This document relates 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

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Public Services Reform (Scotland) Bill introduced in the Scottish Parliament on 28 May 2009. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 26–EN.

POLICY OBJECTIVES OF THE BILL

2. 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.

3. In reforming Scotland’s public bodies landscape, the Scottish Government’s stated approach is:
   • to streamline decision making and improve transparency;
   • to bring together bodies 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.

4. 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 and social work and social care scrutiny and for 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 cooperate with each other and to ensure an appropriate user focus in how they fulfil their functions.

Role of public services

5. The Scottish Government’s core purpose is to create a more successful Scotland with opportunities for all through increasing sustainable economic growth. As the Scottish public
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sector, businesses and individuals face on-going and anticipated economic challenges and their consequences, it is vital that the Scottish Government and the Parliament have the powers to respond effectively to changing circumstances and to tackle barriers to improvement and efficiency within the Scottish public bodies’ landscape.

6. The Government believes strongly in the ethos, value and importance of public services and their continuous improvement for the benefit of the people of Scotland. National Outcome 15, within the Scottish Government’s National Performance Framework, states the Government’s aim to ensure that “our public services are high quality, continually improving, efficient and responsive to local people’s needs”. Scotland’s national public bodies play a vital role in the delivery of public services which benefit and assist individuals and businesses. Public bodies are normally established to carry out executive functions or other tasks which have a clear national remit. In simple terms, this means a public body carrying out its day to day work independently of Ministers but for which Ministers are ultimately accountable.

7. The term “public bodies” covers a wide and diverse range of organisations of varying size and responsibilities including:

- **Executive agencies** – are constituent parts of Scottish Government with a focus on operational management and direct delivery of public services, for example, Historic Scotland;
- **Executive NDPBs** – have a national remit and carry out administrative, commercial, executive or regulatory functions, for example, Scottish Natural Heritage;
- **Advisory NDPBs** – have a national remit and carry out advisory functions providing specialist advice to Ministers and others, for example, General Teaching Council for Scotland;
- **Tribunals** – are responsible for tasks and advice relating to specialist areas of the law, carry out judicial functions, but are separate from the formal court system, for example, Parole Board for Scotland;
- **Public corporations** - are industrial or commercial enterprises under direct control of Ministers, for example, Scottish Water;
- **NHS bodies** – provide management, technical or advisory services within the NHS, for example NHS 24;
- **Non-ministerial departments** – NMDs operate in a similar manner to NDPBs, for example, Office of the Scottish Charity Regulator;
- **Commissioners and ombudsmen** – have a range of roles including safeguarding the rights of particular groups in society and reporting on, monitoring and handling complaints about the activity of public bodies, for example, Commissioner for Children and Young People in Scotland;
- **Others** – there are a range of other significant national bodies, for example, Drinking Water Quality Regulator.
Public bodies landscape: drivers for change

8. The current public bodies landscape in Scotland has evolved over time, in part because of decisions to establish individual bodies on a case by case basis without wider consideration as to the overall future shape and size of the landscape. This lack of strategic oversight has led to overlaps and duplication of effort in the roles and functions of some public bodies. At the heart of this, lies a concern that the current landscape of public bodies presents, to the public and business, a confusing array of organisational roles, remits and functions.

9. The 7th Report of the (Session 2) Finance Committee, Inquiry into Accountability and Governance1, recommended:

   “Bodies with similar roles and responsibilities should be amalgamated wherever possible; the potential to pool the resources of existing bodies (such as sharing staff) should be considered wherever possible; unnecessary direct remit overlaps should be dealt with by removing responsibility from one of the bodies involved and adjusting budgets accordingly.”

Scottish Government approach

10. The Scottish Government has taken a strategic approach to the public bodies landscape by considering whether the current configuration of bodies and overall size and role of individual bodies continue to be the most appropriate and cost effective. This has identified scope for real change to deliver financial efficiencies and tangible service delivery benefits by bringing together bodies with similar functions, stopping activity which no longer contributes to the public purpose or, in some cases, removing the need for a separate organisation by bringing the functions back into Government.

Commitment to a 25% reduction in the number of public bodies

11. In October 2007, the Scottish Government published, for the first time, a full list2 of the 199 national public bodies in Scotland and committed to reducing this number by a quarter, or 50 bodies, by April 2011. On 30 January 2008, the First Minister set out to the Parliament how the Government would deliver this 25% reduction commitment.

12. The broad aims of the Government’s commitment to fewer public bodies is to deliver:

   • simpler public sector structures, with clarity of organisational roles, remits and functions;
   • more effective public service delivery through streamlined and improved processes, for example, reduced bureaucratic burden on the private sector, transparent and clear public service decision-making, streamlined scrutiny and control regimes; and
   • better value for money through the release of efficiencies and reinvestment of savings in increased and improved front line delivery.

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1 http://www.scottish.parliament.uk/business/committees/finance/reports-06/fr06-07-Vol01-00.htm
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13. By May 2009, the Scottish Government has delivered a reduction of 11 bodies, just over a fifth of our overall target. Taken together with the reduction of Justice of the Peace Advisory Committees, taken forward by the previous Administration, but which did not come into effect until December 2007, this brings the current number of existing or planned national public bodies down to 162. By April 2011, we expect the total number of public bodies in Scotland to be reduced to around 120 bodies. The Public Services Reform (Scotland) Bill implements a further reduction of 8 bodies towards the delivery of this commitment, referred to collectively as the Government’s Simplification Programme. Full details of progress to date are set out in the Simplification Programme tracker on the Scottish Government web site.3

14. The Simplification Programme represents a significant package of change for many of Scotland’s public bodies. An update on the progress of these projects has been published to coincide with the introduction of the Public Services Reform (Scotland) Bill4. This will provide information about the actual or expected benefits and financial implications of projects which are being taken forward other than through this Bill.

15. The simplification proposals do not question the basic allocation of delivery responsibilities between national (e.g. health) and local (e.g. education) levels. They seek to put in place national institutional arrangements that make sense for a country of 5 million people. The overall approach of Government with a core purpose and 5 strategic objectives is based on the view that we cannot deliver for the people of Scotland by working in silos, and our national delivery structures also need to reflect this integrated approach. Simplifying the delivery landscape is about more streamlined and effective public services and less duplication, offering better value for money.

16. Full guidance and critical success factors expected in the implementation of the Simplification Programme were prepared during 2008 in consultation with public bodies, Scottish Government unions, the STUC and interests across Scottish Government. This guidance is available on the Scottish Government’s website.5

Creative Scotland

17. The simplification proposals in this Bill include specific provisions for the establishment of Creative Scotland as a new national body for arts and culture, embracing the creative industries. Creative Scotland will take over and improve on the general functions of two existing national bodies; the Scottish Arts Council and Scottish Screen. As a single unified body, Creative Scotland will be more responsive and effective in engaging with the diverse arts and culture sector.

The role of scrutiny

18. The independent Crerar Review6 of regulation, audit, inspection and complaints handling of public services in Scotland recognised that external scrutiny of public services has a

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4 Scottish Government web site.
5 http://www.scotland.gov.uk/Topics/Government/public-bodies/Simplificationguidance
vital role to play, stating that “the unique role of external scrutiny is to provide independent assurance that services are well-managed, safe and fit for purpose and that public money is being used properly.” This is an essential function in the system of governance and accountability that will always be required.

19. There are three things that Government, the Parliament and the public should expect from scrutiny:
   • public services are focused on and contributing to the Government’s purpose and strategic objectives;
   • public services are performing well – responsive, efficient/value for money, continually improving – and are achieving outcomes; and
   • service users, their families and carers, are being given assurance or protection, particularly vulnerable groups less likely to have a voice.

20. Whilst assurance is a key component of scrutiny, the Government response to Professor Crerar’s review made it clear that improvement is also an important factor. Whilst the primary responsibility for improvement clearly rests with the body delivering the services, scrutiny in Scotland plays an important role in influencing a culture of continuous improvement and striving towards excellence.

A proportionate and risk-based scrutiny system for Scotland

21. Whilst there will always be a need for external scrutiny, Ministers are committed to ensuring that the current system is reviewed and improved. The key drivers for simplification of the scrutiny landscape are:
   • tackling the complexity of organisational structures where so much time can be absorbed in working across structural boundaries, instead of speaking directly to citizens to listen to and address their needs; and
   • achieving more outcome-focused, efficient and streamlined public services, which provide better value for the public pound.

22. Most of Scotland’s scrutiny bodies already operate, or are in the process of introducing, more proportionate and risk-based approaches to scrutiny. This is already leading to improved targeting and reductions in the level and volume of scrutiny. In the new scrutiny system delivery bodies will achieve a reduction in scrutiny by demonstrating that their self evaluation is leading to continuous improvement (the converse being that more attention will be paid to those bodies which are not performing).

23. A more proportionate approach to scrutiny will free up more time for the delivery and improvement of services which will be of benefit to people using services. Crucially this will give public bodies more freedom to concentrate on the delivery and improvement of services and on achieving critical outcomes.
24. In line with the desire to reduce substantially the overall number of public bodies, including scrutiny bodies, the Government is committed to targeting a reduction of scrutiny bodies by 25%, matching or exceeding the broader commitment on public bodies. Parts 4 and 5 contribute to this target. Ministers have welcomed the Parliament’s commitment to review its commissioners and ombudsman and look forward to the report of the Review of Scottish Parliament Corporate Body (SPCB) Supported Bodies Committee. It is essential, however, that we ensure that the reduction on the number of scrutiny bodies is taken forward in a way which does not undermine the public’s confidence in the assurance function which they provide.

Wider public services reform policy

25. The Simplification Programme and the development of a more proportionate and risk-based scrutiny system fit clearly within the wider context of the Scottish Government’s commitment to public service reform, creating clearer, simpler and more effective public services and freeing local agencies and front-line workers to focus on delivering for individuals and communities. The update document being published alongside the Bill provides further background about how the Simplification Programme and scrutiny improvement are contributing towards public services reform.

Bill content

26. The Public Services Reform (Scotland) Bill has a number of aims which reflect the above policy context. The Bill is structured in the following parts:

- **Part 1** contains structural changes, dissolving some and merging other bodies to reduce the number of national public bodies resulting in less duplication and less bureaucracy as part of the Government’s wider programme to renew and reform Scotland’s public services, and delegating powers to administer support under the Industrial Development Act 1982 (Regional Selective Assistance grants) and the Science and Technology Act 1965 (SMART:Scotland grants);

- **Part 2** gives Scottish Ministers powers to make, with approval from the Parliament, further necessary and proportionate changes to the landscape of public bodies and public functions, and to remove or reduce unnecessary burdens throughout the Scottish economy in devolved areas similar to the power in section 1 of the Legislative and Regulatory Reform Act 2006 which only applies to reserved matters in Scotland;

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

- **Parts 4 and 5** contains provisions to reform health, social work and social care scrutiny with the establishment of Healthcare Improvement Scotland and Social Care and Social Work Improvement Scotland in place of existing scrutiny bodies;

- **Part 6** of the Bill contains provisions relating to the delivery of a more proportionate system of scrutiny and to improve governance and administration in relation to public finance and accountability;

- **Part 7** amends the provisions in the Charities and Trustee Investment (Scotland) Act 2005 to allow charities on the Scottish Charity Register to provide their trustees with
indemnity insurance from charity funds and other miscellaneous and general provisions.

PART ONE – SIMPLIFICATION OF PUBLIC BODIES

27. 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 include:

- Transfer to Scottish Natural Heritage of functions of the Deer Commission for Scotland;
- Transfer to Scottish Natural Heritage of functions of the Advisory Committee on Sites of Special Scientific Interest;
- Dissolution of the Scottish Records Advisory Council;
- Dissolution of Scottish Industrial Development Advisory Board;
- Dissolution of the Building Standards Advisory Committee;
- Dissolution of the Historic Environment Advisory Council for Scotland;
- Delegation of functions under section 7(1) of the Industrial Development Act 1982 to Scottish Enterprise or any other appropriate body;
- Delegation of functions under section 5 of the Science and Technology Act 1965 to Scottish Enterprise or any other appropriate body;
- Regulation of officers of court

28. This part of the Policy Memorandum sets out the rationale and policy objectives for each of these changes, other options considered and an assessment of the effects of the policy decision.

Transfer to Scottish Natural Heritage (“SNH”) of functions of Deer Commission of Scotland (“DCS”)

29. DCS is an Executive NDPB established in 1996, under the Deer (Scotland) Act 1996 as a successor to the Red Deer Commission. SNH is an Executive NDPB established in 1992, under the Natural Heritage (Scotland) Act 1991. The principal rationale for the transfer is that there is considerable commonality of functions between DCS and SNH especially as regards their partnership work on protected nature conservation features. The transfer will also streamline decision making, remove duplicated functions and provide clearer governance and accountability arrangements.

30. DCS is a small body with 26 staff, and a Board of 9 Deer Commissioners. It devotes disproportionate effort to meeting corporate governance requirements, dealing with administrative issues and Board functions when compared with larger bodies. There are also currently significant costs on the Scottish Government staff time which is spent on sponsorship functions, especially appointments processes.
31. The provisions in the Bill will provide for the functions of DCS to be carried out by SNH. There are no changes to the powers in the Deer (Scotland) Act 1996 proposed, so SNH would have the same powers that DCS does at present. A priority in enacting the merger will be that there is no negative impact on the work carried out at present by either body.

Alternative approaches

32. The alternative approach to the merger of these two bodies is to maintain the status quo. This would entail the continuation of DCS in its current form. There would be continued cost to the Scottish Government in remuneration and other costs of the Chair and Board of DCS.

Consultation

33. A consultation on this proposal was undertaken, which was open for email or postal responses, between 30 January and 14 March 2008. A number of key stakeholders were interviewed about the proposal during the consultation. The outcome of the consultation was that, while a majority of consultation responses were against the proposed merger, overall the majority of key stakeholders accepted the rationale behind the proposal and many supported the principle of de-cluttering. There was little, if any, direct challenge to the case supporting the proposal, although some doubts about the benefits were raised and concerns about the detail or the merger. The report on the consultation is available on the Scottish Government website at: http://www.scotland.gov.uk/Topics/Environment/Countryside/SimplifyingtheLandscape/Reports

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

34. There will be no effects on equal opportunities, human rights, island communities, etc. Local government, private individuals and businesses will benefit from consulting one organisation in place of two on matters pertaining to deer and the natural heritage of Scotland.

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

35. ACSSSI is an advisory NDPB established in 1992, under the Natural Heritage (Scotland) Act 1991 (and continued by the Nature Conservation (Scotland) Act 2004) to advise SNH in cases where there are sustained objections or representations, by owners or occupiers, to the notification (or review) of Sites of Special Scientific Interest (“SSSI”). Its role is to comment on the scientific justification for the designation.

36. ACSSSI is a very small body that meets around twice a year on average. It devotes disproportionate effort to meeting corporate governance requirements and dealing with administrative issues. There are also costs on Scottish Government staff time which is spent on sponsorship functions, especially appointments processes.

37. ACSSSI is somewhat anomalous in being appointed by Ministers to advise SNH which is itself the principal advisor to Ministers on the natural heritage. The SNH Board is not bound to follow ACSSSI’s advice. The number of cases referred to the Advisory Committee has, in recent
years, declined very significantly. The emphasis of nature conservation site designation has also shifted to assessment of potential “Natura” sites which Member States of the EU are obliged to identify and classify under the EU Birds and Habitats Directives. There have also been changes to SNH’s Board structure and procedure such that potential now exists within the organisation to provide adequate access to the designation process for all interested parties and so effectively take on ACSSSI’s functions. In these circumstances, it is difficult to justify the continued existence of a free-standing body to assess objections to proposed SSSI notifications. The Bill provisions include the legislative changes required for the dissolution of ACSSSI and for SNH effectively to take on the functions of that body.

Alternative approaches

38. Consideration was given to the possibility of redefining ACSSSI’s role and remit through Ministerial direction to the body to streamline its future operation. This could allow ACSSSI to concentrate its advice entirely on SNH’s application of guidance rather than on individual cases. This option would present some possible benefits if it reduced the size of the committee’s membership. However, apart from the costs that would continue to be incurred in administering the sponsorship functions and the appointments process, this would still represent a duplication of functions between ACSSSI and the revised SNH Board structures and procedures, which now recognise the need for all interested parties to have access to the designation process as well as for scientific scrutiny of guidance.

Consultation

39. ACSSSI was consulted prior to and following the First Minister’s statement in January 2008 announcing the Scottish Government’s intention to reduce the number of public bodies in Scotland. SNH participated in official level discussions with ACSSSI and outlined options for taking over the Advisory Committee’s functions. No representations relating specifically to the Scottish Government’s intention to dissolve ACSSSI have been received following the First Minister’s statement, with the exception of the body itself, to state its view that an independent review mechanism is important in assessing challenges to SSSI notifications. No separate consultation was undertaken on this proposal.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

40. The changes to SNH’s Board structure and procedure has the potential to provide equivalent levels of access to the SSSI designation process for landholders, tenants and other interested parties as the current process offers through ACSSSI. All interested parties will continue to have recourse to the Scottish Public Services Ombudsman if they are dissatisfied with SNH’s operation of the SSSI system. The dissolution of ACSSSI and transfer of functions to SNH is therefore not expected to have any negative effect.

Dissolution of the Scottish Records Advisory Council (“SRAC”)

41. The Scottish Records Advisory Council was established under section 7 of the Public Records (Scotland) Act 1937. It advises Scottish Ministers, the Lord President and Lord Justice General on matters relating to the custody, preservation, indexing, cataloguing of public records
in Scotland and the application of the Freedom of Information (Scotland) Act 2002 in relation to records held by the Keeper of the Records of Scotland. Members of SRAC are appointed by Scottish Ministers and receive no remuneration except reimbursed travelling expenses. SRAC has no current members.

42. Advice to Scottish Ministers on matters relating to archives and records, which SRAC provided, can more easily be obtained from alternative, non-statutory sources. Archive sector interests are represented by the Scottish Council on Archives, which is funded by Government, and also by the Archivists of Scottish Local Authorities Working Group, the Scottish Records Association and other bodies. The Keeper of the Records of Scotland will co-ordinate advice to Ministers on archives and records matters.

Alternative approaches

43. The status quo was considered but, as noted above, it was determined that the Keeper of the Records of Scotland was best placed to co-ordinate advice on archives and records matters and that independent advice was available from other, non-statutory, sources.

Consultation

44. No separate consultation was undertaken on this proposal but the proposal to dissolve SRAC was set out in the First Minister’s statement to simplify the public sector landscape in January 2008. The Keeper of the Records of Scotland has also been fully consulted and has agreed to provide and co-ordinate future advice on archives and records matters, liaising as appropriate with the Scottish Council on Archives, Archivists of Scottish Local Authorities Working Group, the Scottish Records Association and other bodies.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

45. The dissolution of the SRAC will be neutral in these regards.

Dissolution of the Scottish Industrial Development Advisory Board (“SIDAB”)

46. SIDAB is a statutory body established under section 20 of the Scottish Development Agency Act 1975 (c.69) (“the 1975 Act”). It advises Scottish Ministers on the exercise of their devolved powers under section 7 of the Industrial Development Act 1982, specifically in relation to Regional Selective Assistance (RSA) grants. In practice, SIDAB provides advice to officials on larger RSA cases, being those of over £250,000. Members of SIDAB are appointed by Scottish Ministers. The posts are part-time and members receive no remuneration for a time commitment of one day per month.

47. Ministers and officials have high regard to the advice offered by SIDAB and wish to ensure that business continues to be involved in the grant application process. However it is also recognised that the complexities and demands associated with formal public appointments is out of proportion to this type of (unpaid) advisory body. At the same time there is a need to consider a more flexible approach to securing appropriate business orientated advice for a broader range
of grant support – especially in view of opportunities that might arise from broader enterprise reforms and the proposed delegation of grant delivery to Scottish Enterprise. This transfer of function will remove the need for SIDAB in relation to its statutory purpose. Scottish Enterprise will continue to seek appropriate business input and advice into its processes.

**Alternative approaches**

48. The status quo was considered. However, as noted above, continued formal NDPB status was thought to be disproportionate to the nature of the advice sought. Given that future grant administration will be undertaken by Scottish Enterprise (itself a NDPB) under its own powers and governance arrangements, advice from another formal NDPB would not be necessary or appropriate.

**Consultation**

49. The proposal to dissolve SIDAB was set out in the First Minister’s statement to simplify the public sector landscape in January 2008. No representations relating specifically to the Scottish Government’s intention to dissolve SIDAB have been received following the First Minister’s statement. This proposal was discussed with the main business organisations – Confederation of British Industry, Institute of Directors, Federation of Small Businesses and Scottish Council Development and Industry - STUC and SIDAB members themselves. The abolition of formal NDPB status was broadly welcomed, seen as reasonable in principle and inevitable in practice given separate proposals to transfer RSA grants to Scottish Enterprise. There was equally strong respect paid to the work that members undertake and a broad desire expressed to ensure that future arrangements for grant determination include advice from business.

**Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.**

50. The grant schemes on which SIDAB advises will in future be administered by Scottish Enterprise under its governance procedures which comply with all Scottish Government equality commitments. SIDAB’s dissolution will be neutral in these regards.

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

51. The Building Standards Advisory Committee is an advisory non-departmental public body which was established under the Building (Scotland) Act 1959 and continued under the Building (Scotland) Act 2003. The purpose of the Committee is to advise on matters relating to the development of building regulations, specifically advising Scottish Ministers on the exercise of their functions under the Building (Scotland) Act 2003.

52. Although BSAC, as a statutory body, has Ministerial advisory status, in practice the Committee advises the Scottish Government’s Building Standards Division (“BSD”) which, in turn, directly advises Scottish Ministers. This appointed Advisory Committee, therefore, acts as a technical sounding board for proposed changes to building regulations. As such, the key driver behind dissolution is to simplify current arrangements for technical advice on building standards and provide greater flexibility to draw in such advice. The provisions remove the statutory basis
of BSAC and therefore dissolve the Committee. Following dissolution, the Committee’s functions will be continued through BSD establishing informal technical working groups operating on a non-statutory basis, thereby engaging with key construction industry stakeholders.

**Alternative approaches**

53. The alternative approach to the dissolution of this statutory advisory Committee was to maintain the status quo. However, it is not considered necessary to have a statutory Committee providing a technical input to proposals for regulations as this can be achieved by other, non-statutory, means.

**Consultation**

54. The proposal to dissolve BSAC was set out in the First Minister’s statement to simplify the public sector landscape in January 2008. No representations relating specifically to the Scottish Government’s intention to dissolve BSAC have been received following the First Minister’s statement. Following the decision to dissolve BSAC as a statutory body, an Extraordinary General Meeting was convened which allowed members to develop proposals on how best to continue the necessary engagement between the construction industry and Scottish Ministers. The BSAC Chair and Working Party Convenors subsequently met with the Minister for Transport, Infrastructure and Climate Change on 16 April to highlight BSAC’s views on Future Building Standards advice. No separate consultation was undertaken on this proposal.

**Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.**

55. Nil. BSAC’s dissolution will be neutral in this regard. After dissolution of the Committee, the Scottish Government’s Building Standards Division will continue to engage with key construction industry stakeholders and establish the necessary processes to do so.

**Dissolution of the Historic Environment Advisory Council for Scotland (‘HEACS’)**

56. HEACS was established as an NDPB in 2003 under the Public Appointments and Public Bodies etc. (Scotland) Act 2003. Its membership is voluntary – although the Chair receives a small salary and members receive expenses – and is appointed by Scottish Ministers. At its inception, HEACS was charged by Ministers with providing informed and independent advice on the state of the historic environment; its identification and protection; its presentation and promotion; its contribution to the wider context e.g. the economy; and its resourcing, particularly in terms of skills and materials. HEACS revised its aims in November 2005 so as to include a new remit to identify and develop an agenda of strategic issues and topics on which it would offer advice to Ministers of its own motion; taking account of the need to work in consultation with key stakeholders and within recognised good practice frameworks; and to communicate effectively as an advocate for Scotland’s historic environment.

57. The key driver behind dissolution of HEACS is duplication. Historic Scotland is responsible for providing expert advice to Ministers on the historic environment and in recent years has increased both its capacity to deal with policy analysis and its degree of consultation and engagement with stakeholders. This has enabled the Scottish Historic Environment Policy
programme to progress. As such, in today’s landscape, Ministers do not need an Advisory Council as well as a dedicated Agency to provide expert advice on Scotland’s historic environment.

58. Historic Scotland will continue to ensure that external expertise is brought to bear on particular issues as appropriate and to consult with the public and stakeholder groups, as and when the need arises. In addition, Historic Scotland now has six Non-Executive Directors on its Board (out of a total of 13 members), bringing external input into the heart of its business at the highest level.

Alternative approaches

59. The alternative approaches to the dissolution of this statutory advisory Council would have been to maintain the status quo or to expand the remit of HEACS. Neither of these would have been consistent with the aim of consolidating advice to Ministers on Scotland’s historic environment.

Consultation

60. The proposal to dissolve HEACS was set out in the First Minister’s statement to simplify the public sector landscape on 30 January 2008. The proposals were discussed at a meeting shortly after the announcement between the Minister and the members of HEACS. The Chair of HEACS and the Minister exchanged letters summarising their discussion during April and May 2008, which were published on the HEACS website. These letters recorded HEACS’ decision to complete their programme of work prior to its dissolution, which was welcomed by the Minister. No separate consultation was undertaken on this proposal.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

61. The remit of Historic Scotland is to provide expert and independent advice to Scottish Ministers on issues relating to the historic environment. It is expected to subject its advice to Ministers to analysis of its impact on the areas above in the same way as is expected across the Scottish Government. Clearer lines of accountability will enable a more consistent approach to taking account of Scotland’s diverse communities and related policies.

Delegation of Function under Section 7(1) of the Industrial Development Act 1982 and Functions under Section 5 of the Science and Technology Act 1965

62. The Cabinet Secretary for Finance and Sustainable Growth announced, in a statement to the Parliament on 26 September 2007, an intent to consolidate the delivery of national business grants – initially under joint venture arrangements – within Scottish Enterprise (“SE”), Regional Selective Assistance (“RSA”), SMART grant scheme and the proposed new general Research and Development grant scheme will be delivered under these arrangements.

63. At present, the Scottish Government makes grant awards for RSA under section 7 of the Industrial Development Act 1982 and SMART:SCOTLAND under section 5 of the Science and
Technology Act 1965. Scottish Ministers do not currently have powers to delegate responsibility for RSA and SMART grant schemes. To allow for a quick realignment of responsibility SE is able to 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. The new SE schemes will be national grants, available on the same terms and conditions to businesses operating within the Highlands and Islands Enterprise (“HIE”) area.

64. Initially, SE will deliver RSA and SMART:SCOTLAND grant schemes under its own legislative powers and, following legislation, will be delegated the responsibility for the administration of grant awards under section 7 of the Industrial Development Act 1982 and Section 5 of the Science and Technology Act 1965, where the Scottish Government is contractually committed to making payments. Amendment to the relevant legislation is therefore required to provide Ministers with the authority to delegate these grant delivery responsibilities to Scottish Enterprise or any other appropriate body.

65. Embedding RSA and SMART within SE will reinforce the shift in focus for the enterprise agencies towards a greater emphasis on support for business innovation and investment. It will support the simplification and decluttering 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 HIE’s wider business support interventions.

Alternative approaches

66. Consideration was given to several alternative approaches:

- Status quo. It was not considered possible to deliver, within the existing statutory arrangements, the intention of securing more effective and simplified outcomes through bringing business grants and the main body for business support closer together.

- Delivery of RSA and SMART:SCOTLAND brought together with delivery of SE grant schemes within the Scottish Government. This would not have allowed for the better alignment of SE and HIE wider business support interventions.

- Joint Venture. This was not considered the optimal option, given the need for separate approval and governance processes and the limitation on staff working across the different grant schemes.

- Creation of a separate agency. This option would add unnecessary complexity to the public sector landscape and could incur potentially significant additional costs.

Consultation

67. Under the devolution concordat in relation to financial assistance to industry there is a requirement for mutual consultation between all parties to the concordat on any proposals for new legislative provision (whether primary or secondary legislation) for financial assistance to industry. Consultation has been undertaken with the Department of Business Enterprise and Regulatory Reform and the Welsh Assembly Government. The Welsh Assembly did not comment on the proposed new arrangements. BERR asked for more detail on related issues –
future reporting, State Aid coverage and future application of the Concordat – but did not indicate any objections. This proposed transfer was also discussed with the main business representative organisations - Confederation of British Industry, Institute of Directors, Federation of Small Businesses and Scottish Council Development and Industry - and STUC who were comfortable with this further streamlining and simplification of support to business.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

68. The grant awards to be delegated will be administered by Scottish Enterprise under its governance procedures which comply with all Scottish Government commitments in these regards.

Regulation of officers of court

69. Part 3 of the Bankruptcy and Diligence etc (Scotland) Act 2007 (“the 2007 Act”) provides the legal framework for the creation of a new national public organisation, the Scottish Civil Enforcement Commission (“SCEC”), although it is not yet in force.

70. Messengers-at-arms and sheriff officers belong to old and reputable professions with much tradition and history. A certain amount of reform to the law of diligence (the enforcement of court judgments) and to the professions was introduced by the Debtors (Scotland) Act 1987 (“the 1987 Act”). However, there was some criticism by debtor protection interests during the 1990s when the collection of unpaid community charge and council tax was at its height. The professions were charged with relentlessly pursuing debtors with little or no ability to pay, notwithstanding the defence put forward by the Society of Messengers-at-Arms and Sheriff Officers (“the Society”) that they were not responsible for the legal position.

71. Proposals for change to modernise the officer professions were published, with recommended changes to the diligence system in Scotland in the Enforcement of Civil Obligations in Scotland consultation paper, published in April 2002. An overwhelming majority of respondents, including the Society, welcomed the recommendations for reform to the officer professions, including the establishment of a new public body, SCEC, to provide the authority and independence to realise these reforms.

72. Provisions to create SCEC are set out in Part 3 of and schedule 2 to the 2007 Act. Creation of this new non-departmental public body was approved by the second session of the Scottish Parliament on 30 November 2006 after extensive public consultation and scrutiny by the relevant committees. At that stage it was viewed as an appropriate response to public concerns.

73. As part of the Scottish Government’s commitment to organisational simplification, the First Minister announced in January 2008 an intention to review the implementation of the SCEC. It was felt that the majority of the functions of this proposed organisation could be delivered by other existing bodies, with the others being surplus to requirements.

74. Furthermore, during stakeholder discussions in late 2007, and early 2008, there was general recognition that the wider enforcement environment had changed since 2002 when the
idea of the SCEC was originally conceived. The Debt Arrangement and Attachment (Scotland) Act 2002 (“the 2002 Act”) had delivered improvements for the debtor and it was considered that standards within the profession had risen. The debt arrangement scheme, the replacement of poinding and warrant sale and the introduction of the debt advice and information package, the changed debt environment with improved availability of free money advice and information and other diligence reforms introduced under the 2007 Act, once they were commenced, had all contributed to this.

75. There was significant agreement among the stakeholders consulted on the improvements required to ensure accountability and transparency in the officer profession. These were:

- an open and transparent complaints route
- publication of a Code of Practice for officers to ensure consistent behaviour and practice
- publication of an annual report of Advisory Council and officer activities
- lay representation on the Advisory Council, and expansion of its activity in supervising officers

76. It was agreed amongst stakeholders consulted that these could be achieved without the need to create an entity with the remit and functions originally envisaged of the SCEC. Instead, they could be delivered at a reduced cost by utilising existing resources and frameworks.

77. The Bill accordingly places additional functions of the SCEC on the Lord President. These changes will allow the Lord President to regulate more effectively the enforcement officer profession, taking on key areas of the role that the Commission was envisaged to fulfil. The role of and support arrangements for the Lord President are set to change under the Judiciary and Courts (Scotland) Act 2008 and we anticipate that these changes will be in place before the implementation of the proposals in the Bill. It is anticipated that the new support structure will easily accommodate additional functions being placed on the Lord President in relation to the regulation of messengers-at-arms and sheriff officers.

78. One of the key benefits of this option will be the substantial savings realised by implementing a solution that requires only minimal resource and financial commitment. The costs of implementing this solution for the period 2010 to 2012 are just £5,600 compared to planned SCEC costs of £1.567m, creating very significant savings compared with establishing a separate body.

79. The profession will benefit from an approved professional organisation that will be able to raise standards through training and regulation, and which it is hoped will raise the profile of the profession and create sustainability in standards, encouraging new members to join and therefore contributing to a wealthier and smarter Scotland. The benefit for the creditor would be greater consistency in the quality of service. The benefit for the debtor would be greater transparency and a body of officers who are better informed in terms of diligence law and the potential implications for the individual.
80. The Bill seeks to amend various provisions in Part 3 of and schedule 2 to the 2007 Act, which establishes the SCEC. These changes will preclude the SCEC from coming into existence by amending Part 3 of the 2007 Act before it is brought into force. There are also amendments to the 1987 Act, which would have been repealed had the 2007 Act been brought into force as drafted. Significant consequential amendments are required to give effect to the policy discussed above and the Bill as drafted delivers these.

Alternative approaches

81. The alternative approach was to implement the SCEC as originally envisaged. This option would have reflected the ethos of the policy driving the reforms in this Bill, but at a greater cost financially and with greater bureaucracy.

82. The reform of the law of diligence in Scotland, principally in Parts 4 to 14 of the 2007 Act aims to strike a better balance between the rights of creditors who seek to enforce decrees granted by the Scottish civil courts and documents of debt and the rights of debtors who require robust protections from harassment, appropriate and proportionate treatment, and direction to free help and money advice.

83. Although the SCEC as originally envisaged was considered by the previous administration to be integral to the reform of the law of diligence, as detailed above in paragraph 74 the enforcement environment had changed since SCEC was conceived and stakeholders views had moved on. SCEC was designed to have the twin roles of regulating more effectively the new enforcement officer profession of judicial officers (a fusion of the present messengers-at-arms and sheriff officers professions) and overseeing the modernisation of the diligence system. It was also thought to be the correct vehicle through which to provide the desired level of independence from Government and to deliver proactive, open and accountable regulation of officer behaviour, discipline and business organisation. It was designed to be capable of delivering greater focus and higher visibility to the officer profession in terms of standards and training.

84. The potential costs of setting up the SCEC and ongoing running costs are set out in the Financial Memorandum. This funding would have come directly from the Scottish Government’s budget. Alternative financing options were considered, including asking banks to contribute towards the costs of the SCEC by means of a levy or levying public creditors. However, these options were not considered viable.

Consultation

85. Over the last 9 months, the Scottish Government has been working with stakeholders on how to implement Part 3 of the 2007 Act. There was a significant area of agreement among the stakeholders consulted on the minimum improvements that were needed. These were an open and transparent complaints route; publication of a Code of Practice for officers to ensure consistent behaviour and practice; publication of an annual report of Advisory Council and officer activities; lay representation on the Advisory Council and expansion of its activity in supervising officers.
Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

86. The publication of and improved access to information such as an annual report by the Advisory Council on Messengers at Arms and Sheriff Officers, as well as a published code of conduct for officers will enable wider public awareness and access by various media to information previously unavailable or indeed previously inaccessible.

87. Lay representation on the Advisory Council will open the door to more balanced membership by allowing representation from creditors; debtors; the profession; the Courts and any other interested parties.

88. The 1987 and 2007 Act regimes deal with interests protected under Article 1 of Protocol 1 to and Article 6 of the ECHR relating to an individual’s property rights (e.g. business goodwill) and the right to a fair trial in relation to disciplinary procedures. However, the amendments made to those regimes by the Bill, mainly for the Court of Session to act in place of SCEC have no substantive effect on the safeguards in the Acts and it is considered that the Bill complies with the Scottish Parliament’s obligations as regards human rights.

PART TWO – ORDER-MAKING POWERS

89. Part 2 provides Scottish Ministers with powers, by order, to:
   • improve the exercise of public functions by scheduled bodies; and
   • remove or reduce burdens in the public, private and third sectors.

90. The overarching aim of these order-making powers is to allow Scottish Ministers, with approval from the Parliament, to make further necessary and proportionate changes to the landscape of public bodies and public functions, similar to those set out in Part 1 of the Bill, and to remove or reduce unnecessary burdens on public, private and third sector bodies. These powers reflect Scottish Ministers’ commitment to work through the Parliament to ensure a public sector landscape and public sector functions that are proportionate, responsive and efficient.

Power to improve the exercise of public functions

91. The changes delivered through the Scottish Government’s Simplification Programme to date, and those set out within this Bill, will deliver part of the Government’s commitment to reduce the number of public bodies by 25%. Further legislation to streamline the children’s hearings system will be taken forward in the forthcoming Children’s Hearings (Scotland) Bill. Other changes will be delivered without the need for legislation.

92. Delivering the 25% reduction in the number of public bodies is not intended to be the end of the process of simplification. Such changes will continue to be driven by the need for continual improvement and modernisation in the delivery of Scotland’s public services and for a flexible approach that responds to change in the wider economic and social environment of Scotland and beyond. Further consideration will be ongoing across the range of public bodies to reshape the delivery of public service functions and to improve or extend service delivery.
Currently, in terms of sections 69 and 70 of the Deregulation and Contracting Out Act 1994, Scottish Ministers may, by order, contract out functions of Ministers and office-holders and local authorities which, in some respects, provides a limited parallel. Under the first power, Scottish Ministers will be able to introduce secondary legislation, not to contract out these functions to the private sector but, within the context of improving the exercise of public functions, among other things to delegate or reallocate the delivery of public functions by bodies listed in schedule 3. This provides Scottish Ministers, with the Parliament’s approval, with the flexibility to implement the necessary reshaping of structures to deliver better, more effective and responsive public services.

At present, it is often a matter of historical accident whether changes to improve the delivery of public functions require legislation. Some functions of the public sector have legislative underpinning, but other similar or more significant functions do not and can be re-organised without legislation. There is no consistent, structured approach for the Parliament to approve low profile improvements to the public sector landscape and functions. The order-making power introduces a rationale to this process.

The power will avoid situations where necessary improvement is delayed until a suitable primary legislative opportunity arises, or where a change is not taken forward as it may not merit the procedure of a full Bill. This power will provide the Parliament with the opportunity to consider organisational changes and to respond to issues such as duplication, bureaucracy and overlap through proportionate arrangements. To provide for appropriate scrutiny, it is envisaged that each order will deal with a single proposal for organisational change. It will be for the Parliament to consider in each case whether the power is the appropriate and proportionate process through which the organisational change and improvement should be considered and progressed.

The overarching requirement for any proposed change under this power is for Ministers to demonstrate that it will improve the exercise of public functions having regard to the three “e’s”: efficiency, effectiveness and economy. Any proposed change using the power must be proportionate to the aim of achieving efficiency, effectiveness and economy in the exercise of public functions. Ultimately, it will be for the Parliament to consider whether any proposed structural change should more appropriately be progressed through primary legislation, as the correct route to provide for Parliamentary scrutiny, through the existing Bill process.

The power makes provision for modifying, conferring, abolishing, transferring, or providing for the delegation of, any function of a person, body or office holder listed in schedule 3. There is also provision for amending the constitution of, or abolishing, a person, body or office-holder listed in schedule 3 except the Scottish Ministers, the Forestry Commissioners, a person listed by virtue of section 11(3)(e) or a company (within the meaning of the Companies Act 2006).

The power to transfer or delegate functions (but not to modify, confer or abolish functions) also allows functions to be transferred or delegated to local authorities. Substantially unmodified functions may, following consultation, be transferred to local authorities and fire and police authorities. However, the order-making power does not allow Ministers to transfer...
functions away from local authorities or to make any structural change in relation to local government.

99. Any functions that are modified or conferred on a body using the power must be broadly consistent with the general objectives and purpose of the body concerned. It will not be possible, therefore, to use the power to alter significantly the overall role or purpose of an individual body or to ask it to undertake functions inappropriate to its core functions. Where functions are conferred on a new body, they must be broadly consistent with existing functions that are being abolished or modified from an existing body listed in Schedule 3. Where functions of the Scottish Ministers are transferred, instead of referring to the general objects or purpose of a body, the reference is to “the broad remit of the part of the Scottish Administration concerned”. The conferral of radically new functions will not, therefore, be allowed for under these provisions.

100. The order-making power could not be used to remove any necessary protections from an individual or organisation, unless equivalent or similar protections are put in place.

101. The Bill puts in place a number of other important constraints on the use of the first order–making power. There are also important limitations on the use of both powers. These restrictions preclude the transfer to any other a body of any statutory function of Scottish Ministers, the First Minister and the Lord Advocate to legislate, give directions, appoint persons to any office or position, or to consent to any thing. They also preclude the use of the power to interfere with local taxation. There are further limitations on the creation of new criminal offences and a complete prohibition on the authorisation of forcible entry, search or seizure, or the compelling of a person to give evidence. One purpose of the constraints and limitations is to ensure that the exercise of the power is compliant with the Human Rights Act 1998.

Explanatory document

102. The Bill sets out provisions requiring certain information to be included within the explanatory document that must accompany any statutory instrument made under the power. The document must explain how it will improve the exercise of the relevant public functions with regard to efficiency, effectiveness and economy. The document must include sufficient information to satisfy the Parliament that these requirements are met. The document must also confirm the consultation undertaken on the proposals, any representations received and changes made in light of those representations. The explanatory document will provide information to enable the Parliament to consider whether the specific proposals are proportionate and meet the overarching aims of this element of the Bill. No change can be made unless the Parliament is satisfied that the relevant preconditions and requirements have been met.

Proposed uses of the power

103. The following paragraph sets out proposed ways in which this power will be used to deliver improvement in the exercise of public functions, having regard to efficiency, effectiveness and economy.
This document relates to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

Transfer of functions

104. There are circumstances where, due to duplication or overlap of functions, or to improve the clarity or efficiency of services for business or individuals, it would be appropriate for a specific function of one body to be transferred to another organisation listed in schedule 3 to the Bill. This element of the power will provide for such transfers of functions, where an amendment to existing primary legislation is required to achieve this change. This may include the transfer of functions from Scottish Ministers to local government or from an NDPB to Scottish Ministers or from one NDPB to another. The provisions allow for existing functions to be transferred to a new body created by the power, provided the various pre-conditions are met. As noted above, the general power would not allow for the transfer of functions away from local government.

105. Part 1 of this Bill provides examples of the transfer of all or part of the functions of one existing body to another existing body. This includes the transfer of the functions of the Deer Commission for Scotland to Scottish Natural Heritage and the transfer of functions in relation to the allocation of certain existing enterprise grants from part of the Scottish Government administration to Scottish Enterprise.

106. The power will also allow for the transfer of functions from existing bodies to a new body established under the power. One possible example for the use of this element of the power would be to facilitate the transfer of functions if Ministers decided to move existing tribunal functions into a new Scottish Tribunal Service. The Administrative Justice Steering Group, chaired by Lord Philip, identified a number of issues with the current tribunal arrangements in Scotland, and found the status quo to be unsatisfactory. It set out options for the future of tribunals, including the establishment of a Scottish Tribunal Service, taking over the functions of existing separate tribunal bodies. The Group considered that the establishment of a Scottish Tribunal Service would provide greater coherence in relation to existing Scottish tribunal functions.

Modifying functions

107. In merging bodies and streamlining their functions it may be necessary to modify existing functions to ensure that they reflect the vision and functionality of the new single organisation. Ministers therefore require the power to modify existing functions of bodies. This will ensure that they are modernised to reflect current day circumstances but also to remove any duplication or overlap in activity.

108. An example of such a change might include modifying the number of board members required for a particular public body, where this is prescribed in legislation. Another example might include modifying the functions of two bodies to ensure that they are better aligned and consistent with co-ordinated approaches to activity and service delivery.

Conferring functions

109. There may be circumstances where Ministers consider it necessary to confer a new function on an existing or new body, for example to replace an obsolete function. It is not the intention that any restructuring or reorganisation of activities be used to create a new enterprise with functions unrelated to the functions or activities being carried out by the scheduled bodies.
There must be some continuity of identity in the functions performed and the services delivered by any new organisation and that which preceded its establishment. The new functions conferred must be supplemental or ancillary in some way to functions or activities already being performed.

**Abolishing functions without transfer or replacement**

110. The circumstances in which a function may be abolished without transfer and replacement would be where Ministers and the Parliament agree that such activity should be stopped as it no longer contributes to the public purpose or where such activity is already being delivered from other routes and there is duplication and overlap. In assessing such a change, the tests of economy, efficiency and effectiveness would be important to assess the value of the duplication and overlap and justification for change.

111. Part 1 of the Bill seeks to abolish a number of appointed advisory panels as expert advice and assistance is drawn into Government and public policy development through other less bureaucratic routes than a panel appointed through the public appointments process. For example, stakeholder and public consultation is a norm in policy development and short life consultative groups have been set up to draw in rich and varied ideas to inform policy changes in a flexible and cost effective manner.

112. Another example might include the removal of NDPB status from the General Teaching Council for Scotland (GTCS). Currently, if the GTCS wanted to amend aspects of its organisational structure, it would be necessary for Government to either take forward primary or secondary legislation. A consultation has been issued which considers the future responsibilities of the GTCS and the way in which it is governed, including the power to make rules and set its structure without recourse to Government and the legislative process. An example of this is that elements of the current GTCS committee structure are set in statute. It seems appropriate that an independent GTCS should be able to determine its own committee structure without recourse to legislation, and by default a reliance on Government and the Parliament. As such, it may be appropriate to remove such requirements from legislation.

**Alternative approaches**

113. The alternative to this power is to bring in primary legislation each time changes need to be made to a statutory body. As many of these changes are small and of a primarily administrative nature, it is not always a good use of Parliamentary or Government time to bring forward Bills to make the necessary amendments. Another approach is to add the necessary provisions to another piece of legislation going through the parliamentary process. However, there is no guarantee that a suitable legislative vehicle will be in process at the time the changes should be made. The changes are then delayed and the benefits which would have accrued from a timeous amendment of the legislation may be foregone. Current arrangements do not provide a consistent process for the Parliament to consider proposed, relatively small scale, changes to the public services landscape and delivery of public sector functions.
Consultation

114. There has been no pre-legislative consultation on this power. However, the use of this power requires prior consultation involving organisations representative of interests affected by the proposals as well as the public bodies covered by the proposals, and any other persons that the Scottish Ministers considered appropriate. Any representations raised during the consultation process and any changes made in response to such representation, must be highlighted in the explanatory document accompanying any statutory instrument under the power.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

115. The effects on equal opportunities, human rights, island communities, local government, sustainable development etc will depend on the context in which the power is being used and the legislation which is being amended. Any use of this power would have to be compatible with European Convention on Human Rights and EU law. The accompanying document with the statutory instrument will confirm the consideration given to these issues in progressing the proposed legislative change. Provisions within the Bill prescribe specific limits and pre-conditions on the use of the power compliant with the Human Rights Act 1998.

Power to remove or reduce burdens

116. The purpose of this power is to remove or reduce unnecessary burdens on the Scottish economy in respect of devolved areas. The power replicates and updates previous provisions within the Deregulation and Contracting Out Act 1994 Act, which is repealed. In updating the power, the provisions largely mirror the regime already set out in section 1 of the Legislative and Regulatory Reform Act 2006. The 2006 Act provisions already apply in England and Wales and to reserved matters in Scotland. The Bill creates a common regime for the removal or reduction of burdens in Scotland across both reserved and devolved areas.

117. The burden-removing power will be used to remove or reduce burdens which are holding back the economic, effective and efficient operation of the public, private or third sectors, economic recovery or the longer-term sustainable economic growth, which is at the heart of the Government’s Economic Strategy. For example, as demonstrated elsewhere in this Memorandum, the way the public bodies’ landscape has evolved over time has led to clear overlaps and duplication of effort in the roles and functions of some public bodies. In turn, this has led to overlaps and duplication in the licensing and inspection of legitimate business activities. The removal or reduction of the bureaucratic processes resulting from the overlaps and duplication is of substantive benefit to both the public bodies and the private sector companies they regulate.

118. This will complement parallel activity to improve consultation with business as part of the process of developing new regulations, and to develop co-operative and constructive relationships between regulators and the regulated. Both are consistent with the Government’s approach to better regulation and the related work of the independent Regulatory Review Group (whose members are drawn primarily from the main business organisations in Scotland, Consumer Focus Scotland and the Scottish Trades Union Council).
**Proposed uses for the power**

119. The type of burdens that the power will remove or reduce include burdens that give rise to financial costs, such as fees; administrative inconvenience, such as frequent licensing or re-licensing requirements; obstacles to efficiency, productivity and profitability or inappropriate sanctions that affect individuals or businesses undertaking other lawful activities.

120. Equivalent existing burden-removing legislation in England and Wales has been used to introduce a significant number of deregulatory measures, for example removing the responsibility on local authorities to seek Ministerial approval before making payments under certain grant schemes and removing restrictions on scrutiny bodies to co-ordinate joint inspections. The power has been used in particular to remove and rationalise licensing and other requirements on businesses.

121. Examples where the power might be used is to rationalise the licensing requirements of certain types of businesses, for example reducing the frequency of inspections or licensing fees on certain types of businesses and other establishments. Licensing of game-dealing has also been identified as another possible area where this power might be used.

122. As with the first power, certain preconditions and protections will apply to the use of the power. Proposals should only be brought forward under this power if the policy objective intended could not be secured by non-legislative means; the effect of the proposal is proportionate and strikes a fair balance between public interest and the interests of any person who might be adversely affected; does not remove any necessary protection and does not prevent someone exercising any reasonable right or freedom.

123. The general restrictions on the use of the power to remove or reduce burdens are the same as those restrictions that already apply to the operation of Part 1 of the Legislative and Regulatory Reform Act 2006 with reference to non-devolved matters in Scotland. As with the first power, this includes conditions to ensure compliance with the Human Rights Act 1998.

**Explanatory document**

124. As with the first power, certain information must be included within the explanatory document that must accompany any statutory instrument made under the power to remove or reduce burdens. The document must include confirmation that the relevant preconditions have been met and a clear description of the burdens that the statutory instrument will remove or reduce. The document must also include information about the consultation undertaken on the proposals, any representations received and changes made in light of those representations. The explanatory document will provide information to enable the Parliament to consider whether the specific proposals are proportionate and meet the overarching aims of this element of the Bill. As with the first power, no change can be made unless the Parliament is satisfied that the relevant preconditions and requirements have been met and that the use of the power is the most appropriate and proportionate way in which these changes can be achieved.
Alternative approaches

125. The alternative is to bring in primary legislation each and every time burdens are identified which need to be removed or reduced. As many of these changes are small and of a primarily administrative nature, it is not always a good use of Parliamentary or Government time to bring forward bills to make the necessary amendments. Another approach is to add the necessary provisions to another piece of legislation going through the parliamentary process. However, there is no guarantee that a suitable legislative vehicle will be in process at the time the changes should be made. The changes are then delayed and the benefits which would have accrued from a timeous amendment of the legislation are foregone.

Consultation

126. The independent Regulatory Review Group, whose members represent the main business organisations in Scotland – including the Confederation of British Industry, Institute of Directors, Federation of Small Businesses and Scottish Council Development and Industry - has been consulted and supports this proposal. There has been no other pre-legislative consultation. However, the use of this power requires prior consultation involving organisations representative of interests affected by the proposals as well as the public, private or third sector bodies covered by the proposals, and any other persons that the Scottish Ministers considered appropriate.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

127. The effects on equal opportunities, human rights, island communities, local government, sustainable development etc will depend on the context in which the power is being used and the legislation which is being amended. Any use of this power would have to be compatible with the European Convention on Human Rights and EU law.

PART 3 – CREATIVE SCOTLAND

128. This section of the Policy Memorandum sets out the policy objectives behind establishing a new national body for arts and culture, embracing the creative industries: Creative Scotland.

Overview of policy aims

129. The Scottish Government wants Scotland to be a truly creative nation, both now and in the future, with a strong national identity which our vibrant arts and culture help to reflect, shape and define.

130. The Government wishes to encourage and support artists, creative practitioners and enterprises, as well as attract increasing numbers of creative people to Scotland; and to build Scotland’s cultural profile as part of a broader international reputation.

131. The Government wishes to ensure that the work of Scotland’s artists and creative practitioners is accessible to as many people as possible, and equally that the opportunity to participate in artistic and creative endeavours of all kinds is open to all. In summary,
Government policy is to support the arts, culture and creativity; and to maximise access to, appreciation of and participation in, the arts, culture and creativity.

132. In developing its policy aims for Creative Scotland, the Government considered carefully the responses to consultation on a draft Culture Bill, published in December 2006. This asked for views on the proposals for a single statutory public body for the arts and culture, to be known as Creative Scotland. The Government also considered the findings of the Cultural Commission, established during the 2003-07 Parliamentary session, the report from which was published in June 2005.

**Policy aims**

133. The Government believes that its policy aims for arts and culture will be better achieved by establishing a single national public body. This is a different approach from what currently exists, with two national public bodies: the Scottish Arts Council and Scottish Screen. The Government intends Creative Scotland to have new, wider functions than its predecessor bodies. It will also need to develop new skills, knowledge, expertise and working practices to fulfil these functions. These wider functions and skills will enable Creative Scotland to have a clear overview of the breadth of arts and cultural practice in Scotland.

134. To reflect the significant and central role which Government wants the arts and culture to continue to play in this country, Creative Scotland will be a statutory Non-Departmental Public Body (NDPB). Part 3 of the Bill establishes the new body and sets out the general and advisory functions that it will have. It also provides for the dissolution of the Scottish Arts Council. Scottish Screen, which has a different constitutional basis from the Scottish Arts Council, will be dissolved at the same time, but by non-legislative means. The staff, assets and liabilities of both bodies will transfer to Creative Scotland on its establishment as a new statutory NDPB.

135. The Government is clear that a single unified body is the best way to achieve its policy aims because the arts and culture, not just in Scotland but globally, are constantly evolving as creative practice and definitions are questioned and redefined. An example of this is the digital arts, which have developed with great speed in the last 20 years, driven by new technology. This requires a different structural approach to supporting arts, culture and creativity: one which realises their potential contribution to every part of society and the economy. It also means that Creative Scotland’s working practices, as well as its skills base, will need to be agile and responsive to a diverse and rapidly changing sector.

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7 The Scottish Executive published a draft Culture (Scotland) Bill and associated draft guidance for consultation on 14 December 2006, seeking comments from those organisations which would be affected by the Bill and from any other interested parties. In addition to a wide distribution, copies of the consultation and guidance documents were made available on request and the document was published on the Scottish Executive’s website.

8 The Creative Scotland Bill was introduced to the Parliament on 12 March 2008 and the Stage 1 debate took place on 18 June 2008. At that debate, the Parliament was generally supportive of the principles of the Bill but voted against the financial resolution relevant to the Bill, causing it to fall. After the fall of the Bill, the Scottish Government considered and then reconfirmed its intention to pursue the proposal to establish Creative Scotland as a statutory body via the Public Services Reform (Scotland) Bill.

136. The Government is proposing, within Part 3 of the Bill, to encompass the existing general functions of the Scottish Arts Council and Scottish Screen together in Creative Scotland because there are important synergies between the two. They have an existing, and significant, skills base which the Government believes can be unified, built upon, and better aligned to meet the sector’s needs. The two bodies carry out similar functions in terms of advocating and advising on the arts, culture and creativity; and fulfil the crucial function of providing and administering public funding. Creative Scotland, however, will be able to do more than this. Its wider functions will establish a distinctive and unique body better equipped to sustain artists and creators of all kinds and to extend and increase the wider benefits of arts and culture. This includes their contribution to the promotion and development of our national culture and its place in the wider international arena.

137. The proposal to bring together the functions of the Scottish Arts Council and Scottish Screen in Creative Scotland is also in line with the Government’s wider policy aim of public service reform. This Government wants to ensure public services of the highest quality are delivered to people in Scotland, and delivered as efficiently, effectively and transparently as possible for the people who use them. In the context of the arts and culture, “efficiency” also means helping to ensure that public funding is targeted as directly as possible at artists, creative practitioners and enterprises, rather than at administrative systems and processes.

**Proposed functions for Creative Scotland**

138. To deliver the policy aims outlined above, Creative Scotland will have the following functions:

- to identify, support and develop quality and excellence in the arts and culture from those engaged in artistic and other creative endeavours;
- to promote understanding, appreciation and enjoyment of the arts and culture;
- to encourage as many people as possible to access and participate in the arts and culture;
- to realise, as far as reasonably practicable so to do, the value and benefits, (in particular, the national and international value and benefits) of the arts and culture;
- to encourage and support artistic and other creative endeavours which contribute to an understanding of Scotland’s national culture;
- to promote and support industries and other commercial activity the primary focus of which is the application of creative skills.

**Identifying, supporting and developing quality and excellence in the arts and culture from those engaged in artistic and other creative endeavours.**

139. The identification of, support for, and development of, quality and excellence from those engaged in artistic and creative endeavours will be a key function for Creative Scotland. It relates specifically to Government’s policy aim of ensuring that Scotland’s artists and creative practitioners are at the heart of the work of the new body. This in turn will support the Government’s overarching purpose, which is to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through
increasing sustainable economic growth in its broadest sense. Creative Scotland will be able to unleash opportunities for artists of all kinds to contribute to a stronger, more vibrant Scotland.

140. As is currently the case for the Scottish Arts Council and Scottish Screen, Creative Scotland will have independence from Ministers in all matters of artistic and creative judgement, by deciding how best to support artists and creative practitioners in what they do – to create. This is enshrined in the provisions in section 30(2) of the Bill. The Government considers that this independence is critical to creating a national context in which work of outstanding talent and excellence will continue to be made in Scotland.

Promoting understanding, appreciation and enjoyment of the arts and culture

141. In promoting understanding, appreciation and enjoyment of the arts and culture, Creative Scotland’s function will continue the existing key roles of the Scottish Arts Council and Scottish Screen in providing financial and advisory support to artists, creative practitioners and creative enterprises. In fulfilling this function, its role will be to develop support frameworks (both funding and expert/best practice advice) to existing organisations, as well as supporting consortia or new bodies involved in creative practice and enterprise.

142. Creative Scotland will additionally fulfil this function and the other general functions by working through other national, regional and local arts and cultural organisations to promote understanding, appreciation and enjoyment of the arts and culture. It will do this by supporting wider delivery partners, including local government, lifelong learning and education bodies, and Community Planning bodies. The support which Creative Scotland will provide will include direct funding and expert and good practice advice to this range of bodies.

143. Creative Scotland will also support the sector through its role as principal adviser to Scottish Ministers on matters to do with arts and culture. As the national public body for the arts and culture, with all the relevant skills and expertise in one place, Creative Scotland will be best placed both to oversee public funding and expert advice, and to advise Ministers on future policy. In fulfilling this role, the Government will also require Creative Scotland to be the key advocate of Scotland’s arts and culture, across all sectors and parts of Scotland’s society and economy. Examples of how it will do this might include Creative Scotland’s advocacy of the contribution which the arts and culture can make to community health programmes, and its advice to Ministers on how to maximise this through different policy levers; or the role of creativity in developing innovative, competitive new business practices.

Encouraging as many people as possible to access and participate in the arts and culture

144. Creative Scotland will work to give creative opportunities to people of all ages and backgrounds. This function is supported at section 27(2) relating to the diversity of persons who access and participate in the arts and culture. The new body will recognise that the fun, fulfilment and creative stimulation of both experiencing and joining in the arts and culture are valued by individuals and communities across Scotland. Audiences and participants alike find that cultural experiences add significantly to the quality of their lives. Individual, local and national well-being and prosperity can be advanced in this way.
Realising as far as is practicably possible to do so, the value and benefits (in particular the national and international value and benefits) of the arts and culture

145. Creative Scotland will also realise, wherever possible, the reputational value of Scotland’s arts and culture through its role as lead advocate at a national and international level. The creative sector has the potential to contribute hugely to our national prosperity in many direct and indirect ways. These might include the growth of specific creative industries, the contribution that a vibrant arts and culture scene can make to tourism or to economic investment in a locality, or the improvement in health and well-being that participation in the arts can engender. There is clear evidence\(^\text{10}\) of the positive transformational impact that cultural and creative activity in all its forms can have on local and national communities.

146. In fulfilling this function, Government will also require Creative Scotland to play a key international role. Scotland needs to attract people to live, learn, work, visit, do business and invest in an increasingly competitive and challenging global market. Managing Scotland’s reputation as a modern nation with a distinct and vibrant national identity is a key objective of the Scottish Government’s International Framework. One of the most powerful tools to achieve that is Scotland’s arts and culture, and Creative Scotland’s role will be to promote both on the international stage. For example, it will bring about opportunities for showcasing Scotland’s arts practice across the world, and it will develop joint initiatives with internationally known performance companies and arts venues. Creative Scotland will also help to align arts and culture activities with the Government’s wider international approach, by working with other key agencies such as VisitScotland and the British Council in Scotland.

Encouraging and supporting artistic and other creative endeavours which contribute to an understanding of Scotland’s national culture

147. The policy aim of this function is for Creative Scotland to nurture any form of creativity which adds to our collective understanding of our distinctive national culture in its broadest sense – as a way of life. Artistic and creative output necessarily represents, describes, explores, responds to and sometimes challenges Scotland’s culture. In doing this it also in itself adds to and is part of that culture. Artistic and creative endeavours may not necessarily enhance the national culture, because they may be critical or represent it in an unflattering light, but are nevertheless valuable in contributing to our broader understanding of the national culture. It will be for Creative Scotland to exercise judgement on a day to day basis how it will deliver its functions within this broad context. Encouraging and supporting artistic and other creative endeavours could take many forms – from generic guidance, through to direct funding.

Promoting and supporting industries and other commercial activity the primary focus of which is the application of creative skills

148. Creative Scotland’s function will be to support the creative industries\textsuperscript{11} to develop successfully, working in partnership with other relevant bodies. A thriving creative industries sector is important for Scotland’s economic prosperity and for promoting Scotland’s national identity. In supporting the creative industries, Creative Scotland’s role will be to provide research, intelligence and advocacy; and contribute to policy development across the industries and other commercial activities, the primary focus of which is the application of creative skills, so that strong and innovative ideas are generated by the sector. This role will be key to a partnership approach with other bodies which have the relevant and detailed expertise in business infrastructure and growth\textsuperscript{12}. Creative Scotland will also lead the co-ordination of support to the creative industries so they can develop and prosper, working with other relevant bodies. These other key bodies will provide complementary services to those provided by Creative Scotland. The enterprise agencies’ role will be to identify and develop growth sectors within the creative industries, and to maximise the economic potential of businesses within creative industries. Local authorities will remain key in supporting creative industries within their areas, and in their responsibility for the Business Gateways. The latter will provide generic business advice to creative entrepreneurs, and signpost them to other sources of specialised support and advice to help make their business succeed. Government expects this partnership approach to ensure that the creative industries make their fullest contribution to Scotland’s economic prosperity and future growth.

Governance arrangements

The Creative Scotland board

149. A number of respondents to the consultation on the draft Culture Bill proposed that the Board of Creative Scotland should include representatives from particular parts of the arts and culture sector, or wider sectors. There were also proposals that wider demographic interests should be reflected on the Board. The Government has considered these suggestions carefully. It agrees that Creative Scotland should be led by a diverse group of individuals, who between them should have a broad but expert knowledge of arts and culture policy and practice, placing artists and creative practitioners at the heart of the work of Creative Scotland. In addition, the Board will need the wider mix of skills required for a public body – for example business skills, corporate governance, and experience of leading national or international organisations. The Board should also have an understanding of the diversity of people and organisations which contribute to Scotland’s culture and national identity.

150. Such a combination of skills is needed if the Creative Scotland Board is properly to fulfil its responsibility for overseeing the efficient and effective operation of the new body, and to provide a “challenge” function to the Creative Scotland senior executive team. But the

\textsuperscript{11} The current definition used the Department of Culture, Media and Sport includes 13 industries and is at www.culture.gov.uk/what-we-do/creative-industries/default.aspx

\textsuperscript{12} The principles of this partnership approach were discussed and agreed with the relevant delivery bodies prior to the introduction of this Bill, and announced publically on 5 February 2009.
Government does not believe this will be achieved by “reserving” places for particular organisations or areas of expertise on the Board. Appointments to the Board of Creative Scotland will be subject to the full public appointments process which aims to ensure that the right skills for the Board are recruited fairly, openly and transparently.

Ministerial powers to direct

151. Many respondents to the consultation on the draft Culture Bill were concerned by proposals for Scottish Ministers to have powers of direction over Creative Scotland, lest such powers interfered with its independence in artistic and creative judgement. As explained above, there is a specific provision in Part 3 of this Bill granting Creative Scotland freedom in artistic and creative judgement. A Ministerial power of direction over public bodies is a common element of governance regimes, and part of the accountability which public bodies have, through Ministers, to the Parliament. In practice, it means that Ministers can direct a public body to fulfil particular functions on behalf of the Government – in the case of Creative Scotland, these are the 6 functions set out above – with accountability to Ministers for delivering these functions successfully. But a power of direction does not mean Ministers direct the public body, day-to-day, on how it delivers those functions – for example, in deciding which organisations or individual artists to fund. Ministers accept that it is essential that Creative Scotland enjoys artistic and creative independence in carrying out its core functions. The Government expects that support for this principle will continue to be shared by all the parties in the Parliament.

Alternative approaches

152. Before deciding on a single national body for the arts and culture as the best vehicle for delivering its policy aims, the Government reviewed possible alternative approaches. Alternatives it considered were: maintaining the status quo; creating new separate bodies, and creating a non-statutory Creative Scotland.

Maintaining the status quo

153. To date the Scottish Arts Council and Scottish Screen have effectively supported their respective areas (arts organisations; film and the wider screen industries) by providing funding, guidance and other practical support. It would be possible to continue with the status quo. But responses to the consultation on a proposed Culture Bill indicated that structural change was being looked for by the arts and culture sector itself.

154. As stated, the Government considers that a single unified body can be more responsive and effective in meeting the needs of a hugely diverse and constantly evolving sector. The disciplines used in the past to define different art forms, and the way in which the sector is structured, has changed and continues to change rapidly. A single unified body will place all the relevant skills in one place, with potential to cross-fertilise skills and expertise, as well as enhance the existing (and significant) skills base already held within the Scottish Arts Council and Scottish Screen.

155. In addition, a single public body will enable more streamlined business systems and processes (for example, grant administration systems) to be developed than is possible in two separate bodies. This, in the long term, will release public money from administration which can...
be targeted more directly towards artists and creative practitioners. The Financial Memorandum sets out more detail on this.

**New separate bodies**

156. Another approach would be to set up more than one body to deliver the functions proposed by Ministers for Creative Scotland. One model for doing this was developed by the “Cultural Commission”, established during the 2003-07 Parliamentary session, the report of which was published in June 2005. This report recommended a new development agency, “Culture Scotland” to bring together all parts of the arts and cultural sector as a strategic planning “hub” for the sector. A separate body, “Culture Fund” was proposed with responsibility for a single development fund, and for fostering enterprise, within the sector.

157. This approach is considered feasible but undesirable. As stated earlier, the Government believes that a single body can fulfil each of the functions intended for Creative Scotland in a more cohesive way. Creative Scotland as a unified national body will be best placed to give an overview of arts, culture and creativity – both policy and practice – at the national level. This will not detract from the range of other public, private and voluntary bodies that will also have a role to play in developing future policy and strategy. But Ministers will expect Creative Scotland, as the principal adviser to Government, to garner and co-ordinate expertise across other organisations and sectors.

158. Also as stated, the option of retaining two separate bodies is not considered desirable by the Government given its wider policy intention to simplify, rather than increase, the number of bodies in the public sector. As with the status quo, two separate bodies will not allow the more streamlined, efficient business systems and processes possible in a single, unified public body.

**A non-statutory body**

159. The third alternative approach considered by the Government was to establish Creative Scotland through non-legislative means. New public bodies can be created, for example, by establishing a limited company wholly owned by Scottish Ministers; or as an executive agency which would remain part of the “parent” Directorate in the Scottish Government with no separate legal status. But the Government recognises the importance of Creative Scotland’s statutory NDPB status for the arts and culture sector itself. Consultation responses to the draft Culture Bill indicated support for a new body which was significant enough to be established by statute.

160. As part of the statutory basis for Creative Scotland, the Government has included a provision in this Bill at section 30(2) which gives it independence in artistic and creative judgement. The policy reasons for this are explained above. However, given this very significant independence of judgement which Creative Scotland will exercise, the Government also feels it is appropriate for it to be subject to direct Parliamentary scrutiny of its functions and powers. Only statutory status allows this fuller scrutiny process. For these reasons, the Government has rejected non-legislative options for establishing Creative Scotland.
Consultation

161. Some of the key issues raised in consultation, and the Government’s responses to them in Part 3 of this Bill, have been covered earlier. The key remaining issues raised by consultation respondents, and how the Government has responded to these, are outlined below.

Perceived over-emphasis on the economic benefits of arts and culture

162. Some respondents were concerned that the proposed functions for Creative Scotland (section 8(2)(c) of the draft Culture (Scotland) Bill), placed too much emphasis on realising the “economic benefits” of arts and culture, rather than wider benefits. The Government has considered this point carefully. Clearly the arts and culture have many economic benefits, and Creative Scotland’s potential to maximise these is enormous – for example, in developing international opportunities to showcase Scotland’s art and creative practice. But Creative Scotland should also be able to support arts and culture purely on the basis of judgements it may make about artistic or creative merit, without considering what economic benefits may result from supporting a particular organisation or project. The provisions in Part 3 of this Bill therefore give Creative Scotland scope to take a balanced approach overall to its functions so it can take into account these wider benefits. This is reflected in section 27(1)(d) of this Bill.

The relationship of Creative Scotland to other national arts and culture bodies

163. Some consultation responses objected to the description of Creative Scotland in the draft Culture Bill as the national body, feeling that it implied that Creative Scotland would be the only national body for arts and culture in Scotland. These respondents included bodies such as the Scottish Museums Council (now Museums and Galleries Scotland) and the Scottish Library and Information Council. They felt that there was a danger of duplication between their roles and the proposed role of Creative Scotland. It is not the Government’s intention that Creative Scotland should duplicate the role of these existing national advisory bodies, which have critical expertise in particular areas. Ministers will expect Creative Scotland to work in partnership with these and all other relevant bodies across the arts/culture sector, as well as more widely.

164. The Government will look to Creative Scotland to play a strategic, leadership role within the arts and cultural sector. But it will not have any statutory or other authority over other bodies. Some respondents suggested a “National Cultural Forum” or “Board” led by Ministers or by Creative Scotland, with members drawn from the wider landscape of relevant bodies. Proposals on how this would work varied, but the most popular suggested that a Forum could develop national cultural strategy, to be delivered by Forum members. The Government believes that Creative Scotland’s functions as proposed in this Bill will allow it to develop and lead a strategic approach to the delivery of arts and culture, garnering input from others in order to act as principal advisor to Ministers on arts and cultural policy. The Government therefore sees it as unnecessary to legislate for a “National Cultural Forum” or “Board”.

Definition of terms relating to the arts and culture in statute

165. A number of responses suggested that the Bill should recognise more strongly the important contribution of artists and arts/cultural practice to Scotland by setting out a definition of “culture” or of an “artist”. But any definition in statute is unlikely to provide a reference which all artists and creative practitioners will feel reflects them adequately, particularly given
the diverse and constantly evolving nature of arts and cultural practice. The Government believes that statutory definitions are in themselves contradictory to the principle of artistic and creative freedom enshrined in the Bill. The Government also considers that statutory definitions would make legislation cumbersome, without any clear benefit, and that the 6 core functions proposed for Creative Scotland themselves underline the central role it wants artists and creative practitioners of all kinds to have in Scotland.

**Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.**

**Equal opportunities**

166. The Government considers that the provision in Part 3 of this Bill do not have an adverse impact on the basis of age, gender, race, disability, marital or civil partnership status, religion or belief or sexual orientation. On the contrary, Part 3 seeks to create opportunities for Creative Scotland to widen access to all communities to a highly diverse range of arts and cultural activities. It will do this through its remit to promote understanding, appreciation and enjoyment of the arts and culture in all sectors and sections of society. The Government has recently completed an Equality Impact Assessment about the establishment of Creative Scotland. Creative Scotland will also work with voluntary, business and charities sectors as well as other interested bodies.

**Human rights**

167. Part 3 of the Bill does not give rise to any issues under the European Convention on Human Rights.

**Island communities**

168. Part 3 of the Bill tasks Creative Scotland with encouraging as many people as possible to participate in artistic and creative endeavours and in increasing the diversity of people accessing and actively participating in them. This will encompass the island communities.

**Local government**

169. Making Creative Scotland’s functions and remit wide-ranging, encourages the body to work in partnership with local government and other persons and groups as it thinks fit. Creative Scotland will work together with local and central government to discuss and agree implementation and resource issues relating to this policy area. Scottish Ministers will also look to Creative Scotland to undertake a strategic role across the public sector which will include working with local government and Community Planning sectors to assist delivery of the national performance framework. Part 3 of the Bill does not, however, impose any new burden or responsibility on local authorities.

**Sustainable development**

170. Creative Scotland will contribute positive social and economic impacts and will seek to minimise adverse environmental impacts.
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PARTS FOUR AND FIVE – SOCIAL CARE AND SOCIAL WORK AND HEALTHCARE SCRUTINY AND IMPROVEMENT

171. This section of the Policy Memorandum sets out the policy objectives for Parts 4 and 5 of the Bill which establish two new scrutiny bodies, one for social care and social work, Social Care and Social Work Improvement Scotland, and one for healthcare, Healthcare Improvement Scotland.

Background

172. The independent Crerar Review highlighted that the unique role of external scrutiny is to provide independent assurance that services are well-managed, safe and fit-for-purpose, and that public money is being used properly. It recommended the five guiding principles for external scrutiny should be public focus, independence, proportionality, transparency and accountability. The review also recommended that scrutiny should support self-assessment and that, in time as the level of scrutiny required reduced, there could be one scrutiny body for healthcare, social care, social work services and education. The Scottish Parliament endorsed these principles. The Scottish Government also endorses these principles but considers that it is too soon to consider moving to a single external scrutiny body for these services. Accordingly in November 2008 the Scottish Government brought forward proposals involving three scrutiny bodies: one for healthcare, one for social care and social work and one for education.

Overview of policy aims

173. The aim of parts 4 and 5 is to create Social Care and Social Work Improvement Scotland (SCSWIS) and Healthcare Improvement Scotland (HIS). SCSWIS will be a Non-Department Public Body (NDPB) and will be the national body for the improvement and scrutiny of local authority social work services and registered care services. In addition it is intended that there should be a transfer of some functions in relation to integrated children’s services from Her Majesty’s Inspectorate of Education (HMIE) to SCSWIS.

174. HIS will be a health body and will be the national body for the improvement and scrutiny of all registered independent healthcare services and the NHS in Scotland.

175. The Bill will repeal the provisions establishing the Commission for the Regulation of Care (Care Commission), and NHS Quality Improvement Scotland (NHS QIS). The Social Work Inspection Agency (SWIA) which is an agency of the Scottish Government will be dissolved as a consequence of the Bill.

176. The proposed structural changes will assist in achieving improvements to scrutiny, the creation of a cohesive system for improvement and scrutiny, simplification of the public sector and therefore improvement to public services.

177. The establishment of these new improvement and scrutiny bodies working alongside HMIE will provide a stronger emphasis on achieving better outcomes for children, adults who need support and adults who need protection (including older people). The new bodies will support service improvement by enabling integrated scrutiny along the whole of the relevant care
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pathways. This will facilitate greater consistency of scrutiny of social care and social work services, including criminal justice social work, child protection, the integrated children’s services and of healthcare services, across the public (including the NHS), private and voluntary sectors.

178. It will be necessary for the two new improvement and scrutiny bodies to work together and with other improvement and scrutiny bodies, including HMIE and Audit Scotland. Together they will:

- support improvement and scrutinise services where services act collectively to meet individuals’ needs;
- focus on better outcomes for individual service users, their carers and families;
- bring together existing skills and expertise from the current bodies into the new bodies to support continuous improvement; and
- help develop robust self-evaluation by service providers and commissioners.

179. In order to allow for a more proportionate and risk based approach to improvement and scrutiny the provisions in the Bill establishing the new bodies are designed to put in place an enabling framework within which improvement and scrutiny work can be developed and adapted rather than prescribing a specific set of processes which must be undertaken.

180. The provisions will provide better scope to achieve the principles behind:

- a cohesive scrutiny system
- scrutiny improvement
- public sector simplification
- promotion of improvement in services to the public.

181. The provisions in the Bill, therefore, retain the policy intention of the legislation which founded or frames the work of the existing improvement and scrutiny bodies, except where it is necessary to repeal, amend or supplement existing legislation to achieve the principles underlying the creation of the new bodies.

182. The provisions are designed to enable the new bodies to build on or improve the approaches, methodologies and practices of the existing bodies. They give Scottish Ministers powers to make regulations in relation to some provisions currently specified in primary legislation to provide flexibility for a more integrated, proportionate and risk-based approach to regulation and inspection. At the same time the provisions enable the robust scrutiny of services for vulnerable groups of individuals to be maintained.

183. The provisions in Parts 4 and 5 complement the new duties on the improvement and scrutiny bodies in Part 6 of the Bill, of “user focus”, “co-operation” and “joint inspection”.

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184. The provisions will simplify the public sector by reducing the number of improvement and scrutiny bodies in the education, health and social work and social care sectors from four to three while at the same time providing a cohesive improvement and scrutiny system across those sectors.

185. The Bill aims to ensure that SCSWIS and HIS while exercising their functions:

- promote high quality services
- promote the continuous improvement of services
- protect and enhance the safety and wellbeing of people who use the services scrutinised
- promote the independence of those persons where appropriate and
- ensure the scope and intensity of scrutiny is appropriate to the level of risk.

**Commonality between the two new bodies**

186. A number of provisions are common or apply to each of the new bodies. These are:

- involving service users
- working co-operatively
- improving services
- taking account of standards and outcomes
- joint inspections.

**User involvement**

187. The powers set out at Part 6 of the Bill place a duty on specified improvement and scrutiny bodies to ensure continuous improvement in "user focus" in the functions of external scrutiny and a power for the Scottish Ministers to issue guidance and directions to support user focus, to which the specified improvement and scrutiny bodies will be required to have regard.

188. This duty will also apply to SCSWIS and to HIS. The provisions build on existing systems in place in many public bodies. SWIA, the Care Commission, HMIE and NHS QIS currently have systems for involving service users and ensuring user focus in their work. It is expected that such systems will be carried forward into SCSWIS and HIS. Nevertheless the provisions in the Bill will provide a legislative framework for embedding user focus in their work.

189. In addition Parts 4 and 5 of the Bill provide that SCSWIS and HIS involve services users and carers in their governance arrangements.
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**Working co-operatively**

190. It is important that SCSWIS and HIS work effectively together, not just on planning improvement and scrutiny work but on all service improvement and inspection of services. They must be able to work jointly to inspect all the health and social services provided to any group or groups of service users.

191. Part 6 of the Bill contains a provision placing a duty on all scrutiny bodies which scrutinise local authorities, social services or health services to co-operate and to co-ordinate activity on the planning of inspections and shared risk assessments. This will apply to SCSWIS and to HIS.

**Services improvement**

192. The Bill enables SCSWIS and HIS to work jointly across their service sectors to identify and promote best practice, to promote continuous improvement in services, to support the redesign of services and to focus on outcomes for all individual service users.

**Standards and outcomes**

193. A key element in the two new bodies working together co-operatively will be the development of standards and outcomes for services users which are consistent and compatible across the healthcare, social care and social work sectors. The Bill provides that Scottish Ministers can ensure the development of appropriate standards and outcome measures and that the bodies have due regard to these in their work.

194. Each of the two bodies may also co-operate through sharing services, including accommodation, with the other body, and with other public bodies where this promotes economy, efficiencies or effectiveness.

**Joint inspections**

195. The Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 200613 (“the 2006 Act”) enables Ministers to request HMIE jointly with SWIA, the Care Commission and other improvement and scrutiny bodies (including NHS QIS) to undertake joint inspections of children’s services. That Act provides the necessary legal powers to enable these bodies to work together jointly, to access and share information for the purposes of joint inspections and to share information under prescribed conditions with other inspectorates where the information is necessary for the conduct of their service specific inspections. It enabled, for instance, the successful piloting of inspection of child protection services to be carried out by joint teams, led by HMIE. Joint working in other areas such as multi-agency inspection of older people’s services has not been able to achieve the same level of integration, efficiency and effectiveness because of the issue of lawful access to the appropriate information by the teams carrying out the inspections.

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196. The Bill repeals the 2006 Act. In its place Part 6 makes specific provision for “joint inspections” which enable Scottish Ministers to request two or more scrutiny bodies to work together and with other scrutiny bodies on joint inspections of services for children and of other relevant services and for the joint inspection teams to work in an integrated way, sharing information where it is necessary and appropriate for the conduct of such inspections.

SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND (SCSWIS)

197. The aim of SCSWIS will be to scrutinise the provision of social care and support services in Scotland and the local authorities’ delivery of social work functions. It will scrutinise the local authorities’ strategic social work functions through service delivery to the outcomes achieved for individuals.

198. Part 4 establishes SCSWIS by bringing together the existing functions of the Social Work Inspection Agency, the Care Commission in relation to regulation of registered care services (excluding independent healthcare services); and facilitates the transfer from HMIE of the function of inspection of services for the protection of children and the integration of children’s services.

199. Part 4 provides that the staff, resources and other assets associated with those functions should transfer from the Care Commission to SCSWIS, along with the functions and staff of SWIA. This part also provides for the repeal of the provisions establishing the Care Commission. SWIA, which is currently an agency of the Scottish Government, will be dissolved as a consequence of the Bill.

200. To deliver the aims outlined above SCSWIS will have core functions of:
   - regulation of care services, and
   - inspection of social work services.

201. The main policy intention of the Regulation of Care (Scotland) Act 2001 (the “2001” Act”) in respect of the regulation of care services is carried forward into this Bill. However, provisions for order-making powers will allow Scottish Ministers more scope to direct changes to the type of services inspected, the frequency of such inspection, the manner of regulation, and other matters, while maintaining appropriate scrutiny of services for vulnerable groups.

202. These changes are necessary to allow SCSWIS flexibility to plan a proportionate risk-based programme of inspection of social services with the potential to reduce the burden of scrutiny on those services and service providers who are assessed as providing consistently high quality services and therefore “low risk”.

203. SCSWIS, at the request of Scottish Ministers, will be able to carry out inspections of all social services (including social work services and related children’s services). They will be able to inspect across a range of services or by theme to look at, for example, services for older people and for adults and children with learning disabilities. SCSWIS will be able to undertake such inspections in a more integrated and cohesive manner, and involving where appropriate other
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scrutiny and regulatory bodies, such as HIS, HMIE, Audit Scotland and the Housing Regulator, helping to ensure the quality of service to groups of users across the whole of their care pathway.

HEALTHCARE IMPROVEMENT SCOTLAND

204. HIS’s aims will be improving the quality of healthcare through supporting NHS Boards and independent healthcare providers in improving patient care by bringing together the provisions of advice, and guidance, support for implementation and improvement and assessment, monitoring and reporting.

205. Part 5 establishes HIS, a health body, by taking on the current functions of NHS QIS along with the regulation of independent healthcare currently the responsibility of the Care Commission. Part 5 also provides for the dissolution of NHS QIS and that the staff, resources and assets associated with those functions transfer from NHS QIS to HIS. This part also provides for the transfer of the independent healthcare functions from the Care Commission and will facilitate the transfer of associated resources and staff.

206. To deliver the aims outlined above, HIS will have the following functions:
   - Driving and supporting implementation of improvements in quality of healthcare across all sectors
   - Assessing the performance of the NHS and independent healthcare providers, reporting and publishing findings
   - Providing independent healthcare providers with a licence to operate and taking enforcement action when necessary standards are not achieved
   - Inspecting the healthcare environment regime
   - Providing advice and guidance on effective clinical practice
   - Facilitating improvements in patient safety
   - Clinical governance
   - Supporting, ensuring, monitoring NHS Boards in their duty of encouraging public involvement and promoting equal opportunities.

207. HIS will be able to establish committees reporting to its board including the Scottish Health Council (SHC). (The current provisions establishing SHC as a committee of NHS QIS will fall as a result of this Bill.)

Regulation of independent healthcare services

208. The Scottish Government is reviewing, with the Care Commission and NHS Quality Improvement Scotland, the costs, benefits and timescale for commencing regulation of the remaining independent healthcare services currently defined in the 2001 Act.

209. The provisions for regulating this sector mirror those for the regulation of registered care services and will provide for the same flexibilities, for instance, to add to, amend or remove the
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types of services regulated and to revise the frequency of inspection through regulations. This will enable HIS to design a system of regulation for independent healthcare services which is both robust and proportionate while maintaining appropriate scrutiny of services for vulnerable groups.

**Issues affecting both SCSWIS and HIS**

*Alternative approaches*

**Maintaining the status quo?**

210. Ministers have indicated that they wish to simplify the scrutiny landscape and reduce the amount of external scrutiny on local authorities and service providers arising from scrutiny by a number of different bodies. Reducing the amount of scrutiny might be achieved to a degree by the existing bodies making changes in the pattern of scrutiny and by more joint working on inspections. However some legislative change would be needed to allow more proportionate risk based scrutiny of care services to be undertaken by the Care Commission. Effective and efficient joint working also would require legislative change to enable this to be fully achieved. The present powers which the bodies have in this respect have been proved, through joint work already undertaken, to place barriers in the way of fully integrated working. The status quo, without further legislative change, would not therefore achieve the Government’s aims.

**One new scrutiny body for healthcare, social care and social work services**

211. From the viewpoint of service users, healthcare, social care and social work should provide a seamless pathway of care when required. The Scottish Government’s policy is that healthcare and social care providers should work together to provide the care required in a seamless manner. However, it is recognised that at present there are considerable differences in the ethos and manner in which NHS QIS, SWIA and the Care Commission carry out improvement and scrutiny work. The Scottish Government’s view is that to bring all the functions of these bodies together at this time into one new improvement and scrutiny body is unlikely to result in a cohesive improvement and scrutiny body. The Government believes that the differences at present are so substantial that a single body would be too large to effectively manage this transition in a short space of time. Instead it is likely that such a body would continue to operate as two or more individual bodies in their separate sectors. It is the Government’s view that making a smaller change by bringing together the improvement and scrutiny bodies by sectors – healthcare and social care and social work - while requiring them to work together co-operatively will achieve the same aim of seamless scrutiny across sectors without overburdening a large body with complex organisational issues to resolve.

**Consultation**

**Within government**

212. Appendices I and III of the Crerar Review list the wide variety of Scottish Government and public sector organisations that contributed to the report through discussion events, meetings and the submission of evidence.
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213. Following the Government’s decision to create two new improvement and scrutiny bodies we have consulted on the detail of the specific proposals with the bodies themselves and with representatives of local authority and the NHS. The Project Implementation Team has established a stakeholder engagement programme which includes discussions with policy officials within the Scottish Government, with the Boards and Chief Executives of the current bodies, engagement with trade union representatives and with key external stakeholders. This engagement activity contributed substantially to the development of the draft legislative provisions.

214. The bodies directly affected by the creation of the two new improvement and scrutiny bodies recognise the benefits of being able to work much more closely in the inspection of services and taking a holistic approach to the inspection of services provides to an individual or to a group of service users and the opportunities the new bodies present for new ways of conducting scrutiny.

Public consultation

215. Evidence supplied to the Crerar Review included a report by the Scottish Consumer Council examining the consumer perspective of scrutiny. Seminars were also held with a cross section of care and social housing providers and independent providers of healthcare services.

216. There has been no formal public consultation carried out on these proposals.

217. Representative organisations are included in the engagement programme established by the government to discuss the proposals with external stakeholders of the existing bodies. This engagement activity contributed to the development of the draft legislative provisions.

Effects on equal opportunities

218. Health, social care and social work providers are affected by these new provisions, as well as local authorities, health boards, independent sector organisations and inspectorates and regulators. As well as having a direct impact on social work and social work and healthcare services, the policy affects a wide range of care services for adults and children including care homes, day centres, childminders, nurseries and private hospitals and clinics. The beneficiaries will be service users and public, through more consistent and better co-ordinated scrutiny of social care and social work services (including services for children) and of healthcare services. This will provide greater safety and assurance to users of these services, their carer and families and to the public. Service providers will benefit from an improved scrutiny regime resulting from the reduction in the number of scrutiny bodies and the closer collaboration on improvement and scrutiny work freeing up time for them to deliver improved outcomes for service users.

Effect on human rights

219. The Scottish Government considers that the provisions creating the two new scrutiny bodies are wholly consistent with the European Convention on Human rights.
This document relates to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

Effect on island communities

220. There is no specific effect on island communities arising out of the establishment creation of the two new scrutiny bodies.

Effect on local government, sustainable development etc.

221. Currently both SWIA and the Care Commission along with HMIE conduct inspections of local authority provided or commissioned social care and social work services (including services for children) and the management of those services. The reduction in the number of scrutiny bodies along with the new duty on scrutiny bodies to collaborate across their work programmes will ensure a more proportionate scrutiny regime for local authorities. These provisions have no effect on equal opportunities or sustainable development.

Mental Welfare Commission

222. The independent Crerar Review recognised that the Mental Welfare Commission for Scotland (MWCS) scrutinised healthcare and local authority care services and should therefore be included as part of the simplification programme. The Government’s proposals included the proposal to take the functions of the MWCS into HIS although it also recognised that there is a good fit between the MWCS and the functions of SCSWIS.

223. Following concerns expressed by the MWCS’ stakeholders at the potential for loss of the MWCS’s independence and its safeguarding role under mental health and incapacity legislation the government decided to remove the MWCS from the Bill. This was to allow time for further consultation on the proposals on the role of the MWCS in respect of the Simplification Programme and the Government intends now to bring forward proposals in relation to the MWCS at Stage 2.

PART SIX – SCRUTINY

224. Part 6 covers the following elements:

- Scrutiny: user focus
- Scrutiny: duty of co-operation
- Joint inspections
- Amendments to legislation on public finance and accountability

Scrutiny: user focus

Policy background

225. The duty of user focus will require the listed scrutiny bodies to make arrangements to secure and demonstrate continuous improvement in user focus in their work. The duty will ensure that users of public services are better involved in the design and delivery of the work and governance of bodies that scrutinise those services.
226. User focus is recognised as a means to help deliver better and more responsive services. The provisions in this Bill will ensure that the experience of service users is firmly rooted in the scrutiny process and is influential in shaping service development and in informing the improvement of service delivery. It also has the potential to increase the credibility, knowledge and understanding of the scrutiny body itself and can develop user capacity to engage with public services, further helping the service provider to improve.

227. The measures in the Bill will give scrutiny bodies more responsibility to act within an appropriate framework, and to embed a culture of user focus throughout their organisation. The provisions build on existing systems already in place in many public bodies and promote sound, consistent approaches across the public sector.

228. Guidance will clarify how the listed scrutiny bodies are to demonstrate continuous improvement in user focus. The duty and the associated guidance will support the excellent work already being undertaken by individual scrutiny bodies across Scotland.

Links to equality duties and Best Value

229. In providing the framework for the delivery of user focus within scrutiny bodies, the Bill ensures that equality issues are fully integrated, and are wholly complemented by both the duty and associated guidance. A key benefit of the user focus duty is the manner in which it is wholly consistent with other key components of service improvement, such as Best Value and the general Equality duties.

Proposed content of user focus guidance

230. The duty of user focus will be supported by guidance issued by Scottish Ministers. The guidance will recognise that the onus is upon the scrutiny body itself to demonstrate that it has met the duty. The guidance will allow local discretion and circumstances to be taken into account. If there is a conflict between the guidance issued by the Scottish Ministers and any other non-statutory guidance, then the guidance from Ministers will take precedence.

Safeguards

231. The duty will not remove any existing statutory duties or safeguards. While the duty is intended to improve user focus by listed scrutiny bodies, and also encourage the adoption of user focus by others, the Scottish Government does not intend that this should interfere, delay or weaken existing scrutiny regimes.

Alternative approaches

232. The main alternative approach considered was to maintain the current statutory position. There are already elements of excellent work on user focus carried out by various scrutiny bodies. However this is not consistent across all scrutiny bodies. In addition, user focus should

be the responsibility of the whole organisation if it is to be effectively embedded and continuously developed. Current arrangements lack the strength to compel commitment across an entire organisation, and limit the scope for a thorough and transparent account of scrutiny to all stakeholders, especially users.

Consultation

233. The independent Crerar Review included substantial research and consultation on the issue of user focus. There was substantial research (including research from the (then) Scottish Consumer Council (now Consumer Focus Scotland). There were also a number of regional workshops and events. These included:

- working groups with Care Commission, Scottish Housing Regulator, SWIA, HMIE;
- events with representative groups such as Community Care Providers Scotland (CCPS), Scottish Federation of Housing Associations (SFHA) and Association of Childminders.

234. The independent Crerar Review therefore concluded that this should be one of the five principles which should govern the application and use of external scrutiny. “Scrutiny priorities must reflect the public and user interest. Focusing external scrutiny outputs in a way that is more meaningful to the public should be an overriding principle of any change and will assist both in targeting external scrutiny and in informing stakeholders about performance.”15

235. As part of the Scottish Government response to the Independent Crerar Review, five action groups were set up by the Scottish Government. Of these one was the User Focus Action Group (UFAG). UFAG was given the task of considering improvements to the user focus of scrutiny bodies. Membership of the group was drawn from representatives from scrutiny bodies, consumer organisations and service providers. Following the Parliamentary debate, which accepted the Crerar principles, no further consultation has been undertaken.

Effects on equal opportunities

236. The introduction of better user focus in scrutiny will contribute to the overall scrutiny improvement programme for which an EQIA has been prepared. There will be no detrimental impact in terms of equal opportunities. The overall programme has identified key sectors where inequality will be tackled through the suggested improvements.

Effect on human rights

237. The Scottish Government considers that the provisions in this Bill related to user focus are wholly consistent with the European Convention on Human Rights. By ensuring user focus in the work of all scrutiny bodies, this provision in the Bill provides clear features by which user involvement can be proven.

15Page 4, The Crerar Review, ibid
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Effects on rural and island communities

238. The Government considers that the provisions in the Bill will be valuable in helping service providers respond to the varied needs and circumstances on island and remote rural communities. By ensuring a consistency in user focus amongst the scrutiny bodies, the duty and the guidance will provide valuable experience and expertise which other public service delivery agencies in Scotland can draw upon.

Effects on local government

239. The provisions on improving user focus in scrutiny will have no immediate impact on how local government delivers its services. However, as the voice of the service user is reflected in scrutiny practice, this may shape how some services are delivered in the longer term.

Effect on sustainable development

240. By encouraging the scrutiny bodies to focus on the user, rather than on their own functions and organisational arrangements, the provisions in this Bill encourages them to work in a more holistic manner. This clearly encourages sustainable development, and assists in building well-targeted and more responsive public services in general.

Scrutiny: duty of co-operation

Policy background

241. Improving scrutiny requires changes to the way in which scrutiny is carried out. As part of this, Scottish Ministers asked the Accounts Commission to work with those scrutiny bodies that scrutinise local authorities and local authority services to find ways of reducing the burdens on local authorities through the better planning and scheduling of service inspections. The Accounts Commission and the relevant scrutiny bodies are making good progress in developing a single corporate assessment and a shared risk assessment along with better scrutiny planning.

242. To highlight the importance placed on this work, and provide a sound basis for progressing the new arrangements, a duty of co-operation will be placed on scrutiny authorities that regulate, audit or inspect local authorities and local authority services. The duty will also extend to scrutiny authorities that regulate, audit or inspect social services and health services.

243. Scheduled scrutiny bodies will be under a duty to co-operate and co-ordinate activity with each other and, where appropriate, the Scottish Ministers. The purpose is to improve the way these bodies’ scrutiny functions are exercised in relation to local authorities, social services and health services, having regard to efficiency, effectiveness and economy. Improvements will be expected to both reduce the burden of scrutiny and also improve the effectiveness of scrutiny in relation to, for example, local authorities, by better planning and scheduling of inspections; delivering a single corporate assessment through Best Value 2; and shared risk assessment and scrutiny planning. Scheduled authorities will also be expected to share information to the extent necessary (and legally permissible) for the purposes of complying with this duty.

244. The duty has 2 main purposes:
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- to signal the Government’s commitment to the principle that scrutiny bodies should work together;
- to ensure that the cultural change that we want to see in scheduled scrutiny bodies is supported by a requirement to co-operate and co-ordinate activity with each other and, where appropriate, the Scottish Ministers in relation to the regulation, audit or inspection of local authorities, public services provided by them or on their behalf, social services and health services including, for example, risk assessments, planning and inspections.

245. In placing this duty on scheduled scrutiny authorities, the Scottish Government do not constrain any individual authority’s right or ability to undertake scrutiny activity if it identifies (or Ministers, by direction, consider) risk factors which it considers require immediate action.

246. In complying with the duty, scheduled authorities will be required to comply with any directions given by the Scottish Ministers and to have regard to any guidance provided by the Scottish Ministers. This will allow Ministers to, for example, require named authorities to carry out joint risk assessments and ensure that relevant authorities adopt the new collaborative working practices being developed by the Accounts Commission in relation to the scrutiny of local authorities and, more generally, to ensure consistency of approach between scrutiny authorities.

Alternative approaches

247. The main alternative approach considered was to rely on the willingness of scrutiny authorities to participate in the new working practices. However, relying on the voluntary approach does not recognise the criticality of reducing the burden on local authorities. A statutory duty will ensure that the current spirit of co-operation is embedded into the scrutiny bodies in their future work.

Consultation

248. There has been no separate consultation on these proposals. However, the independent Crerar Review included substantial research and consultation on scrutiny improvement, and how best to introduce a more proportionate approach to external scrutiny. The Crerar Review recommended that “Ministers should identify and appoint an appropriate scrutiny body to oversee the delivery of scrutiny programmes in local government, aiming to minimise compliance burdens….A natural candidate would be the Accounts Commission.”\(^\text{16}\)

249. Ministers accepted this recommendation and, in March 2008, the Cabinet Secretary for Finance and Sustainable Growth asked the Accounts Commission to find ways of reducing the burdens on local authorities through the better planning and scheduling of service inspections\(^\text{17}\). The Accounts Commission subsequently proposed a statutory duty of co-operation. This proposal was supported by the relevant scrutiny authorities and local government.

\(^{16}\) Paragraph 9.16, The Crerar Review, ibid
\(^{17}\) Paragraph 20,
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Effects on equal opportunities

250. The introduction of a duty to cooperate amongst scrutiny bodies will contribute to the overall scrutiny improvement programme for which an EQIA has been prepared. There will be no detrimental impact in terms of equal opportunities. The overall programme has identified key sectors where inequality will be tackled through the suggested improvements.

Effect on human rights

251. The Scottish Government considers that the provisions in this Bill are wholly consistent with the European Convention on Human Rights.

Effects on island communities

252. The Government considers that the provisions in the Bill will be valuable in helping scrutiny bodies respond to the varied needs and circumstances on island and remote rural communities in a more coordinated way. By ensuring cooperation scrutiny bodies will provide a valuable example for other public service delivery agencies working in remote and rural areas.

Effect on local government

253. Once the new procedures have been agreed, local government should begin to see scrutiny authorities take a more coordinated approach to the risk assessment of individual local authorities. Each local authority will be subject to a shared risk assessment that will inform the timing, scope and intensity of future inspection activity. Those local authorities which can demonstrate that they are performing well and have a commitment to improvement will find that their scrutiny burden is decreased.

Effects on sustainable development

254. The provisions in this Bill will encourage scrutiny bodies to cooperate more closely and work in a more holistic manner. This clearly encourages sustainable development, and assists in building well-targeted and more responsive public services in general.

Joint inspections

255. The Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006\(^{18}\) (“the 2006 Act”) enables Ministers to request HMIE jointly with SWIA, the Care Commission and other improvement and scrutiny bodies (including NHS QIS) to undertake joint inspections of children’s services. That Act provides the necessary legal powers to enable these bodies to work together jointly, to access and share information for the purposes of joint inspections and to share information under prescribed conditions with other inspectorates where the information is necessary for the conduct of their service specific inspections. It enabled, for instance, the successful piloting of inspection of child protection services to be carried out by joint teams, led by HMIE. Joint working in other areas such as multi-agency inspection of older people’s services has not been able to achieve the same level of integration,

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efficiency and effectiveness because of the issue of lawful access to the appropriate information by the teams carrying out the inspections.

256. The Bill repeals the 2006 Act. In its place Part 6 makes specific provision for “joint inspections” which enable Scottish Ministers to request two or more scrutiny bodies to work together and with other scrutiny bodies on joint inspections of services for children and of other relevant services and for the joint inspection teams to work in an integrated way, sharing information where it is necessary and appropriate for the conduct of such inspections.

Effects on equal opportunities, local government, sustainable development etc.

257. Currently HMIe and SWIA along with the Care Commission, NHS QIS and other scrutiny bodies where appropriate, can conduct joint inspections of child protection services. The new duty requiring the scrutiny bodies to collaborate and undertake joint inspections on a wider range of children’s and adult services will ensure an improved and more proportionate scrutiny regime for service providers including local authorities.

258. This will benefit users of these services, their carer and families and to the public through more consistent and better co-ordinated scrutiny of social care and social work services (including services for children) and of healthcare services. Service providers, including local authorities, will benefit from an improved scrutiny regime resulting from the reduction in the number of scrutiny bodies and the extension of inspections conducted jointly by two or more scrutiny bodies freeing up time for them to deliver improved outcomes for service users.

Effect on human rights

259. The Scottish Government considers that the powers for listed scrutiny bodies to conduct joint inspections are wholly consistent with the European Convention on Human rights.

Effect on island communities

260. There is no specific effect on island communities arising out of the powers for listed scrutiny bodies to conduct joint inspections.

Consultation

261. There has been no formal public consultation carried out on these proposals which aim to reproduce those in the Joint Inspection of Children’s Services (Scotland) Act 2006 in relation to children’s services and to extend the provisions to adult services.

262. Representative organisations are included in the engagement programme established by the Government to discuss the proposals with external stakeholders of the existing bodies.
This document relates to the Public Services Reform (Scotland) Bill (SP Bill 26) as introduced in the Scottish Parliament on 28 May 2009

Amendments to legislation on public finance and accountability

Policy background

263. The Bill provides for a number of amendments to the Public Finance and Accountability (Scotland) Act 2000 (the “2000 Act”), mainly implementing relevant recommendations in the report by the Scottish Commission for Public Audit (SCPA) on its Review of the Corporate Governance of Audit Scotland. The review was prompted in part by a request from the board of Audit Scotland to consider the implications of an examination of the governance arrangements of the National Audit Office. Information on the main changes is set out below.

Appointment of the Auditor General for Scotland for a single non-renewable term of eight years

264. Current legislation places no restriction on the period of appointment of the Auditor General and the requirement to vacate office on attaining the age of 65 was removed in 2007 in response to an EU Directive prohibiting age discrimination. A single fixed term appointment is now recognised in many countries as being appropriate for public auditors in that it emphasises their independence and avoids the retirement age issue. The Government considers that a fixed term of eight years, as recommended by the SCPA, strikes a reasonable balance between the need for the office-holder to develop and pursue a programme of work and the risk of public audit becoming too closely associated with the personality of one individual.

Appointment of non-executive members of Audit Scotland for a period of up to three years with the possibility of a single re-appointment

265. Under the current legislation the Board of Audit Scotland consists of the Auditor General for Scotland, the Chairman of the Accounts Commission and three other members appointed jointly by the Auditor General and the Chairman on terms and conditions determined by the Auditor General and the Chairman. Current good practice with regard to the corporate governance of public bodies however would require that there should be a majority of non-executives on the body’s board and that those non-executives should be clearly independent of the executive. The Government therefore agrees with the SCPA that the three “other” members must not be members of staff of Audit Scotland or members of the Accounts Commission. The Government also agrees with the SCPA that, in accordance with good practice, such appointments should be made for a limited period of time by someone other than the board of Audit Scotland. The period of up to three years with the possibility of one re-appointment is consistent with arrangements for equivalent public audit bodies. The Government considers that making the SCPA responsible for appointing the three “other” members and determining their non-statutory terms and conditions would further enhance corporate governance.

Appointment by the SCPA of a non-executive Chair of Audit Scotland

266. The SCPA noted that Audit Scotland can currently appoint any member of the board to preside at meetings and that, by convention, the Chairman of the Accounts Commission takes on this role. Good practice in corporate governance however would suggest that the role of Chair should be undertaken by a non-executive member. The Government considers that in this particular case corporate governance would be further enhanced if the SCPA (and Audit Scotland if SCPA’s appointed chair is not present) is required to appoint one of the three “other” members to preside at these meetings.
Defamation: absolute privilege for certain statutory reports by the Auditor General

267. For the purposes of the law of defamation, reports on accounts sent by the Auditor General to Scottish Ministers and the results of examinations into the economy, efficiency and effectiveness reported by the Auditor General to the Parliament are not currently absolutely privileged. It is important for the Auditor General to be in a position to report frankly and openly on matters within his/her remit and that he/she should be able to do so without fear of legal challenge on the grounds of defamation. This is an argument which has been accepted for other bodies which are in a similar position. Absolute privilege is a complete defence against proceedings for defamation. The Government considers that the Auditor General should have broadly similar protection to that afforded to the Comptroller and Auditor General, the Auditor General’s UK equivalent, without the need for separate Parliamentary authority.

Power for the Auditor General to publish reports into economy, efficiency and effectiveness

268. Current legislation provides that the results of examinations into the economy, efficiency and effectiveness with which bodies have used their resources may be reported by the Auditor General to the Parliament. The Government’s view is that the legislation should also expressly provide that the Auditor General may publish such reports.

Publication of accounts and reports sent to the Scottish Ministers by the Auditor General

269. Current legislation requires the Scottish Ministers to publish every account and related report sent to them by the Auditor General. The purpose of the amendment is to disapply this requirement if the accounts and reports are published by the audited body itself. In practice that would normally mean the Scottish Ministers publishing only the accounts and reports relating to the Scottish Government while those relating to other public bodies would be published by the bodies concerned.

Defamation: absolute privilege for proceedings and publications of the Scottish Commission for Public Audit

270. The SCPA (consisting of the Convener of the Parliament’s Public Audit Committee and four other MSPs) was established under the 2000 Act. It is not however a parliamentary committee. For the purposes of the law of defamation, statements made in proceedings of the SCPA and publications by the SCPA are not absolutely privileged. The Government agrees with the SCPA that its proceedings and publications should receive protection, similar to way in which the proceedings and publications of Scottish parliamentary committees are absolutely privileged. The purpose of the amendment is to make broadly equivalent legislative provision.

Alternative approaches

271. Maintaining the current position with regard to Audit Scotland and the Auditor General was not considered to be an option. Good practice in corporate governance has evolved in the period since the 2000 Act came into effect and the public and the Parliament would rightly expect arrangements relating to Audit Scotland and the Auditor General to reflect the highest standards.
Consultation

272. There has been no separate public consultation on these specific proposals but the Government has consulted Audit Scotland, the SPCB and the SCPA. Audit Scotland considered that the structure of the Board of Audit Scotland could be reconstituted without amending the primary legislation while both the SPCB and the SCPA expressed a preference for responsibilities with regard to the appointment and terms and conditions of the non-executives and chair to be given to the SPCB. There was otherwise general support for the proposed amendments.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

273. None of the amendments to the 2000 Act have any effect on equal opportunities etc.

PART SEVEN – MISCELLANEOUS AND GENERAL

274. Part 7 of the Bill covers the following elements:
   - Charity trustees’ indemnity insurance
   - Other miscellaneous and ancillary provisions

Charity trustees’ indemnity insurance

275. These provisions 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. Trustee Indemnity Insurance (TII) is a personal insurance that indemnifies charity trustees against the risk of personal liability arising from breach of their duties. Prior to the 2005 Charities Act charities were able to pay for TII for all their trustees from charity funds.

276. The 2005 Act restricts the payment of TII to fewer than half of the trustees. This restriction is a result of section 67 of the 2005 Act, which sets out the conditions in which charity trustees may receive remuneration, including that fewer than half the number of trustees may receive remuneration. The definition of remuneration captures the provision of trustees with indemnity insurance from charity funds, which means that charities may only legally provide up to half their trustees with indemnity insurance. The Scottish Government is clear that this was an unintended consequence of the legislation which has caused considerable concern amongst the charity sector who felt that this would make it harder to attract and retain charity trustees.

277. The Bill amends the Charities and Trustee Investment (Scotland) Act 2005 to allow the provision of TII to all charity trustees from charity funds. It does not alter the circumstances under which any other types of remuneration may be provided – any other type of remuneration to charity trustees can only be provided in accordance with the remuneration conditions, including that no more than half of the charity trustees may receive remuneration. This is achieved by adding TII to the list of circumstances in which charity trustees may receive remuneration irrespective of the remuneration conditions.
Alternative approaches

278. The only way to allow charities to provide all their trustees with TII from charity funds is to amend the Charities and Trustee Investment (Scotland) Act 2005. Therefore the only other option is to not amend the 2005 Act. This would mean that charities would continue to be unable to provide all their trustees with TII from charity funds, and any difficulties this has been causing charities in attracting and retaining charity trustees would continue. OSCR would have to enforce this aspect of the 2005 Act and use their resources to take action against charities breaching the provisions where necessary. Scottish charities would continue to be at a disadvantage to English and Welsh charities, who can provide all their trustees with TII from charity funds, and this difference could cause particular problems for charities that operate in Scotland and England and Wales.

Consultation

279. The Office of the Scottish Charity Regulator (OSCR) has been consulted on the inclusion of these provisions in the Public Services Reform (Scotland) Bill. No further consultation was considered necessary because these provisions do not reflect a change in policy – they merely correct an unintended consequence. The Scottish Government and OSCR have received correspondence on this issue from a range of people including individuals, charities, umbrella organisations and MSPs. All expressed concern at the restrictions the 2005 Act placed on the provision of TII from charity funds and urged the Scottish Government to address the issue.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

280. These provisions will allow charities to provide all their trustees with TII from charity funds if they so wish. It does not place any requirements or costs on them. This will have no specific impact on equal opportunities, island communities, local government or sustainable development, although they may benefit indirectly if charities supporting these issues find it easier to attract and retain trustees as a result of being able to provide all their trustees with TII.

Other miscellaneous and ancillary provisions

Amendment to the Local Government (Scotland) Act 1973

281. This provision makes a minor amendment to section 102(2A) of the Local Government (Scotland) Act 1973 to repeal an obsolete reference. Consultation was not considered necessary.
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PUBLIC SERVICES REFORM (SCOTLAND) BILL

POLICY MEMORANDUM