EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

AGENDA

21st Meeting, 2009 (Session 3)

Tuesday 1 September 2009

The Committee will meet at 2.00 pm in Committee Room 1.

1. Public Services Reform (Scotland) Bill The Committee will take evidence on the Bill at Stage 1 from

   Val Cox, Deputy Director, Community Care, Adam Rennie, Deputy Director, Community Care, Gillian Russell, Divisional Solicitor, Scottish Government Legal Directorate, Nicholas Duffy, Solicitor, Scottish Government Legal Directorate, and Fiona Tyrrell, Scrutiny Bodies Team, Legislative Change Leader, Scottish Government;

   and then from—

   Alexis Jay, Chief Executive, Social Work Inspection Agency;

   Jacquie Roberts, Chief Executive, Care Commission;

   Graham Donaldson, HM Senior Chief Inspector, HM Inspectorate of Education;

   Harry Stevenson, ADSW Executive Committee member, Association of Directors of Social Work;

   Geraldine Doherty, Depute and Registrar, Scottish Social Services Council;

   Tam Baillie, Scotland’s Commissioner for Children and Young People;

   Ruth Stark, Professional Officer, British Association of Social Workers;

   Annie Gunner Logan, Director, Community Care Providers Scotland;

   John Fair, Regional Officer, UNISON Scotland.
2. **Subordinate legislation:** The Committee will take evidence on the Looked After Children (Scotland) Regulations 2009 (SSI 2009/210) from—

   Adam Ingram MSP, Minister for Children and Early Years, and Penny Curtis, Head of Kinship, Fostering and Adoption Team, Scottish Government.

3. **Subordinate legislation:** The Committee will take evidence on the Children’s Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211) from—

   Adam Ingram MSP, Minister for Children and Early Years, and Denise Swanson, Head of Children's Hearings Team, Scottish Government.

4. **Subordinate legislation:** The Committee will consider the following negative instruments—

   the Looked After Children (Scotland) Regulations 2009 (SSI 2009/210);

   the Children’s Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211); and

   the Police Act 1997 (Criminal Records) (Scotland) Amendment (No. 2) Regulations 2009 (SSI 2009/216).
The papers for this meeting are as follows—

**Agenda item 1**

- Paper by the Clerk  
  ELLC/S3/09/21/1
- SPICe briefing  
  ELLC/S3/09/21/2
- SPICe briefing  
  ELLC/S3/09/21/3

**Agenda item 2**

- Paper by the Clerk  
  ELLC/S3/09/21/4
- SPICE briefing  
  ELLC/S3/09/21/5

**Agenda item 3**

- Paper by the Clerk  
  ELLC/S3/09/21/6

**Agenda item 4**

- Paper by the clerk  
  ELLC/S3/09/21/7
Introduction

1. This paper introduces members to the Committee’s first evidence session as part of its consideration of the Public Services Reform (Scotland) Bill. This first session will focus on the social work elements of the Bill.

Background

2. The Public Services Reform (Scotland) Bill was introduced in the Scottish Parliament on 28 May 2009 by John Swinney MSP, Cabinet Secretary for Finance and Sustainable Growth.

3. The Bill was referred to the Finance Committee for Stage 1 consideration by the Parliamentary Bureau at its meeting on 3 March 2009. The Parliamentary Bureau also referred the Bill to the Education, Lifelong Learning and Culture, Health and Sport and Rural Affairs and Environment Committees to act as secondary committees.

4. The Committee agreed its approach to its consideration of the Bill on 23 June 2009.

The Bill

5. The main purpose of the 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.”

6. The objectives of the Bill that are relevant to the Committee are:

   • the establishment of Creative Scotland as a new arts body, replacing the Scottish Arts Council and Scottish Screen;

   • the establishment of Social Care and Social Work Improvement Scotland (SCSWIS), which would replace the current Social Work Inspection Agency and Scottish Commission for the Regulation of Care, and the repeal of the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006; and

   • the dissolution of the Historic Environment Advisory Council for Scotland (HEACS) due to perceived duplication with Historic Scotland.
7. In addition, the Bill contains other parts relevant to the Committee:

- Scotland’s Commissioner for Children and Young People is listed in Schedule 3 to the Bill as one of the bodies to which the wide-ranging powers set out in Part 2 would apply. The effect of this would be, if the Bill were to be passed, that Ministers would be able to change the functions of the Commissioner.

- Parts 1 and 2 of the Bill sets out powers Ministers would require to carry out the Scottish Government’s planned changes to the General Teaching Council for Scotland (GTCS). However, the Bill does not contain specific provision regarding the GTCS.

8. SPICe has prepared a briefing on the Bill. This is attached in hard copy for members and can be viewed on the Parliament’s bill web pages.1

Written evidence

9. The Committee agreed to call for written evidence and to invite written evidence from a number of organisations. 71 responses were received and a list of respondents is attached at Annex A. These, and a summary of the written evidence produced by SPICe, are attached in hard copy for members and can also be viewed on the Committee’s, and Bill, web pages.2

Oral evidence

10. The Committee agreed the following timetable for oral evidence:

<table>
<thead>
<tr>
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<th>Subject</th>
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<tbody>
<tr>
<td>1 September</td>
<td>Social work aspects of the Bill</td>
</tr>
<tr>
<td></td>
<td>Panel 1 – Scottish Government officials;</td>
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<td>Panel 2 – Round-table discussion with representatives from</td>
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<td></td>
<td>relevant stakeholder organisations.</td>
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<tr>
<td>9 September</td>
<td>Creative Scotland aspects of the Bill</td>
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<td></td>
<td>Panel 1 – Scottish Government officials;</td>
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<td>Panel 2 – Round-table discussion with representatives from</td>
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<td></td>
<td>relevant stakeholder organisations.</td>
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<tr>
<td>16 September</td>
<td>Single panel – Adam Ingram MSP, Minister for Children and Early Years</td>
</tr>
<tr>
<td>23 September</td>
<td>Single panel – Michael Russell MSP, Minister for Culture, External</td>
</tr>
<tr>
<td></td>
<td>Affairs and the Constitution</td>
</tr>
</tbody>
</table>

Emma Berry
Assistant Clerk
Education, Lifelong Learning and Culture Committee

1 Public Services Reform (Scotland) Bill web pages – http://www.scottish.parliament.uk/s3/bills/26-PubSerRef/index.htm
Education, Lifelong Learning and Culture Committee

Public Services Reform (Scotland) Bill

List of evidence received

1. Aberdeen City Council [SW; CS; HEACS]
2. Aberdeenshire Council [CS; HEACS]
3. Aberlour [SW]
4. Architecture and Design Scotland [CS]
5. Artlink Edinburgh and the Lothians [CS]
6. Association of Directors of Social Work (ADSW) [SW]
7. Bonnar, Anne [CS]
8. Bord na Gaidhlig [CS]
9. British Medical Association (BMA) Scotland [SW]
10. Burns, Elizabeth [HEACS]
11. Care Commission [SW]
12. Carers Scotland [SW] *
13. Children 1st [SW]
14. Children in Scotland (CiS) [SW]
15. City of Edinburgh Council [SW; CS]
16. Community Care Providers Scotland (CCPS) [SW]
17. COSLA [SW; CS; HEACS]
18. Creative Scotland [CS]
19. Dundee City Council [SW; CS]
20. East Ayrshire Council [CS]
21. East Dunbartonshire Council [SW; CS; HEACS]
22. Equity [CS]
23. EventScotland [CS]
24. Falkirk Council [SW; CS; HEACS]
25. Federation of Scottish Theatre [CS]
26. Feisean nan Gaidheal [CS]
27. Her Majesty’s Inspectorate of Constabulary for Scotland [SW]
28. Her Majesty’s Inspectorate of Education (HMIE) [SW]
29. HI-Arts [CS]
30. Highlands and Islands Enterprise (HIE) [CS]
31. Historic Scotland [HEACS]
32. Institute of Local Television [CS]
33. Learning Disability Alliance Scotland [SW] *
34. MG Alba [CS]
35. Moray Council [SW; HEACS]
36. Musicians’ Union [CS]
37. National Museums Scotland (NMS) and National Galleries of Scotland (NGS)
38. National Trust for Scotland [CS; HEACS]
39. National Youth Orchestras of Scotland (NYOS) [CS]
40. Orkney Islands Council [CS]
41. Porter, Guyan [CS]
42. Publishing Scotland [CS]
43. Quarriers [SW]
44. Royal Scottish Academy of Music and Drama (RSAMD) [CS]
45. Royal Society of Edinburgh [CS]
46. Scotland’s Colleges [CS; SW]
47. Scotland’s Commissioner for Children and Young People [SCCYP]
48. Scottish Artists Union [CS]
49. Scottish Arts Council and Scottish Screen [CS]
50. Scottish Ballet [CS]
51. Scottish Borders Council [SW]
52. Scottish Enterprise [CS]
53. Scottish Government, Social Care Directorate [SW]
54. Scottish Library and Information Council (SLIC) and CILIP in Scotland (CILIPS) [CS]
55. Scottish Pre-School Play Association [SW]
56. Scottish Social Services Council [SW]
57. Shetland Child Protection Committee [SW] *
58. Skillset [CS]
59. Social Work Inspection Agency (SWIA) [SW]
60. South Ayrshire Council [SW; CS]
61. South Lanarkshire Council [SW]
62. Traditional Music and Song Association of Scotland [CS]
63. UK Film Council [CS]
64. UK Information Commissioner’s Office [SW] *
65. UNISON Scotland [SW; CS]
66. Universities Scotland [CS]
67. Variant Magazine [CS]
68. Visual Arts and Galleries Association (VAGA) [CS]
69. Voluntary Arts Scotland [CS]
70. West Dunbartonshire Community and Volunteering Services [SW] *
71. YouthLink Scotland [CS]

[CS] indicates the evidence relates to the Creative Scotland proposals
[SW] indicates the evidence relates to the social work proposals
[HEACS] indicates the evidence relates to the HEACS proposals
[SCCYP] indicates the evidence relates to the SCCYP proposals

* originally submitted to the Finance Committee
The Public Services Reform (Scotland) Bill was introduced in the Parliament on 28 May 2009 by John Swinney. It seeks to simplify the procedures for altering certain public bodies, creates some new ones and dissolves others. This briefing looks at the dissolution of the Care Commission and the Social Work Inspection Agency, ‘SWIA’ and the creation of Social Care and Social Work Improvement Scotland, ‘SCSWIS’. These changes are provided for in parts 4 and 5 of the Bill. This briefing focuses on the differences between the new provisions and the existing law. It also briefly considers the effect of Parts 2 and 6 of the Bill on existing bodies within the remit of the Education, Lifelong Learning and Culture Committee.

Other SPICe briefings will consider the other aspects of the Bill, including the background to public service reform, the creation of ‘Creative Scotland’ and of ‘Healthcare Improvement Scotland’.
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EXECUTIVE SUMMARY

Public Sector Reform (Scotland) Bill: Social Services

Camilla Kidner

The Bill establishes Social Care and Social Work Improvement Scotland (SCSWIS) to take on almost all functions of the Care Commission (established 2001) and the functions of the Social Work Inspection Agency (established in its current form in 2006). The structure, functions and powers of the new agency differ very little from an amalgamation of the functions of SWIA and the Care Commission.

Part 2 of the Bill enables Ministers to abolish, modify or create public sector bodies by secondary legislation. These provisions affect a number of education, cultural and social care agencies, changes to many of which would currently require primary legislation.

Part 6 of the Bill replicates the existing legislation from 2006 which provides for joint inspections with the key change that they are extended from children’s services to all social care services. Under current policy the lead responsibility for these inspections is with HMIe. However it is intended that lead responsibility will move to the new agency, SCSWIS. Part 6 also requires that HMIe and SCSWIS co-operate with each other, with other regulators and with Scottish Ministers in order to SCSWIS is also under a duty under Part 6 to ensure that the services they inspect focus on the users of those services.

The Financial Memorandum estimates that these changes will cost £5.56m and generate £6.2m savings over the period to 2013/14 – a net saving of £640,000 over four years.

There was no formal Government consultation on the Bill’s proposals. Submissions to the Education, Lifelong Learning and Culture Committee mostly welcomed the changes, although some were concerned about whether the changes would in fact achieve the aim of improved scrutiny and whether they would create financial savings. There was also some concern, particularly from the Children’s Commissioner about the proposal to use of regulations rather than primary legislation to change public sector bodies.
EXISTING AGENCIES

SCSWIS is created to replace the functions of SWIA and the Care Commission. However, the independent health care functions of the Care Commission are transferred to another new agency – the Healthcare Improvement Service (HIS). The Bill also provides that SCSWIS can undertake joint inspections of children’s and social services. It is the policy intention that it will take on the lead responsibility which is currently held by HMIe. The following outlines the functions of existing agencies which will transfer to SCWIS.

THE CARE COMMISSION

The Care Commission is an Non Departmental Public Body (NDPB) established in 2002 under the Regulation of Care (Scotland) Act 2001 (asp 8) (the 2001 Act) to register and inspect care services. It brought together a variety of different inspection arrangements into one system and extended inspection and registration requirements onto some services which had not previously been regulated. Services must register with the Care Commission before they can operate and conditions for registration are set by regulation. Services are inspected with the minimum frequency set out in the 2001 Act and subsequent regulations against National Care Standards (set by Ministers), Scottish Social Service Council codes of practice for social service employers and employees and relevant law and regulations. The Care Commission also deals with complaints against care services and its own organisation. It can take advantage of a number of enforcement options including removal of registration. Childminding and children’s day care together make up nearly 70% of care services. The services covered are listed below, together with the proportion each type makes up of all the services registered.

- Support service (service to vulnerable people by a local authority or health board) (9.4%)
- Care home service (11.1%)
- School care accommodation service (residential accommodation for school pupils) (0.5%)
- Independent health care service (eg independent hospitals and clinics) (0.2%)
- Nurse agency (0.4%)
- Child care agency (0.2%)
- Secure accommodation service (secure units in children’s residential care homes) (0.5%)
- Offender accommodation service (0.1%)
- Adoption service (0.3%)
- Fostering service (0.4%)
- Adult placement service (accommodation for vulnerable adults in the homes of families or individuals, together with personal care, personal support or counselling) (0.1%)
- Child minding (40.4%)
- Day care of children (28.7%)
- Housing support service (sheltered housing) (8.1%)

The Care Commission has 579 employees and inspects around 15,000 services (Care Commission website accessed 9 July 2009). Fifteen per cent of staff provide business and support services. There is a Chief Executive, five directors, 190 administrative and support staff and a Board of 12 members. The Convener of the Board is appointed by Scottish Ministers (Scottish Commission for the Regulation of Care, 2008).
Total expenditure in 2007/08 was £31m, income from fees was £13.5m and it received a Government grant of £17.7m. In 2007/08 the Care Commission inspected around 11,000 care services, issued 147 enforcement notices and investigated 1,418 formal complaints (Scottish Commission for the Regulation of Care, 2008).

As well as inspection reports of individual care services, the Care Commission also prepares reviews of the quality of care which have contributed to policy debate about how to improve care services. Recent reviews include palliative care and children’s residential services.

The Bill repeals the parts of the 2001 Act which relate to the Care Commission.

**SOCIAL WORK INSPECTION AGENCY**

**SWIA** is a Government executive agency established in 2005 which inspects local authority social work functions and advises Ministers about these services. Social work inspections were originally provided for by s.6 of the Social Work (Scotland) Act 1968 (c.49) (the 1968 Act) and then by Part 2 of the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006 (asp 3) (the 2006 Act). Ministers appoint Social Work Inspectors to inspect social work services and encourage improvement in their provision. Most of the arrangements for inspections are provided for in regulations and are conducted to a timetable and directions set by Ministers. SWIA does not investigate complaints from the public and has no legal enforcement powers. Where a care service is inspected by the Care Commission, and is relevant to the wider inspection of local authority social work services inspected by SWIA, then SWIA takes the Care Commission’s findings into account and does not duplicate work.

Social work functions are defined in section 7 of the 2006 Act. The following lists these provisions and describes the functions they cover. The key Acts are highlighted in bold.

<table>
<thead>
<tr>
<th>Provision</th>
<th>Description of functions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part IV of the Children and Young Persons (Scotland) Act 1937</td>
<td>Anonymity of children in court proceedings, power to send children to ‘approved schools’ i.e secure residential schools.</td>
</tr>
<tr>
<td>Sections 22(2) to (5A) and (8), 26(2) to (4), 43, 45, 47 and 48 of the National Assistance Act 1948</td>
<td>Payments for local authority provided accommodation to those who require it due to age, illness or disability. Removal to local authority accommodation of persons unable to care for themselves.</td>
</tr>
<tr>
<td>Disabled Person’s (Employment) Act 1958</td>
<td>Provision of sheltered employment</td>
</tr>
<tr>
<td>s.11 Matrimonial Proceedings (Children) Act 1958</td>
<td>Reports to a court in divorce proceedings relating to the future upbringing of children.</td>
</tr>
<tr>
<td><strong>Social Work (Scotland) Act 1968</strong></td>
<td>Requirement for Chief Social Worker, plans for Community Care services, complaints, research, training and grants to voluntary organisations, duties to assess need, to assess ability to provide care, direct payments, provision of services to incapable adults, residential accommodation with nursing, home help and laundry, supervision of ex-offenders, grants for community service facilities, grants for hostels for ex-offenders, burial and cremation, power to pay funeral expenses, provision of residential care, appointment of children’s panels and children’s panels advisory committees.</td>
</tr>
<tr>
<td>Social Work (Scotland) Act 1968 read with ss 1 and 2(1)</td>
<td>Ability of local authority to appoint someone as representative of a disabled person where they are unable to do so themselves.</td>
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<tr>
<td>Act</td>
<td>Description</td>
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<tr>
<td>Children Act 1975</td>
<td>Payments to children not living with their payments (e.g. kinship care), some provisions relating to secure accommodation.</td>
</tr>
<tr>
<td>Adoption (Scotland) Act 1978/Adoption and Children (Scotland) Act 2007</td>
<td>Provision for adoption services. NB: due to be replaced by Adoption and Children (Scotland) Act 2007.</td>
</tr>
<tr>
<td>Foster Children (Scotland) Act 1984</td>
<td>Local authority duties regarding private fostering.</td>
</tr>
<tr>
<td>ss 38(b) and 235 of the Housing (Scotland) Act 1987</td>
<td>Review of decision regarding local authority’s duty to a person who is homeless or threatened with homelessness.</td>
</tr>
<tr>
<td>Part II of the Children (Scotland) Act 1995</td>
<td>Provisions for looked after children, the Children’s Hearings system, some provision for adoption services, inquiries into matters affecting children, day-care for children.</td>
</tr>
<tr>
<td>s.51 Criminal Proceedings (Scotland) Act 1995</td>
<td>Child on remand to be accommodated by local authority – including in secure accommodation.</td>
</tr>
<tr>
<td>s.10 Adults with Incapacity (Scotland) Act 2000</td>
<td>To investigate situations where the personal welfare of an adult seems at risk. To give advice to and deal with complaints about welfare attorneys, guardians or persons authorised under intervention orders.</td>
</tr>
<tr>
<td>Community Care and Health (Scotland) Act 2002</td>
<td>Free personal care, direct payments and joint working between the NHS and local authorities.</td>
</tr>
<tr>
<td>Mental Health (Care and Treatment) (Scotland) Act 2003</td>
<td>Provision of mental health services by local authorities: charging for services, co-operation with other bodies, appointment of mental health officers, duty to inquire into individual cases. Detention, compulsory treatment orders. Criminal proceedings for mentally disordered persons. Patient representation. Establishment of Mental Welfare Commission and Mental Health Tribunal.</td>
</tr>
</tbody>
</table>

Net operating costs for SWIA in 2007/08 were £3.8m and it has around 70 staff (SWIA, 2008).

By the end of 2008/09, SWIA will have completed inspections of all local authorities. Inspections of all 14 criminal justice social work services were completed in 2007. Multi-agency inspections have been completed for: learning disability services, substance misuse services and older people’s services (SWIA 2008).

The Bill repeals the 2006 Act in its entirety.

HMIE

Her Majesty’s Inspectorate of Education was established as an Executive Agency in 2001 and prior to this was a department of the Scottish Executive/Scottish Office. School inspectors are appointed under the Education (Scotland) Act 1980, but the first inspectors were appointed in 1840. HMIE currently has a remit for schools, pre-school education, colleges, community education, Education Authorities and, since 2005, children’s services. The Services for Children Unit within HMIE has developed integrated inspections using quality indicators and leads multi-agency inspections with representatives from SWIA, the Care Commission, HMIC, and NHS-
QIS. Between 2005 and September 2009 they will have completed joint inspections of child protection services in all local authorities. Where there are areas of concern, follow through inspections are undertaken. Inspection reports are available at: http://www.hmie.gov.uk/SelectEstablishment.aspx?typeid=12

HMIe has been working towards a more proportionate approach to inspections in all its areas of work and has developed approaches based on self evaluation (HMIe, 2008).

In February 2009 Adam Ingram wrote to HMIe directing them to co-ordinate and lead a further 3 year cycle of joint inspection of child protection services. New guidance on child protection and a guide to self-evaluation are also being developed. In addition to working with other ‘joint inspection’ bodies, HMIe also plan inspection activity as part of the Accounts Commission/Audit Scotland co-ordinated programme of scrutiny (Scottish Government 2009a).

**ESTABLISHMENT OF SCSWIS**

SCSWIS is established by s.34 and Schedule 7 of the Bill. The Board, Chief Executive and staffing provisions are very similar to those in the Regulation of Care (Scotland) Act 2001 which established the Care Commission although there is greater Ministerial involvement with regard to consent for location of office and consent to acquire and dispose of land.

The new body will have different Ministerial involvement compared with SWIA as it is an NDPB rather than a Government agency. Like SWIA, it will conduct inspections at the request of Ministers but can also inspect of its own volition. However, its timetable for inspecting social work services must be approved by Ministers.

SCSWIS will bring together 594 Care Commission staff, 72 SWIA staff and up to 13 HMIe staff (Financial Memorandum para 527). The removal of the independent healthcare function from the Care Commission will remove only 32 services from its remit representing 0.2% of care services covered by that organisation. This suggests that SCSWIS will have around 679 staff.

When local authority and health board staff transferred to the Care Commission, the 2001 Act required a scheme to be established for this which had to be consulted on. The 2009 Bill provides for the transfer of SWIA and Care Commission staff in similar terms, but does not provide for a scheme or consultation. It is intended that this will be included as amendments at stage 2 (Scottish Government, personal communication, 17 August 2009). The financial memorandum notes that HMIe and SWIA staff will move from the Civil Service to the Local Government pension scheme (Financial Memorandum para 530). In their submission to the Education, Lifelong Learning and Culture Committee, SWIA noted that many staff may not wish to transfer out of the Civil Service (SWIA, 2009).

Unlike the Care Commission, SCSWIS is not required by its establishing legislation to have regard to equal opportunity requirements in the exercise of its functions. However, there are existing duties in reserved legislation for public authorities to have regard for race, gender and disability equality. In addition, the Equality Bill, currently before the Westminster Parliament includes a general duty at clause 145 which would require public authorities, in the exercise of their functions to have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations in relation to any of the protected characteristics covered by the Equality Bill.

The creation of SCSWIS was generally welcomed by those submitting evidence to the Education, Lifelong Learning and Culture Committee. For example, HMIC, SSSC, Dundee City Council, Scottish Borders Council, Children in Scotland and the Scottish Pre-school Play
Association all supported the simplification of scrutiny. Some organisations felt that further simplification could be achieved. In the long term, COSLA would like to see a single body on the lines recommended by Crerar. Similarly, Edinburgh Council and Quarriers referred to the original intention for a single scrutiny body covering the functions of the Care Commission, NHS-QIS, SWIA and the Mental Welfare Commission. In relation to the new body’s status as an NDPB, SWIA noted that its agency status has enabled it to work closely with Ministers on policy development (SWIA, 2009). Similarly, HMIe noted that agency status “gave a flexibility which allows a prompt response to matters of serious concern identified through inspection and to directions from Ministers” (HMIe, 2009).

INSPECTIONS

Chapter 2 of Part 4 provides for inspections by SCSWIS at sections 43 to 47 and Part 6 provides for joint inspections at sections 95 to 97. Currently, SWIA inspections are provided for by the 2006 Act and SSI 2006/531. Joint inspections of children’s services are provided for by the 2006 Act and SSI 2006/263 and Care Commission inspections are provided for by ss.25 to 27 of the 2001 Act.

INSPECTION OF SOCIAL SERVICES

SCSWIS will incorporate inspections conducted by SWIA of local authority social work functions and the regulation and inspection of care services by the Care Commission.

In addition to inspecting the general quality of services, SCSWIS will be able to carry out inspections in relation to services provided to a particular person (s.43(3)). For example, it could undertake investigations into particular instances of the failure of child protection services. While the Care Commission couldn’t do this, social work inspectors appointed by Ministers would have been able to in the context of the local authorities social work functions. Although these inspections could be initiated by SCSWIS, they must be carried out according to a timetable set by Ministers (s.43(4)). In addition, like SWIA, the SCSWIS will be required to carry out inspections at the request of Ministers.

The table below compares the powers of inspection proposed for SCWIS with those of the existing agencies. The powers are very similar, but most of the detail is to be specified in regulations. One difference is that whereas the frequency of care services inspections is currently set in primary legislation, the Bill provides that this may be provided for in regulations. However, the existing legislation can and has been altered by regulations. The minimum frequencies of inspection as set out in s.25 of the 2001 Act were altered by SSI 2009/131.
<table>
<thead>
<tr>
<th>Services inspected</th>
<th>SCSWIS</th>
<th>Care Commission</th>
<th>SWIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services inspected</td>
<td>Care services and social work services known jointly as ‘social services’</td>
<td>Care services</td>
<td>Social work services</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Frequency</th>
<th>SCSWIS</th>
<th>Care Commission</th>
<th>SWIA</th>
</tr>
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<tbody>
<tr>
<td>Frequency</td>
<td>As set in regulations and at Minister’s request</td>
<td>As specified at s.25, 2001 Act and in regulations.</td>
<td>At Minister’s request</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Type of inspection</th>
<th>SCSWIS</th>
<th>Care Commission</th>
<th>SWIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of inspection</td>
<td>Joint inspections, inspections of social services individual investigations, and other types as specified in regulations</td>
<td>Integrated (with HMie) of care services provided with education, joint inspections of children’s services, inspection of individual care services</td>
<td>Joint inspections of children’s services, individual investigations, social work function.</td>
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<thead>
<tr>
<th>Powers of Inspection</th>
<th>SCSWIS</th>
<th>Care Commission</th>
<th>SWIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power to require information</td>
<td>including health records.</td>
<td>only medical staff can inspect medical records. s.25(9)(b)(ii)</td>
<td>can require any documents, records or other items, but only medical staff can inspect medical records.</td>
</tr>
<tr>
<td>Powers to share/disclose information</td>
<td>Confidential information shared for that inspection, to safeguard a child/vulnerable person, to comply with a court order or for the prevention or detection of crime s.45(4). Powers to share health information set in regulations.s47(2)(e).</td>
<td>Not specified – except in joint inspections</td>
<td>Can share info with HMIC, HMIP, Care Commission, special Health Board, HMie, Audit Scotland, Mental Welfare Commission (SSI 2006/553)</td>
</tr>
<tr>
<td>Power to require explanation</td>
<td>As set in regulations</td>
<td>Not specified</td>
<td>Can require explanation of documents or records produced</td>
</tr>
<tr>
<td>Power to enter premises</td>
<td>Can enter at any time s.45(3).</td>
<td>Can enter at any time (s.25(2)) can take measurements, recordings and photographs s.27</td>
<td>Can enter at any reasonable time, can take measurements, photographs and make recordings.</td>
</tr>
<tr>
<td>SCSWIS</td>
<td>Care Commission</td>
<td>SWIA</td>
<td></td>
</tr>
<tr>
<td>--------</td>
<td>----------------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>power to interview and examine</td>
<td>As set in regulations</td>
<td>interview the manager, employees, service user. Medical examination if suspect that a person is not getting proper care.</td>
<td>Not specified</td>
</tr>
<tr>
<td>power to seize and remove documents</td>
<td>As set in regulations</td>
<td>Can seize or remove documents if believe that they are evidence of failure to comply with requirements s.27(1). Can inspect and take copies of documents other than medical records s.25(6)(b).</td>
<td>Can inspect, copy and remove documents or records except medical records.</td>
</tr>
<tr>
<td>enforcement</td>
<td>care services– issue improvement notices, conditional registration, can cancel registration. All services – reports with recommendations.</td>
<td>Care services - issue improvement notices, conditional registration, can cancel registration. Reports with recommendations.</td>
<td>reports with recommendations</td>
</tr>
<tr>
<td>disposal of personal records. [n.b also Data Protection principle - data not kept longer than necessary].</td>
<td>Not specified, but regulations under s.47 can make similar provision as made by regulations under the 2006 Act.</td>
<td>Not specified</td>
<td>Under regulations must return or destroy records after a year/when the report is published/submitted to Ministers.</td>
</tr>
<tr>
<td>offences</td>
<td>Offences not exceeding level 4 to be set in regulations.</td>
<td>Obstruction or failure to comply. Fine at level 4. 2001 Act s.25(13).</td>
<td>Obstruction or failure to comply. Fine up to level 4 on standard scale.</td>
</tr>
</tbody>
</table>

Inspections of social services include the types of inspection currently conducted by SWIA (in relation to social work functions) and the Care Commission (in relation to care services). In combining these functions, the Bill provides that when SCSWIS is conducting an inspection of the functions of a social service which is also a care service, it may also consider the need for an improvement notice or a condition notice, which are notices related to the standard for registration of care services (s.43(2)).

**JOINT INSPECTIONS**

The 2006 Act provided that, at the request of Ministers certain agencies would conduct a joint inspection of children's services. These inspections could consider services in general or the case of an individual child. The purpose of inspection was to review and evaluate the effectiveness of services and make recommendations to Ministers. The detail of inspection powers was set out in SSI 2006/263. The current provisions for joint inspections allow SWIA,
the Care Commission, HMIe, NHS-QIS, HMIP and HMIC to undertake them. In practice, HMIe
has been invited by Ministers to take lead responsibility for developing these inspections, but
this has not been specified in legislation.

The main differences between the existing and proposed joint inspections is that in addition to
children’s services, any social service can be subject to a joint inspection and it is Ministers’
policy that lead responsibility will be with SCSWIS rather than HMIe. The bodies involved have
been updated to reflect the creation of HIS and SCSWIS but there is also the addition of the
Mental Welfare Commission for Scotland. Ministers will also be able to direct any body with
inspection functions to participate in a joint inspection. Whereas the purpose of a joint children’s
services inspection was set out in the 2006 Act, the purpose of the new joint inspection is to be
specified by Ministers.

The 2006 Act and the Bill make similar use of regulations to specify the powers attached to
inspections.

The differences between the 2006 Act and the Bill are set out in the table below, which also
indicates whether provisions are made in regulations or on the face of the Act or Bill.

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006 and regulations</th>
<th>Public Services Reform (Scotland) Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children’s services, including individual child. Part or all of Scotland. (s.1)</td>
<td>All children’s services or other services as specified. These other services must be within the remit of the inspection agencies taking part in the joint inspection. Can include individual child/person. Part of all of Scotland. (s.95)</td>
<td></td>
</tr>
<tr>
<td>Instigation</td>
<td>Minister’s request (s.1(5))</td>
<td>Minister’s request (s.95) any of the bodies which can conduct joint inspections can request the Minister to request an inspection (s.95(7)).</td>
</tr>
<tr>
<td>Purpose</td>
<td>review and evaluate the effectiveness of services (s.1)</td>
<td>As specified by Ministers (s.95) without the need for subordinate legislation</td>
</tr>
<tr>
<td>Outcome</td>
<td>Recommendations to Ministers (s.1(3))</td>
<td>Recommendations to Ministers. (s.95(8)). Reports to be specified in regulations.</td>
</tr>
<tr>
<td>Conduct</td>
<td>according to Minister’s directions and any Code of Practice issued by Ministers (s. 1(5), (6))</td>
<td>According to Minister’s directions, timetable (s.95(5)) and any code of practice issued by Ministers (s.95(8))</td>
</tr>
<tr>
<td>Power of Entry</td>
<td>At any reasonable time and can take measurements and photographs (regs 5, 6)</td>
<td>Not specified</td>
</tr>
<tr>
<td>Powers to require information</td>
<td>Can require document (including personal records) to be produced, can inspect, copy and remove them, and can require an explanation of</td>
<td>To be specified in regulations</td>
</tr>
<tr>
<td>Interviews and examinations</td>
<td>Not specified</td>
<td>To be specified in regulations</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>--------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Offences</td>
<td>Obstruction or failure to comply (reg 11) Offence at level 4 (s.3).</td>
<td>Up to level 4, to be specified in regulations.</td>
</tr>
<tr>
<td>Bodies conducting</td>
<td>HMLe, SWIA, Care Commission, HMIP, HMIC, any special health board (e.g. NHS-QIS), or others as set in regulations. (s.1(7))</td>
<td>HMLe, SCSWIS, HIS, HMIP, HMIC, Mental Welfare Commission for Scotland, any special health board (s.95(6)) or others as set in regulations (s.95(9)). Also, any body with inspection functions to the extent directed by Ministers (s.96). Persons authorised to carry out inspections to be set in regulations (s.97).</td>
</tr>
<tr>
<td>Confidentiality and sharing information</td>
<td>Confidential info only used for that inspection, comply with court order, to protect welfare of child or adult, for the prevention or detection of crime. (s3(2)) Information may be shared between the bodies listed at s.1(7), 2006 Act. Confidential health information may only be disclosed to someone who is entitled to see that information as part of their job. (reg 9) Further provision can be made in Code of Practice. (s.1(6))</td>
<td>To be specified in regulations and Code of Practice.</td>
</tr>
</tbody>
</table>

In relation to powers of inspection, the BMA and the Information Commissioner have reiterated concerns about whether the correct balance has been found between the need to share information in inspections and the protection of patient confidentiality. These concerns were also raised when very similar powers were provided for in the 2006 legislation which first established joint inspections (BMA, 2009).

**DEFINITIONS AND FUNCTIONS**

The functions of SCSWIS are almost identical to those of the Care Commission. Much of the Bill simply lifts the provisions from the 2001 Act. The main differences are the removal of independent health care from the remit of the new body, the incorporation of SWIA and the policy intention that the new body lead on joint inspections. While, as noted above the new organisation was generally welcomed, some organisations such as Children 1st, Children in Scotland and Community Care Providers Scotland are concerned that the Bill would only bring existing functions together rather than fully integrating them. They gave the examples that powers relating to complaints and enforcement relate only to care services and not to other social services functions to be inspected by SCSWIS.
DEFINITION OF CARE SERVICES AND SOCIAL WORK SERVICES

The remit for and definition of Care Services to be regulated by SCSWIS is the same as the 2001 Act, with the removal of independent health care. The definition of social work services is the same as in the 2006 Act with updating to reflect the recent changes in adoption and fostering law. The overarching definition of Care Services and Social Work Services is ‘Social Services’. (See above at p4 for the definition of Care Services and p5 for Social Work Services). In the Bill, the general principles (s.35), provision of information to the public about the availability and quality of services (s.41), inspection (s.43-47) and inquiries (s.82) relate to social services (i.e. care services and social work services).

Social work services are treated separately with regard to defining standards and outcomes (s.40). Ministers will be able to publish standards and outcomes for care services and for social work services or delegate that function to SCSWIS. The current policy is that the National Care Standards will continue to apply to care services.

Care services are treated separately with regard to: defining standards and outcomes (s.40), registration, enforcement and complaints (ss 48 – 67), registration of local authority adoption and fostering services, (s.68 – 75) and reports to Ministers regarding local authority adoption and fostering services (s.76-77).

Like the 2006 Act, the Bill defines a ‘social work service’ as a service provided in pursuit of a social work function. As a result there is a high degree of overlap between regulated care services and services provided in pursuit of local authority social work functions. This overlap is a key reason for bringing the functions under a single body.

Both the Bill and 2006 Act allow the alteration of the definition of social work services by regulation. However, the Bill gives wider powers to alter the definition of care service than were afforded by the 2001 Act. The 2001 Act allowed for the definition of care services to be widened by regulation, but not narrowed. That said, it was possible to exclude a specific service provider from the definition by regulation. The Bill proposes that regulation can add or remove services from the definition.

STANDARDS AND OUTCOMES

The 2001 Act provided that Ministers would produce National Care Standards, against which different types of Care Services were to be inspected. There are 23 sets of care standards covering all care services. These were developed through consultation in the period following the establishment of the Care Commission. The Bill provides for standards and outcomes which can be produced separately in relation to care services and social work services. Ministers’ intention that the National Care Standards will remain published under the provision in s.40(1)(a) for ‘care standards and outcomes’ for care services (Scottish Government personal communication, 17 August 2009). The Bill provides that Ministers ‘may’ rather than ‘shall’ prepare these standards, and enables them to delegate this function to SCSWIS.

OTHER FUNCTIONS

The other functions of SCSWIS are very similar to those of the Care Commission. Provisions for making complaints about care services, offences and registration of local authority fostering and adoption agencies are the same (with some updating to reflect recent changes to adoption and fostering law). The provisions for the registration of care services are almost exactly the same except that there is no longer a provision for an urgent procedure to cancel registration by application to the sheriff (s.18, 2001 Act). However, it is intended to provide for this by amendment at stage 2 (Scottish Government personal communication, 17 August 2009).
EFFICIENCIES AND COST SAVINGS
The combined staff of the organisations whose functions will be taken over by SCSWIS is around 679. The Scottish Government grants to the Care Commission and SWIA are around £18m and £4m respectively, suggesting that, not taking account of any potential savings, the new organisation would have a grant of around £22m. The Financial Memorandum notes that: “until fully worked up business models are available we are not able to be precise about the level of efficiencies which will be achievable from creating the two new bodies.” (i.e HIS and SCSWIS) (Financial Memorandum para 509). However, it speculates that there will be a board of between 12 and 14 members, a chief executive and 5 or 6 senior managers (Financial Memorandum para 523).

It suggests that savings will be generated by:

- reduction in the number of senior management posts
- sharing corporate services such as IT support, procurement, reception, security and facilities management (this may result in fewer posts)
- efficiency savings of around 5.5% of gross budget from scale changes, sharing services, simplification, integration and closer collaboration

More specifically, Table 15 of the Financial Memorandum estimates that these changes will cost £5.56m and generate £6.2m savings over the period to 2013/14 – a net saving of £640,000 over four years

In the calculation of savings, the Financial Memorandum mentions fewer senior management posts, saving c.£400,000 per annum. However, although one Chief Executive post would be saved (£100,000 per annum) this is offset by the fact that the post of Chief Social Worker will move to the Scottish Government (£100,000 per annum). There will be a saving to the budget of the new organisation, but not to the public sector as a whole. In addition the Scottish Government will also retain a ‘small support team within Government at an estimated cost of between £48,000 and £70,000.

It also suggests that savings will be made through corporate and management efficiencies. (Financial Memorandum para 545). However, the staff moving in from SWIA and HMie are already part of large organisations.

Finally, it suggests that 5.5% efficiency savings can be achieved through integration and closer collaboration. Some examples of existing provision for collaboration are that: HMie and Care Commission already undertake ‘integrated’ inspections where services provide both care and education, SWIA attempt to align their work with that of the Care Commission and ‘Joint Inspections’ already requires agencies to work closely together.

ORDER MAKING POWERS
Section 10 enables Ministers to bring forward regulations which they consider would improve the exercise of public functions having regard to efficiency, effectiveness and economy. These regulations may supplement, transfer, change or abolish the public functions of, and or create, change or abolish certain bodies listed in schedule 3. Schedule 3 is based on a list of 199 (now 162) bodies published by Ministers in January 2008. Ministers can add to or remove from the list any body which has public functions. These powers can only be exercised if: it is proportionate to the aim of delivering more efficient, effective and economical public functions, does not remove a necessary protection and the functions given to a body are broadly
consistent with its existing functions. Any such change must be subject to prior consultation with views expressed reported to Parliament.

Bodies with public functions relevant to the remit of the Parliament’s Education, Lifelong Learning and Culture Committee are listed below and those which would currently require primary legislation to abolish are marked in italics. In addition, reference to the Scottish Administration in Schedule 3 would cover the executive agencies such as HMIe, National Archives of Scotland and the Student’s Award Agency for Scotland.

**Education**
- Additional Support Needs Tribunals for Scotland
- General Teaching Council for Scotland
- Learning and Teaching Scotland Ltd
- Scottish Agricultural College
- Scottish Futures Trust Ltd
- Scottish Qualifications Authority
- Scottish Further and Higher Education Council

**Social services**
- Children’s Panels
- Children’s Panel Advisory Committees
- Commissioner for Children and Young People
- Scottish Children’s Reporter Administration
- Scottish Social Services Council
- Skills Development Scotland Co. Ltd
- Social Care and Social Work Improvement Scotland

**Culture**
- Architecture and Design Scotland Ltd
- Bord na Gaidhlig
- Creative Scotland
- National Galleries of Scotland
- National Library of Scotland
- National Museums of Scotland
- Visit Scotland

Section 13 enables Ministers to bring forward regulations to remove or reduce burdens on business, the public and third sectors resulting from any legislation. This includes; financial costs, administrative inconvenience, obstacles to efficiency or sanctions which affect carrying out lawful activity. This can include abolishing or changing the functions of a body. The power replicates, for devolved areas, powers within the Legislative and Regulatory and Reform Act 2006 which already apply to reserved matters in Scotland.

Current proposals which could be affected by these provisions include proposals for changes to the General Teaching Council for Scotland and the Children’s Hearings System. The Parliament has also recently considered the functions of the Children’s Commissioner.

**Children’s Hearings**

A draft bill was published in June 2009 which, among other things, proposes a new Tribunal to support Children’s Hearings including recruiting and training panel members. The Bill also takes the opportunity to consolidate and update the existing law and a Bill is expected to be introduced in the autumn (Scottish Government 2009b).
General Teaching Council Scotland (GTCS)

The GTCS has recently consulted on changes to its functions (Scottish Government, 2009c). This proposes establishing the GTCS as a self-regulating, profession-led body, along the lines of the General Medical Council.

Children’s Commissioner

The [Review of SPCB supported bodies](#) considered whether the functions of the Scottish Human Rights Commission and the Children’s Commissioner could be undertaken by a single body, but decided against this (Scottish Parliament, 2009). In evidence to the Finance Committee, the Children’s Commissioner objected strongly to the proposal to use regulations rather than primary legislation to change public sector bodies. He also noted that the proposals were generally about organisations which carried out government functions whereas parliamentary commissioners such as the Children’s Commissioner were accountable to Parliament not Ministers (Children’s Commissioner, 2009).

Currently, these changes require primary legislation. Were the Public Sector Reform (Scotland) Bill to be passed, similar changes in the future could be made through regulation.

USER FOCUS AND CO-ORDINATION OF SCRUTINY BODIES

Part 6 of the Bill provides at sections 92 and 93 for listed bodies to work towards the improvement of the ‘user focus’ in services they scrutinise. It also provides at section 94 for listed bodies to co-operate and co-ordinate their activities with each other and Scottish Ministers in order to improve scrutiny of local authorities, social services and health services. In doing so, bodies must comply with guidance and directions issued by Scottish Ministers.

The bodies covered by Part 6 which fall within the remit of the Education, Lifelong Learning and Culture Committee are HMIe and SCSWIS. Ministers can add to or remove a body from the list by regulations. The Care Commission and HMIe already have a duty to collaborate through integrated inspections of care services which also provide education.

More detail on the provisions in Parts 2 and 6 of the Bill will be provided in other SPICe Briefings on the Bill.
SOURCES


Children 1st (2009). Evidence to the Education, Lifelong Learning and Culture Committee on the Public Services Reform (Scotland) Bill. Edinburgh: Children 1st

Children’s Commissioner. (2009) Evidence to the Finance Committee on the Public Services Reform (Scotland) Bill. Edinburgh: Children’s Commissioner

Children in Scotland. (2009) Evidence to the Education, Lifelong Learning and Culture Committee on the Public Services Reform (Scotland) Bill. Edinburgh: Children in Scotland


Community Care Providers Scotland. (2009) Evidence to the Education, Lifelong Learning and Culture Committee on the Public Services Reform (Scotland) Bill. Edinburgh: Community Care Providers Scotland

Convention of Scottish Local Authorities. (2009) Evidence to the Education, Lifelong Learning and Culture Committee on the Public Services Reform (Scotland) Bill. Edinburgh: COSLA


Her Majesty’s Inspectorate of Education. (2009) Evidence to the Education, Lifelong Learning and Culture Committee on the Public Services Reform (Scotland) Bill. Edinburgh: HMIE


Quarriers. (2009) Evidence to the Education, Lifelong Learning and Culture Committee on the Public Services Reform (Scotland) Bill. Edinburgh: Quarriers

Scottish Commission for the Regulation of Care [Online]. Available at: http://www.carecommission.com/


RELATED BRIEFINGS

SB 05-72 Joint Inspection of Children’s Social Work and Social Work Services (Scotland) Bill

RP 01-05 Regulation of Care (Scotland) Bill

SB 08-52 Social Work Services in Scotland


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Introduction

This paper summarises the submissions to the Committee on Part 4 of the Public Services Reform (Scotland) Bill. It also includes comments on Parts 2 and 6 where relevant. That is, it covers the creation of Social Care and Social Work Improvement Scotland (SCSWIS), provision for joint inspections and order making powers for changing public bodies.

Evidence received

Twenty six submissions were made including nine local authorities, five children’s voluntary organisations, five NDPBs (including the Care Commission), SWIA and HMIE and others including UNISON, COSLA and the BMA.

General principles

Submissions generally welcomed the general principles of the Bill. Most considered that it would result in a more streamlined and cohesive approach which reduced duplication and would create a focus on self evaluation. Some organisations provided more qualified support. For example, Children 1st was not convinced that simplification and improvement were complimentary. The Care Commission welcomed the proposals as long as they did indeed deliver enhanced services and increased value for money. It queried how the Scottish Government would evaluate the changes. ADSW stated that: “It is difficult to see how the proposals in the Bill improve the current arrangements; they certainly do not seem more modern or efficient.”

Whereas local authorities referred to the current burden of regulation, the Care Commission emphasised the need not to ‘overplay’ this, given the necessity for robust scrutiny. Community Care Providers Scotland highlighted the burden placed on voluntary and independent service providers by local authorities through the commissioning process.

Part 4: SCSWIS

Status of new body

SWIA suggested that because the proposals will result in some scrutiny bodies having a different status from others, this would not create the ‘level playing field’ that Crerar envisaged (e.g. HMIE is an agency whereas SCSWIS would be an NDPB). SWIA also noted that its agency status has enabled it to work closely with ministers on policy development and it fears that this may be lost because the new body will be an NDPB. HMIE made a similar point by noting that its agency status “gave a flexibility which allows a
prompt response to matters of serious concern identified through inspection and to directions from ministers”.

**Level of integration**

The creation of SCSWIS was generally welcomed although there was some concern about whether a proper integration of functions would be achieved rather than just bringing existing functions into one organisation (Children 1st, Children in Scotland, Community Care Providers Scotland). Children 1st and Community Care Providers Scotland gave the examples that powers relating to complaints and enforcement only applied to care services and not to the other services covered by SCSWIS inspections. Another concern about integration was whether SCSWIS would have access to health expertise in the same way as the Care Commission currently has. In addition SWIA emphasised the “significant practical challenges of implementation in a short timescale.”

**Further simplification**

Some respondents felt that further simplification could be achieved. In the long term, COSLA would like to see a single body on the lines recommended by Crerar. Similarly, the City of Edinburgh Council and Quarriers referred to the original intention for a single scrutiny body covering the functions of the Care Commission, NHS-QIS, SWIA and the Mental Welfare Commission. South Lanarkshire Council mentioned that early years services would still be subject to inspection from HMIE and SCSWIS and Quarriers stated that they would be subject to inspection from both HIS and SCSWIS.

**Links with SSSC**

There was concern from the SSSC and the Care Commission about the relationship between SCSWIS and the SSSC. The SSSC described its relationship with the Care Commission as: “central to the work of both organisations.” UNISON, the Care Commission and the SSSC supported creating a duty on the SCSWIS to enforce the **SSSC Code of Practice for Employers**. The Care Commission was unclear whether SCSWIS inspectors would have to register with the SSSC and SSSC was of the opinion that they should have to register.

The SSSC raised a number of other issues about how it would work with the new body, including suggesting:

- A duty on SCSWIS to share workforce data with SSSC
- A power for SCSWIS to require social service managers to meet SSSC qualification criteria
- A requirement that SCSWIS board member sit on the SSSC board (also supported by Care Commission).

SSSC and the Care Commission also noted that they currently share services and co-locate, and wonder whether these arrangements would continue.

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1 SCSWIS would have the powers of the Care Commission with regard to care services, the powers of SWIA with regard to the inspection of social work functions and very similar powers outlined for existing bodies for joint inspections.

2 The Bill currently requires at s.40(4) that any Codes of Practice published by the SSSC under s.53 of the 2001 Act are taken into account by SCSWIS in their registration and inspection work.
Transfer of staff

UNISON and SWIA raised issues about the transfer of staff. UNISON pointed out the pay differences between the different agencies and SWIA stated that many of its staff would not want to leave the Civil Service and so would apply for other Scottish Government vacancies rather than transfer to the new organisation. SWIA was "particularly concerned that the business continuity of SWIA is not jeopardised" during the transition period.

Other

Aberlour suggested a number of specific amendments including additional general duties and principles for SCSWIS and including terms such as ‘kinship care’ and ‘holiday playscheme’ in the definitions of care services and social work services.

SWIA and Community Care Providers suggested that the name of SCSWIS should be changed.

Joint inspections

The provisions for joint inspections were generally welcomed with the exception of some concerns about information sharing and transition arrangements.

Transitions

HMIE was concerned that the transitional provisions would need to be robust enough to avoid disruption or dilution of ongoing work on child protection. Similarly, Children in Scotland hoped that existing expertise would not be compromised by the change. SWIA’s concerns about staff not wishing to transfer are relevant here.

Consent and Personal Data

The BMA stated that the repeal of the 2006 legislation which established joint inspections provides an opportunity to revisit the issue of patient consent for the disclosure of medical information. It considered that general powers allowing patient information to be disclosed without consent in joint inspections is too much of an encroachment into personal privacy. It proposed the use of anonymised information or else seeking patient consent. In evidence to the Finance Committee, the Scottish Information Commissioner had similar concerns.  

Part 2: Order making powers

In evidence to the Finance Committee, the Children’s Commissioner was strongly opposed to the powers in section 10 to abolish public organisations by regulation. In particular, he argued that the inclusion of SPCB sponsored bodies cut across their establishment as independent of ministers. Unlike NDPBs, they are not part of government. Aberlour Childcare Trust proposed that any order to change a public body should be debated by the full parliament. Children 1st was of the opinion that these order making powers were not consistent with improvement of public services because they implied less consultation than would be required for primary legislation.

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3 These issues were discussed during the passage of the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006.
Part 6: user focus and duty to co-operate

A number of respondents considered that these provisions build on existing good practice and the proposals were generally welcomed. HMIC was a little concerned about who might constitute its ‘users’. SWIA noted that effective user involvement requires resources. Suggestions for additions to Schedule 14 were:

- HMIP (proposed by SWIA to reflect criminal justice social work)
- SSSC (proposed by Aberlour)
- Local authorities (proposed by Children 1st, Community Care Providers Scotland)

Consultation

There was little comment on consultation. The Care Commission and HMIC would have liked more consultation. SWIA recognised that there was limited time for consultation but had been consulted on the financial memorandum and on Crerar. HMIE and UNISON were both involved in discussions.

Financial Memorandum

The Care Commission made quite detailed comments on the Financial Memorandum to the Finance Committee. It noted that it would have benefited from more detailed discussion with the project team. The Care Commission’s main concerns related to the assessment of human resources and shared services costs. It also considered that there may not be enough contingency for the development of a new organisation in the context of requirements for stringent efficiency savings.

The City of Edinburgh Council referred back to the removal of a GAE allowance when the Care Commission was created. It queried whether the new arrangements would result in these funds being included again in the local government settlement.

COSLA was concerned that it was not yet clear whether the savings to local authorities would be as great as might be expected. Similarly UNISON was “not convinced that the anticipated savings […] will occur – even in the longer term.” It referred to the reduction in the number of quangos being “largely cosmetic”.

Other issues not specified in the Bill

Commissioning services

Reflecting concerns about the way in which local authorities commission services, Community Care Providers Scotland would like a duty on local authorities to take SCSWIS reports into account when they procure services. It noted that its concerns about local authorities adding to the burden of regulation through tendering or contract compliance had not been addressed. They referred to the inquiry recently completed by the Local Government and Communities Committee on home care services for the elderly.

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4 Schedule 14 lists scrutiny bodies that are required by s.94 to co-operate in order to improve scrutiny of local authorities, social services and health services having regard to efficiency, effectiveness and economy.
5 A response from the Scottish Government to the Local Government and Communities Committee inquiry was received on 30 July 2009. See http://www.scottish.parliament.uk/s3/committees/lgc/inquiries/HomeCareServices/index.htm
Registration fees

There were also some concerns about registration fees. Community Care Providers Scotland stated that it had always opposed the part funding of the Care Commission through fees and would like SCSWIS to be wholly funded by government grant. Quarriers and East Dunbartonshire Council were also concerned about whether the changes have implications for registration fees.

Camilla Kidner
SPICe
20th August 2009
Introduction

1. This paper seeks to inform members’ consideration of the Looked After Children (Scotland) Regulations 2009 (SSI 2009/210).

2. Copies of the SSI, explanatory notes and Executive Note are provided to members in hard copy only.

3. The instrument is subject to the negative procedure and a procedural note on this is attached at Annexe A.

4. The Committee will take evidence on this instrument at agenda item 2 and will consider whether it has anything to report to the Parliament at agenda item 4.

Evidence from the Minister for Children and Early Years

5. Members will recall that the Committee agreed at a previous meeting to take oral evidence from the Minister for Children and Early Years to inform its consideration of these Regulations.

6. Members will note that there is no scope to amend instruments subject to the negative procedure. This is because instruments subject to the negative procedure automatically come into force unless they are annulled during the parliamentary process.

7. This means that if members have any outstanding issues following the evidence session, the Committee has the option of either agreeing that it is content with the instrument by determining that it does not wish to bring it to the attention of Parliament and taking forward the outstanding issues separately with the Minister. Alternatively, a member of the Committee could lodge an amendment to annul the instrument. Members should refer to Annexe A for further information.

Looked After Children (Scotland) Regulations 2009 (SSI 2009/210)

8. The Executive Note states that the purpose of the instrument is to set out the duties and functions of local authorities in respect of children who are looked after by them in terms of section 17 (6) of the Children (Scotland) Act 1995. The Regulations revoke and replace the Fostering of Scotland (Scotland) Regulations 1996 and the Arrangements to Look After Children (Scotland) Regulations 1996.

1 Electronic copies are available on the website of the Office of Public Sector Information. http://www.opsi.gov.uk/legislation/scotland/s-200902
9. The Executive Note goes on to state that the Regulations seek to update the legislation to take account of a number of policy and legislative developments. The Regulations introduce a number of new measures and some new duties on local authorities, including the recognition of ‘kinship carers’. Members should refer to the SPICE briefing for further information.

10. The instrument was laid on 3 June 2009. The Education, Lifelong Learning and Culture Committee was designated the lead committee and should report to the Parliament by 7 September 2009.

11. The Subordinate Legislation Committee (SLC) considered the instrument at its meeting on 23 June 2009. The SLC highlighted that the Regulations do not cite the principal instrument making power in the parent act (section 17(6) of the Children (Scotland) Act 1995) but do cite other sections of the parent act which do not confer delegated legislation powers. The SLC pursued these points with the Scottish Government, who confirmed that these were errors and would be corrected using the ‘correction slip’ process. The SLC accepted the Scottish Government’s explanation and determined that it did not need to draw it to the attention of the Parliament. The extract of the SLC’s report, including correspondence with the Scottish Government, is attached at Annexe B.

Subsequent laying of amending instrument

12. On 11 August 2009, the Minister for Children and Early Years wrote again to the Committee, advising that he intended to lay a second instrument (SSI 2009/290) to amend the original instrument. A copy of the Minister’s letter, together with a copy of the original regulations showing the proposed changes in “track changes” mode, is attached at Annexe C.

13. Members should be aware that although the Committee will be able to question the Minister on both SSIs at the meeting on 2 September, the Committee will not be able to dispose of SSI 2009/290 until a subsequent meeting, when the SLC’s report is available.

Action

14. The Committee is invited to

• take evidence from the Minister for Children and Early Years on SSI 2009/210 at agenda item 2; and

• consider whether it has anything to report to the Parliament in relation to this instrument at agenda item 4.

Emma Berry
Assistant Clerk
Education, Lifelong Learning and Culture Committee
Procedural note

Standing Orders

1. The procedures for dealing with Scottish Statutory Instruments (SSIs) are covered by Chapter 10 of Standing Orders. SSIs are laid by being lodged with the chamber clerks and are published in the Business Bulletin. They are referred to the Subordinate Legislation Committee, the appropriate subject committee (the ‘lead committee’) and, where relevant, any other committee.

SSIs subject to annulment: ‘negative instruments’

2. Where an SSI is subject to annulment, it comes into force on a specified date and then remains in force unless it is annulled by the Parliament. Any MSP may by motion propose to the lead committee that the committee recommends that nothing further is to be done under the instrument. Such motions are lodged with the chamber clerks.

3. The lead committee debates such a motion for no more than 90 minutes.

4. The lead committee reports to the Parliament, setting out its recommendations. If it recommends annulment, the Bureau will propose to the Parliament a motion that nothing further is to be done under the instrument.

5. All the above must take place within 40 days of the instrument being laid, excluding recesses of more than 4 days.
6. These Regulations set out the duties and functions of local authorities in respect of children who are ‘looked after’ by them in terms of section 17(6) of the Children (Scotland) Act 1995 (‘the 1995 Act’).

7. In updating the existing secondary legislative provision these Regulations revoke and restate large parts of the Fostering of Children (Scotland) Regulations 1996 and the Arrangements to Look after Children (Scotland) Regulations 1996, while also introducing various new measures and imposing new duties on local authorities.

8. Section 17(1) of the 1995 Act provides for the Scottish Ministers being able to prescribe for a range of matters concerned with a child looked after by a local authority. It represents the principal instrument making power contained within section 17 but has not been cited. However section 17(2) and (3), which are cited, do not confer powers to make Regulations. Subsection (2) and (3) are essentially concerned with other matters relating to the duty of an authority to a child looked after by them.

9. Correspondence between legal advisers and the Scottish Government is reproduced at Appendix 2.

10. The reply acknowledges that section 17(1) should have been cited, and that the omission of such reference, and the citation of subsections (2) and (3), is erroneous. This was a typographical mistake and the Government indicates that the matter will be addressed by way of the ‘correction slip’ process.

11. The Committee accepts the explanation provided in relation to the failure to cite section 17(1) of the Children (Scotland) Act 1995, and the erroneous reference to subsections (2) and (3), within the preamble to this instrument, and notes the indication that matters will be addressed by way of correction slip.

Appendix 2

The Looked After Children (Scotland) Regulations 2009 (SSI 2009/210)

On 9th June 2009 the Scottish Government was asked:

1. to explain the citation of section 17(2) and (3) of the Children (Scotland) Act 1995 within the preamble which subsections do not appear to confer regulation making powers and the absence of other provisions within section 17, in particular subsection (1);

2. what is the effect of using the citation referred to above.
The Scottish Government responds as follows:

1. The Regulations originally referred to section 17 of the Children (Scotland) Act 1995 ("the 1995 Act") so as to include all provisions within that section. The preamble also cites provisions in the Social Work (Scotland) Act 1968 as well as sections 110 and 117 of the Adoption and Children (Scotland) Act 2007 ("the 2007 Act"). During the styling process for this instrument it was agreed that the reference to section 117 of the 2007 Act should be amended to specify subsections (2) and (3) of that provision. Unfortunately a typing error occurred and that change (the insertion of "(2) and (3)") was made after section 17 of the 1995 Act instead of after section 117 of the 2007 Act. Regretfully this error went unnoticed. As this is a typographical error the Scottish Government intends to rectify this by way of correction slip and thanks the Committee for bringing this matter to their attention.

2. It is regrettable that section 17(1) of the 1995 Act has been omitted from the preamble. However the preamble also cites the fact that the Scottish Ministers use all other powers enabling them to make the Regulations. Section 17(1) of the 1995 Act allows, inter alia, the Scottish Ministers to prescribe the manner in which local authorities must safeguard and promote the welfare of children who are looked after by them. Section 17(2) provides that that duty includes the duty of providing advice and assistance with a view to preparing the child for when they are no longer looked after by the local authority. The view of the Scottish Government is that it is clear from this, and from the operative provisions of the instrument, that the power at section 17(1) is invoked. Therefore, in line with the Vibixia decision (Vibixa Ltd v Komori UK Ltd & Ord (2006) EWCA Civ 536), the view of the Scottish Government is that the preamble may be interpreted as including a reference to section 17(1) and its omission does not affect the vires of the instrument.
Minister for Children and Early Years
Adam Ingram MSP

T: 0845 774 1741
E: scottish.ministers@scotland.gsi.gov.uk

Karen Whitefield MSP
Convener
Education, Lifelong Learning and Culture Committee
Scottish Parliament
Edinburgh
EH99 1SP

Our ref: Erdm B3076958
1| August 2009

Dear Karen,

As you will be aware the Looked After Children (Scotland) Regulations 2009 (the Looked after Children Regulations) were laid before the Scottish Parliament on 3 June 2009 and the Education, Lifelong Learning and Culture Committee are due to discuss the Regulations in September when Parliament returns following recess.

The decision was made to lay the Looked After Children Regulations following amendments received from stakeholders during the second consultation. However, during discussions with stakeholders, involved in writing the guidance, it has come to light that some amendments to the functions that a Local Authority can delegate to a Registered Fostering Service were required. Rather than withdraw this important piece of legislation from the Parliamentary process to make these changes directly, I decided that a further set of regulations amending the Looked After Children Regulations should be laid in Parliament. These will be laid when Parliament returns from recess in September and will also be set to come into force on 28 September so they apply at the same time.

The amendments proposed signify the power to delegate will broadly mirror the existing position. This power will sit alongside the powers to delegate the creation and running of a fostering panel, payment of fostering and kinship care allowance, and the power to place a child in an emergency.

However, Local Authorities will not be given the power to delegate the collection of information of a looked after child, the assessment of permanence plans for the child, or the creation of a child’s plan to a Registered Fostering Service.
The Local Authority will also have sole responsibility for informing Scottish Ministers and each person with parental rights and responsibilities for a looked after child in the event of that child’s death; making recommendations to a children’s hearing about the placement of a looked after child; and the establishment, retention and review of a child’s case record. These changes will require 2 consequential amendments to regulations 45(1) and 46(1).

I have also taken this opportunity to amend Schedule 3, specifically, paragraph 1 will now include reference to civil partnerships where reference to marriage or marital status is made; Paragraphs 2, 11, 13 and 14 will include a reference to kinship care after foster care and; paragraph 9 will replace the reference ‘relative’ with ‘kinship’. We have also made an amendment to paragraph 7 of Schedule 4 so that it now also refers to Schedule 6.

For ease, I enclose a copy of the amending Regulations as well as a version of the original Looked after Children Regulations showing, in tracked change mode, the provisions as amended.

Yours sincerely

ADAM INGRAM
Introduction

This briefing gives a short overview of the Looked After Children (Scotland) Regulations 2009, focusing particularly on where they introduce new provisions to the existing framework. Many of the new regulations are the result of combining two previous sets of regulations, with some updates. The two previous sets are The Arrangements to Look After Children (Scotland) Regulations SI 1996/3262 and Fostering (Scotland) Regulations 1996/3263.

The key changes are:

- Provision for kinship care, including provision for assessment, review and allowances
- Duty rather than a power to provide fostering allowances
- Changes to the composition and operation of fostering panels
- Removal of restriction on same sex fostering
- Greater emphasis on requirements for assessment and planning for looked after children
- Requirements to take account of the views of the child
- Changes to timescales in a number of areas such as reviews and case records
- Emergency placements can now be extended for up to 12 weeks, rather than 6 weeks as previously.

The British Association of Adoption and Fostering and the Fostering Network have been commissioned by the Scottish Government to develop guidance and training on these, and the adoption regulations1.

Policy context

The need to change the regulations has arisen from various policy developments and recommendations from inquiries. These include Getting it Right for Every Child which is an approach emphasising the need for streamlined assessment and planning. In addition to reflecting this general policy approach, the regulations respond to recommendations made by the Adoption Policy Review Group, the Western Isles report and the Shaw review.

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1 Adoption regulations considered by the Committee on 1 October 2008, 20 May and 10 June 2009. Some further regulations are still to be laid.
Shaw review

Tom Shaw's *Review of Historic Abuse within Residential Child Care between 1950 and 1995* was published in November 2007. In addition to re-iterating the continued need to recognise children’s rights and to keep systems under constant review, a key theme in this report was the difficulty in tracing records. One recommendation was:

“The government should commission a review of public records legislation which should lead to new legislation being drafted to meet records and information needs in Scotland. This should also make certain that no legislation impedes people's lawful access to records. This review's objectives should address the need for permanent preservation of significant records held by private, non-statutory agencies that provide publicly funded services to children.”

A *review was established* to identify possible failures of record keeping as highlighted by Shaw, but the review will also include a broad overview of public records legislation in Scotland. The Keeper of the Records of Scotland will submit a report of his review to Scottish Ministers in 2009. Although the Shaw review looked at children in residential care, these new regulations make changes to record keeping for all looked after children, chiefly by extending the time for which records must be kept (Regs 16, 31, 42 and 43).

Western Isles Inquiry recommendation 23

The 2005 report - *An Inspection into the Care and Protection of Children in Eilean Siar* - was commissioned by the Western Isles Child Protection Committee following the arrest of 13 adults in relation to the alleged abuse of three children. The report covered a wide range of child protection issues including joint working, child assessment and skills in interviewing children. One issue was the way in which relatives or friends were approved as foster carers without a full assessment. The report stated at para 145 that: “the imperative to promote the upbringing of children within their families must be balanced by an appropriate assessment of the suitability of extended family members to provide a safe home.”

Under the *Fostering (Scotland) Regulations 1996*, if a child is placed with a carer under a supervision requirement, the placement can continue beyond six weeks without the carer having to be approved as a foster carer. Recommendation 23 proposed that these placements be treated like other placements, which cannot continue beyond an emergency placement unless the carer is fully approved:

“The Scottish Executive should seek to amend the fostering regulations and relevant guidance so that relatives and friends must be formally approved as carers for a child who is looked after when that child is placed with them as a condition of a supervision requirement made by a children’s hearing. Approval should be based on an assessment of their ability to care for, protect and meet the needs of the child.”

These regulations reflect this in a number of ways. Firstly, they require the local authority to assess any child who is or who is about to become ‘looked after’ (reg 3) and to prepare a child’s plan (reg 5). The new regulations do not distinguish between placements made as a condition of a supervision order and any other placements. Emergency placements with friends or relatives can last up to three working days (reg 36) and can be extended for
up to 12 weeks. A longer placement can only be with someone who is an approved kinship or foster carer. In deciding whether to approve a kinship carer, the local authority must assess the carer’s suitability to care for the child (reg 10).

**Adoption Policy Review Group (APRG)**

The Adoption Policy Review Group started in 2001. Phase 1 concerned practice issues and reported in 2003. Phase II considered the need for legislative change and reported in June 2005. The group’s proposals aimed to provide long-term security for children who cannot live with their birth families and provide additional support to adopters, foster carers and birth families. Many of the recommendations of the group have already been addressed by the *Adoption and Children (Scotland) Act 2007* and associated regulations. However, the group also considered foster and kinship care. The major recommendations of the APRG on these issues are reproduced in the following table together with how they are addressed in these regulations:

<table>
<thead>
<tr>
<th>APRG recommendation</th>
<th>Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>The support needs of children and carers should be re-assessed following a</td>
<td>Though support is not mentioned specifically, regulation 44 requires a local authority to review the case of the a child looked after by them under s17(6) of the</td>
</tr>
<tr>
<td>Permanence Order and support should continue to be available to children and</td>
<td><em>Children (Scotland) Act 1995</em>. The review must assess the child’s needs (both at that time and long term) and how those needs are being met and the child’s development amongst other thins. The outcome of this</td>
</tr>
<tr>
<td>carers if a s.11 order is made in respect of a looked after child(^2).</td>
<td>review may indicate support needs for the placement.</td>
</tr>
<tr>
<td></td>
<td>The regulations require that an allowance should be paid, but does not establish a national scheme. Local authorities can pay at their own rate. Reg 33</td>
</tr>
<tr>
<td>There should be a nationally agreed scheme of adequate allowances for foster</td>
<td>The regulations enable this by not reproducing the previous prohibition.</td>
</tr>
<tr>
<td>carers.</td>
<td></td>
</tr>
</tbody>
</table>
| Adults of the same sex living in the same household should be allowed to foster      | The regulations provide for an ‘extended emergency placement’ of up to 12 weeks, during which time the child’s case must be reviewed. The carer must be fully assessed as either a foster or kinship carer for the placement to continue beyond 12 weeks (Reg 39).
| children.                                                                         |                                                                                                                                          |
| Immediate placements should last up to four months, and carers should be fully     | The regulations provide for kinship carers of looked after children to be assessed and paid allowances by the local authority. (Regs 11 and 33). Private fostering arrangements are made where a child is not looked after by the local authority. These   |
| assessed within that time. (currently placements with a relative or friend who has  |                                                                                                                                          |
| not been fully assessed is possible for 6 weeks Regs 13 and 14. The group         |                                                                                                                                          |
| considered that this did not afford enough time for a full assessment).            |                                                                                                                                          |
| Kinship care and private fostering should be examined further.                    |                                                                                                                                          |

\(^2\) Section 11, *Children (Scotland) Act 1995* can give someone parental responsibilities and rights and can include provision about contact and residence.
Fostering issues arose during Parliamentary scrutiny of the Adoption and Children (Scotland) 2007 Bill. The Education Committee’s stage 1 report noted the following issues:

“a number of issues relating to fostering were raised in evidence (for example, the maximum number of children who can be placed in one family, the registration and training of foster carers and the age at which children can leave foster care).”

Schedule 6 of these regulations requires that a local authority’s agreement with a foster carer will cover such matters as support and training and the procedure for handling complaints. Regulation 22 requires that the decision to approve a person as a foster carer will specify how many children each foster carer may have in their care at any one time. A child is no longer a foster child once they reach the upper limit of compulsory school age. Regulation 4 requires assessment of the child’s long term needs, including the arrangements for when the child will no longer be looked after by the local authority and this will included when they are no longer in a foster placement.  

The Committee also recommended a national fostering allowance scheme:

“The Committee recommends the introduction of a fairer system of national fostering allowances that reflects the true cost of a child’s upbringing. The Committee believes that the Scottish Executive should ensure that there is a national minimum level for fostering allowances (para 85).”

Regulation 33 places a duty on local authorities to pay a foster care allowance, subject to such conditions as they consider necessary and at an amount that they see fit.

**Other relevant proposals**

A draft Children’s Hearings (Scotland) Bill was published in June 2009. This proposes replacing most of Part II of the Children (Scotland) Act 1995. As many of the regulations refer to Part II, were the draft Bill to become an Act, they would need to be amended to reflect the changes.

**Kinship care**

The biggest change is the formal provision for placements of looked after children with kinship carers in Part V of the regulations.

The provisions are very similar to foster care with the main differences being in relation to assessment and reviews. Whereas foster carers are approved by a foster panel, kinship carers are assessed by the local authority. For kinship carers, regulation 10(3) requires the local authority to try to obtain certain information and carry out an assessment of a prospective kinship carer’s suitability to care for the child. In comparison, the regulations for foster carers (regs 20 and 22) require that a fostering panel take into account certain specified information and any other information provided by the local authority. The
prospective foster carer is interviewed, the fostering panel makes a recommendation to the local authority and the local authority then makes its decision.

The other key difference is that the timescales for review of foster carer approval are set in the regulations but the timings of reviews of kinship care placements are a matter for agreement between the local authority and the individual kinship carer.

The requirement to pay allowances is the same for both groups, and the matters to be covered in agreements between the carers and the local authority are very similar.

In a number of places, the new regulations provide that the possibility of a kinship care placement must be considered. This applies where the local authority is developing a care plan, is considering a foster care placement (reg 27) or is reviewing an emergency placement (regs 37, 41).

Allowances
The issue of kinship care allowances has received considerable attention in the Parliament and in the media. As mentioned, regulation 33 places a duty on a local authority to pay an allowance subject to conditions it considers necessary to:

- Kinship carers approved under regulation 10. They can only be approved by the local authority if the child in question is ‘looked after’ by the local authority.
- Carers who have parental responsibilities and rights under a Permanence Order. Children under a Permanence Order are considered ‘looked after’ in terms of the Children (Scotland) Act 1995.
- A child who is placed with someone other than their parents as a condition of a supervision requirement made by a Children’s Hearing. Children under supervision requirements are ‘looked after.’

The regulations enable local authorities to set the actual amount paid and to pay different amounts to people in different circumstances.

In addition to these regulations, there are also older provisions which enable (not require) local authorities to pay an allowance to children who do not live with their parents.

In parallel to the legislative position there is also the policy from the concordat with local authorities that they will pay a kinship care allowance to carers of looked after children. It is generally agreed that local authorities will have this in place by 2011.

The current amount of payment made varies considerably between different local authorities. The Herald reported variation between £40 per week in Glasgow and up to £200 per week in Perth and Kinross. The numbers of looked after children in kinship care also varies considerably between different local authorities. There are around 550 looked after children in kinship care in Glasgow compared with 35 in Perth and Kinross.

Neither the concordat nor the regulations make provision for kinship carers of children who are not ‘looked after’. It is not known how many children or carers fall into this category but

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4 A Permanence Order is a new order introduced by the Adoption and Children (Scotland) Act 2007 and associated regulations. It is similar in intent to long term fostering. They regulate residence and can also include provisions about contact, adoption or any other issue relating to the welfare of the child.

5 s. 50, Children Act 1975.

6 The Herald, 6 July 2009 “No choice but to care: grandparents ready for the battle to secure justice.”
a ‘best guess’ based on the Scottish Household Survey is that it might apply to up to 10,000 children.

Fostering

Changes to fostering panels are that they:

- can now have a solicitor or advocate to advise them (reg 19(2))
- must now have a quorum of three members (reg 18(1)) and minimum number of 6 members (reg 17(2)). Neither of these was specified in the previous regulations
- can now advise on the maximum number of children which a foster carer can have (reg 20(2)(c))
- must now give the prospective foster carer a chance to meet the panel (reg 20(3))
- foster carers can now ask for a review of a decision (reg 26).

The provisions for reviews of foster carers are now set out in more detail but they are not required as frequently. Changes to timescales for reviews are set out in the Annex.

A key change is that the new regulations remove the requirement that a foster carer must either be a man and woman living together, or someone living alone. Not keeping this regulation effectively removes the legal barrier to same sex fostering.

Another important change is that local authorities now have a duty to pay any fostering allowance that they see fit, subject to conditions that the local authority considers necessary. The amount paid is still discretionary.

Care planning and assessment

Previously, a local authority only had to prepare a care plan ‘so far as is reasonably practicable’ (1996/3262 reg 3(1)). Now, a local authority must make an assessment of a child and must prepare a care plan (2009/210 regs 4 and 5). The information to be gathered remains the same (Schedule 1 of 1996/3262 and 2009/210) and in general the matters to be considered are the same. However, the requirements on local authorities have been strengthened. For example, previous regulations required the local authority to have regard to certain issues such as transitions, health, education, contact arrangements but these are now matters which must be assessed (1996/3262 reg 4 and 5 cf: 2009/120 reg 4(1)). Similarly, whereas previously, the local authority had to take into account the views of the child, parent and others ‘so far as practicable’ (4(2)(e) by reference to 17(4) of the 1995 Act), the new regulations provide that such views must be sought and taken into account (2009/210 reg 4(2)).

In addition, it is now explicit that the possibility of kinship care must be considered (210 reg 4(1)(f)).

Provisions on child’s views

The previous regulations required the child’s views to be considered when making a care plan, when deciding on a placement in foster or residential care, and when reviewing the child’s case. The new regulations also require that the child’s views are considered during an assessment of a child’s needs, a review of a foster carer and during a review of an emergency or extended emergency placement.
Changes to timescales

There are various changes to timescales across different parts of the regulations. The main changes are that:

- records need to be kept for longer,
- specific provision for kinship carers has been introduced,
- reviews of placements where the carer has parental responsibilities and rights can now be as agreed between them and the local authority instead of to a set timescale,
- foster carers are no longer automatically reviewed every year, and
- monitoring of voluntary sector foster placements is less frequent, unless concerns are expressed, in which case the time by which a visit must be made is shorter.

More detail is given in Annexe 1.

Camilla Kidner
SPICE Research
25 August 2009

Note: Committee briefing papers are provided by SPICE for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.
Annexe 1: Changes in reviews, keeping case records and monitoring placements

The table below compares the requirements for reviews, keeping case records and monitoring placements. The second and third columns give the requirements in the new regulations. The fourth and fifth columns give the requirements of the current regulations. Here LAAC refers to the Arrangements to Look After Children (Scotland) regulations 1996 SI 1996/3262 and ‘fostering’ refers to Fostering of Children (Scotland) Regulations 1996 SI 1996/3263.

<table>
<thead>
<tr>
<th>New 2009 Regulations</th>
<th>Current 1996 Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Topic</strong></td>
<td><strong>Provision</strong></td>
</tr>
<tr>
<td><strong>Review of child’s placement:</strong></td>
<td></td>
</tr>
<tr>
<td>Child accommodated by local authority</td>
<td>Review at 6 weeks, then 3 months, then 6 months (i.e. residential, approved kinship/foster care).</td>
</tr>
<tr>
<td>If child with parents/permanence order</td>
<td>frequency of review is as agreed between the parents and the local authority or else within 6 weeks and then annually.</td>
</tr>
<tr>
<td>Emergency Placements</td>
<td>Review within 3 working days</td>
</tr>
<tr>
<td>Immediate / extended emergency placement</td>
<td>Review within 6 weeks (for kinship, foster, any person)</td>
</tr>
<tr>
<td><strong>Review of suitability of carers:</strong></td>
<td></td>
</tr>
<tr>
<td>Foster Carers</td>
<td>Foster carers reviewed at end of first year, then every three years or when necessary.</td>
</tr>
<tr>
<td>Kinship Carers</td>
<td>Frequency of review agreed between carer and local authority.</td>
</tr>
<tr>
<td><strong>Retention of case records:</strong></td>
<td></td>
</tr>
<tr>
<td>Looked after and accommodated child</td>
<td>100 years, or 25 years if the child dies before the age of 18.</td>
</tr>
<tr>
<td>Foster carers</td>
<td>Foster carer records must be kept for the shorter of 25 years or until the death of the carer.</td>
</tr>
<tr>
<td>Kinship carers</td>
<td>Kinship carer records must be kept for the shorter of 25 years or until the death of the carer.</td>
</tr>
<tr>
<td>Visits</td>
<td>Placed by voluntary sector</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>----------------------------</td>
</tr>
<tr>
<td>Placed by local authority</td>
<td>46</td>
</tr>
</tbody>
</table>
Introduction

1. This paper seeks to inform members’ consideration of the Children’s Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211).

2. Copies of the SSIs, explanatory notes and Executive Notes are provided to members in hard copy only.

3. The instruments are all subject to the negative procedure. A procedural note on this is attached at Annex A.

4. The Committee will take evidence on this instrument at agenda item 3 and will consider whether it has anything to report to the Parliament at agenda item 4.

The Children’s Hearings (Legal Representation) (Scotland) Amendment Rules 2009 (SSI 2009/211)

Background

5. These Amendment Rules were laid on 3 June 2009 and the lead committee must report by 7 September 2009. The Education, Lifelong Learning and Culture Committee was designated the lead committee.

6. This instrument is made in exercise of powers conferred by the Children (Scotland) Act 1995.

Policy objectives

7. This instrument amends the Children’s Hearings (Legal Representation) (Scotland) Rules 2009, which set out the circumstances under which children can access state-funded legal representation in a children’s hearing. This is done in order to extend the availability of state-funded legal representation in children’s hearings to relevant persons, in certain circumstances.

8. The changes are made to support the effective participation of relevant persons where it is considered they would otherwise be unable to participate effectively in a children’s hearing. The new Rule 3B provides guidance on the factors that might impact on a person’s ability to participate effectively.

9. The instrument also makes minor amendment to the rules in relation to the provision of free legal representation to children under the scheme.

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1 Electronic copies are available on the website of the Office of Public Sector Information. http://www.opsi.gov.uk/legislation/scotland/s-200902
10. The scheme operates whereby local authorities appoint a legal representative on behalf of a child and recovers the cost from the Scottish Government.

**Issues the Committee may wish to consider**

11. Members will note that the Amendment Rules came into force on 4 June 2009, the day after they were laid before the Scottish Parliament. This is a breach of Article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 which provides that negative instruments shall be laid not less than 21 days before they come into force.

12. A letter from the lead official in the Children’s Hearings branch of the Scottish Government to the Presiding Officer relating to this issue is included with the instrument papers. It states that the breach was considered necessary to ensure that there was minimum delay in providing free legal representation and compliance with the European Convention on Human Rights, specifically Article 6 (right to a fair trial), Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination).

13. The Executive Note states that no additional costs are anticipated for local authorities. It also states that “additional costs for Scottish Government are anticipated, as yet undetermined”. The Clerks sought further information on this point from Scottish Government officials, who confirmed that initial costings suggest that these additional costs can be met from the current budget.

14. The SLC considered the instrument at its meeting on 16 June 2009 and determined that it did not need to draw it to the attention of the Parliament.

**Action**

15. The Committee is invited to

- take evidence from the Minister for Children and Early Years on SSI 2009/211 at agenda item 3; and

- consider whether it has anything to report to the Parliament in relation to this instrument at agenda item 4.

Emma Berry
Assistant Clerk
Education, Lifelong Learning and Culture Committee
Procedural Note

Standing Orders

1. The procedures for dealing with Scottish Statutory Instruments (SSIs) are covered by Chapter 10 of Standing Orders. SSIs are laid by being lodged with the chamber clerks and are published in the Business Bulletin. They are referred to the Subordinate Legislation Committee, the appropriate subject committee (the ‘lead committee’) and, where relevant, any other committee.

SSIs subject to annulment: ‘negative instruments’

2. Where an SSI is subject to annulment, it comes into force on a specified date and then remains in force unless it is annulled by the Parliament. Any MSP may by motion propose to the lead committee that the committee recommends that nothing further is to be done under the instrument. Such motions are lodged with the chamber clerks.

3. The lead committee debates such a motion for no more than 90 minutes.

4. The lead committee reports to the Parliament, setting out its recommendations. If it recommends annulment, the Bureau will propose to the Parliament a motion that nothing further is to be done under the instrument.

5. All the above must take place within 40 days of the instrument being laid, excluding recesses of more than 4 days.

6. To date, no motion to annul these instruments have been lodged with the chamber clerks.
Introduction

1. This paper seeks to inform members’ consideration of the Police Act 1997 (Criminal Records) (Scotland) Amendment (No. 2) Regulations 2009 (SSI 2009/216).

2. Copies of the SSIs, explanatory notes and Executive Notes are provided to members in hard copy only.

3. The instruments are all subject to the negative procedure. A procedural note on this is attached at Annexe A.

The Police Act 1997 (Criminal Records) (Scotland) Amendment (No. 2) Regulations 2009 (SSI 2009/216)

Background

4. These Amendment Regulations were laid on 4 June 2009 and the lead committee must report by 14 September 2009. The Education, Lifelong Learning and Culture Committee was designated the lead committee.

5. This instrument is made in exercise of powers conferred in the Police Act 1997.

Policy objectives

6. These Regulations amend the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006, to increase the fees for criminal conviction certificates, criminal record certificates and enhanced criminal record certificates from £20 to £23 from 1 August 2009.

7. A Regulatory Impact Assessment has been provided by these Regulations. It states that the fees are being increased to cover the operating budget of Disclosure Scotland. This is because it was identified that Disclosure Scotland’s income for 2009-10 would be unlikely to cover its operating costs. The possibility of the Scottish Government funding the gap was explored but not found to be a viable option.

Issues the Committee may wish to consider

8. The Executive Note states that the Amendment Regulations will create a cost to Disclosure Scotland to make the IT changes needed to support the new fee and to the Scottish Government for the checks that it funds. The Clerks sought further information on this point from Scottish Government officials, who confirmed that the IT changes will cost no more than approximately £22,500 plus VAT. Officials also confirmed that the Scottish...
Government will no longer meet the costs of the checks which it previously funded and that these will, in future, be met from Disclosure Scotland’s fee income. Officials stated that the Scottish Government may be able to meet some of these costs but that this will not be confirmed until the end of the financial year when Disclosure Scotland’s accounts are finalised.

9. The SLC considered the instrument at its meeting on 16 June 2009 and determined that it did not need to draw it to the attention of the Parliament.

**Action**

10. The Committee is invited to consider whether it has anything to report to the Parliament.

Emma Berry
Assistant Clerk

Education, Lifelong Learning and Culture Committee
Procedural Note

Standing Orders

1. The procedures for dealing with Scottish Statutory Instruments (SSIs) are covered by Chapter 10 of Standing Orders. SSIs are laid by being lodged with the chamber clerks and are published in the Business Bulletin. They are referred to the Subordinate Legislation Committee, the appropriate subject committee (the ‘lead committee’) and, where relevant, any other committee.

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