an offence under this Chapter will not be able to escape prosecution simply because the organisation is liable: both they and it may be liable to prosecution.
Chapter 4 – Local Authority Adoption and Fostering Services etc.

Section 68 – Local authority applications for registration under Chapter 4

149. Local authorities are under a statutory duty to provide adoption and fostering services which means that, unlike most care services, SCSWIS will not be able to take direct enforcement action against authorities. It would not be appropriate for SCSWIS to de-register a local authority's adoption service, for example, since that would prevent the authority from fulfilling its statutory duty. There may also be some other individual care services where non-registration or cancellation of registration would result in a local authority being in breach of a statutory duty. Instead SCSWIS will prepare a report to Ministers who will then decide what action should be taken against the local authority.

150. These services cannot therefore be covered by the registration and enforcement provisions in Chapter 3 of the Bill. This Chapter therefore provides similar requirements and rights that will apply to local authorities providing adoption and fostering services and other services needed so as to fulfil a statutory duty. The substantive difference is the role of Scottish Ministers in being informed of improvement notices and being empowered to take default action where they consider that the provision of these services is unsatisfactory.

151. Subsection (1)(a) and (b) require a local authority to apply to SCSWIS to register its adoption and fostering services (as set out in paragraph (8)(1)(a) and (9)(a) and (c) to schedule 8 respectively) and subsection 1(c) extends this requirement to register any other care service which a local authority determines they must provide in order to fulfil a statutory duty. Subsection (2) empowers Ministers to prescribe the manner and content of applications and that a fee should be payable.

152. Subsection (3) makes provision for SCSWIS to disagree with the local authority's determination in (1)(c) and refer the matter to Ministers, giving its reasons. Ministers must then decide (subsection (4)) whether the local authority's determination is justified. If it considers that it is not, then subsection (5) provides that the application for registration is deemed to have been under the Chapter 3 provisions.

Section 69 – Grant of local authority application under Chapter 4

153. Subsection (1) provides for SCSWIS to grant registration applications, with or without conditions, from a local authority service applying for registration under section 68(1) and to give the authority notice of its decision. Subsection (2) provides that on granting registration, SCSWIS should issue a certificate of registration, and subsection (3) requires authorities to display such certificates.

Section 70 – Condition notices: services registered under Chapter 4

154. This section provides that condition notices can be served on local authority care services registered under Chapter 4 in the same way as for other care services.
Section 71 – Applications under Chapter 4 in respect of conditions

155. This section gives local authorities the power to apply to SCSWIS for the variation or removal of any condition. Applications must comply with the manner and content of applications, including a fee if appropriate, as for applications under section 68. If SCSWIS decides to grant or refuse the application, it must notify the authority and issue a new certificate of registration if appropriate.

Section 72 – Right to make representations to SCSWIS under Chapter 4 as respects conditions

156. This section gives a local authority the right to make, within 14 days after receiving a notice to which the section applies, written representations to SCSWIS about any matter which they may wish to dispute. The notices in question are: any notice of a proposal to grant an application for registration but to do so subject to conditions, any notice of a proposal to vary, remove or impose a condition in relation to an existing registration and any notice of a proposal to refuse such an application.

157. Subsection (2) provides that SCSWIS may not implement the terms of the notice until the 14 day period has ended unless they receive representations during the 14 day period or the authority notifies SCSWIS that it will not be making representations. Subsection (3) provides that where notice to take an action has been given, SCSWIS may only take such action if it has considered any representations made, the authority has notified SCSWIS that no action shall be taken, or a period of 14 days has elapsed.

Section 73 – Notice of SCSWIS’s decision under Chapter 4

158. This section provides that if SCSWIS has decided to implement a notice to which section 72 applies, it must give the local authority to which the notice applies, written notice of its decision.

159. Subsections (2) to (4) deal with situations where the representations stage has been completed, requiring SCSWIS to serve a notice in writing of their decision on the authority. The notice must explain the right of appeal conferred by section 74 and in the case of a decision to grant an application subject to conditions or to vary conditions, set out those conditions. A decision to implement a notice will take effect only after the outcome of any appeal has been determined, or after 14 days if no appeal is brought. If an authority decides not to pursue its appeal the decision will take effect immediately.

Section 74 – Appeal against decision under Chapter 4

160. This section provides that local authorities may appeal to a sheriff against a decision made by SCSWIS under Chapter 4 within 14 days after a notice, under section 73 is given. The sheriff may determine the appeal in the same manner as appeals for other non-local authority care services in section 60(2).
Section 75 – Offences under Chapter 4

161. This section provides that the offence provisions in sections 65(1) and (3) and 67 shall apply to local authority care services registered under Chapter 4, in the same way as they apply to services registered under Chapter 3, and further that a failure to comply with section 69(3) can lead on summary conviction to a fine not exceeding level 2 on the standard scale.

Section 76 – Report to Scottish Ministers

162. Subsection (1) provides that SCSWIS shall report to Scottish Ministers if an improvement notice is imposed on a local authority service registered under Chapter 4, and provide them with a copy of that notice. Subsection (2) requires SCSWIS to inform Scottish Ministers (within 14 days) as to whether a notice has been complied with within the specified timescale. Subsection (3) requires SCSWIS to report to Ministers if any person is convicted of an offence in relation to these services, or if it appears to SCSWIS that a service is being carried on other than in accordance with the relevant requirements. Subsection (4) defines a relevant offence for the purposes of this section (they are the same as for section 53). Subsection (5) defines relevant requirement for this section and for section 77 as the same as those for section 53, however with the addition that they will also include any requirement or condition imposed by, under or by virtue of an Act as may be prescribed by an order made by the Scottish Ministers.

163. Subsection (6) requires SCSWIS to report to Scottish Ministers and provide them with information about any issues in relation to a care service registered under Chapter 4 that may be prescribed by order by the Scottish Ministers.

Section 77 – Default powers of Scottish Ministers

164. Subsection (1) provides that Scottish Ministers (having received a report under section 76 or otherwise) may take certain actions if they are satisfied that a local authority providing a service registered under Chapter 4 is, without reasonable excuse, failing to comply with an improvement notice or carrying on the service not in accordance with relevant requirements.

165. Subsection (2) sets out what those actions are, either to make an order to declare an authority in default or to make a direction setting out the steps that should be taken to remedy the matter. Subsection (3)(a) provides that if an authority fails to comply with that direction Scottish Ministers can take the necessary action themselves or make arrangements for someone to do it on their behalf. Subsection (3)(b) provides that the Court of Session may order specific performance of those steps on application from the Scottish Ministers.

Chapter 5 – Miscellaneous

Section 78 – Grants to SCSWIS

166. This section makes provision for Scottish Ministers to make grants to SCSWIS in relation to the expenses that it incurs or will incur through either the initial establishment of the body or through the discharge of its functions.
Section 79 – Guarantees

167. This section gives Scottish Ministers the power to guarantee any borrowing of funds which SCSWIS undertakes. Scottish Ministers will be required to lay details of any such guarantees before Parliament, and also provide the Parliament with an annual statement setting out the sum or sums borrowed, until these have been repaid.

Section 80 – Duty of SCSWIS to consult Scottish Social Services Council

168. This section provides that SCSWIS must consult the Scottish Social Service Council on matters where SCSWIS think appropriate. This may include consultation about cases, such as the manager of a care home being removed from the Council's register.

Section 81 – Complaints procedure

169. This section requires SCSWIS to put in place a complaints procedure to deal with complaints about its operation. Subsection (2) provides that SCSWIS must get consent from Scottish Ministers before establishing procedures. Subsection (3) provides that it should keep these procedures under review. Subsection (4) provides that it also make appropriate arrangements to publicise the procedures it establishes.

Section 82 – Inquiries

170. Subsection (1) enables Scottish Ministers to act on any concerns over SCSWIS's exercise of its functions or concerns over the provision of a social service, by setting up an inquiry. Subsection (2) allows SCSWIS to set up an inquiry on the exercise of its functions, or over the provision of a social service. SCSWIS needs to have legal authority to investigate issues of serious concern that may arise in respect of its functions or any particular social service.

171. Subsection (3) enables an inquiry to be held in private. This might be necessary to protect, for example, a victim of child abuse.

172. Subsections (4) and (5) provide for section 210(2) to (8) of the Local Government (Scotland) Act 1973 to apply in relation to an inquiry. This will enable the person holding the inquiry to issue a summons requiring an individual to give evidence or produce any documents in their custody or under their control at a stated time and place. If that person fails to attend (for reasons other than not having the necessary expenses of their visit paid or tendered), they are liable to a fine or imprisonment.

173. Subsections (6) and (7) allow SCSWIS to determine who should pay their expenses in relation to an inquiry. Subsection (8) allows SCSWIS to award expenses to parties involved in an inquiry and to direct who should pay those expenses.

Section 83 – Liability of persons exercising functions

174. This section provides that a person acting in good faith and on reasonable grounds will not be liable in any civil or criminal proceedings for anything done in connection with the
functions being carried out under the Bill. Subsection (2) provides that SCSWIS would remain liable for the actions of its staff.

Section 84 – Arrangements entered into by local authority or health body: services to be registered

175. This section provides that, although a service commissioned by the body in question need not exist as a registered care service at the time the contract is entered into, the service must be a registered one by the time it is actually provided.

Section 85 – Giving of notice

176. This section deals with the serving of notice on a care service provider or a person seeking to be a care service provider, and sets out when notice is deemed to have been delivered.

Section 86 - Transfer of staff etc

177. Section 86 provides for the employees, property and liabilities of the Scottish Commission for the Regulation of Care (‘the Care Commission’) to transfer to SCSWIS on the date that the new body is established. It also makes provision for all the staff of the Social Work Inspection Agency (“SWIA”), which is an executive agency of the Scottish Executive, to transfer to SCSWIS on the same date. The transfer of Care Commission and SWIA employees does not terminate their contracts of employment and has effect as if their contracts of employment were originally made with SCSWIS. All rights, obligations and acts surrounding a transferred person’s contract of employment transfer to SCSWIS (see subsection (4)). Staff who are on secondment to SWIA from another part of the Scottish Administration are not to be transferred to the new body.

178. A transferred person’s right to terminate their contract of employment, where there is a substantially detrimental change to the person’s contract of employment, is not affected by the provisions of subsections (1) to (4). However, the mere change of the identity of a person’s employer from the Care Commission or SWIA to SCSWIS is not to be treated as a substantially detrimental change to the person’s contract of employment (see subsection (5)).

Section 87 - Orders and regulations: procedure

179. This section provides that any order or regulations made by Scottish Ministers under this Part of the Bill must be by statutory instrument and may be exercised to make different provisions for different purposes. Apart from orders under section 39, regulations under section 47(1) and schedule 8 which must be made by affirmative procedure, all other orders and regulations must be made by negative procedure.

Section 88 – Interpretation of Part 4

180. This section defines certain terms that are used in this part of the Bill.
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

Section 89 – Minor and consequential amendments and repeals: SCSWIS

181. This section gives effect to schedule 10.

PART 5 – HEALTH CARE: SCRUTINY AND IMPROVEMENT

Section 90 – Healthcare Improvement Scotland

182. This section amends The National Health Service (Scotland) Act 1978 (c. 29) by inserting the following sections into the Act.

Healthcare Improvement Scotland

Section 10A – Healthcare Improvement Scotland

183. Subsection (1) creates Healthcare Improvement Scotland, which is referred to in the Bill and in these notes as HIS. It will be a statutory body corporate which will exercise the functions given to it by or under the Bill or other relevant legislation. Subsection (1)(b) provides that as part of its function, HIS will be expected to promote improvements in healthcare provided in Scotland.

184. Subsection (2) defines what is mean by healthcare in subsection (1)(b) as services for, or in connection with, the prevention, diagnosis or treatment of illness provided under the health service or by people providing independent health care services

185. Subsection (3) and (4) places HIS under an obligation to act subject to and in accordance with directions given by the Scottish Ministers and enables the Scottish Ministers to vary or revoke such directions.

186. Subsections (5) gives effect to Schedule 5A of The National Health Service (Scotland) Act 1978 (c. 29) contained in schedule 11 to the Bill, and which sets out the constitutional arrangements and general provisions for the establishment and operation of HIS.

Principles

Section 10B – Principles

187. This section sets out the principles in accordance with which HIS will be required to exercise their functions. These prioritise the safety and welfare of persons, and the promotion of good practice.

Functions related to the health service

Section 10C – Health service functions

188. Subsection (1)(a) to(c) requires HIS to exercise the functions of supporting, ensuring and monitoring the quality of health care provided by the NHS in Scotland (including quality assurance, and accreditation) the promotion of user involvement in the planning and development of health services by Health Boards, Special Health Boards and the Common
Services Agency; and the discharge of those bodies’ functions in a way that encourages equal opportunities. Subsection(2) confers certain functions exercisable by the Scottish Ministers under particular provisions of the 1978 Act on HIS. Subsection (3)(a) provides that HIS must make available to the public information on the availability and quality of health service services which under subsection (3)(b) should be made available in any format that may reasonably be requested. Information provided might include details about the location and types of services available as well as the results of HIS's inspections of services provided under the health service.

189. Subsection (5) to (7) provide a definition for health service functions which HIS may exercise.

190. Subsection (3)(c) requires HIS to provide advice to Scottish Ministers when requested, and subsection (3)(d) allows it to do so at any time even without a request by Scottish Ministers. Subsection (3)(e) requires HIS to provide advice to service users and persons representing carers of such users, local authorities, health boards, special health boards and the Common Services Agency, health service providers or prospective providers, and any other bodies set out in regulations, about any aspect of its functions. For example, HIS might offer advice to service providers on how to meet any standards and outcomes. Subsection (3)(f) provides a power for HIS to publish information arising out of its inspection and other work such as good practice guidance. Subsection (3) allows HIS to charge a reasonable fee for any advice, forms or documents it provides in connection with its obligations under subsection (3)(e).

Section 10D – Health service functions: further provision

191. This section permits Scottish Ministers to delegate by order to HIS such of their functions in relation to the NHS as they think is appropriate. This might include, for example, conducting an investigation into serious failure in NHS care.

192. Under subsection (2), HIS is required to carry out tasks for bodies associated with the NHS that Scottish Ministers and the other health bodies agree they should undertake and in the manner that is agreed. When carrying out such tasks or exercising functions on behalf of the Scottish Ministers, HIS may enforce any rights acquired and will incur any liabilities and be fully responsible for those tasks and the exercise of those functions.

Section 10E – Independent health care functions

193. Subsection (1) and (2) create functions for HIS in relation to information on the availability and quality of independent health care services similar to those for NHS services described above for section 10C.

194. Subsection (3) provides a list of the sections which confer functions on HIS to be known as independent health care functions. These functions include the registration, regulation and inspection of independent healthcare services and conditions attached to those functions and the designation of authorised persons who may inspect independent health care services. Subsection (4) further explains what is meant by the independent health care functions of HIS for the purposes of the Bill.
Section 10F – Meaning of “independent health care services”

195. Subsections (1) and (2) lists and provides detailed definitions for the services which are to be considered independent health care services for the purposes of the Bill namely any independent hospital or clinic, any private psychiatric clinic or any independent medical agency.

Section 10G – Power to modify definitions

196. This section gives Scottish Ministers a power, following consultation, to amend by affirmative order the definition of an independent health care service. The power may be used to add to or remove from the range of defined services or to amend the definitions themselves.

Standards and outcomes

Section 10H – Standards and outcomes

197. This section gives Scottish Ministers a power to prepare and publish standards and outcomes applicable to services provided under the health service and independent health care services; and to keep any published standards under review. Under subsection (4) any published standards must be taken into account by HIS when making any decisions related to registration, inspection and enforcement in respect of services provided under the health service and independent health care services. This section also ensures that consultation must be undertaken prior to initial publication and consequent amendment of the standards and outcomes.

Inspections

Section 10I – Inspections of services provided under the health service

198. As part of the duty of furthering improvement in the quality of healthcare in Scotland, conferred by section 10A under this section, HIS may inspect any service provided under the health service. Such inspections are to be subject to a timetable approved by Scottish Ministers.

Section 10J – Inspections of independent health care services

199. HIS may inspect any independent health service. The purposes of an inspection of independent health services are to review and evaluate their effectiveness, to investigate particular aspects of a service and to encourage continuous improvement in the provision of those services. Subsection (3) provides that any service or combination of services in any part or all of Scotland may be inspected. This would enable for instance a themed inspection of independent health care services provided to older people.

200. Subsection (4) provides that HIS may require a person who provides an independent health service registered under the Bill to supply it with any information to enable HIS to discharge its functions. This may include such aspects as pre-inspection questionnaires or other information. Subsection (6) makes provision for HIS to decide the form which any inspection will take, subject to any regulations made under section 10N. This will enable HIS to conduct inspections in a manner appropriate for the type of service being inspected.
Section 10K – Authorised persons

201. This section provides that any inspection must be carried out by a person authorised by HIS – an “authorised person” - and that such a person may carry out inspections of any or all independent healthcare services.

202. Subsection (3) provides powers for an authorised person to enter and inspect any premises being used to provide an independent health care service. Subsection (4) provides that any confidential information that person acquires during such an inspection may not be used or disclosed by that person other than for the purposes of the inspection, or if required under law or a court order or disclosed to the extent that is necessary for the purpose of protecting the welfare of a child or adult at risk or the prevention or detection of crime or prosecution of offenders. Confidential information for the purposes of the Bill is information which can identify an individual and in respect of which a duty of confidentiality is owed to the individual in question.

Section 10L – Inspections at request of Scottish Ministers

203. This section provides that HIS must undertake an inspection of any service provided under the health service and any independent health care service at the request of the Scottish Ministers. Subsection (3) provides that an inspection or investigation is to be conducted in accordance with a timetable approved by the Scottish Ministers. Under this provision, for example, Scottish Ministers might request HIS to undertake an inspection of the services provided to people with mental illness across both NHS and private providers.

Section 10M – Inspections: reports

204. Subsection (1) requires HIS to prepare a report after carrying out an inspection of NHS or independent health care services and send a copy of the report to the person (or body) providing the service(s). Subsection (2) provides that HIS should give that person (or body) an opportunity to comment on a draft of that report. Subsection (3) provides that HIS must make the report available to the public and subsection (4) makes provision for regulation to make further provisions about the preparation, content and effect of reports.

Section 10N – Regulations relating to inspections

205. Subsections (1) and (2) provide a power for regulations to make further provision on the detail of inspections at sections 10I, 10J and 10L - and for different types of inspection to be carried out for such services.

206. Subsection (3) provides a list, which is not exhaustive, of the issues which the regulations may address in relation to those inspections such as the frequency of such inspections, the persons who are authorised to conduct such inspection, the interviews and examinations which may be carried out in relation to such inspections and the creation of offences.

207. Subsection (4) provides a definition for “health records” as referred to in subsection 10N(3)(c).
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

Registration

Section 10O – Registration of independent health care service

208. This section sets out the framework for applications for registration of an independent health care service and specifies that such applications must be made to HIS and in addition to information that may be prescribed in regulations, the identity of the manager of the service must be included as well as any information HIS may reasonably require from the applicant.

Section 10P – Grant or refusal of registration

209. Registration will only be granted if HIS is satisfied that the applicant has demonstrated that they have complied with or will comply with the relevant standards and other relevant requirements. The burden of proof is with the applicant rather than HIS.

210. Subsection (1) and (2) provides that an application can be granted either unconditionally or subject to any conditions HIS sees fit to impose. Specific conditions may be required to take account of the circumstances in an individual service, for example, a condition that a particular door is kept locked to prevent children from wandering directly onto a busy road, or that a particular ratio or skill mix of staff is needed.

211. Subsection (3) provides that if HIS is satisfied that the applicant is complying with, or will comply with, all relevant requirements set out in regulations under section 10Z2, and the requirements of any other legislation that it considers relevant, it should give the applicant notice of its decision to grant registration either unconditionally under section 10W or subject to conditions under section 10U(1)(a). Otherwise, it will give notice of its refusal of registration under section 10U(1)(b).

212. If HIS grants the application, it must issue a certificate of registration (subsection (4)), which the independent health service provider must display in a prominent position (subsection (5)), in the premises where the independent health care service is operated from and, if there is a separate management office, in that office too.

Improvement notices

Section 10Q – Improvement notices: independent health care services

213. This section gives HIS the power to serve an improvement notice on an independent health care service. Such a notice will specify the improvements required to bring an independent health care service up to the standards required and the timescale for meeting these standards. It also provides for the HIS to warn that if the necessary improvements are not made within the time allowed HIS intends to begin procedures under Section 10R.

Proposals and applications in relation to registered independent health care services

Section 10R – Cancellation of registration

214. This section gives HIS the power to cancel the registration of an independent health care service that, having been issued with an improvement notice, is still not meeting the relevant
requirements. This could be concern about a condition of registration that has been breached or where a relevant offence has been committed. Further grounds for cancelling registration may be prescribed by regulations.

215. Subsection (2)(a) provides that relevant offences for the purpose of this section are:
   - an offence under this group of sections;
   - any other offence which in HIS's view makes it appropriate to cancel a registration.

216. Registration can be formally cancelled even if a provider closes an independent health care service before the cancellation process is complete. This will ensure that the provider's record accurately reflects the situation and HIS will be aware of previous history in dealing with any future applications.

217. Cancellation of registration would not normally be the first step in a formal enforcement action. It is only likely to be used where the service has not met conditions of registration over time and has ignored the serving of an improvement notice. If an independent health care service provider is convicted of a relevant offence, such as obstructing an inspection and fails to remedy matters at fault, HIS will be able to cancel registration.

Section 10S – Condition notices

218. This section enables HIS to notify the registered independent health service, by a “condition notice” that a condition in force may be varied, removed or a new condition added.

Section 10T – Applications in respect of conditions

219. Subsection (1) enables a provider of an independent health care service to apply for a change to their conditions of registration, or to apply voluntarily for the cancellation of registration, for example, if they plan to close or sell the business. Subsection (2) prevents a person voluntarily cancelling their registration if HIS has given notice of intention to, or decided to, cancel registration. Subsection (3) provides that an application shall be accompanied by the fee and that regulations shall say how the application is to be made and what particulars are to be stated in it. Subsection (4) provides that if HIS grants an application for a change of conditions it must give notice in writing and issue a new certificate of registration.

Section 10U – Further provision as respects notice of proposals

220. Subsection (1) provides for HIS to give notice of decisions it intends to take, in respect of applications for registration made under Section 10O, if it intends to grant an application subject to conditions, or to refuse it. For example, in the case of a person applying for registration for the first time, the notice of proposal will state the conditions subject to which HIS proposes to grant the application.

221. Subsection (2) requires HIS to give notice if it intends to cancel a registration. Subsection (3) requires HIS to give notice if it decides to refuse an application for a variation of conditions made under Section 10T. Such notice must set out the reasons (subection (4)).
Section 10V – Right to make representations to HIS as respects proposals

222. This section states that a notice given under Section 10U must indicate that the recipient of the notice can, if they so wish, make written representations to HIS within a time limit of 14 days (subsection (1)). This ensures that that person has the opportunity to make their point of view known. Subsection (2) provides that HIS may not implement the terms of the notice until the 14 day period has ended unless they receive representations during the 14 day period or the person notifies HIS that they will not be making representations.

Notice of decision on application for registration

Section 10W – Notice of HIS’s decisions

223. Subsections (1) and (2) provide that HIS should give notice when granting an application for registration unconditionally or subject to a condition that has been agreed in writing between HIS and the applicant.

224. Subsections (3) to (6) deal with situations where the representations stage has been completed, requiring HIS to serve a notice in writing of their decision on the applicant. The notice must explain the right of appeal conferred by section 10Y and in the case of a decision to grant an application subject to conditions or to vary conditions, set out those conditions. A decision to cancel registration, to grant an application subject to conditions which are not agreed, or to change conditions will take effect only after the outcome of any appeal has been determined, or after 14 days if no appeal is brought. In the case of a decision to grant an application subject to conditions which are not agreed, if the applicant decides not to pursue an appeal the decision will take effect immediately.

Conditions as to numbers

Section 10X – Conditions as to numbers

225. This section provides that HIS can limit the number of people using certain services or to whom certain services are provided either on initial registration, or through a subsequent condition notice. For example, it may be appropriate for a new provider to be restricted on numbers until they get fully established, or where an independent healthcare provider is causing concern the power could be used as an alternative to enforcement action (i.e. withdrawing registration).

Appeal against decision to implement proposal

Section 10Y – Appeal against decision to implement proposal

226. This section provides for an appeal against a decision on registration made by HIS under Section 10W. The appeal must be made to a sheriff within 14 days of the notice of decision. Subsection (2) provides for the sheriff's powers on considering an appeal.
Fees

Section 10Z – Registration Fees

227. This section sets powers in relation to the fees which are payable to HIS. Subsection (1) gives Scottish Ministers power to prescribe maximum levels of fees which may be imposed (following consultation with those who will or may be affected by the fees or their potential effect) and to determine whether or not a fee is payable by regulations. Subsection (2) sets out the activities for which the HIS is able to impose fees.

228. Subsection (3) requires HIS to have regard to its own expenses in setting particular fees within the maxima set by Scottish Ministers. This subsection also allows HIS to waive fees.

Regulations

Section 10Z1 – Regulations: registers and registration

229. Subsection (1)(a) provides for Scottish Ministers to make regulations about how HIS should maintain registers. Subsection (1)(b) allows regulations to be made about the information that should be provided in an application under Section 10O and what certificates of registration should include, for example the conditions of registration of an independent health care service. Subsection (1)(b)(iii) provides for regulations specifying types of applicants who cannot make certain kinds of applications.

230. Subsection (1)(c) and (d) allow regulations to be made that define the circumstances and conditions, including the payment of a fee, under which HIS should provide access to its registers. Subsection (2) allows for regulations to be made setting out when fees should not be payable and provides that HIS can give access free of charge. These regulations would be, for example, to prevent unrestricted access to the names and addresses of services, such as children's services, where there might be a consequent risk to children. The regulations could contain a requirement for someone to show they had a legitimate interest before they could be granted access to certain registers.

231. Subsection (1)(e) gives Scottish Ministers the power to make regulations conferring additional functions on HIS in relation to registration under Section 10O. Section 10Z2 – Regulations: independent health care services

232. This section gives Scottish Ministers the power to make regulations in respect of independent health care services. Such regulations would cover the normal day to day administrative matters required for well run independent health care services such as provision in relation to management, staffing, premises and the general way independent health care services are conducted.

233. Subsection (2) provides that regulations made under this section may make it an offence to fail to comply with specific provisions within the regulations, or with a condition of registration. Subsection (3) provides that a person guilty of such an offence would be liable to a fine not exceeding level 5 on the standard scale (£5,000 at present).
234. Subsection (4) requires the Scottish Ministers to consult such persons as they consider appropriate before making regulations under the powers in this section.

Complaints about independent health care services

Section 10Z3 – Complaints about independent health care services

235. Subsection (1) requires HIS to establish suitable procedures for dealing with any complaints made to it about independent health care services by users, their relatives or advocates or staff. Subsection (3) requires that, before establishing such procedures, HIS will be required to consult such persons or groups of persons it considers appropriate and that it should submit proposals to Scottish Ministers for approval. Any procedures developed must be kept under review by HIS. HIS must also ensure that the established procedure is given the appropriate publicity.

Offences

Section 10Z4 – Offences in relation to registration

236. This section sets out offences in relation to registration under Section 10O (registration of independent health care services). Subsection (1) makes it an offence for a person to describe any service as an independent health care service for the purposes of this Bill when it is not registered as such. If convicted of an offence under this subsection, the person would be liable to a fine not exceeding level 5 on the standard scale or up to three months imprisonment, or both.

237. Subsection (2) makes it an offence not to display a certificate of registration in a prominent place. The penalty on summary conviction is a fine not exceeding level 2 (£500) on the standard scale.

Section 10Z5 – False Statements in applications

238. This section creates an offence of knowingly giving information which is false or misleading in a material respect when making an application for registration, or for variation or removal of a condition. The penalty is a fine not exceeding level 4 on the standard scale.

Section 10Z6 – Offences by bodies corporate etc.

239. This section provides that if an offence under this group of sections is committed with the consent or connivance of individuals operating a body corporate, a partnership, or an unincorporated association, or if that person has been neglectful, then the person as well as the organisation is guilty of the offence. Individual officers of a body corporate, partners of a partnership, or persons managing or controlling an unincorporated association who are complicit in an offence under this group of sections will not be able to escape prosecution simply because the organisation is liable: both they and it may be liable to prosecution.
Inquiries

Section 10Z7 – Inquiries

240. Subsection (1) allows HIS to set up an inquiry on the exercise of its functions, or over the provision of an independent health care service or a service provided under the health service, giving HIS the authority to investigate issues of serious concern that may arise in respect of their functions or any particular independent health care service or a service provided under the health service.

241. Subsection (2) enables an inquiry to be held in private. This might be necessary to protect, for example, a victim of child abuse.

242. Subsections (3) and (4) provide for section 210(2) to (6) of the Local Government (Scotland) Act 1973 to apply in relation to an inquiry. This will enable the person holding the inquiry to issue a summons requiring an individual to give evidence or produce any documents in their custody or under their control at a stated time and place. If that person fails to attend (for reasons other than not having the necessary expenses of their visit paid or tendered), they are liable to a fine or imprisonment.

243. Subsections (5) and (6) allow HIS to determine who should pay their expenses in relation to an inquiry. Subsection (7) allows HIS to award expenses to parties involved in an inquiry and to direct who should pay those expenses.

244. Scottish Ministers also have a power to ask HIS to set up an inquiry under section 76 of the National Health Service (Scotland) Act 1978 (c. 29).

Liability of persons exercising functions

Section 10Z8 – Liability of persons exercising functions

245. This section provides that a person acting in good faith and on reasonable grounds will not be liable in any civil or criminal proceedings for anything done in connection with the functions being carried out under the Bill. Subsection (2) provides that HIS would remain liable for the actions of its staff.

Giving of notice

Section 10Z9 – Giving of notice

246. This section deals with the serving of notice on an independent health care service provider or a person seeking to provide and independent health care service, and sets out when notice is deemed to have been delivered.
Scottish Health Council

Section 10Z10 – Establishment of Scottish Health Council

247. This section allows HIS to establish a committee of its board known as the Scottish Health Council and to delegate to the Council the functions, set out at 10C(1)(b) and (c), of supporting, ensuring and monitoring the duties under section 2B of the 1978 Act for Health Boards, Special Health Boards and the Commons Services Agency to encourage public involvement in the health services for which they are responsible; and of supporting, ensuring and monitoring the promotion under section 2D of that Act, equal opportunities in the delivery of all their functions.

Section 10Z11 – Transfer of staff

248. This section clarifies that section 12CA concerning transfer of staff amongst health service bodies is applicable to HIS and provides that the existing staff of NHS Quality Improvement Scotland will transfer to HIS on the date on which it is established as a new body.

Section 10Z12 – “Provide” in relation to independent health care services

249. This section provides a definition of the term “provide” in this Part of the Act which is to carry on or manage an independent healthcare service.

Section 91 – Healthcare Improvement Scotland: constitution, etc.

250. Subsection (1) gives effect to schedule 11 which inserts schedule 5A into the National Health Service (Scotland) Act 1978. Subsection (2) gives effect to schedule 12 which contains modifications of enactments consequential on section 90.

PART SIX - SCRUTINY

User focus

Section 92 - Scrutiny: user focus

251. Subsection (1) imposes a duty on listed scrutiny authorities to secure continuous improvement in user focus in the exercise of their scrutiny functions and to demonstrate that improvement. Scrutiny functions of a person, body or office-holder are defined in subsection (7).

252. Subsection (2) provides that “user focus” is the involvement of users of scrutinised services in the design and delivery of scrutiny functions in relation to those services and the governance of the listed scrutiny authorities. Subsection (3) defines “scrutinised services” to mean services that are scrutinised and also persons, bodies or office-holders (providing services) that are scrutinised.

253. Subsection (4) provides that the phrase “users of a service” includes people who have not yet used the service but may use it in the future, people who act on behalf of others for whom the service is provided, and persons with a direct interest in, or directly affected by, the service. It also includes a person, such as a local authority, with a direct interest in, or directly affected by
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

the scrutiny of a service (i.e. it includes the person providing the service, such as, the local authority) and it includes a person with a direct interest in, or directly affected by the scrutiny of a person, body or office-holder providing services.

254. Subsection (5) allows the Scottish Ministers to add, by order, a person, body or office-holder which has scrutiny functions to the list of authorities that are subject to the duty in schedule 13. Subsection (6) requires the Scottish Ministers to consult those in question, before making such an order.

Section 93 - User focus: guidance etc.

255. Subsection (1) requires listed scrutiny authorities to have regard to any guidance in relation to the duty provided by the Scottish Ministers, and to what are otherwise regarded as proper arrangements for securing and demonstrating continuous improvement in user focus.

256. Subsection (3) provides that arrangements may be regarded as proper arrangements by reference to generally recognised published codes or otherwise. Reference could therefore be made to professional codes of practice. Subsection (2)(a) provides that the guidance issued by Scottish Ministers may include guidance on how to make, and what is to be included in, such arrangements.

257. Subsection (5) provides that if there is a conflict between guidance provided by Scottish Ministers and these proper arrangements, then it is the guidance that must be followed. Subsections (6) and (7) enable the Scottish Ministers to require a listed scrutiny authority to explain why it has not complied with guidance provided by Scottish Ministers, and to publish that explanation.

Section 94 - Scrutiny: duty of co-operation

258. Subsection (1) imposes a duty on scheduled scrutiny authorities to co-operate and co-ordinate activity with each other and, where appropriate, the Scottish Ministers, with a view to improving the exercise of their scrutiny functions in relation to local authorities (including public services provided by them or on their behalf), social services and health services. This must be with regard to efficiency, effectiveness and economy. Scrutiny functions of a person, body or office-holder are defined in subsection (10). This duty requires, for example, SCSWIS and Her Majesty’s Inspectors of Education to co-operate and carry out integrated inspections in relation to the inspection of school care accommodation services (as defined in schedule 8).

259. Subsection (3) allows the Scottish Ministers to add, by order, a person, body or office-holder to the list of authorities that are subject to the duty in schedule 14. An authority can only be added to the list if it has scrutiny functions in relation to local authorities or public services provided by them or on their behalf, social services or health services. Subsection (4) requires the Scottish Ministers to consult those in question, before making such an order.

260. Subsection (5) disapplies the duty to the extent that compliance with it would prevent or delay action that the scheduled scrutiny authority considers necessary as a matter of urgency. Subsection (6) requires scheduled scrutiny authorities to comply with any directions given by the
Scottish Ministers and have regard to any guidance issued by Scottish Ministers. Subsection (7) provides that such directions and guidance may be of a general or a specific nature, and may apply to all or some scheduled scrutiny authorities and to all or some of their functions.

Joint inspections

Section 95 - Joint inspections

261. Subsection (1) requires any two or more of the persons or bodies specified in subsection (6), on being requested to do so by the Scottish Ministers, to conduct jointly an inspection of the provision of children’s services, such other services within the inspection remit of the bodies involved as Scottish Ministers specify, or a combination of such services. The intention is that the Scottish Ministers would be able to require a joint inspection of, for example, child protection services, adult mental health services or services for people (that is adults and children) with learning disabilities.

262. Subsection (11) defines “children’s services” to mean services provided predominantly to, or for the benefit of, children to which the provisions of section 15(1) of the Local Government in Scotland Act 2003 apply. Section 15(1) of that Act makes provision regarding community planning by local authorities. The services to which the community planning process may apply are all public services provided in the area of the local authority. These public services may be provided by public bodies or community bodies as defined in section 15(4) of that Act.

263. Subsections (2) to (4) enable the Scottish Ministers to specify the purposes for any joint inspection and to specify that any or all of the services to be jointly inspected are inspected by reference to the area in which they are provided (which can be the whole of Scotland or any part of Scotland) or to the person or group of persons to whom they are provided.

264. Subsection (5) requires a joint inspection to be carried out to a timetable approved by, and in accordance with any directions issued by, Scottish Ministers. Such directions might include which person or body is to co-ordinate the arrangements for the joint inspection and the arrangements for the publication of the report.

265. Subsection (6) lists the persons and bodies which may be required to conduct a joint inspection in terms of a request from the Scottish Ministers under subsection (1). Subsection (9) enables the Scottish Ministers, by order, to add other persons or bodies to or remove bodies from the list.

266. Subsection (7) allows any person or body listed in subsection (6) who considers a joint inspection would be appropriate to bring this to the attention of Scottish Ministers.

267. Subsection (8) enables the joint inspection team to submit their report and recommendations to Scottish Ministers following an inspection. It also requires persons or bodies participating in a joint inspection to have regard to any code of practice prepared by Scottish Ministers giving practical and general advice and promoting desirable practices. Matters
such as access to and the use and destruction of confidential information are examples of the kind of matter which might be dealt with in such a code.

**Section 96 - Participation in joint inspections**

268. Subsection (1) allows Scottish Ministers to direct persons or bodies not listed in section 95(6) but which have inspection functions to participate in a joint inspection. The direction to participate may specify that participation is only to a limited extent or for a limited purpose. This section would enable Scottish Ministers to include lay people or specific organisations with particular knowledge or expertise, for example, in any aspect of services for children; provided of course any person so included was given inspection functions as an authorised person of an inspection body.

269. Subsection (2) gives Scottish Ministers the power, when directing the participation in a joint inspection of a person or body in terms of subsection (1), to limit the exercise by that person or body of the powers conferred under regulations under section 97 in relation to the conduct of joint inspections. In some cases, it would not be appropriate for such a person or body to have access to, for example, sensitive and personal information.

**Section 97 - Regulations relating to joint inspections**

270. Subsection (1) provides for regulations to relating to how inspections may be conducted, and subsection (2) provides a non-exhaustive list of what the regulations may provide for including provision as to seizure of items, persons authorised to carry out inspections, the sharing of information, interviews and examinations, reports and the creation of offences.

*Public Finance and Accountability*

**Section 98 - Amendment of Public Finance and Accountability (Scotland) Act 2000**

271. Subsection (2) transfers responsibility for appointing the three other members of Audit Scotland under section 10(2)(c) of the Public Finance and Accountability (Scotland) Act 2000 (the “2000 Act”) from the Auditor General for Scotland and the Chairman of the Accounts Commission (acting jointly) to the Scottish Commission for Public Audit (the “SCPA”).

272. Subsections (3) and (9)(a) update the 2000 Act to reflect the new name for the Public Audit Committee.

273. Subsection (4) provides that a person appointed Auditor General for Scotland holds office for a period of 8 years, vacates office on the expiry of that period and is not eligible for reappointment.

274. Subsection (5) disapplies the duty on Scottish Ministers to publish accounts and reports under section 22(5)(b) of the 2000 Act where these are published by the body or office-holder in question.
275. Subsection (6) gives the Auditor General for Scotland a power to publish the results of any examination carried out under section 23 (economy, efficiency and effectiveness examinations) of the 2000 Act.

276. Subsection (7) provides that, for the purposes of the law of defamation, reports that are sent by the Auditor General to the Scottish Ministers under section 22(4) of the 2000 Act and the results of any examination that are carried out and reported by the Auditor General to the Parliament under section 23 of the 2000 Act are absolutely privileged. Absolute privilege is a complete defence against proceedings for defamation.

277. Subsections (8)(a) and (b) provide that members of the staff of Audit Scotland and members of the Accounts Commission are not eligible for appointment as a member of Audit Scotland under section 10(2)(c) of the 2000 Act, that such appointments must not exceed three years, and that appointees may only be reappointed for one further such period.

278. Subsection (8)(c) transfers responsibility for the terms and conditions of the three other members of Audit Scotland appointed under section 10(2)(c) of the 2000 Act from the Auditor General for Scotland and the Chairman of the Accounts Commission to the SCPA, and provides that the SCPA will receive any notices of resignation from these members, rather than the Auditor General and the Chairman. Subsection 8(d) provides that the SCPA, rather than the Auditor General and the Chairman, may remove these members if they consider that the member is for any reason unable or unfit to exercise the functions of a member.

279. Subsection (8)(e) provides that the SCPA must appoint one of the three other members of Audit Scotland appointed under section 10(2)(c) of the 2000 Act to preside at the meetings of Audit Scotland, except that Audit Scotland must do this if that member is not present.

280. Subsection (9)(b) provides that for the purposes of the law of defamation, statements made in the proceedings of the SCPA, the publication under the authority of the SCPA of any statement and any report to Parliament under section 12(4) of the 2000 Act are absolutely privileged.

PART SEVEN – MISCELLANEOUS AND GENERAL PROVISIONS

Miscellaneous

Section 99 – Charity trustees’ indemnity insurance

281. This section inserts section 68A into the Charities and Trustee Investment (Scotland) Act 2005.

282. Section 68A(1) allows charity trustees to purchase, from charity funds, indemnity insurance against personal liability in their role as charity trustee or as directors or officers of any body corporate carrying on any activities on behalf of the charity.
283. Sections 68A(2) and (3) set out certain types of liability that must be excluded from the provision of any indemnity, for example liability incurred by a trustee to pay a fine imposed in criminal proceedings.

284. Section 68A(4) clarifies that this provision does not allow the purchase of insurance if it is expressly prohibited by the charity’s constitution and clarifies that indemnity insurance can be provided despite any provision prohibiting the charity trustees receiving any personal benefit from charity funds.

Section 100 - Local Government (Scotland) Act 1973: minor amendment

285. This section amends section 102(2A) of the Local Government (Scotland) Act 1973 to repeal an obsolete reference.

General

Section 101 – Ancillary provision

286. This section allows the Scottish Ministers, by order, to make consequential, supplemental, incidental, transitional, transitory or saving provision for the purposes of, in consequence of, or for the purposes of giving full effect to, any provision of the Bill.

Section 102 - Orders and regulations: Parts 6 and 7

287. This section regulates the powers conferred on Scottish Ministers by Parts 6 and 7 to make orders and regulations. It requires these powers to be exercised by statutory instrument and provides that the powers may be used to make different provisions for different purposes. It also establishes the type of Parliamentary procedure which applies to these instruments.

Section 103 – Short title and commencement

288. This section provides that sections 101, 102 and 103 come into force on Royal Assent, with the remaining sections to be commenced by order made by statutory instrument.

Schedule 1 - Deer Commission for Scotland: consequential amendments

289. Schedule 1 is introduced by section 1 and sets out consequential amendments and repeals to other legislation required as a result of the provisions of that section.

290. Paragraphs 2 to 4 deal with various amendments to the Natural Heritage (Scotland) Act 1991 (“the 1991 Act”) required to give SNH aims and purposes, functions and duties in relation to deer. The amendments also extend the general function of commissioning research to “any research, inquiry or investigation”.

291. Paragraphs 5 to 27 amend various provisions of the Deer (Scotland) Act 1996 (“the 1996 Act”) including amendments so as to substitute all references to “the Deer Commission for Scotland” and “the Commission” with “Scottish Natural Heritage” except where this is not
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

appropriate. There are also two consequential repeals made to the 1996 Act in paragraphs 25 and 26.

292. Paragraphs 28 to 31 cover further consequential amendments required to remove entries for the Deer Commission for Scotland in the Ethical Standards in Public Life etc. (Scotland) Act 2000, the Scottish Public Services Ombudsman Act 2002, the Freedom of Information (Scotland) Act 2002 and the Public Appointments and Public Bodies etc. (Scotland) Act 2003 as a result of section 1.

Schedule 2 - Regulation of officers of court: modifications of enactments

293. Schedule 2 is introduced by section 9 and sets out amendments and repeals relating to the existing provisions which regulate officers of court.

Part 1 - Amendments

294. Part 1 amends the rules in relation to officers of court in Part V of the Debtors (Scotland) Act 1987 (“the 1987 Act”) and confers functions upon the Lord President, the Court of Session and Sheriffs Principal in order to implement provisions of Part 3 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (“the 2007 Act”).

295. Paragraph 2 amends section 75 of the 1987 Act (regulation of organisation, training, conduct and procedure). New powers are given to the Court of Session, allowing it to regulate by Act of Sederunt court rules the conduct of officers of court when exercising their extra-official functions and to prescribe the procedure in relation to appeals under section 82 of the 1987 Act. Additional powers are also given to Sheriffs Principal allowing them to revoke permissions for remuneration under section 75(2).

296. Paragraph 3 amends section 76 of the 1987 Act (Advisory Council on Messengers at Arms and Sheriff Officers) so as to allow the Lord President to make additional lay appointments to the Advisory Council as considered appropriate.

297. Paragraph 4 amends section 79 of the 1987 Act (investigation of alleged misconduct). The amendments to section 79(1) extend the application of section 79 and expand the definition of “misconduct” as it applies under sections 79 and 80 to match its scope under the 2007 Act.

298. Paragraph 5 amends section 80 of the 1987 Act (courts’ powers in relation to offences or misconduct). The Court of Session’s powers and the powers of Sheriffs Principal under section 80(1) and (2) are extended to include powers to restrict the functions and activities of messengers-at-arms and sheriff officers respectively. New powers are introduced under section 80(3A) and (3B) giving the Court of Session and Sheriffs Principal the power to suspend messengers-at-arms and sheriff officers placed under investigation or charged with an offence. Section 80(4A) is introduced to give the Court of Session powers to restrict the functions and activities of, or suspending, messengers-at-arms at the end of disciplinary proceedings under section 79(3). Section 80(6A) is introduced to give Sheriffs Principal powers to make orders restricting the functions and activities of, or suspending, sheriff officers.
299. Paragraph 6 amends section 81 (provisions supplementary to section 80) to ensure that any orders in relation to offences or misconduct made under section 80(1)(a), (2)(a), (3A), (3B), (4), (4A), (6), (6A) or (8)(b) are intimated to the professional association designated under section 63(1) of the 2007 Act. Subsection (3) of section 81 is amended to give Sheriffs Principal power, on receipt of intimation of an order under section 80(3A), (3B), (4A) or (6A), to make an order suspending a sheriff officer.

300. Paragraph 7 amends section 82 (appeals from certain decisions under sections 79(5) and 80) so as to extend the remit for appeals to the Inner House of the Court of Session to include appeals from the decision of a Lord Ordinary or Sheriff Principal in relation to section 77(1) (appointment of messengers-at-arms) and section 80(3A), (3B), (4A), (6A) or (8)(b) (various orders in relation to officers’ misconduct).

301. Paragraph 8 introduces a new section 86A (Electronic communications) so as to include within the scope of Part V admissions (e.g. in section 79(2)) given in electronic format.

302. Paragraph 9 introduces the amendments to the Bankruptcy and Diligence etc. (Scotland) Act 2007.

303. Paragraph 11 amends section 51 of the 2007 Act (information and annual report) so as to require the Advisory Council on Messengers at Arms and Sheriff Officers (“the Advisory Council”), as opposed to the Scottish Civil Enforcement Commission (“the Commission”), to prepare an annual report on its activities. The report may contain statistical analysis in relation to officers of court. The professional association designated under section 63 has a duty to provide information for the report if asked to do so by the Advisory Council. The report must be published and a copy given to the Scottish Ministers.

304. Paragraph 13 amends section 61 of the 2007 Act (regulation of judicial officers). Powers allowing the Scottish Ministers to make regulations in relation to fees and charges levied by an officer of court under section 61(2)(d) and the obligation to consult the Commission before making such regulations under section 61(3) are removed. There are, however, existing powers in relation to fees levied by officers of court under the Sheriff Courts (Scotland) Act 1907, the Execution of Diligence (Scotland) Act 1926 and the 1987 Act as with the current Act of Sederunt (Fees of Sheriff Officers). The obligation to consult the Commission otherwise under section 61(2) becomes an obligation to consult the Lord President of the Court of Session (“the Lord President”) and each Sheriff Principal.

305. Paragraph 14 amends section 62 of the 2007 Act (duty to notify Commission of bankruptcy etc.) so as to make the obligation to notify the Commission under section 62(1) an obligation to notify the Lord President or the Sheriff Principal from whom an officer holds a Commission.

306. Paragraph 15 amends section 63 of the 2007 Act (judicial officers’ professional association). Section 63 gives the Scottish Ministers powers to designate and make provision for a professional association for officers of court. Section 63(1A) extends these powers by allowing the Scottish Ministers to include provision requiring officers of court to provide information to the professional association (for statistical purposes related to the Advisory Council power in
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section 51). The obligation to consult the Commission prior to making such regulations becomes an obligation to consult the Lord President and each Sheriff Principal.

307. Paragraph 16 introduces section 63A (code of practice), replacing the Commission’s duty under section 55. The professional association must, subject to prior approval of the Lord President, prepare and publish a code of practice in relation to the functions of officers of court and may prepare and publish a code of practice in relation to the undertaking of activities by officers of court. Either code may be revised. Where revisions are substantial, the code must be published; otherwise, it may be published. Copies must be sent to the Scottish Ministers, the Lord President, each Sheriff Principal and each officer of court.

308. Paragraph 17 amends section 64 of the 2007 Act (duty of professional association to forward complaints to Commission). The professional association’s duty to forward complaints to the Commission will become a duty to forward complaints to the Lord President and the appropriate Sheriff Principal.

309. Paragraph 18 amends section 65 of the 2007 Act (information from professional association connected with discipline). The Lord President or any Sheriff Principal, as opposed to the Commission, may require the professional association to provide information under section 65.

310. Paragraph 19 introduces section 65A (annual fee) to replace provision in the 2007 Act. The professional association may, subject to the approval of the Lord President, make rules requiring officers of court who hold a commission to pay an annual fee. Rules made under this provision may make provision in relation to when and in what manner the fee must be paid, and other matters the professional association considers appropriate.

311. Paragraph 20 amends section 66 of the 2007 Act (inspection of judicial officer). The Commission’s powers to appoint a person to inspect and report back on the works or particular aspects of the work of an officer of court will be transferred to the Lord President or any Sheriff Principal. The obligation to pay a person appointed will be borne by the Scottish Ministers, as opposed to the Commission.

312. Schedule 2 also replaces various references to “judicial officers” in the 2007 Act with references to messengers-at-arms and sheriff officers.

Part 2 - Repeals

313. Part 2 repeals the provisions superseded by the changes made by Part 1 of schedule 2, including sections 50 and 60 of the 2007 Act which would establish the Commission and abolish messengers-at-arms and sheriff officers.

Schedule 3 - Improvement of public functions: listed bodies

314. Schedule 3 is introduced by section 11 and lists the persons, bodies and office-holders to which the order-making powers in section 10 (public functions: efficiency, effectiveness and economy) apply.
Schedule 4 - Order-making powers: modifications of enactments

315. Schedule 4 is introduced by section 24 and contains minor amendments and amendments consequential on Part 2.

Schedule 5 - Creative Scotland: Establishment etc.

316. Schedule 5 is introduced by section 26(2) and makes further provision about the status, constitution, proceedings etc. of Creative Scotland.

Paragraph 1 – Status

317. Creative Scotland is a body corporate but is not a Crown body.

Paragraph 2 – Membership of Creative Scotland

318. The membership of Creative Scotland is to consist of a chairing member and not less than 8 nor more than 14 other members. All members of Creative Scotland are to be appointed by the Scottish Ministers.

319. Sub-paragraph (2) gives the Scottish Ministers power to substitute, by order made by statutory instrument, different numbers of minimum or maximum members in sub-paragraph (1)(b). A statutory instrument under sub-paragraph (2) is subject to negative resolution procedure.

Paragraph 3 – Terms of appointment etc.

320. Each member of Creative Scotland is to be appointed for such period as the Scottish Ministers think fit. A member of Creative Scotland holds and vacates office in accordance with the terms and conditions of appointment but may resign office as a member by giving written notice (see sub-paragraph (2)).

321. Sub-paragraph (3) provides that once a person ceases to be a member of Creative Scotland they are eligible to be reappointed as a member for another term.

Paragraph 4 – Removal of members

322. The Scottish Ministers have the power to remove a member of Creative Scotland from office if they are satisfied that the member is insolvent (see sub-paragraphs (a) and (b)), has been absent from meetings without permission, or is otherwise unfit or unable to discharge the functions of a member of Creative Scotland.

Paragraph 5 – Disqualification from membership

323. Paragraph 5 provides that members of the Scottish Parliament, members of the House of Commons and members of the European Parliament are disqualified from appointment and from holding office as members of Creative Scotland.
Paragraph 6 – Remuneration and allowances for members

324. Creative Scotland is to pay to each of its member’s remuneration, allowances and expenses determined by the Scottish Ministers.

Paragraph 7 – Chief executive and other employees

325. Creative Scotland is to employ a chief executive and sub-paragraph (2) provides that the chief executive of Creative Scotland may not be a member of Creative Scotland. The chief executive of Creative Scotland is to be appointed, with the approval of the Scottish Ministers, by Creative Scotland. Creative Scotland will determine, with the approval of the Scottish Ministers, the chief executive’s terms and conditions.

326. Creative Scotland may appoint employees other than the chief executive and can determine their terms and conditions of employment. The Scottish Ministers may give directions to Creative Scotland in relation to the appointment of employees and their terms and conditions of employment (see sub-paragraph (5)).

327. Sub-paragraph (6) gives Creative Scotland power to arrange, with the approval of the Scottish Ministers, for pensions, allowances or gratuities in relation to employees of Creative Scotland. The reference in sub-paragraph (6) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment (see sub-paragraph (7)).

Paragraph 8 – Committees

328. Creative Scotland may establish committees for any purpose relating to its functions. Creative Scotland may appoint persons who are not members of Creative Scotland to be members of a committee, but such persons are not entitled to vote at meetings of the committee.

329. A committee of Creative Scotland is to comply with any directions given to it by Creative Scotland (see sub-paragraph (4)).

Paragraph 9 – Procedure and meetings

330. Creative Scotland determines its own procedure and the procedure of its committees. The validity of any proceedings of Creative Scotland or any of its committees is not affected by any irregularity in the membership of Creative Scotland.

331. Sub-paragraph (3) provides that members of the Scottish Executive and persons authorised by the Scottish Ministers may attend and take part in meetings of Creative Scotland or any of its committees, but are not entitled to vote at such meetings.

Paragraph 10 – General powers

332. Paragraph 10 provides for the general legal powers of Creative Scotland.
333. Sub-paragraph (1) gives Creative Scotland wide power to do anything related to the exercise of its functions. Without prejudice to the generality of this power, sub-paragraph (2) sets out particular powers of Creative Scotland.

**Paragraph 11 – Delegation of functions**

334. Creative Scotland has power to authorise the chief executive, any other employee or any of its committees to exercise its functions. Sub-paragraph (2) restricts Creative Scotland’s power to delegate its functions by providing that Creative Scotland may not authorise any other person to exercise functions relating to financial accounting.

335. Any delegation under sub-paragraph (1) does not affect the responsibility of Creative Scotland for the exercise of its functions (see sub-paragraph (3)).

**Paragraph 12 – Location of office**

336. Paragraph 12 requires Creative Scotland to obtain the approval of the Scottish Ministers before determining the location of its office premises.

**Paragraph 13 – Accounts**

337. Sub-paragraph (1) requires Creative Scotland to manage its financial accounting and requires Creative Scotland to do so in accordance with any directions the Scottish Ministers may give.

338. Sub-paragraph (2) requires Creative Scotland to send its annual statement of accounts to the Auditor General for Scotland for auditing.

**Paragraph 14 – Reports**

339. Creative Scotland is required to prepare an annual report. Sub-paragraph (2) requires Creative Scotland to publish its annual report, lay a copy before the Scottish Parliament and send a copy to the Scottish Ministers.

340. Creative Scotland may publish other reports and information on matters relevant to its functions.

**Schedule 6 - Creative Scotland: modifications of enactments**

341. Schedule 6 is introduced by section 33 and modifies specified Acts of the Scottish Parliament to insert new references to Creative Scotland and delete redundant references to the Scottish Arts Council and Scottish Screen (which is being wound up by non-legislative means).

**Schedule 7 - Social Care and Social Work Improvement Scotland: establishment etc.**

342. Schedule 7 is introduced by section 34(4) and makes further provision about the status, constitution, proceedings etc. of SCSWIS.
Paragraph 1 – Status

343. SCSWIS is a corporate body but not a Crown body.

Paragraph 2 – Membership of SCSWIS

344. The membership of SCSWIS is to consist of a chairing member, the chair of Health Improvement Scotland, the convener of the Scottish Social Services Council and not less than 9 nor more than 12 other members. All members of SCSWIS are to be appointed by Scottish Ministers.

345. Sub-paragraph (2) gives the Scottish Ministers power to substitute, by order made by statutory instrument, different numbers of minimum and maximum members in sub-paragraph (1)(d).

346. Paragraph 3 at sub-paragraph (1) provides that it is desirable to include as members of SCSWIS persons with experience of the provision of any social service, persons who use or have used any social service, persons who care for or have cared for such persons or persons with other relevant skills, knowledge or experience. Sub-paragraph (2) provides that the Scottish Ministers must appoint at least:

(a) 2 people who are past or present users of care services,

(b) 2 people who are past or present carers for past or present users, or

(c) one person from (a) and (b).

Paragraph 4 – Terms of appointment etc.

347. Each member of SCSWIS is to be appointed for such a period as the Scottish Ministers think fit. A member of SCSWIS holds and vacates office in accordance with the terms and conditions of appointment but may resign office as a member by giving written notice to Scottish Ministers.

348. Sub-paragraph (3) provides that once a person ceases to be a member of SCSWIS they are eligible to be reappointed as a member for another term.

Paragraph 5 – Removal of members

349. The Scottish Ministers have the power to remove a member of SCSWIS from office if they are satisfied that the member is insolvent (see sub-paragraphs (a) and (b)), has been absent from three consecutive meetings without permission, or is otherwise unfit or unable to discharge the functions of a member of SCSWIS.
Paragraph 6 – Disqualification from membership

350. This paragraph provides that members of the Scottish Parliament, members of the House of Commons and members of the European Parliament are disqualified from appointment and from holding office as members of SCSWIS.

Paragraph 7 – Remuneration and allowances for members

351. SCSWIS is to pay its members remuneration, allowances and expenses as determined by the Scottish Ministers.

Paragraph 8 – Chief Executive and other employees

352. SCSWIS is to employ a chief executive and sub-paragraph (2) provides that the chief executive may not be a member of SCSWIS. The chief executive is to be appointed and their terms and conditions determined, with the approval of the Scottish Ministers, by SCSWIS.

353. SCSWIS may appoint employees other than the chief executive and can determine their terms and conditions. The Scottish Ministers may give directions to SCSWIS in relation to the appointment of employees and their terms and conditions of employment (see sub-paragraph (5)).

354. Sub-paragraph (6) gives SCSWIS power to arrange, with approval from the Scottish Ministers, for pensions, allowances or gratuities in relation to employees of SCSWIS. The reference in sub-paragraph (6) to pensions, allowance and gratuities includes a reference to pensions, allowance and gratuities by way of compensation for loss of employment (see sub-paragraph (7)).

Paragraph 9 – Committees

355. SCSWIS may establish committees for any purpose relating to its functions. SCSWIS may appoint persons other than board members to be members of a committee, however such persons are not entitled to vote at meetings of the committee.

356. A committee of SCSWIS is to comply with any directions given to it by SCSWIS (see sub-paragraph (4)).

Paragraph 10 – Procedure and meetings

357. SCSWIS determines its own procedure and the procedure of its committees, including quorum. The validity of any proceedings of SCSWIS or any of its committees is not affected by any irregularity in the membership of SCSWIS or vacancy in the membership.

358. Sub-paragraph (3) provides that members of the Scottish Executive, persons authorised by the Scottish Ministers, members of Healthcare Improvement Scotland and persons authorised by it, and members of the Scottish Social Services Council and persons authorised by it may
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attend and take part in meetings of SCSWIS or any of its committees, but are not entitled to vote at such meetings.

Paragraph 11 – General powers

359. Paragraph 10 provides for the general legal powers of SCSWIS.

360. Sub-paragraph (1) gives SCSWIS wide power to do anything related to the exercise of its functions. Without prejudice to the generality of this power, sub-paragraph (2) sets out particular powers of SCSWIS.

Paragraph 12 – Delegation of functions

361. SCSWIS has power to delegate functions to the chief executive, any other employee or any of its committees, with the exception of approval of annual reports and accounts and approval of any budget or financial plan (see sub paragraph (2)) Any delegation under sub-paragraph (1) does not affect the responsibility of SCSWIS for the exercise of its functions (see sub-paragraph (3)).

Paragraph 13 – Location of office

362. This paragraph requires SCSWIS to obtain the approval of the Scottish Ministers before determining the location of its office premises.

Paragraph 14 – Accounts

363. Sub-paragraph (1) requires SCSWIS to keep accounts, to prepare a statement of accounts each financial year and to send a copy of it to Scottish Ministers, and to do so in accordance with any directions the Scottish Ministers may give.

364. Sub-paragraph (2) requires SCSWIS to send its annual statement of accounts to the Auditor General for Scotland for auditing.

Paragraph 15 – Reports

365. SCSWIS is required to prepare an annual report. Sub-paragraph (2) requires SCSWIS to publish its annual report, lay a copy before the Scottish Parliament and send a copy to the Scottish Ministers.

366. SCSWIS may publish other reports and information on matters relevant to its functions.

Schedule 8 - Care Services: definitions

367. Schedule 8 is introduced by section 37(2) and provides definitions for the purposes of section 37(1) (care services) including definitions of support services, care home services, adoption services, child minding, housing support services and other associated services.
Schedule 9 - Social Work Services Functions: specified enactments

368. Schedule 9 is introduced by section 38 and specifies the relevant enactments for the purposes of the definition of “social work services functions” in that section.

Schedule 10 - Social Care and Social Work Improvement Scotland: modifications of enactments

369. Schedule 10 is introduced by section 89 and makes minor modifications of enactments and modifications consequential on the provisions of Part 4.

Schedule 11 - Healthcare Improvement Scotland: establishment etc.

370. Schedule 11 is introduced by section 91(1) and inserts schedule 5A into the National Health Service (Scotland) Act 1978. Inserted Schedule 5A (Healthcare Improvement Scotland) makes the further provision for the establishment etc. of HIS as follows.

Paragraph 1 – Status

371. HIS is a corporate body but not a Crown body.

Paragraph 2 – Membership of HIS

372. The membership of HIS is to consist of: a chairing member, the chair of Social Care and Social Work Improvement Scotland and not less than 10 or more than 13 other members. All members of HIS are to be appointed by Scottish Ministers.

373. Sub-paragraph (2) gives the Scottish Ministers power to substitute, by order made by statutory instrument, different numbers of minimum and maximum members in sub-paragraph (1)(c).

374. Sub-paragraph (3) provides that it is desirable to include as members persons with experience of the provision of any social service, persons who use or have used any social service or persons with other relevant skills, knowledge or experience.

Paragraph 3 – Terms of appointment etc.

375. Each member of HIS is to be appointed for such a period as the Scottish Ministors think fit. A member of HIS holds and vacates office in accordance with the terms and conditions of appointment but may resign office as a member by giving written notice to Scottish Ministers, however once a person ceases to be a member of HIS they are eligible to be reappointed as a member for another term.

Paragraph 4 – Removal of members

376. The Scottish Ministers have the power to remove a member of HIS from office if they are satisfied that the member is insolvent (see sub-paragraphs (a) and (b)), has been absent from
three consecutive meetings without permission, or is otherwise unfit or unable to discharge the functions of a member of HIS.

**Paragraph 5 – Disqualification from membership**

377. This Paragraph provides that members of the Scottish Parliament, members of the House of Commons and members of the European Parliament are disqualified from appointment and from holding office as members of HIS.

**Paragraph 6 – Remuneration and allowances for members**

378. HIS is to pay its members remuneration, allowances and expenses as determined by the Scottish Ministers.

**Paragraph 7 – Chief Executive and other employees**

379. HIS is to employ a chief executive and sub-paragraph (2) provides that the chief executive must be a member of HIS. The chief executive is to be appointed and their terms and conditions determined, with the approval of the Scottish Ministers, by HIS.

380. HIS may appoint employees other than the chief executive and can determine their terms and conditions. The Scottish Ministers may give directions to HIS in relation to the appointment of employees and their terms and conditions of employment (see sub-paragraph (5)).

381. Sub-paragraph (6) gives HIS power to arrange, with approval from the Scottish Ministers, pensions, allowances or gratuities in relation to employees of HIS. The reference in sub-paragraph (6) to pensions, allowance and gratuities includes a reference to pensions, allowance and gratuities by way of compensation for loss of employment (see sub-paragraph (7)).

**Paragraph 8 – Committees**

382. HIS may establish committees for any purpose relating to its functions. Other than the provision at Section 10Z10 to establish the Scottish Health Council as a committee, HIS may determine the composition of its own committees and appoint persons who are not members of HIS to those committees (sub-paragraphs (2) and (3)). A committee of HIS is to comply with any directions given to it by HIS (see sub-paragraph (4)).

**Paragraph 9 – Procedure and meetings**

383. HIS may determine its own procedure and the procedure of its committees, including any necessary quorum. The validity of any proceedings of HIS or any of its committees is not affected by any irregularity in the membership of HIS.

384. Sub-paragraph (3) provides that members of the Scottish Government, persons authorised by the Scottish Ministers, and members of Social Care and Social Work Improvement Scotland and persons authorised by it may attend and take part in meetings of HIS or any of its
committees, but are not entitled to vote at such meetings. This will enable for instance a member of SCSWIS to attend a meeting when their chair person is unable to do so.

**Paragraph 10 – General powers**

385. Paragraph 10 provides for the general legal powers of HIS.

386. Sub-paragraph (1) gives HIS wide power to do anything related to the exercise of its functions. Without prejudice to the generality of this power, sub-paragraph (2) sets out particular powers of HIS.

**Paragraph 11 – Delegation of functions**

387. HIS has powers to delegate functions to its chief executive, its staff or any of its committees, with the exception of approval of annual reports and accounts and approval of any budget or financial plan (see sub Paragraph (2)) Any delegation under sub-paragraph (1) does not affect the responsibility of HIS for the exercise of its functions (see sub-paragraph (3)).

**Paragraph 12 – Location of office**

388. Paragraph 12 requires HIS to obtain the approval of the Scottish Ministers before determining the location of its office premises.

**Paragraph 13 – Accounts**

389. Sub-paragraph (1) requires HIS to keep accounts, to prepare a statement of accounts each financial year and to send a copy of it to Scottish Ministers, and to do so in accordance with any directions the Scottish Ministers may give.

390. Sub-paragraph (2) requires HIS to send its annual statement of accounts to the Auditor General for Scotland for auditing.

**Paragraph 14 – Reports**

391. HIS is required to prepare an annual report. Sub-paragraph (2) requires HIS to publish its annual report, lay a copy before the Scottish Parliament and send a copy to the Scottish Ministers.

392. HIS may publish other reports and information on matters relevant to its functions.

**Schedule 12 - Healthcare Improvement Scotland: modification of enactments**

393. Schedule 12 is introduced by section 91(2) and makes provision for the modification of other Acts as a consequence of the establishment of HIS.
Schedule 13 - Scrutiny functions: persons etc. subject to user focus duty

394. Schedule 13 is introduced by section 92 and lists the persons, bodies, and office-holders that are subject to the user focus duty and related guidance provisions in sections 92 and 93.

Schedule 14 - Scrutiny functions: persons etc. subject to duty of co-operation

395. Schedule 14 is introduced by section 94 and lists the persons, bodies and office-holders that are subject to the duty of co-operation provisions in that section.

FINANCIAL MEMORANDUM

SIMPLIFICATION

396. The Public Services Reform (Scotland) Bill will support the delivery of the Government’s approach to simplify Scotland’s public service landscape. Organisational changes across the Simplification Programme will incur transitional costs. Equally, a key premise of taking forward organisational simplification is that changes will deliver financial efficiencies, from a reduction in bureaucracy and duplication, and/or specific service benefits from improved delivery.

EFFICIENT GOVERNMENT

397. In 2008 the Scottish Government, through the Efficient Government Programme, put in place a requirement for portfolios to deliver an increasing 2% efficiency saving year on year (i.e. 2%/4%/6%) over the period 2008 – 2011 across the public sector. Public bodies have a variety of arrangements in place to deliver these savings. These depend on the organisation itself and on discussions between the organisation and the relevant Government portfolio. Savings arising from the Simplification Programme will contribute towards the required efficiency savings.

398. Recurring savings will be realised across the Simplification Programme in a variety of ways, by removing duplication and overlap across the public bodies’ landscape. For example, in cases where organisations or functions are abolished or where duplicate services are merged, organisation cost should reduce in line with the development of new business models.

399. The Scottish Government has given a guarantee of no compulsory redundancies as a result of the changes, instead wishing to retain the skills, competence and experience of staff across the public sector through the use of voluntary redeployment where possible and appropriate. Other recurring savings realised will likely fall into the following categories:

- savings on staffing costs through natural wastage, Voluntary Early Severance (VES) and Voluntary Early Retirement (VER);
- streamlined business processes;
- shared support services;
- rationalisation of assets, such as buildings, etc.;
- rationalisation of contracts to achieve economies of scale; and
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- Scottish Government Administration Budget efficiencies (e.g. public body sponsorship and public appointment arrangements).

TRANSITION COSTS

400. Organisational changes, such as those within the Simplification Programme, carry with them a number of transitional costs to make the changes happen. Such transitional costs are additional to routine business costs and can include:

- project management of the organisational change, including stakeholder consultation, staff consultation and communication arrangements;
- staffing costs including harmonisation of staff terms and conditions or pensions, training, (including programmes of organisational development to established shared values and underlying organisational culture), re-skilling and voluntary redeployment of staff and where redeployment is not an option, affordable VES/VER packages;
- relocation or asset management costs, including property costs (e.g. handling of leases, property acquisition and disposal costs); and
- costs associated with restructured delivery of processes, including ICT costs and contractual obligations.

401. Investment in business improvement would not be classed as a transition cost associated with the change, as proposals for business improvement should be considered separately on the basis of the cost of investment required against the related benefits the investment will achieve. Equally, the costs of new functionality for an organisation would not be included as a transition cost as part of the Simplification Programme but should be considered separately on the merits of the investment which this new function requires. This Financial Memorandum seeks to make such a distinction, where appropriate. That said, it is sometimes difficult to distinguish between these different types of costs and, where there is any doubt, the cost has been counted as a transitional cost.

402. In investing public resources in the transitional costs of change, the Scottish Government’s approach has been to ensure the affordability of these costs within existing budgets, minimising expenditure on costs to ensure value for money and to offset the costs through releasing savings and ensuring business benefits. Factors informing the timing and affordability of such expenditure include:

- **Pension costs**: A small number of the organisational changes will incur pension associated costs. The rules\(^1\) associated with pension changes (in particular reserved decision making) mean that the costs are sometimes unavoidable. However, pension costs are significantly affected by current market conditions. As a consequence, the Scottish Government has agreed that changes to, or consolidation of, pension schemes should only be incurred where the option of retaining staff in their existing scheme is not possible. This will ensure that current liabilities of the schemes are not crystallised in

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\(^1\) Staff Transfers in the Public Sector Statement: of Practice January 2000 (Revised November 2007) and “A Fair Deal for Staff Pensions” supplemented by guidance note by HM Treasury, June 2004.
current market conditions but await a more financially prudent time. The Scottish Government also believes that no new pension schemes should be established but where possible, existing schemes should be utilised to deliver efficiency in ongoing administration.

- **Location**: Some of the simplification measures will lead to location decisions and surplus assets. In line with the asset management policy\(^2\), the Scottish Government believes that where relocation is not essential or does not release a net financial benefit, existing buildings should be maintained, with relocation left until a more financially prudent point, such as a lease breakage point.

**BILL CONTENT**

403. Organisational changes will follow the approach set out above, but with variations reflecting the individual organisational type and structure, the terms and conditions of staff and other relevant circumstances. Detailed financial information is set out within this Financial Memorandum in line with the parts of the Public Services Reform (Scotland) Bill as follows:

- **Part 1** contains a number of structural changes, abolishing some bodies and merging others, to reduce the number of national public organisations, and delegating from the Scottish Ministers to Scottish Enterprise responsibility for administering support under the Industrial Development Act 1982 and the Science and Technology Act 1965.

- **Part 2** gives Scottish Ministers order-making powers to effect organisational and other changes in the public sector landscape in Scotland, including amending existing legislation; and to remove or reduce by statutory instrument burdens in the Scottish public sector as scheduled in the Bill, similar to the power contained in section 1 of the Legislative and Regulatory Reform Act 2006 which does not extend to devolved matters in Scotland.

- **Part 3** provides a statutory basis for the establishment of Creative Scotland.

- **Part 4** contain provisions for social care and social work improvement and scrutiny.

- **Part 5** contain provisions for healthcare improvement and scrutiny.

- **Part 6** of the Bill contains provisions relating to the delivery of a more proportionate system of scrutiny and public finance and accountability

- **Part 7** of the Bill contains miscellaneous provisions, including provisions to amend the provisions in the Charities and Trustee Investment (Scotland) Act 2005 to allow charities on the Scottish Charity Register to provide all their trustees with indemnity insurance from charity funds, a minor amendment to the Local Government (Scotland) Act 1973 and ancillary provisions.

\(^2\) Scottish Government Asset Management Policy (January 2008)

http://www.scottish.parliament.uk/s3/committees/finance/papers-08/fip08-04.pdf
SUMMARY OF FINANCIAL IMPLICATIONS

404. Table 1 sets out a summary of the financial implications across the Bill. Table 1 and the tables throughout the document provide the best estimate of the costs and potential savings arising from changes proposed within the Bill. In line with Standing Order rule 9.3.2, where there is a margin of uncertainty in the best estimates, upper and lower estimates are shown within the tables for individual changes. Where required, explanation of the assumptions and uncertainties taken into account in calculating the upper and lower estimates and in determining the best estimates is provided within the text of the Financial Memorandum. Where there is limited margin of uncertainty a single estimate is shown.
Table 1: Summary of Financial Implications (£)

<table>
<thead>
<tr>
<th>Part</th>
<th>Organisational Change</th>
<th>Best Estimated Costs</th>
<th>Best Estimated Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Simplification Of Public Bodies</td>
<td>Transfer of Deer Commission to SNH</td>
<td>60,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Advisory Committee on Sites of Special Scientific Interest</td>
<td>15,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Scottish Records Advisory Council</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Scottish Industrial Development Advisory Board</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Building Standards Advisory Committee</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Historic Environment Advisory Council for Scotland</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Delegation of RSA Grants to Scottish Enterprise</td>
<td>181,500</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Scottish Civil Enforcement Commission [1]</td>
<td>3,400</td>
</tr>
<tr>
<td>2</td>
<td>Order Making Powers [2]</td>
<td>N/K</td>
<td>N/K</td>
</tr>
<tr>
<td>3</td>
<td>Establishment Of Creative Scotland</td>
<td>3.104M</td>
<td>126,000</td>
</tr>
<tr>
<td>4</td>
<td>Creation Of Social Care And Social Work Improvement Scotland</td>
<td>1.865M</td>
<td>1.145M</td>
</tr>
<tr>
<td>5</td>
<td>Creation Of Healthcare Improvement Scotland</td>
<td>240,000</td>
<td>151,000</td>
</tr>
<tr>
<td>6</td>
<td>Miscellaneous Provisions</td>
<td>26,000</td>
<td>26,000</td>
</tr>
<tr>
<td></td>
<td>Total Across Bill</td>
<td>5.495M</td>
<td>1.542M</td>
</tr>
<tr>
<td></td>
<td>Total Costs / Savings</td>
<td>9.972M</td>
<td></td>
</tr>
</tbody>
</table>
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

[1] The Scottish Civil Enforcement Commission has no existing budget, but not proceeding with establishment of SCEC provides savings of £1.6m over the first 3 years of the body and estimated recurring savings of £664,000 p.a.

[2] Costs and savings arising from the order-making powers in Part 2 are not known (N/K). All proposals under the power must demonstrate regard for efficiency, effectiveness and economy.

[3] Total estimated costs include costs for years prior to commencement. Total estimated savings are for the four years following commencement of the Bill.

PART ONE – SIMPLIFICATION OF PUBLIC BODIES

405. Part 1 contains the legislative provision to implement a number of the structural changes which make up part of the Scottish Government’s Simplification Programme. The changes in the Bill are:

- transfer of the functions of the Deer Commission for Scotland to Scottish Natural Heritage
- transfer of the functions of the Advisory Committee on Sites of Special Scientific Interest to Scottish Natural Heritage
- dissolution of Scottish Records Advisory Council
- dissolution of Scottish Industrial Development Advisory Board
- dissolution of Building Standards Advisory Committee
- dissolution of Historic Environment Advisory Council for Scotland
- delegation of Ministerial functions under section 7 of the Industrial Development Act 1982
- delegation of Ministerial functions under section 5 of the Science and Technology Act 1965
- regulation of officers of court

406. The following table summarises the overall costs and savings for all of the proposals in Part 1.

Table 2: Summary table of costs and savings in Part 1(£)

<table>
<thead>
<tr>
<th>Organisational Change</th>
<th>Best Estimate of Costs</th>
<th>Best Estimate of Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer of Deer Commission to SNH</td>
<td>60,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Advisory Committee on Sites of Special Scientific Interest</td>
<td>15,000</td>
<td>10,000</td>
</tr>
<tr>
<td>Scottish Records Advisory Council</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Scottish Industrial Development Advisory Board</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

| Building Standards Advisory Committee | 0 | 0 | 0 | 0 | 4,600 | 4,600 | 4,600 | 4,600 |
| Historic Environment Advisory Council for Scotland | 0 | 0 | 0 | 0 | 210,500 | 210,500 | 210,500 | 210,500 |
| Delegation of RSA Grants to Scottish Enterprise | 181,500 | 33,000 | 33,000 | 33,000 | 0 | 0 | 0 | 0 |
| Scottish Civil Enforcement Commission [1] | 3,400 | 1,900 | 1,900 | 1,900 | 0 | 0 | 0 | 0 |
| Total | 259,900 | 94,900 | 94,900 | 94,900 | 422,350 | 422,350 | 422,350 | 422,350 |
| Total Over 4 Years | | | | | 544,600 | | | 1.689M |

[1] The Scottish Civil Enforcement Commission has no existing budget, but not proceeding with establishment of SCEC provides savings of £1.6m over the first 3 years of the body and estimated recurring savings of £664,000 p.a.

TRANSFER TO SCOTTISH NATURAL HERITAGE (SNH) OF THE FUNCTIONS OF THE DEER COMMISSION FOR SCOTLAND (DCS)

407. The costs and savings identified are preliminary estimates of the costs and savings resulting from the dissolution of the Board of DCS, implementation of the business transfer, the transfer of staff to SNH terms and conditions and the bringing together of functions such as administration, finance and IT.

Costs on the Scottish Administration

408. The saving generated by the dissolution of the Board of DCS (the Chair, 8 Commissioners and two advisors to the Board) is estimated at between £75,000 and £95,000 per annum from remuneration and travel and subsistence.

409. In relation to Scottish Government staff time, the saving generated by not needing to run an appointments round every 3 years is estimated between £5,000 and £65,000. This large variance in minimum and maximum arises from the difference in costs of conducting a full appointments round, including advertising of vacancies in the national press and staff time and those of a reappointments round which is less onerous and does not require advertising of vacancies in the national press.

410. The costs of transferring DCS staff to SNH terms and conditions are considered to be in the range zero to £30,000 as SNH’s pay and grading system is similar to that of the Scottish Government. The direct running costs of DCS are £1.1 million and programme expenditure is £600,000. This cost will fall to SNH from the date of the transfer. SNH’s grant-in-aid will be increased by £1.9 million in 2010-11, reduced by efficiency savings of £50,000 to £100,000 to cover the activities of DCS. These savings arise from the sharing of IT and front and back office functions; reductions in motor vehicle costs and staff travel and accommodation costs in support of the DCS Board meetings.
411. The transfer will not result in any reduction to the total number of jobs in SNH and DCS and no VER/VES scheme is planned. There will be no relocation or redeployment costs, and as both SNH and DCS staff are members of the Principal Civil Service Pension Scheme there will be no pensions costs.

**Costs on local authorities**

412. There will be no costs for local authorities.

**Costs on other bodies, individuals and businesses**

**Costs on SNH**

413. There is likely to be a cost of between £5,000 and £15,000 in the financial year 2009-10 for preparatory work on the transfer, including the costs of the Programme Board which has been set up to oversee the transfer process, and work on integrating IT systems. Both SNH and DCS are incurring costs in staff time and other costs for progressing work on the transfer.

414. The structure of SNH following the transfer has not yet been fully discussed and agreed, so there may be a requirement for a sub-group of the SNH Board or some similar internal committee to advise on deer management, particularly in the short-term to take over the role currently provided by the Board of DCS. This would generate a cost on SNH, of between £20,000 and £50,000 per annum, should it be considered necessary or advisable. This figure includes remuneration for members of the committee, travel and subsistence, and SNH staff time for support of any such committee.

**Table 3: Financial Summary – Transfer of Deer Commission Scotland functions to Scottish Natural Heritage (£)**

<table>
<thead>
<tr>
<th>Item</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>2011-12</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existing Organisation Budget:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Staff Costs</td>
<td>1.100M</td>
<td>1.100M</td>
<td>1.200M</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>- Non-Staff Costs</td>
<td>0.700M</td>
<td>0.700M</td>
<td>0.700M</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td><strong>Total Organisational Budget</strong></td>
<td>1.800M</td>
<td>1.800M</td>
<td>1.900M</td>
<td>-</td>
<td>Staff and non-staff costs transfer from DCS to SNH from 2010/11</td>
</tr>
<tr>
<td><strong>Transition Costs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff Costs</td>
<td>0</td>
<td>0</td>
<td>15,000</td>
<td>15,000</td>
<td>Best estimated of pay harmonisation costs (£0-£30,000)</td>
</tr>
<tr>
<td>Non-Staff Costs</td>
<td>0</td>
<td>10,000</td>
<td>35,000</td>
<td>35,000</td>
<td>Best estimate of costs for a Programme Board and preparatory work in 2009/10 (£5,000-15,000) and a possible new sub-committee of the SNH Board from 2010/11 (£20,000-50,000)</td>
</tr>
<tr>
<td><strong>Expected Savings</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reduction in staff</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

<table>
<thead>
<tr>
<th>Item</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>2011-12</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Streamlined processes</td>
<td>0</td>
<td>0</td>
<td>12,000</td>
<td>12,000</td>
<td>Best estimate costs of public appointments (between £5,000-£65,000 over 3 years)</td>
</tr>
<tr>
<td>Other Efficiencies (please detail)</td>
<td>0</td>
<td>0</td>
<td>85,000</td>
<td>85,000</td>
<td>Dissolution of DCS Board</td>
</tr>
<tr>
<td>Efficiency Savings</td>
<td>0</td>
<td>0</td>
<td>75,000</td>
<td>75,000</td>
<td>Best estimate of efficiency savings (£50,000-£100,000 p.a.)</td>
</tr>
<tr>
<td>Total Expected Savings</td>
<td>0</td>
<td>0</td>
<td>172,000</td>
<td>172,000</td>
<td></td>
</tr>
</tbody>
</table>

DISSOLUTION OF THE ADVISORY COMMITTEE ON SITES OF SPECIAL SCIENTIFIC INTEREST (ACSSSI)

415. The costs and savings identified are estimates of the costs and savings resulting from the dissolution of ACSSSI and for Scottish Natural Heritage (SNH) to establish a committee for the purpose of dealing with representations on the notification (or review) of SSSIs, from parties with an interest in land, on the same basis as ACSSSI currently does.

Costs on the Scottish Government

416. The grant-in-aid allocated to SNH includes provision for the cost of ACSSSI. Annual costs depend on the number of cases where there are sustained representations on the notification of SSSIs. Annual costs over the period 2001 to 2009 have varied between £1,000 and £60,000. In 2007-08, during which two cases were referred to ACSSSI for consideration, costs were £31,000. Few sites are currently being designated as SSSIs. Consequently, ACSSSI is expected to consider only one more case before the Committee is dissolved in April 2010 and this trend is expected to continue beyond this date.

417. ACSSSI has no staff or assets. There is a contract with a third party for secretarial support, and specialist advice is procured when the Committee requires additional scientific input. The estimated costs (based on expenditure in 2007-08) from which future savings will be derived are estimated to be £15,000 or less. This is because of the reduction in the number of cases that ACSSSI is expected to consider before its dissolution, and the likelihood that SNH will not need to notify any new SSSIs over the next 2 to 3 years.

418. Apart from these savings, there are opportunity costs that will also be saved in relation to the staff time which is spent on sponsorship functions, in particular appointments processes. The saving generated by not needing to run an appointments round every 3 years is estimated at £40,000.

Costs on local authorities

419. There will be no costs on local authorities.
Costs on other bodies, individuals and businesses

Costs on SNH

420. Changes to SNH’s Board structure and the way it organises its procedures already provide the potential adequate basis for access to the SSSI designation process for all interested parties. It is anticipated that costs on the body to establish a committee to deal with cases where there are sustained representations to the notification of SSSIs will therefore be minimal.

421. SNH is considering a number of options for a procedure for managing such cases which will effectively replace ACSSSI’s functions. These options are still being developed and the novelty of some of the proposals means that it is not straightforward to determine what the likely costs will be at this stage. However we would not expect generated costs on SNH to exceed £10,000 per annum. This figure is based on SNH handling one SSSI notification per annum with input from contracted specialist advisers which is one of the options under consideration. The level of costs would therefore be dependent on contact costs and the complexity of future cases.

422. There is likely to be a cost of up to £5,000 per annum in the financial year 2009-10 for preparatory work by SNH on developing a procedure for dealing with representations on the notification (or review) of SSSIs. This will principally be costs incurred in staff time.

Costs on individuals and businesses

423. It is anticipated that there will be negligible, if any, costs to individuals and businesses from the dissolution of ACSSSI.

Table 4: Financial Summary – Advisory Committee on Sites of Special Scientific Interest (£)

<table>
<thead>
<tr>
<th>Item</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existing Organisation(s) Budget:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Staff Costs</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>ACSSSI has no staff</td>
</tr>
<tr>
<td>- Non-Staff Costs</td>
<td>15,000</td>
<td>7,000</td>
<td>0</td>
<td>Cost of Committee including members’ remuneration, travel and subsistence and Secretariat costs No public appointment costs as members re-appointed.</td>
</tr>
<tr>
<td>Total Organisational Budget</td>
<td>15,000</td>
<td>7,000</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td><strong>Transition Costs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Staff Costs</td>
<td>0</td>
<td>5,000</td>
<td>10,000</td>
<td>One off preparatory costs in 2009/10 and estimated ongoing costs to SNH for advice on SSSIs</td>
</tr>
<tr>
<td><strong>Expected Savings:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reduction in staff</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

<table>
<thead>
<tr>
<th>Item</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Streamlined processes</td>
<td>0</td>
<td>0</td>
<td>13,000</td>
<td>Savings of public appointments (per annum)</td>
</tr>
<tr>
<td>Other Efficiencies (please detail)</td>
<td>0</td>
<td>0</td>
<td>7,000</td>
<td>Savings on Committee costs</td>
</tr>
<tr>
<td>Total Expected Savings</td>
<td>0</td>
<td>0</td>
<td>20,000</td>
<td></td>
</tr>
</tbody>
</table>

**DISOLUTION OF THE SCOTTISH RECORDS ADVISORY COUNCIL (SRAC)**

**Costs on the Scottish Government**

424. The dissolution of the Scottish Records Advisory Council will not impose any additional costs on Scottish Government. The annual running costs of the Council are limited to £250 for modest travel expenses, 15% of the time of an official in NAS who acts as Council Secretary, and some senior management time, giving total estimated staff costs of £10,200 per annum. In future Ministers will look to the Keeper of the Records of Scotland to co-ordinate advice on records and archives. The Keeper estimates this will require about the same level of staff resource and it will be met from the existing NAS budget. As such, in terms of staff costs, this change is cost neutral to the Scottish Government.

**Costs on local authorities**

425. The dissolution of SRAC will not impose any direct costs on local authorities.

**Costs on other bodies, individuals and businesses**

426. The dissolution of SRAC will not impose any direct costs on other bodies, individuals and businesses.

**Table 5: Financial Summary – Scottish Records Advisory Council (£)**

<table>
<thead>
<tr>
<th>Item</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Council Budget:</td>
<td>10,450</td>
<td>10,200</td>
<td>10,200</td>
<td>10,200</td>
<td>NAS staff will continue to co-ordinate advice on records and archives.</td>
</tr>
<tr>
<td>Total Organisational Budget</td>
<td>10,450</td>
<td>10,200</td>
<td>10,200</td>
<td>10,200</td>
<td></td>
</tr>
<tr>
<td>Transition Costs</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Expected Savings:</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Reduction in staff</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Other Efficiencies</td>
<td>0</td>
<td>250</td>
<td>250</td>
<td>250</td>
<td>Savings on travel costs</td>
</tr>
<tr>
<td>Total Expected Savings</td>
<td>0</td>
<td>250</td>
<td>250</td>
<td>250</td>
<td></td>
</tr>
</tbody>
</table>
DISSOLUTION OF THE SCOTTISH INDUSTRIAL DEVELOPMENT ADVISORY BOARD (SIDAB)

Costs on the Scottish Government

427. There are no costs falling on the Scottish Government as a result of the dissolution of SIDAB.

428. There will be small savings: the budget for SIDAB is £2,000 per annum, mostly to cover travel expenses for members to attend meetings. Scottish Government staff costs associated with administration of the board are around 30% of the time of 1 member of staff and small amounts of time for 2 or 3 other staff, giving a total staff cost of approximately £13,000 p.a. Capacity released by dissolution will be absorbed into other areas of enterprise activity.

Costs on local authorities

429. The dissolution of SIDAB will not impose any direct costs on local authorities.

Costs on other bodies, individuals and businesses

430. The dissolution of SIDAB will not impose any direct costs on other bodies, individuals and businesses.

Table 6: Financial Summary – Scottish Industrial Development Advisory Board (£)

<table>
<thead>
<tr>
<th>Item</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Board Budget:</td>
<td>5,000</td>
<td>0</td>
<td>0</td>
<td>Scottish Government staff and travel costs</td>
</tr>
<tr>
<td>Transition Costs</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Expected Savings:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reduction in staff</td>
<td>13,000</td>
<td>13,000</td>
<td></td>
<td>Savings on travel costs</td>
</tr>
<tr>
<td>Other Efficiencies</td>
<td>2,000</td>
<td>2,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Expected Savings</td>
<td>15,000</td>
<td>15,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

DISSOLUTION OF THE BUILDING STANDARDS ADVISORY COMMITTEE (BSAC)

Costs on the Scottish Government

431. There will be no costs falling on the Scottish Government. BSAC is primarily a technical sounding board, prior to formal public consultation, on proposed changes in building regulations. After its dissolution, the Scottish Government will continue to pull together, on an informal basis, technical working groups which will comprise the necessary construction industry technical expertise.
432. BSAC meets on average three times a year and operates on a very small budget of £9,000 per annum. This is allocated to cover the costs of holding meetings and to reimburse Committee members’ travel costs.

433. BSAC has no staff or assets, as Scottish Government staff provide full administrative support for all BSAC activity. The Scottish Government costs total £7,140.

434. Following the dissolution of BSAC, the costs of future consultative arrangements with key construction industry stakeholders will be incurred by the Scottish Government, but again will be minimal and comparable with the existing figures detailed in the table 7 below.

435. The only saving will relate to Scottish Government staff time spent on the public appointments process, which is estimated on an annual basis at £4,600. The Scottish Government does not incur external, media, costs for advertising appointments as the BSAC appointments process is a targeted one aimed at key stakeholders who are directed to the Scottish Government website, for application purposes.

Costs on local authorities

436. The dissolution of BSAC will not impose any direct costs on local authorities.

Costs on other bodies, individuals and businesses

437. The dissolution of BSAC will not impose any direct costs on other bodies, individuals and businesses.

Table 7: Financial Summary – Building Standards Advisory Committee (£)

<table>
<thead>
<tr>
<th>Item</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Organisation(s)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Budget:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Staff Costs</td>
<td>7,140</td>
<td>7,280</td>
<td>7,430</td>
<td></td>
</tr>
<tr>
<td>- Non-Staff Costs</td>
<td>9,000</td>
<td>9,000</td>
<td>4,400</td>
<td></td>
</tr>
<tr>
<td><strong>Total Organisational</strong></td>
<td>16,140</td>
<td>16,280</td>
<td>11,830</td>
<td>Scottish Government will continue to meet staff and non-staff costs from 2010/11</td>
</tr>
<tr>
<td><strong>Budget</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Expected Savings:        |         |         |         |                                                            |
| Reduction in staff       | 0       | 0       | 4,600   | Saving on public appointments process                     |
| Other Efficiencies       | 0       | 0       | 4,600   |                                                            |
| (please detail)          |         |         |         |                                                            |

| Total Expected Savings   | 0       | 0       | 4,600   |                                                            |

68
DISSOLUTION OF HISTORIC ENVIRONMENT ADVISORY COUNCIL FOR SCOTLAND (HEACS)

Costs on the Scottish Government

438. No costs are anticipated as a result of the provisions to dissolve HEACS. Any administrative costs from delivering the structural changes are offset by the savings created from the loss of the sponsorship functions (such as public appointments work, creating a forward work programme etc).

439. HEACS’s budget falls within that for Historic Scotland. These existing cost figures cover costs incurred by members including the Chair’s salary, meetings, expenses, and website maintenance. HEACS's budget increased in 2008-09 to facilitate completion of its work programme prior to implementation of the Public Services Reform (Scotland) Bill. This additional cost was offset by savings in public appointments costs. Funding will continue in 2009-10 and into 2010-11. As the current work programme and appointments have not yet been finalised, costs for future years are indicative at this stage.

440. The three members of the HEACS secretariat are employed by Historic Scotland and will be redeployed when HEACS ceases to operate. The projected costs assume the need for a smaller budget to support winding-up costs now extending through 2009-10 into early 2010-11.

441. The table below details the figures involved.

**Table 8: Financial Summary – Historic Environment Advisory Committee (£)**

<table>
<thead>
<tr>
<th>Item</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existing Organisation Budget</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff Costs</td>
<td>103,000</td>
<td>50,000-103,000</td>
<td>12,000-25,000</td>
<td>Travel, subsistence, stationery and call charges for the Secretariat. Public appointments and advertising (2007-08 only).</td>
</tr>
<tr>
<td>Non-staff Costs</td>
<td>7,000</td>
<td>3,000-7,000</td>
<td>1,000</td>
<td></td>
</tr>
<tr>
<td>Other Non-Staff Costs</td>
<td>120,000</td>
<td>40,000-120,000</td>
<td>10,000-30,000</td>
<td>Includes production of reports, holding meetings and annual conference, commissioning work and study tours.</td>
</tr>
<tr>
<td><strong>Total Organisation Budget</strong></td>
<td>230,000</td>
<td>93,000-230,000</td>
<td>23,000-56,000</td>
<td></td>
</tr>
<tr>
<td><strong>Expected Savings:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reduction in Staff</td>
<td>0</td>
<td>0-57,000</td>
<td>90,500</td>
<td></td>
</tr>
<tr>
<td>Streamlined processes</td>
<td>0</td>
<td>0-80,000</td>
<td>100,000</td>
<td></td>
</tr>
</tbody>
</table>
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

<table>
<thead>
<tr>
<th>Other efficiencies</th>
<th>[20,000]</th>
<th>[20,000]</th>
<th>20,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Appointments advertising costs have been redeployed to HEACS organisational budget for 08-09 and 09-10 to accelerate the winding up of HEACS work programme. For those years they are shown here as a specific area of saving but not included in Total Expected Savings below.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Total Expected Savings[1] | 0 | 0 – 137,000 | 210,500 |

[1] Estimated savings in 2009-10 arise as work of HEACS is wound down.

Costs on local authorities

442. The dissolution of HEACS will not impose any direct costs on local authorities.

Costs on other bodies, individuals and businesses

443. The dissolution of HEACS will not impose any direct costs on other bodies, individuals and businesses.

POWER TO DELEGATE RESPONSIBILITY FOR THE DELIVERY OF REGIONAL SELECTIVE ASSISTANCE (RSA) AND SMART: SCOTLAND GRANT SCHEMES

444. Transferring the administration of the two grant schemes - RSA under section 7 of the Industrial Development Act 1982 and SMART:SCOTLAND under section 5 of the Science and Technology Act 1965 - to Scottish Enterprise (SE) will reinforce the shift in focus for the enterprise agencies towards support for business innovation and investment. It will support the simplification of the business grant landscape and, by consolidating responsibility for all significant company support within SE, it will enable greater efficiency and alignment with SE and Highlands and Islands Enterprise’s (HIE) wider business support interventions.

445. The Scottish Government is currently pursuing partial transfer within existing legislation allowing for a phased transfer of responsibilities from 1 May 2009, and Scottish Enterprise will introduce identical support mechanisms delivered under its own legal powers. These schemes will be branded as RSA and SMART:SCOTLAND and from their introduction the Scottish Government will cease offering any new grants. However, as grant offers are paid out over a number of years, those made under existing legislation and administrative arrangements will remain the responsibility of the Scottish Government until legislation to delegate is enacted through the Public Services Reform (Scotland) Bill. These live offers are the “legacy cases” which are the subject of this part of the memorandum.

446. The cost projections set out in the following table relate only to the costs of administration of “legacy cases”. The 2010/11 costs reflect in-year staff transfers and a one-off pension adjustment for staff transferring to SE. Beyond 2011/12 there might be further offsetting savings as a consequence of full integration with SE systems and processes.
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

Table 9: Financial Summary – Delegation of RSA and SMART:SCOTLAND grants to Scottish Enterprise (£)

<table>
<thead>
<tr>
<th>Item</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>2011-12</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Organisation(s) Budget:</td>
<td>546,000</td>
<td>565,000</td>
<td>581,000</td>
<td>-</td>
<td>Staff and non-staff costs transfer from Scottish Government to Scottish Enterprise during 2010/11.</td>
</tr>
<tr>
<td>Transition Costs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff costs [1]</td>
<td>0</td>
<td>0</td>
<td>16,500</td>
<td>33,000</td>
<td>Harmonisation costs</td>
</tr>
<tr>
<td>Other costs [2]</td>
<td>0</td>
<td>0</td>
<td>165,000</td>
<td>0</td>
<td>One-off pension transfer costs estimated between £110,000 - £220,000</td>
</tr>
<tr>
<td>Total Transition Costs[3]</td>
<td>0</td>
<td>0</td>
<td>181,500</td>
<td>33,000</td>
<td></td>
</tr>
<tr>
<td>Expected Savings</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>

Notes

[1.] This assumes that 14 staff dealing with legacy cases will transfer to Scottish Enterprise around October 2010. Figures for 2010/11 include 6 months of Scottish Enterprise salary costs which are assumed to increase by 4.5 to 6% to ensure broad comparability between the Principal Civil Service Pensions Scheme and Scottish Enterprise pension.

[2.] The one-off estimated pension cost in 2010/11 is in respect of legacy staff who chose to transfer to Scottish Enterprise. For bulk transfers of staff out of the Civil Service pension arrangements a bulk transfer payment is paid out of the Civil Superannuation Vote arranged by Cabinet Office Civil Service Pensions as managers of the pension arrangements. This process is at no cost to Scottish Government. The estimated cost is based on the assumption that a price adjustment may occur if actuaries representing the respective interests of Scottish Enterprise and Scottish Government come to an agreement that additional funding is required for the bulk transfer. The need for any price adjustment will be subject to negotiation at the time of the transfer. The estimated cost at this stage is based on actuarial advice and is subject to various factors at the time of transfer including the numbers of staff transferring in 2010 and the pensions options they will exercise. For the purposes of this exercise the cost has been estimated to be between £110,000 and £220,000 assuming 50% to 100% of staff elect to transfer and they decide to transfer their accrued pensions benefits to the Scottish Enterprise pension scheme.

[3.] For information, the estimated cost for appraisal staff transferring to Scottish Enterprise in 2009-10 for new grant cases, which is being achieved through existing legislation, is £175,000 for one-off pension costs. The assumption is that 50% of staff will join Scottish Enterprise and will transfer into its pension scheme. A salary increase ranging between 4.5 to 6% (£60k) is assumed in order to ensure broad comparability with existing employee contributions to the Civil Service pension arrangements. The costs of the transfer for both new and legacy cases is offset by the business benefits for business of rationalising the business grants landscape and co-ordinating responsibility for these within Scottish Enterprise.
SCOTTISH CIVIL ENFORCEMENT COMMISSION - REVOCATION

447. Part 3 of the Bankruptcy and Diligence etc (Scotland) Act 2007 (the 2007 Act), provides the legal framework for the creation of the Scottish Civil Enforcement Commission (SCEC). However as part of simplification the First Minister announced in January that SCEC would not be implemented.

Costs on the Scottish Government

Costs of SCEC

448. Estimated costs for the SCEC project were published in the introduced Bankruptcy and Diligence Bill’s Financial Memorandum. These envisaged annual running costs of c.£650,000 with an additional start up cost in year 1 of £255,000. They assumed a launch date of April 2007 and took into account the detailed budgets of recently established public bodies of comparable size and functions.

Costs of current amendments

449. There are minimal financial implications of proceeding with the current amendments all of which will be absorbed within current legal systems budget lines. A breakdown of the estimated costs and their assumptions are as follows:

- Staffing costs for 2 officers; 10 days per annum to support the Secretariat of the Advisory Council; attend meetings and assist in the publication of an Annual Report are £1,800 in 2010-11; £1,900 in 2011-12 and £1,900 in 2012-13.

Savings

450. There was no budget allocation for SCEC. Therefore there is no identified saving against an existing budget line, but the following shows what the cost of SCEC would have been had it been implemented compared against the cost of the current policy implementation:

Table 10: Scottish Civil Enforcement Commission (£)

<table>
<thead>
<tr>
<th>Item</th>
<th>2010-11</th>
<th>2011-12</th>
<th>2012-13</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated cost of establishing SCEC</td>
<td>255,000</td>
<td>648,000</td>
<td>664,000</td>
<td></td>
</tr>
<tr>
<td>Cost of Amendments in PSR Bill</td>
<td>1,800</td>
<td>1,900</td>
<td>1,900</td>
<td></td>
</tr>
<tr>
<td>Variance</td>
<td>253,200</td>
<td>646,100</td>
<td>662,100</td>
<td></td>
</tr>
<tr>
<td>3 Year Variance</td>
<td></td>
<td></td>
<td>1,561,400</td>
<td></td>
</tr>
</tbody>
</table>

Costs on Local Authorities

451. The revocation of SCEC will not impose any direct costs on local authorities.
Costs on other bodies, individuals and businesses

452. The revocation of SCEC will impact on whichever organisation(s) end up being the approved professional association/s with compulsory membership of Messengers at Arms and Sheriff Officers required. There is currently only one organisation that may apply to become the approved professional association and this is the Society of Messengers at Arms and Sheriff Officers. They have indicated that they would need to review their current operating structure but anticipate if they had full membership of officers then the fees would offset the anticipated administration costs. The level of fees to be charged for membership would be subject to approval by the Lord President of the Court of Session.

Table 11: Financial Summary – Scottish Civil Enforcement Commission (£)

<table>
<thead>
<tr>
<th>Item</th>
<th>2010-11</th>
<th>2011-12</th>
<th>2012-13</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Organisation(s) Budget:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Staff Costs</td>
<td>1,800</td>
<td>1,900</td>
<td>1,900</td>
<td>08/09 onwards 2 officers administering 10 days per annum</td>
</tr>
<tr>
<td>- Non-Staff Costs</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>No additional costs as 10 days work non-staff costs</td>
</tr>
<tr>
<td>Total Organisational</td>
<td>1,800</td>
<td>1,900</td>
<td>1,900</td>
<td></td>
</tr>
<tr>
<td>Organisational Budget</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expected Savings:</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Reduction in staff</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Streamlined processes</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>No processes being streamlined</td>
</tr>
<tr>
<td>Total Expected Savings</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>No actual savings as SCEC was not set up or given a</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Budget allocation</td>
</tr>
</tbody>
</table>

PART TWO – ORDER-MAKING POWERS

453. This part of the Financial Memorandum sets out the financial implications associated with the two order-making powers set out within Part 2 of the Bill, which would provide for the Scottish Government:

- to effect organisational and other changes in the public sector landscape in Scotland, including amending existing legislation; and
- a power to remove or reduce by statutory instrument burdens in the Scottish public sector as scheduled in the Bill, similar to the power contained in section 1 of the Legislative and Regulatory Reform Act 2006 which does not extend to Scotland.
POWER TO EFFECT CHANGE TO PUBLIC FUNCTIONS

Costs on the Scottish Government

454. The structural changes within this Financial Memorandum provide an indication of the order of costs and savings which can be faced and achieved in delivering organisational change. These are very much determined by the size, type and staff terms and conditions of the organisations involved in the specific structural change.

455. The use of the order-making power will be conditional on the demonstration by Scottish Ministers that any changes will deliver improvement in public functions, having regard to efficiency, effectiveness and economy. The Bill requires that an explanatory document must accompany the order. This must indicate how Scottish Ministers consider that the restructuring provisions will promote or secure economy, efficiency and effectiveness, including any relevant financial information.

456. It is envisaged that the delivery of further organisational change through this order-making power, would be taken forward in a manner consistent with the overall approach to the Simplification Programme. As such, the explanatory document would be expected to set out the following:

- **Transitional human resources costs**: including costs of harmonisation of terms and conditions, including pay, redeployment, reskilling, training, voluntary early severance/voluntary early retirement and pension costs;
- **Other transition costs**: including project management costs, relocation or asset management costs and costs associated with restructured delivery of processes;
- **Financial savings**: including savings accrued from reduction of duplication and bureaucracy, stopping activity which is no longer a business priority, streamlined business processes and asset/contract rationalisation;
- **Impact of change**: including where the savings are to be recycled to support front line service delivery, the overall payback period of the investment in change and the benefits to be achieved through more effective service delivery.

Costs on local authorities

457. Costs incurred by local authorities would be dependent on the type of change progressed. The terms of the order-making power allow for functions to be transferred to, but not away from, local government. Where such a change is taken forward, this would necessitate a transfer of budgets between organisation(s) and local authorities. This should be undertaken on a fair basis, reflecting the transfer of functions, with consideration of a shared services support solution and apportionment of efficiencies targets against the budgets transferred. Such arrangements would be set out in the explanatory notes accompanying the power with details of the financial transfers and consultation with COSLA and other organisations involved. The provisions explicitly exclude the order-making power from being used to alter local taxation.
Costs on other bodies, individuals and businesses

458. As with costs on local authorities, costs incurred by other bodies, individuals and businesses would be dependent on the type of change progressed. Where this requires a transfer of budgets, it would be dealt with as set out above. Some costs associated with business improvement may be expected to be met by the organisation(s) involved but, again, this would be dependent on the exact details of the change and would be set out in the accompanying explanatory notes.

Examples of use of the order-making power

459. As explained in the Policy Memorandum, the type of improvements that the order-making power will be used for are those simplification proposals set out in Part 1 of the Bill. The Financial Memorandum provides details of transition costs and efficiency savings that can arise. These range from a few hundred pounds savings for Board costs to savings of £200,000 or more from either the ending of existing functions that are no longer required or from efficiency savings in bringing together back-office and other activities. In some instances individual changes will have, overall, additional cost implications. In such circumstances the explanatory document accompanying the statutory instrument would have to demonstrate clearly the business benefits that will be delivered from the change to justify the additional costs.

460. As also explained in the Policy Memorandum, it is not envisaged that this Order-making power will be used for more high profile and larger-scale changes in the delivery landscape, such as those set out in Parts 3 to 5 of this Bill, where primary legislation through the Bill process is considered the most appropriate arrangements for parliamentary scrutiny.

POWER TO REMOVE OR REDUCE BURDENS

Costs on the Scottish Government

461. The level of any costs for the Scottish Government which can be faced in removing or reducing burdens or the overall burdens on business, third and public sector bodies will be determined by the nature of the individual changes proposed. However, in general it would be expected that the removal of burdens would, in most cases, be cost neutral or provide administrative savings for the Scottish Government.

Costs on local authorities and on other bodies, individuals and businesses

462. The demonstration of a financial cost, an administrative inconvenience, an obstacle to efficiency, productivity or profitability, or sanctions which affect the carrying out of a lawful activity will underpin the use of this power. The accompanying explanatory document will be expected to explain the way the Scottish Government consider that the removal or reductions of the burden, or overall burdens, will achieve these aims and provide views set out during consultation, including with reference to financial implications.

463. It is envisaged that the removal or reduction of burdens through this power would be taken forward in a manner consistent with the overall approach to the simplification programme. As such, the explanatory document would be expected to take into consideration the following:
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

- **Transitional costs**: including project management costs and costs associated with reviewing and implementing the removal of a burden or burdens.
- **Financial savings**: including savings accrued from reduction in bureaucracy or other activities, or direct financial savings, for example through the removal or reduction of fees.
- **Impact of change**: including for example, the recycling of resources to other more productive activities; service improvements delivered through reductions in inspection or bureaucracy, etc.

**Example of implications of a reduced burden**

464. Analysis by the Department of Business, Enterprise and Regulatory Reform (BERR), highlights the financial savings that can be achieved through regulatory reform, including the power to remove or reduce burdens, as it currently applies in England and to reserved matters in Scotland. This includes savings to public bodies, business and other organisations, for example from simplified licensing rules and reduced administrative burdens.

465. A potential example for the possible use of this power in Scotland would be to streamline the current licensing arrangements for businesses. For example, there are around 1,375 shops and other establishments across Scotland that look after animals and require to be licensed and inspected by their local authority on an annual basis. Moving from an annual to a 3 year license period would reduce the administrative and practical burden on local authorities for inspection. It would also allow local authorities to focus more frequent inspections on some establishments on a risk basis.

466. There would be no costs on Scottish Government from this change and the change would be broadly cost neutral for local authorities with reduced costs matched by reductions in fee income.

467. Assuming that 3 yearly licences are charged at 250% of the current annual rate, it is estimated that moving from annual to 3 yearly inspections would provide an overall saving to business of around £125,000 (14%) over 3 years. Businesses would also benefit from more proportionate inspection and reduced administration compared with the annual license arrangement.

**PART THREE – ESTABLISHMENT OF CREATIVE SCOTLAND**

**Introduction**

468. Creative Scotland will be formed by bringing together the functions of the two current bodies, the Scottish Arts Council and Scottish Screen, into a unified organisational structure with integrated business systems which can effectively support the work of the new organisation. These two bodies will be dissolved and their functions, staff, resources assets and liabilities transferred to the new statutory body. This part of the Financial Memorandum sets out the costs of this organisational change programme for the 2 current bodies.

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469. The change process is being managed by Creative Scotland 2009, the limited company established by Ministers in December 2008 (company number SC352851). This company will be dissolved once statutory Creative Scotland is set up.

Costs to Scottish Government

Scottish Administration Grant Support

470. The Scottish Arts Council and Scottish Screen are currently the key national funding bodies for the sector. Central government funding for both these bodies is provided through grant-in-aid and it is not proposed to change this funding mechanism. Grant-in-aid for Creative Scotland will therefore comprise the combined future grant-in-aid figures of the Scottish Arts Council and Scottish Screen. The Scottish Arts Council currently receives an annual core grant of £32.296 million and Scottish Screen receives £3.240 million. This amount includes both the direct running costs for the organisations and the third party grants they administer on behalf of Government.

New Government priorities

471. Ministers want Creative Scotland to develop and implement new funding mechanisms which can support organisations and artists more innovatively and strategically. This reformed approach is needed to support the sector and to maximise all forms of public and other funding support for artists and creative practitioners. Creative Scotland will manage an extra £2.5m per year (£5m in total) over 2009/10 and 2010/11 to support an Innovation Fund which will support new arts practices. This was announced in June 2008. Other funding streams, such as the Youth Music Initiative - £10m per year, might also transfer to Creative Scotland.

Efficient Government Programme

472. As part of the Efficient Government Programme, Scottish Screen and the Scottish Arts Council have been asked to demonstrate annual cash efficiency savings in the 3 year period 2008-2011 from their grant in aid budgets. For the Scottish Arts Council these targets are £912,000/ £1,824,000/ £2,736,000 across 2008-2011 and for Scottish Screen they are £68,060/ £136,120/ £204,180. Creative Scotland will inherit these efficiency targets.
Cost of setting up Creative Scotland - transition costs

473. The new body, Creative Scotland, will be a new and different organisation, not simply the rationalisation of 2 organisations but a unified body which will be responsive and effective to meet the needs of a hugely diverse sector. An outline organisational structure for Creative Scotland was developed for consideration by the Joint Board for the Scottish Arts Council and Scottish Screen which had responsibility for the transition until the formation of the limited company, Creative Scotland 2009. This has been used as the basis on which costs and possible surplus posts have been calculated. Using this structure as a guide to costs in no way implies that this will be the final organisational structure which will be further developed by the limited company set up to manage the transition, Creative Scotland 2009, in consultation with the Scottish Arts Council and Scottish Screen.

474. The Scottish Arts Council and Scottish Screen were asked to meet costs incurred in 2007-08 and 2008-09 by the Creative Scotland Transition Team. The Scottish Government is satisfied that the organisations have made appropriate budget provision for costs incurred for project management.

475. From 2009/10, the costs of transition, as identified in this Financial Memorandum, will be met by the Scottish Government. Resources have been set aside from the Ministerial Portfolio to ensure that direct funding to the creative and cultural sector will not be reduced to meet the cost of transition to Creative Scotland.

476. The Scottish Government want to ensure that the final structure delivers the best level of service to the sector, but with maximum efficiency built in. This will include avoiding duplicated functions and continuation of functions which may no longer be needed. The costs below are therefore the best current estimates for the start of the new organisation, with maximum and minimum ranges for each cost, of the anticipated cost of setting up of Creative Scotland, based on the outline structure. These cover:

- **Human resources costs:** development of a single pay and grading structure, compensation payment for harmonisation of pay and terms and conditions; the impact on staff pension schemes based on current market estimates; actuarial assumptions; and the estimated cost of any Voluntary Early Severance/Retirement scheme, and training and recruitment which may be needed to achieve a business shape and capability which fits with the vision for Creative Scotland.

- **Business systems costs:** for necessary changes to internal and external business systems as a result of establishing Creative Scotland.

- **Location costs:** it is not anticipated that there will be extensive changes to accommodation for staff although there will be some costs associated with necessary changes to leases and branding of buildings.

- **Project management costs:** the cost of staff involved in directly managing the set-up of Creative Scotland and transfer of functions and staff from Scottish Arts Council and Scottish Screen.

- **Legal fees and public appointments:** recruitment of a new Board for Creative Scotland and for dissolving Scottish Screen and Creative Scotland 2009.
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

Staff costs

HR – Pay and grading structure, harmonisation of terms and condition, including pay

477. In line with the Cabinet Office’s Statement of Practice on Staff Transfers in the Public Sector and the provisions of TUPE, the terms and conditions of employment for transferring staff will be protected for all staff employed by the Scottish Arts Council (currently 119 staff) and Scottish Screen (currently 39 staff). It is likely that Creative Scotland will want to develop a modern pay and grading structure to ensure that it can attract and retain the right people with the right skills it needs for the future. A new pay remit will be submitted to the Scottish Government and will follow public sector pay policy guidelines as required by all public bodies. It is anticipated that the development of a new pay and grading structure will be undertaken in-house at no additional cost but should an element of external support be required, then this may cost £30,000 (best estimate) up to a maximum of £120,000.

478. The compensation cost of harmonising the terms and conditions of current Scottish Screen staff with Scottish Art Council terms and conditions is difficult to predict accurately until a pay remit has been developed for the new body. As a comparator, in the event that staff from Scottish Screen were harmonised to the Scottish Arts Council terms and conditions then the estimated compensation costs forecast over a five year period are likely to be £200,000 to £240,000. This assumes 100% take up by staff with payments staged over three financial years (2010/11, through to 2012/13). In the event that a new pay structure reduces the salary differentials between the Scottish Arts Council and Scottish Screen pay structures, this may reduce these costs further.

Pensions

479. A series of options for Creative Scotland staff pensions has been examined by actuaries. The most cost effective option at this time is for Creative Scotland to become an admitted body to both the Scottish Arts Council (SAC) and Scottish Screen (SS) pension schemes, with the Scottish Screen pension scheme closed to new staff. The alternative option of closing the Scottish Arts Council to new employees is not preferred given the costs to the public purse. Pursuing the option to close the Scottish Screen scheme will avoid the crystallisation of the current Scottish Arts Council pension deficit which has been estimated to cost £12m.

480. In pursuing the preferred option, the cost of harmonising the pension benefits includes the equalisation or levelling up of payments to the SAC pension fund to ensure comparability of benefits. The cost of these payments, together with one-off legal costs and actuarial fees, and also including the cost of enhanced employers contributions to reflect the increasing age profile of the scheme members, and a small employer’s contribution to reduce the deficit on the fund, is estimated to be £265,000. The minimum estimate for these costs is £127,094 and the maximum is £552,500.

481. There is a deficit within both pension funds and in closing the Scottish Screen scheme (part of Strathclyde Pension Fund) to new employees, the trustees of the scheme may expect a portion of that deficit to be paid. If it is required, the payment will be subject to the value of the deficit at the date of the transfer and the likely range is from £250,000 to £340,000 based on current estimates. This is not being treated as a transition cost as the deficit exists regardless of
the set up of Creative Scotland. However, as it is possible that part of the deficit will be required to be paid earlier than would have been otherwise been the case, it is included in Footnote 1 to the summary of costs table.

482. A final payment may need to be made to the pension scheme at the point at which the last former Scottish Screen employee leaves the scheme, and this is estimated at current valuations to be £875,000 in 2025-26, which will be required to be met at the time by Creative Scotland.

Voluntary Early Severance/Early Retirement

483. The outline organisational structure, developed for consideration by the Joint Board for the Scottish Arts Council and Scottish Screen, implies a reduction in staffing levels by 19% which is equivalent to 30 full time posts. In line with ministerial commitments on the Simplification Programme, there will be no compulsory redundancies as a result of the restructuring. Savings will be achieved through natural wastage, redeployment and re-skilling where appropriate. However, should it be necessary, a cost effective voluntary early severance/retirement scheme will be made available.

484. An outline organisational structure for Creative Scotland has been developed and agreed by the Joint Board of the two existing bodies. This is the basis on which possible surplus posts have been calculated. The cost of a voluntary early severance/retirement scheme, assuming the more advantageous Scottish Arts Council terms, is estimated to range between £500,000 and £1,500,000. The best estimate for this cost, of reducing the overall headcount by 30 employees, is £1,100,000. It is hoped that such a scheme would be implemented during the 2009/10 as part of the preparation for moving to the new structure for Creative Scotland, with a second phase occurring in the run up to establishment in 2010-11. The estimated cost includes an augmentation cost of £166,000, which is the total one-off payment to the pension scheme on behalf of early leavers to meet their pension contributions until they reach retirement age. This is the maximum projected figure and could reduce substantially if staff applying for early severance are under the age limit to apply for early retirement.

Training and recruitment costs

485. Creative Scotland’s functions will drive the development of a new organisational structure. It is important to note however, that the final organisational structure for Creative Scotland will be developed throughout the financial year 2009/10 by Creative Scotland 2009 Ltd and the following information is provided only to help identify possible costs.

486. Investment in training during major organisational restructuring is an important factor in supporting staff during the transition. Training can be divided into three categories: change management to help staff integrate into Creative Scotland; technical training in new systems and equipment; and reskilling where jobs change as a result of redeployment.

487. Creative Scotland will require a Chief Executive to lead its development as the unified national body for cultural development. This post will be filled through a fair and open recruitment process and £25,000 has been estimated for the cost of recruiting this post through external advertising. The outline organisational structure assumes 3 strategic Director posts in
addition to the Chief Executive. Only if these posts cannot be filled by existing SAC/SS employees will an external recruitment and selection exercise be required at an estimated cost of £40,000.

488. The estimated costs for training and recruitment for the new organisation range from £140,000 to £280,000 with a best current estimate at £235,000 over two years.

Non staff costs

Business systems

489. An initial review of business systems has taken place to identify what the information and communication technologies (ICT) requirements for setting up Creative Scotland may be. This review identified the need for integration as well as possible investment in new services for the new organisation to ensure that business as usual can be maintained as well as developing new and improved support services for artists. As an example, neither of the two current corporate websites is capable of hosting the combined contents of both sites. Integration of telephony, email, system back-ups and security as well as software provision for finance, human resources, and payroll will incur costs. However, it will be for Creative Scotland 2009 Ltd to delineate precisely what is required for business continuity and for potential investment in additional capability. Providing Creative Scotland with sufficient flexibility to deliver the necessary changes, ensuring IT and business systems are fit for purpose alongside possible future changes to their business systems is expected to cost £400,000. However the estimates range from £300,000 to £600,000.

Leases and re-branding

490. The best current estimate for the costs of leases and rebranding is £75,000. This cost assumes that the status quo will be maintained for current accommodation. This £75,000 includes the cost of re-branding the current premises (signage £5,000) and re-assigning the leases from the current holders to Creative Scotland (£35,000). As part of the overall development of Creative Scotland, it will be necessary to develop a new brand which will allow the organisation to develop its corporate and general communications throughout the organisation as well as on websites and publications, and which will be a key part of building the organisation’s new image. Based on recent expenditure by other organisations, the cost of design, included in the £75,000 above, is not expected to exceed £35,000 in 2009-10 with most of the work being done in house. The cost of using the brand thereafter is included in ongoing administration costs.

Implementation Project for Creative Scotland

491. The limited company, Creative Scotland 2009 Ltd has been set up to manage the transition process, focusing on the practical arrangements including staffing, business systems and processes. It is expected that Creative Scotland 2009 will expend £295,000 to fund the implementation team needed to take forward the transition process, working closely with the Scottish Arts Council and Scottish Screen, and to cover necessary costs associated with specialist advice and guidance, such as setting up a new tax structure for Creative Scotland.
Public appointments to the Board

492. Recruitment and training costs will be incurred for the new Creative Scotland Board which is planned to be no more than 6 members and a Chair. These appointments will be regulated within the Office of the Commissioner for Public Appointments in Scotland (OCPAS) code. The cost of appointing the Board, based on recent similar expenditure for other organisations, is estimated to cost £35,000 in 2010-11, which is made up of advertising and interviewing costs.

Legal Fees

493. While the Scottish Arts Council will be dissolved by the passing of the Public Services Reform (Scotland) Bill, Scottish Screen, as a company limited by guarantee, will need to be dissolved separately following the passing of the Bill. The limited company, Creative Scotland 2009 will also need to be dissolved and the total cost for both is estimated to cost £8,000 in 2010-11.

Efficiency Savings

494. Moving to a single organisation will involve some clear efficiencies such as removing duplication of functions and streamlining processes; at this early stage it is difficult to put a financial cost to these. However, having one set of corporate functions such as human resources, finance and IT infrastructure will bring about efficiency gains. The anticipated reduction of staff numbers, based on having between 20 to 30 fewer staff in post, could mean year-on-year savings of between £800,000 - £1,200,000 per annum.

495. The investment in business systems will bring about efficiencies by minimising manual handling and duplication of input. At present the two organisations have different systems for finance, payroll, human resources and funding administration. While integration of some ICT can take place, it would mean continuing duplication of work. One system linking finance, grant administration and human resources will simplify the accounting and management processes and producing efficiency savings in staff time and effort. Initial simple changes (such as integrating telephone systems, rationalising some maintenance contracts) have identified savings of up to £20,000 recurrent but the final total is expected to be significantly higher. Overall, the cost of the transition process is expected to be cost neutral within 4 years from the set up of Creative Scotland.

Costs to local authorities

496. Scottish Ministers consider that there will be no material direct cost implications for local authorities arising from the establishment of Creative Scotland. The creative industries are a key sector in the Government’s Economic Strategy and Creative Scotland will work in partnership with local authorities to provide support to creative businesses, mainly through the Business Gateway as set out in the recently published Framework Agreement. Creative Scotland will also work with Community Planning Partnerships to develop and widen access in cultural participation. This will not involve additional cost but aims to make best use of funding already directed towards these areas.
Costs to other bodies, individuals and businesses

497. Scottish Ministers consider that there will be no material direct cost implications for other bodies, individuals and businesses, other than those specified below. The purpose of setting up Creative Scotland is to identify and provide, in partnership with other bodies such as, but not limited to, Scottish Enterprise, Highlands and Islands Enterprise, Skills Development Scotland and Sector Skills Councils – Skillset, Skillsfast and Creative and Cultural Skills - to identify and provide the enhanced support and interventions needed to ensure creative industries can deliver to their economic potential. The Framework Agreement\(^4\) between the enterprise agencies, COSLA, the Scottish Arts Council, Scottish Screen and Creative Scotland 2009 was published on 5 February 2009 and sets out the roles and responsibilities for supporting creative industries. While Government is currently working to further define the roles and responsibilities of delivery and advocacy bodies to ensure support needs of individuals and businesses are met, there are no anticipated additional costs to other bodies, individuals and businesses.

Loss of Scottish Arts Council charitable status

498. The Scottish Arts Council will retain charitable status until the organisation is dissolved. The resulting potential financial loss is not a transition cost but is included here for completeness. While Creative Scotland may apply to the Office of the Scottish Charity Regulator (OSCR) for charitable status, this application cannot be made until the statutory body is in existence. As any decision will be for OSCR to make, it is prudent to identify the value of charitable status as a possible recurring financial impact on the operational costs for Creative Scotland and this is indicated in footnote 3 to the summary of costs table. The Scottish Arts Council estimates the financial value of charitable status to be the following:

- £73,400 - non-domestic rates relief. However, as the application of this relief currently has the effect of depressing the rates income remitted by local authorities to the NDR pool and consequently increases the requirements for direct grant funding from the Scottish Government to local authorities, then the net effect of loss of this relief will be zero.

- £223,000 – tax and VAT relief. However, loss of this relief increases the tax payable to the public purse.

- £200,000 – charitable discounts. However, the purchasing power for government bodies through the Central Government Centre of Procurement Expertise (CGCoPE) and Procurement Scotland are designed to optimise benefits, savings and efficiencies for the Scottish Government, its Agencies and Non-Departmental Public Bodies.

- £50,000 – donations. The possibility of setting up a charitable arm for Creative Scotland could mitigate this potential loss.

Creative Scotland Transition Team

499. The Creative Scotland Transition Team was employed by the Joint Board of the Scottish Arts Council and Scottish Screen during the period November 2007 to January 2009 to shape, develop and lead the plan for change to Creative Scotland. The total cost for the two years was

£672,060. For 2007/08 the actual costs were £233,924. For 2008/09 the actual costs were £438,137.

500. Expenditure includes the staff costs for the transition team, professional fees, consultation and research/development costs associated with developing the plans for transition.
Table 12: Financial Summary Creative Scotland (£)

<table>
<thead>
<tr>
<th>Item</th>
<th>Min range</th>
<th>Best estimate</th>
<th>Max range</th>
<th>2008-09</th>
<th>2009-10</th>
<th>2010-11</th>
<th>2011-12</th>
<th>2012-13</th>
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<td><strong>Existing Organisation Budget</strong></td>
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<td>£35.536M</td>
<td>£35.536M</td>
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<td><strong>Staff Costs</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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<td>Development of Pay and grading structure</td>
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<td>0</td>
<td>30,000</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td>Harmonisation of terms and conditions</td>
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<td>200,000</td>
<td>240,000</td>
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<td>130,000</td>
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<td>Staff pensions[1]</td>
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<td>0</td>
<td>124,000</td>
<td>76,000</td>
<td>65,000</td>
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<td>Voluntary Early Severance</td>
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<td>1.100M</td>
<td>1.500M</td>
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<td>550,000</td>
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<td>Training and Recruitment</td>
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<td><strong>STAFF COSTS</strong></td>
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<td>2.693M</td>
<td>0</td>
<td>780,000</td>
<td>839,000</td>
<td>126,000</td>
<td>85,000</td>
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<td><strong>Non staff Costs</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business systems</td>
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<td>0</td>
<td>200,000</td>
<td>200,000</td>
<td>0</td>
<td>0</td>
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<td>Leases and re-branding</td>
<td>50,000</td>
<td>75,000</td>
<td>82,000</td>
<td>0</td>
<td>75,000</td>
<td>0</td>
<td>0</td>
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<td>CS Transition project &amp; team for 2007/08 &amp; 2008/09[2]</td>
<td>672,060</td>
<td>672,060</td>
<td>672,060</td>
<td>0</td>
<td>0</td>
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<td>Creative Scotland 2009</td>
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<td>345,000</td>
<td>15,000</td>
<td>250,000</td>
<td>30,000</td>
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<td>Board appointments</td>
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<td>Legal fees</td>
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<td>0</td>
<td>0</td>
<td>8,000</td>
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<td>0</td>
</tr>
<tr>
<td><strong>NON-STAFF COSTS</strong></td>
<td>1.297M</td>
<td>1.485M</td>
<td>1.751M</td>
<td>687,060</td>
<td>525,000</td>
<td>273,000</td>
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<tr>
<td><strong>TOTAL TRANSITION COST</strong></td>
<td>2.064M</td>
<td>3.315M</td>
<td>4.444M</td>
<td>687,060</td>
<td>1.305M</td>
<td>1.112M</td>
<td>126,000</td>
<td>85,000</td>
</tr>
<tr>
<td>Expected Savings reducing staff</td>
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<td></td>
<td></td>
<td>0</td>
<td>0</td>
<td>1.200M</td>
<td>1.200M</td>
<td>1.200M</td>
</tr>
<tr>
<td>Streamlined processes</td>
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<td></td>
<td></td>
<td>0</td>
<td>0</td>
<td>tbc</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other efficiencies</td>
<td></td>
<td></td>
<td></td>
<td>0</td>
<td>0</td>
<td>20,000</td>
<td>20,000</td>
<td>20,000</td>
</tr>
<tr>
<td><strong>Total expected savings</strong></td>
<td></td>
<td></td>
<td></td>
<td>0</td>
<td>0</td>
<td>1.220M</td>
<td>1.220M</td>
<td>1.220M</td>
</tr>
</tbody>
</table>

[1] A one-off payment to the pension provider to cover part of the current deficit may also be paid, subject to the value of the deficit at the time of transfer of staff, but likely to be range from £250,000 to £340,00, based on current estimates. There will also buyout costs for any remaining deficit when the last active former Scottish Screen employee leaves employment with Creative Scotland. Costs will depend on any deficit at that
time. There will be reducing, recurring pension costs from 2013/14, to meet the on-going costs of levelling-up payments to transfer staff and on-going additional employer pension contributions. These will be offset from the identified recurring savings.

These costs have been met by the Scottish Arts Council and Scottish Screen and actual costs for 2007/08 are £233,924 and for 2007/08 are £438,137.

Charitable Status for Creative Scotland will be a decision for OSCR to make once the new body has been set up. If it does not qualify then it is prudent to identify this as a possible recurring financial impact on the body.

PARTS FOUR AND FIVE – CREATION OF SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND (SCSWIS) AND HEALTHCARE IMPROVEMENT SCOTLAND (HIS)

Introduction

501. Creating HIS and SCSWIS will streamline some of the most significant sectors of the scrutiny landscape - together the existing bodies currently employ almost 1,000 staff and have a combined gross budget in 2009-10 of over £55m.

502. Establishing the new bodies and creating a legal framework that makes it easier to work across organisational and functional boundaries provides the opportunity to integrate improvement and scrutiny work beyond what is possible in the current landscape. Co-ordinated planning and reporting of activity, collecting and using information in a seamless way and increasing user involvement is expected to deliver real benefits to service providers and contribute to better outcomes for those using services. As the arrangements develop an increased emphasis on validated self-evaluation is expected. Over time this should create the opportunity to release resources to support a shift in the balance between improvement and scrutiny.

Costs on the Scottish Administration

Table 13: Scottish Administration Grant Support (£m)

<table>
<thead>
<tr>
<th>Scrutiny Body</th>
<th>2008-09 Budget</th>
<th>2009-10 Budget</th>
<th>2010-11 Plans</th>
</tr>
</thead>
<tbody>
<tr>
<td>SWIA</td>
<td>4.300</td>
<td>4.400</td>
<td>4.500</td>
</tr>
<tr>
<td>Care Commission (CC) (gross)</td>
<td>31.100</td>
<td>31.100</td>
<td>31.600</td>
</tr>
<tr>
<td>CC Fee Income</td>
<td>12.200</td>
<td>12.400</td>
<td>12.700</td>
</tr>
<tr>
<td>CC Grant-in-aid (net)</td>
<td>18.900</td>
<td>18.700</td>
<td>18.900</td>
</tr>
<tr>
<td>NHS QIS</td>
<td>18.300</td>
<td>19.300</td>
<td>19.300</td>
</tr>
<tr>
<td>HMIE</td>
<td>0.800</td>
<td>0.800</td>
<td>0.800</td>
</tr>
</tbody>
</table>

Scrubtny Improvement

503. In March 2009 the Government published its response to the public service scrutiny improvement action groups set up in response to the Crerar Review. The response envisages a move away from cyclical inspection to a more proportionate system of scrutiny based on risk. A
further commitment was to identify and transfer resources between external scrutiny and improvement placing a greater emphasis on self-evaluation.

**Efficient Government Programme**

504. Along with all other non departmental public bodies and agencies, the existing bodies have been asked to demonstrate 2% annual cash releasing efficiency savings during the current spending review period from their grant in aid budget and which the new bodies will inherit. The new bodies will be established within the next 3 year budget period. No decisions have yet been taken on efficiency savings during this period. The new bodies could be expected to achieve cash releasing efficiency savings not specified in this Memorandum in response to the public sector spending review.

505. Reducing duplication within and across the new bodies and other scrutiny bodies (e.g. HMIE) and streamlining current processes will bring efficiency benefits. It must be emphasised that efficiency savings are not about cuts but about enhancing value for money, improving public service delivery and raising productivity. The estimated efficiencies set out in this Financial Memorandum will contribute to future requirements.

**Costs and savings**

506. The Financial Memorandum sets out the overall financial impact of the changes being delivered and the Government’s broad expectations of the cost of change. It will ultimately be for the Board and senior management of both SCSWIS and HIS to develop and implement the business systems and structures which will deliver the government’s objectives.

507. The new bodies will build on what has already been done by the existing bodies by, where appropriate: rationalising the existing management structures; streamlining functions; achieving greater integration of the existing functions; developing new operational methods and approaches; removing unnecessary duplication; and developing shared services in key areas. This will give rise to costs for both bodies in some or all of the following areas:

- **HR costs:** compensation payments for harmonisation of pay and terms and conditions; the impact on staff pension schemes based on current market estimates; the estimated cost of any Voluntary Early Severance/Retirement scheme which may be needed to achieve a business shape and capability which fits with the vision for the new bodies and the scrutiny improvement agenda.

- **IT costs:** for necessary changes to internal and external business systems as a result of establishing the new bodies.

- **Stakeholder engagement costs.**

- **Legal costs of transferring leases.**

508. The drive for efficiencies must be balanced with: the need to maintain public assurance and protection both in existing and emerging risk areas, and to maintain and support service improvement; the risk and associated implications of service failure; and the challenge of embedding the necessary cultural change in creating these new bodies. The new bodies must be
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

given the flexibility and resources needed to maintain and improve service quality, and to channel their resources more effectively into the areas of greatest need, based on a coherent risk assessment.

509. During 2009-10 new business models will be developed for each of the new bodies as part of the stakeholder engagement strategy involving the existing bodies and other key stakeholders. Until fully worked up business models are available we are not able to be precise about the level of efficiencies which will be achievable from creating the two new bodies. However, some initial assumptions have been made around potential efficiencies and improved effectiveness and around structures.

Table 14: Cost of setting up Healthcare Improvement Scotland (HIS): Costs and savings

<table>
<thead>
<tr>
<th></th>
<th>Min range</th>
<th>Best est.</th>
<th>Max range</th>
<th>2010-11</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
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<td>Structure</td>
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<td>40,000</td>
<td>80,000</td>
<td>40,000</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>40,000</td>
</tr>
<tr>
<td>Harmonisation</td>
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<td>33,000</td>
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<td>21,000</td>
<td>0</td>
<td>0</td>
<td>21,000</td>
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<tr>
<td>Pensions</td>
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<td>50,000</td>
<td>0</td>
<td>50,000</td>
<td>0</td>
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<td>280,000</td>
<td>200,000</td>
<td>80,000</td>
<td>0</td>
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<td>280,000</td>
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<tr>
<td>Total Costs</td>
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<td>391,000</td>
<td>443,000</td>
<td>240,000</td>
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<td>391,000</td>
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<tr>
<td>Total efficiencies</td>
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<td></td>
</tr>
<tr>
<td>(reccurent from 2011-12)</td>
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<td></td>
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<td>0</td>
<td>164,000</td>
<td>164,000</td>
<td>164,000</td>
<td>492,000</td>
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</table>

**Costs**

**Structure**

510. HIS will have a Convener and 12 to 14 board members appointed through the public appointments process. A Chief Executive will also be appointed. The appointment of a first management tier of 5 to 6 Directors within which responsibility for the regulation of independent healthcare will be subsumed is likely to be through internal competition across the existing organisations. However, some external advertising may be required where posts are not filled internally.

511. Based upon the advertising and interview costs of recent similar recruitment exercises to recruit senior staff, it is estimated that recruitment of the Chief Executive and Directors will cost between £40,000 and £80,000. We have made a best estimate of **£40,000** (on the basis that most of the posts can be filled internally).
Harmonisation of terms and conditions, including pay

512. HIS will bring together staff from NHS Quality Improvement Scotland (NHS QIS) (254) and the equivalent of around 2 staff from the Care Commission. HIS will be a body created under the NHS (Scotland) Act 1978. We have assumed that the new body will retain NHS terms and conditions. Assimilating Care Commission staff onto the NHS QIS pay and grading structure is estimated to cost between £9,000 and £33,000 in 2011-12. Our best estimate is £21,000.

Pensions

513. Staff transferring from NHS QIS to HIS will remain on the NHS pension scheme. It is not certain that any staff will transfer from the Care Commission but if the complement of 2 FTE were identified the cost of transferring them onto the NHS pension scheme is estimated to be around £50,000.

Business costs

514. The following business costs have been identified.

515. Organisational development: A programme of organisational development for the Board and staff of HIS will be critical to help establish common values and new ways of working and to develop a shared vision, objectives and strategy. Based upon work undertaken by NHS QIS during the last year an estimate of £60,000 over 2 years has been made.

516. Shared business systems: As a special health board NHS QIS currently utilises and benefits from a number of shared business systems which include the NHS Scotland Workforce Information System and use of the NHSnet. Financial management, procurement, payroll and payments systems are also shared with other NHS bodies and QIS is part of a financial consortium of seven NHS Boards piloting financial management initiatives on report distribution, data warehousing and collaborative planning. Creating HIS as a health body will allow it to retain the benefit of these shared service arrangements and exploit opportunities for extending these arrangements in the future. Although there may need to be some growth in equipment we expect this to be minimal. We have not included any development of bespoke systems to accommodate new business procedures and processes the new organisation may introduce.

517. Stakeholder engagement and awareness: Prior to the creation of HIS there will be a requirement for a number of events and supporting communications with a wide range of stakeholders. Events will be for the purpose of consultation to ensure that effective business models are developed; marketing, to increase awareness of the new bodies and their role; and explaining, particularly to service users, what has changed and how the changes impact on them. Some will be done through established meetings but any dedicated events and publications will attract costs that will need to be met by the Scottish Government project team and the current scrutiny bodies. A range of costs between £50,000 and £100,000 has been estimated to reflect the scope of this work as set out above. Our best estimate is at the high end of this range in the event that bespoke events are necessary.
518. As part of the wider need to raise awareness of the new body it will be critical for HIS to establish a new identity. Key to this will be creating a new brand, to send a clear signal both corporately within the organisation and to the general public about the new arrangements, particularly the wider remit that HIS will have across both the public and independent healthcare sectors. We estimate that around £120,000 will be required to cover the cost of design, signage, development of new publications and the establishment of a new website, based on information from and discussions with the existing organisations.

519. Location costs: NHS QIS currently operates from two offices, one in Edinburgh and one in Glasgow. It is anticipated that HIS will continue to operate from both cities. Option appraisals in advance of the expiry of current leases will take account of the property currently owned or leased by Scottish Government; the functions of the new body; and the opportunity to reduce rental costs and derive further savings from the sharing of office space and facilities management. We expect the outcome of this approach to be cost neutral.

520. The total transitional business cost reflected in the table is estimated to be between £230,000 and £280,000. We estimate that overall the cost will be at the high end of £280,000.

Funding the cost

521. From 2009-10 NHS QIS has taken on responsibility for the Care Environment Inspectorate. These responsibilities along with the regulation and inspection of independent healthcare will transfer to HIS from April 2011. The new body will be expected to develop a scrutiny model that integrates its work in relation to the NHS and independent healthcare across the new body’s three main functions: providing advice and guidance, including standards; supporting implementation of its advice and recommendations; and scrutinising and reporting on performance.

522. In addition to the above, one of the principles underpinning the creation of the new body is the opportunity this will create for delivering better outcomes for individuals through integrated working both within and beyond HIS’s organisational boundaries. The restructured scrutiny landscape and the supporting legislative provisions are consistent with and will contribute to other Scottish Government agendas where joint working arrangements are a key feature – for example, community planning, community health partnerships, and the joint futures agenda. Development of this approach will require a shift in resources to allow for capacity building across the public and private healthcare sectors. It is anticipated that these efficiencies will generate savings to more than meet the overall transitional costs of £391,000.
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

Table 15: Setting up Social Care and Social Work Improvement Scotland (SCSWIS) - Costs and Savings

<table>
<thead>
<tr>
<th>Item</th>
<th>Min range</th>
<th>Best est.</th>
<th>Max range</th>
<th>2010-11</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
<th>Total</th>
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<tr>
<td>Shadow Management Team &amp; Recruitment</td>
<td>218,000</td>
<td>270,000</td>
<td>315,000</td>
<td>270,000</td>
<td>0</td>
<td>0</td>
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<td>270,000</td>
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<td>Harmonisation*</td>
<td>1.328M</td>
<td>1.910M</td>
<td>2.489M</td>
<td>0</td>
<td>260,000</td>
<td>1.400M</td>
<td>250,000</td>
<td>1.910M</td>
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<td>Voluntary Severance/Retirement Early</td>
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<td>1.500M</td>
<td>2.330M</td>
<td>1.250M</td>
<td>250,000</td>
<td>0</td>
<td>0</td>
<td>1.500M</td>
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<td>1.040M</td>
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<td>355,000</td>
<td>170,000</td>
<td>170,000</td>
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<tr>
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<td>5.560M</td>
<td>7.189M</td>
<td>1.865M</td>
<td>1.145M</td>
<td>1.850M</td>
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<td>5.560M</td>
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<td></td>
<td></td>
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<td>Senior staff (recurring from 2011-12)</td>
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<td>400,000</td>
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<td>400,000</td>
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<td>1.800M</td>
<td>1.600M</td>
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<td></td>
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<td></td>
<td>6.200M</td>
</tr>
</tbody>
</table>

Costs

Structure

523. SCSWIS will have a Convener and 12 to 14 Board members appointed by Ministers. The new body will also need to recruit a Chief Executive to lead the programme of change to integrate the existing bodies into SCSWIS. In addition, the appointment of a first management tier of between 5 to 6 Directors is likely to be through internal competition initially. Some external advertising may be required where posts are not filled internally.

524. Based upon the advertising and interview costs of recent similar recruitment exercises to recruit senior staff, it is estimated that recruitment of the Chief Executive and Directors will cost between £40,000 and £80,000. Our best estimate of recruitment costs is £60,000 (mid point).

525. The post of Chief Social Work Adviser will be transferred from the Social Work Inspection Agency (SWIA) into Scottish Government. The cost of the post is expected to be around £100,000 and will be offset by a commensurate saving of a Chief Executive post in the new body. It is envisaged that SCSWIS will have a role in supporting policy interests across
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Scottish Government. However, we anticipate a small support team within Government at an estimated cost of between £48,000 and £70,000 (best estimate mid point £60,000).

526. We expect to appoint a shadow management team around 9 months ahead of the creation of SCSWIS at an estimated cost of between £130,000 and £165,000 (estimated mid point £150,000).

Harmonisation of terms and conditions, including pay

527. SCSWIS will bring together staff from the Care Commission (594), SWIA (72) and HM Inspectorate of Education (HMIE) (up to 13). The overarching principles agreed as part of the simplification programme will apply. Staff transferring into the new body will be protected by the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector and under these arrangements will transfer into the new body on their existing terms and conditions. The new body will need to consider a modern pay and grading structure from start-up to ensure that it can attract and retain the right people with the right skills it needs for the future. Assuming a new terms and conditions package is required it will be developed as part of the project and in consultation with key stakeholders including Trade Unions. The estimated cost of a job evaluation exercise is between £0.89m and £1.43m (best estimate mid point of £1.16m).

528. The compensation cost of harmonising current terms and conditions is difficult to predict until work has been undertaken to develop a pay remit for the new body. For the purposes of demonstrating the scale of the costs we have used the pay and grading structure of the Care Commission as a starting point. We have estimated the costs of bringing the SWIA and HMIE staff employed currently on Scottish Government salary scales into the Care Commission structure. The transitional costs have two elements – immediate compensation cost for overall detriment in terms and conditions and ongoing costs harmonising staff to the new pay and grading structure. The compensation cost is estimated to be up to £10,000. The best estimate of the ongoing harmonisation costs (i.e. where the result would be an increase in salary) over 3 years totals £738,000. The actual harmonisation cost will depend on the eventual pay remit, job evaluation and the current grades of the transferring staff.

529. Overall costs reflect the 3 years ongoing costs where salaries would increase; transitional harmonisation cost where salaries would be lower and the cost of the job evaluation. Our best estimate within a range between £1.1m and £3.8m is £2.500m.

| Table 16: Harmonisation Cost Figures: Summary (£) |
|----------------------------------------|--------|--------|--------|
|                                      | Min estimate | Mid Point | Max estimate |
| Job evaluation                      | 890,000   | 1.160 M | 1.430 M |
| Transition cost                     | 10,000    | 10,000  | 10,000  |
| Recurring cost (over 3 yrs)         | 428,000   | 738,000 | 1.049 M |
| **Total**                           | **1.328 M** | **1.910 M** | **2.489 M** |

Pensions

530. SCSWIS will be an NDPB and will likely be admitted to an existing Local Government Pension Scheme (LGPS). Care Commission staff (except for a few who retained membership of
the NHS scheme when the Commission was established) are already members of a LGPS. Staff from SWIA and HMIE will not be able to remain in the Principal Civil Service Pension Scheme (PCSPS), but will be admitted into the LGPS referred to. For bulk transfer of staff out of PCSPS a bulk transfer payment is paid by the Civil Superannuation Vote arranged by Civil Service Pensions at no cost to the Scottish Government. For transfers out of PCSPS broad comparability costs are involved and depend on the profile of transferring staff. For the purposes of this exercise the differential is estimated to be between 6-8% of the paybill of those transferring, between £240,000 and £320,000 a year. Further work has been commissioned from the Government Actuaries Department to refine the cost. Our best estimate is £280,000 per annum.

**Voluntary early severance**

531. One of the impacts of achieving the efficiencies set out in this Memorandum may be a reduction in the number of posts in the new body. The extent to which exact numbers can be predicted will be driven by the eventual business model. Some of the efficiencies achieved from creating the new body will be met through operational efficiencies and some through a reduction in the number of posts. It is expected that most of the reduction in posts will be achieved through natural turnover and redeployment. However, in the event that a voluntary early severance/retirement scheme for the remaining staff proves necessary we have assumed, for the purpose of demonstrating costs, the scheme being available to around 25 staff. Our best estimate is £1.5m with the bulk of the cost being incurred in 2010/11. The actual cost of reducing these posts will depend on the grade, post, age and length of service of the individual staff who are eligible and successful in securing voluntary early severance and voluntary early retirement. Costs are estimated to range from £1.04m and £2.33m.

**Business costs**

532. The following business costs have been identified.

533. **Organisational development:** A programme of organisational development for the Board and staff will be critical to help establish common values and new ways of working and to develop a shared vision, objectives and strategy. An estimate of £120,000 over 2 years has been made to reflect the number of staff and the need to integrate staff from 3 different organisations.

534. **Rationalisation of IT systems:** The estimated cost of migrating SWIA and HMIE staff onto the Care Commission’s information and communications network infrastructure is between £100,000 and £200,000. This would include connection of users to the information and voice network, supply of user hardware and office applications. This does not include the development of bespoke systems to accommodate new business procedures and processes the new organisation may introduce. The option of moving the new body onto the Scottish Government’s IT system (SCOTS) was also considered. At a cost of over £1m, with an additional £1m to include access to ERDM (electronic document management system) it was concluded that this option was not cost effective.

535. **VAT:** An estimated increase in VAT of around £170,000 per annum as a result of SWIA’s functions, and some of HMIE’s, transferring into an NDPB.
536. **Legal costs:** As part of the transition some legal fees will be incurred, some of which will be dependent on the development of accommodation options in the longer term. An estimated £15,000-£20,000 (best estimate £15,000) in legal fees will be incurred to transfer 14 leases currently held in the name of the Care Commission into the name of the Scottish Ministers, in line with the Government’s asset management strategy.

537. **Stakeholder engagement and awareness:** Prior to the creation of SCSWIS there will be a requirement for a number of events and supporting communications with a wide range of stakeholders. Events will be for the purpose of consultation to ensure that effective business models are developed; marketing, to increase awareness of the new bodies and their role; and explaining, particularly to service users, what has changed and how the changes impact on them. Some will be done through established meetings but any dedicated events and publications will attract costs that will need to be met by the Scottish Government project team and the current scrutiny bodies. A range of costs between £50,000 and £100,000 has been estimated to reflect the scope of this exercise. Our best estimate is at the high end of this range in the event that bespoke events are necessary.

538. As part of the wider need to raise awareness of the new body it will be critical for SCSWIS to establish a new identity. A key part of this will be creating a new brand. That will send a clear signal both corporately within the organisation and to the general public about the new arrangements, particularly the wider remit of the new organisation that will allow an integrated approach to the scrutiny of social work and care service from the point of assessed need to the point of delivery. Based on information from and discussions with the existing organisations we estimate that around £145,000 will be required incorporating the cost of design, signage, development of new publications and the establishment of a new website. These costs reflect the size and geographical spread of the organisation.

539. The total transitional business cost reflected in the table is estimated to be between £940,000 and £1.095m. We estimate that overall the cost to be around £1.04m.

540. **Location costs:** Currently SWIA and the Care Commission have offices in 19 locations reflecting their national, regional and local focus. The Care Commission has already begun a review of its estate (17 offices). Last year it gave up premises in Dumfries to co-locate with Scottish Enterprise saving 36% of the cost. Decisions are also imminent on co-locating its Galashiels office. In Aberdeen the Commission will co-locate with SG Housing and Regeneration Directorate later this year generating an annual saving in excess of £100,000 from 2009-10. Opportunities to rationalise the estate further in the future across offices in the north, east and west of Scotland are also being pursued. That work will report later this year. SWIA staff are currently based in 2 offices, one in Edinburgh and one in Glasgow. The staff in Glasgow are expected to relocate to Europa Building in October 2009. HMIE staff are located in Livingston, Glasgow and Clydebank offices.

541. Any decisions on future relocation will be taken in line with the Scottish Government’s asset management strategy. The development of the business model for each new scrutiny body may impact on accommodation. Although there is no obvious immediate solution to bringing the existing bodies together we will look for opportunities over time to rationalise the existing
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accommodation. In the short term the existing bodies will be expected to co-locate in the existing accommodation where it supports the business model and aids integration.

Funding the costs

Structure

542. The organisation will have 5 to 6 Directors. SWIA and the Care Commission currently have first tier senior management teams totalling 10, and 60% of an HMIE senior manager gives a combined salary cost of around £880,000. The posts will be graded in line with public sector pay policy guidance; and grading may reflect wider responsibilities than the current posts. Making allowances for the likely wider and increased responsibility of Directors we estimate that the annual cost of the new management team would be between £450,000 and £545,000 achieving an annual saving of £335,000 and £430,000. Our best estimate is around £400,000.

543. Streamlining the structure of the new organisation is expected to deliver efficiencies across corporate services such as HR, finance, analytical, procurement, reception, security and facilities management support (some of which SWIA and HMIE receive currently from the Scottish Government at no identifiable charge). For example, at present each of the bodies manages its own website, creating support costs of around £50,000. Having one website for the new organisation may not halve maintenance costs, but might result in savings of up to £20,000. The £70,000 SWIA currently pays the Scottish Government for IT support and maintenance would also be saved.

544. A consequence of bringing together corporate functions, along with the efficiencies described below may be a reduction in the number of posts. The estimated cost of an early severance/retirement scheme, should it be necessary is set out at paragraph 137.

545. In addition to the corporate and management efficiencies it is anticipated that significant recurrent efficiency savings in the region of 5.5% of gross budget can be achieved through scale changes, sharing services and simplification, integration and closer collaboration. For example:

- More efficient and effective scrutiny through streamlining functions; improved processes such as joint reporting; the improved use of IT in streamlining the collection/sharing of information.

- A holistic approach to scrutiny from the point of identified need to the outcomes for individual service users across increasingly integrated service delivery is likely to change the required skills mix and therefore the distribution of staff across the grading structure.

546. One of the underpinning principles in creating the new body is the opportunity this will create for delivering better outcomes for individuals through integrated working both within and beyond Social Care and Social Work Improvement Scotland’s organisational boundaries. The restructured scrutiny landscape and the supporting legislative provisions are consistent with and will contribute to other Scottish Government agendas where joint working arrangements are a key feature – for example, community planning, community health partnerships, and the joint futures agenda.
Costs on local authorities, bodies, individuals and businesses

547. The Scottish Government does not expect the creation of either SCSWIS or HIS to impose any direct costs on local authorities or individuals and businesses. The proposals will deliver significant benefits for local authorities as providers of services by: delivering fewer bodies in the first place, which will be able to work in a more integrated, efficient and effective way with other scrutiny bodies where they have a shared interest in the outcomes for individual citizens. Duplication and overlap will be reduced through shared assessment, information collection, better knowledge management and reporting. Scrutiny will be proportionate and risk-based with a reduction in the burden of scrutiny for well performing services as the new bodies support providers in a shift towards greater evidence based self-evaluation over time.

548. The move towards an increased emphasis on self-evaluation has begun and will continue over time. This shift will be supported by the scrutiny bodies. The cost of external scrutiny over time will reduce as self-assessment provides an incentive and assurance of high quality and continuous improvement.

549. The Government’s policy that the regulation of care services should be self-funding is to continue. Care service providers will continue to pay regulatory fees to the new bodies for registration and a license to operate. Current maximum fees are set out in the Regulation of Care (Fees) (Scotland) Order 2005. Maximum fees increases will continue to be set by Ministers and subject to public consultation. The Minister announced in March that fee structures are to be reviewed during 2010-11. The outcome of that review may have financial implications for care service providers.

PART SIX – SCRUTINY PROVISIONS

550. This part of the Financial Memorandum sets out the financial implications of the scrutiny provisions in Part 6 of the Bill. Only those provisions that are considered to have any financial implications are addressed.

Costs on the Scottish Government

551. No costs are expected to fall on the Scottish Government as a result of these provisions.

Costs on local authorities

552. No costs are expected to fall on local authorities as a result of these provisions. The duty of co-operation for bodies scrutinising local government and local authority services should lead to more proportionate and co-ordinated scrutiny, with potential cost savings for local authorities. However, it is not possible to estimate these savings.

Costs on other bodies, individuals and businesses

Duty of user focus

553. The Bill places a general duty on listed scrutiny authorities to secure continuous improvement in user focus in the exercise of their scrutiny functions. The Bill does not dictate
These documents relate to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

how the duty of user focus should be achieved by individual bodies. It is expected that the duty will be reflected across the key scrutiny functions of each of identified scrutiny bodies. Within their wider work, scrutiny bodies already meet costs, for example related to staff training and programmes of organisational development to establish shared values and an underpinning organisational culture. The duty of user focus would therefore be contained within that larger body of activity.

554. Some of the scrutiny bodies which will be subject to the new duty of user focus already apply processes and approaches relevant to user engagement and focus. Those scrutiny bodies which will need to adopt some of these approaches and processes can, therefore, immediately build on established good practice, available within the scrutiny body context.

555. Satisfaction surveys and similar measurement systems are already used to assess user satisfaction with services they receive. However, it is anticipated that information on user focus should help inform progress towards more effective and proportionate scrutiny activity.

Duty of co-operation

556. The duty of co-operation may result in some additional costs for scheduled scrutiny authorities in ensuring effective communication, co-operation and sharing of information. However, it is anticipated that any costs will be more than offset by allowing for more proportionate and co-ordinated scrutiny.

Public Finance and Accountability

557. The Public Finance and Accountability (Scotland) Act 2000 already provides for the appointment of three other members to the Board of Audit Scotland (in addition to the Auditor General for Scotland and the Chairman of the Accounts Commission). The Bill, however, provides that the staff of Audit Scotland and members of the Accounts Commission will no longer be eligible for these appointments. It also provides that one these three (non-executive) members must preside at the meetings of the Board.

558. Two of the three serving non-executive members will no longer be eligible to remain on the Board. These individuals do not currently receive additional remuneration as Board members because one is a member of staff of Audit Scotland and the other is a member of the Accounts Commission. The estimated cost of each new non-executive member, based on the remuneration of the other serving non-executive member, is £8,000 per year. The cost of the two additional non-executives is therefore estimated at £16,000 per year.

559. In addition, the current chair (who is also the Chairman of the Accounts Commission and receives no additional remuneration) will no longer be eligible to preside at meetings of the Board. Given the duties associated with the role, it is estimated that a non-executive chair might expect to receive a further £7,500 - £10,000 per year. That would result in the provisions in the Bill costing Audit Scotland a total additional amount of £23,500 - £26,000 per year.

560. The Bill also transfers responsibility for appointing the three other (non-executive) members (including the chair) to the Scottish Commission for Public Audit and for determining
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the non-statutory terms and conditions of these members. These are likely to involve only minimal administrative costs.

PART SEVEN – MISCELLANEOUS AND GENERAL PROVISIONS

561. This part of the Financial Memorandum sets out the financial implications of the miscellaneous provisions in Part 7 of the Bill. Only those provisions that are considered to have any financial implications are addressed.

Charity trustees’ indemnity insurance

562. The Bill amends the provisions in the Charities and Trustee Investment (Scotland) Act 2005 to allow charities on the Scottish Charity Register to provide all their trustees with indemnity insurance from charity funds.

563. This amendment will enable charities on the Scottish Charity Register to provide all their trustees with indemnity insurance from charity funds. Prior to the enactment of the 2005 Act charities were able to provide indemnity insurance to all their trustees from charity funds. Therefore this is not a new cost – it merely allows charities legally to continue doing what they were able to do before the Act was brought into force in April 2006, if the charities choose to provide their trustees with indemnity insurance.

564. The provision of trustee indemnity insurance is a specialised market, and the cost of providing trustees with indemnity insurance varies considerably depending on the nature of the charity’s activities, the size of the charity and the number/experience of trustees, making it hard to provide costs. A cost of around £1,000 to cover all the trustees would not be uncommon, although we understand that the Church of Scotland has been quoted a price as low as £36 per congregation (each congregation being registered as an individual charity). No additional costs are anticipated on the Office of the Scottish Charity Regulator (OSCR) as a result of the amendment to the Charities and Trustee Investment (Scotland) Act 2005 to allow the provision of trustee indemnity insurance to all charity trustees.
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SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

565. On 28 May 2009, the Cabinet Secretary for Finance and Sustainable Growth (John Swinney MSP) made the following statement:

“In my view, the provisions of the Public Services Reform (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

566. On 27 May 2009, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Public Services Reform (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”