I am pleased to have the opportunity to work over the coming period with the Finance Committee, as the lead Committee for considering the Public Services Reform (Scotland) Bill (PSR Bill). The Bill aims to deliver a number of important changes to simplify and improve the co-ordination and delivery of public services.

When the PSR Bill was first submitted to Parliament, we indicated that we were likely to propose Government amendments at Stage 2. The Finance Committee, and supporting Committees, may find it helpful, therefore, if I set out the amendments we anticipate at present, so that these can be considered in taking evidence during Stage 1 of the Bill. The proposed amendments are set out in the attached annexes. Annex A covers likely amendments identified by the Scottish Government. Annex B provides the current position paper on proposals for the future of the Mental Welfare Commission for Scotland, which is the subject of on-going consultation with relevant stakeholders. Annex C covers proposed amendments arising from the Review of SPCB Supported Bodies Committee Report, which was debated by Parliament on 18 June.
The annexes reflect the likely Stage 2 amendments that we are aware of at this stage, but it is possible that other issues will arise. I will aim to keep the Finance Committee and supporting Committees informed of any further developments. I am copying this letter to the Conveners of the Health & Sport, Rural Affairs & Environment and Education, Lifelong Learning & Culture Committees and to the Minister for Parliamentary Business.

JOHN SWINNEY
PUBLIC SERVICES REFORM (SCOTLAND) BILL – POSSIBLE SCOTTISH GOVERNMENT STAGE 2 AMENDMENTS

1. This Annex sets out possible Scottish Government Stage 2 amendments to the Public Services Reform (Scotland) Bill (PSR Bill). The Scottish Government considers that these amendments are within the scope of the PSR Bill. This is not intended to be a definitive summary of all possible Scottish Government amendments at Stage 2.

Leasing of Forestry Land to Local Communities

2. Following its Stage 1 consideration of the Climate Change (Scotland) Bill, the Rural Affairs and Environment Committee recommended that, while the proposal to lease significant parts of the national forest estate should be dropped, the Scottish Government should incorporate provisions to allow for community leasing of forest estate land in future legislation. The Transport, Infrastructure and Climate Change Committee endorsed this view. Having considered how best to take this matter forward, we intend to bring forward a Stage 2 amendment to the PSR Bill.

3. At present, communities are able to purchase land on the national forest estate through the National Forest Land Scheme, but they can only lease land through the Scheme for non-forestry purposes. Our proposed amendment would make it possible for communities to lease land for forestry purposes. Sales and leases under the National Forest Land Scheme take place at (independently assessed) market value. There will be some financial implications for Forestry Commission Scotland and communities from the transaction costs. The exact costs will depend on the number and detail of individual transactions, but should not be significant.

Social Work and Social Care Improvement Scotland and Healthcare Improvement Scotland

4. Parts 4 and 5 of the Bill set out provisions for the establishment of Social Care and Social Work Improvement Scotland (SCSWIS) and Health Improvement Scotland (HIS), taking over the functions of existing scrutiny and improvement bodies. We expect to present some clarifying and ‘tidying-up’ amendments to the provisions relating to the functions of the two new bodies. We will also present consequential amendments to other legislation, including amendments to the Regulation of Care (Scotland) Act 2001 in respect of the Scottish Social Services Council and, possibly, some provisions relating to the transitional arrangements towards establishment of the new bodies. We would not expect these, mostly technical, amendments to have any significant operational or financial implications.

Mental Welfare Commission for Scotland

5. In answer to a parliamentary question on 13 February 2009 (S3W-20858), the Minister for Public Health indicated that the Government had decided to step back at that time from including the functions of the Mental Welfare Commission for Scotland (MWCS) within either SCSWIS or HIS, and that further discussion would be undertaken with the MWCS and relevant stakeholders on the way forward. Consultation is being undertaken over the summer months on the MWCS’s current protective and improvement functions and how the broader scrutiny landscape might fit around these. However, the Scottish Government does not expect to bring forward any amendments at Stage 2 of the PSR Bill that would transfer its protective and rights functions away from the MWCS.

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www.scotland.gov.uk
6. The consultation with stakeholders will consider the MWCS’s functions under the Mental Health (Care and Treatment) (Scotland) Act 2003, in particular, examining whether the improvement and best practice functions, which are different in nature from the functions related to the protection of rights, might be the primary responsibility of the new health and social care improvement bodies in future.

7. The consultation is also considering the current governance arrangements for the MWCS and whether these need to be revised, in line with the recommendation in the quinquenial review of the organisation in 2007.

8. A copy of the position paper on these issues being discussed with stakeholders is attached at Annex B. Subject to the outcome of the consultation, Scottish Government amendments may be proposed at Stage 2 in line with the issues raised within the position paper. Such amendments are not expected to be extensive or particularly complex. The financial impact of any changes will be considered and will be made available alongside any proposed Stage 2 amendments.

**Proposed amendments to the Charities and Trustee Investment (Scotland) Act 2005.**

9. Part 7 of the PSR Bill already includes a proposed amendment to the Charities and Trustee Investment (Scotland) Act 2005 to allow charities to provide trustee indemnity insurance. Proposals for other amendments to the 2005 Act, including with reference to the functions of the Office of the Scottish Charities Regulator (OSCR) are currently the subject of a wider charity law consultation. The Scottish Government will consider, in light of the consultation outcome, whether any of these proposals should appropriately be considered as Stage 2 amendments alongside the current provisions within Part 7 of the PSR Bill.

Scottish Government
June 2009
PUBLIC SECTOR REFORM BILL: MENTAL WELFARE COMMISSION

[This Annex provides the position paper on the future of the Mental Welfare Commission being discussed at present with key stakeholders.]

Position Paper

Background

1. On 13 February, Shona Robison MSP, the Minister for Public Health and Sport, announced that the Mental Welfare Commission for Scotland would not be included within the Public Sector Reform Bill at introduction to allow for a period of reflection and consideration. She said:

   "...we will step back at this time from taking the MWCS’ functions into either the new health or the new social care body. We will discuss further with the MWCS and engage directly with stakeholders on the way forward. At the same time we will review the operation of the MWCS over the next four to six months to establish how best to take the MWCS forward as part of the simplification programme."

2. The discussions that have taken place since that announcement have been productive.

Analysis

3. There have been three broad areas of consideration.

Protective and Improvement Functions

4. There is significant support for the idea that the protective functions of the MWC, those that have their origins in the 1960 Mental Health Act, are by nature different to the new functions added under the Mental Health (Care and Treatment) (Scotland) Act 2003. The new functions largely duplicate functions to do with improvement and best practice which are carried out by NHS QIS, the Care Commission and the Social Work Inspectorate Agency and which it is proposed the new health and social care bodies should take on in the future.

5. We will consult further on how the two groups of functions – the protective functions and the scrutiny and improvement functions – should be handled under the legislation. One option within this consultation will be that the MWC might in future be focused on the rights of those with mental illness or learning disabilities, with the wider improvement functions sitting elsewhere.

Governance of the Mental Welfare Commission

6. Separately, we have given some thought to the governance of the MWC. This was considered in 2007 as part of the quinquennial review of the MWC. The report proposed the creation of a board to provide management and governance to the organisation and this recommendation was accepted by the MWC. At present the MWC is governed by all the full and part time commissioners giving in practice a board of 20-24 members. This is unwieldy, takes up a considerable resource in meetings and makes it difficult for individual members to be clear that they are discharging their governance responsibilities effectively.
7. We will consult on this issue as part of the consultation mentioned above.

The Broader Scrutiny and Improvement Landscape

8. Thirdly, the broader discussion of what needs to be done to ensure that services provide appropriate care and treatment so that people with mental illness and learning disabilities receive safe and appropriate care which respects their rights has been productive. While there is a concern to protect the particular functions of the MWC, there is also an interest in considering the wider landscape and an understanding that the protection of individuals is linked to the regulation and scrutiny of services and the improvement of systems. There is value in being able to look beyond the separate perspectives and approaches of the current organisations.

9. We want to explore how that might be done without diluting the particular role of the MWC or its independent nature.

Next Steps

10. We will work with the MWC to develop a paper in respect of the issues set out above with the intention of conducting a consultation during the Summer. The Finance Committee will be informed of this work to enable it to separately take evidence on the matters referred to above. Depending on the outcome of the consultation and discussions, we may bring forward amendments at Stage 2.

Mental Health Division
May 2009
ANNEX C

PUBLIC SERVICES REFORM (SCOTLAND) BILL – POSSIBLE SCOTTISH GOVERNMENT STAGE 2 AMENDMENTS ARISING FROM THE REVIEW OF SPCB SUPPORTED BODIES COMMITTEE REPORT

1. The Scottish Parliament agreed on 18 June proposals for a Committee Bill as recommended by the Review of SPCB Supported Bodies (RSSB) Committee report. The RSSB Committee also recommended that certain of its recommendations should be taken forward as Stage 2 amendments to the Government’s Public Services Reform (Scotland) Bill (PSR Bill). This Annex sets out possible Stage 2 amendments arising from the RSSB Committee report.

Complaints Handling

2. The RSSB Committee proposed that functions in relation to complaints handling suggested by the Sinclair Report should be undertaken by the Scottish Public Services Ombudsman (SPSO). The recommendations are set out in full at paragraph 140 of the Committee’s report. They include recommendations for the SPSO and service providers to develop principles for complaints handling, founded on consumer focus and simplification, and for the SPSO to have responsibility for working with service providers to develop standardised complaints handling systems.

3. The Scottish Government welcomes these recommendations. Some are achievable without legislative change, e.g. learning from complaints and co-ordinating the way outputs and outcomes from complaints are reported and followed; some are already carried out by the SPSO, but will benefit from statutory underpinning, e.g. the provision of guidance on best practice for complaints handling; others require legislative change, e.g. powers to establish a set of principles, to develop standardised complaint handling procedures and to allocate lead responsibility for handling complaints. The Scottish Government will bring forward amendments at Stage 2 of the PSR Bill to implement these recommendations.

4. The SPSO is working with local authorities and Government to identify the financial implications arising from the new approach, including any additional costs for the SPSO. The proposed changes also offer the potential for savings to the public purse; for example, more first-point-of-contact resolution should lead to a gradual decrease in overall costs. Information on the financial implications of the proposed changes to complaints handling will be made available alongside the Stage 2 amendments.

Scottish Prisons Complaints

5. In Recommendation 14 of their report, the RSSB Committee states that the necessary legislative change to transfer the functions of the Scottish Prisons Complaints Commission (SPCC) to the SPSO could be progressed through their proposed Committee Bill. The Scottish Government agree with the intent to transfer functions from the SPCC to the SPSO. As noted above, Stage 2 amendments to the PSR Bill will include proposals to improve overall complaints handling. Given the need to have a co-ordinated and coherent approach to complaints across all public services, it may be that the transfer of the SPCC functions to SPSO could be better achieved, alongside the other provisions relating to complaints handling and the SPSO, within the PSR Bill, rather than the Committee Bill. However, we supported the RSSB Committee motion on 18th June in full and will seek to discuss further with the members responsible for the Committee Bill how best the complaints handling elements can be progressed in a co-ordinated way between the two Bills.
6. In Recommendation 15 of their report, the RSSB Committee did not recommend in favour of the transfer of Waterwatch’s complaint functions to the SPSO. The proposed transfer of these functions arose from the advice of a number of outside bodies, including Douglas Sinclair from Consumer Focus Scotland, who chaired the Complaints Action Group which looked at these issues following the Crerar Review.

7. The RSSB Committee report noted that their decision was finely balanced. In their considerations the Committee did not consider evidence on the proposed transfer of Waterwatch’s customer representation and advocacy function to Consumer Focus. Consequently the Committee concluded it was not in a position to justify changing the customer service role.

8. The Scottish Government’s view is that there are overarching benefits to aligning complaints handling processes across all services. These benefits include simplifying the landscape for service users, reducing overall costs, and ensuring the lessons learned from complaints in any service can lead to improvements across all services. Within that wider context, we consider that the Government’s original proposal to transfer Waterwatch’s complaints functions to SPSO and advocacy role to Consumer Focus Scotland respectively is a sensible rationalisation that would create significant advantages for water customers – a position that is supported by both Professor Crerar’s view and Douglas Sinclair’s work. These advantages would be achieved through the ability to use the wider knowledge base of complaints handling and customer representation within the SPSO and CFS, respectively. We plan to undertake continuing dialogue on this issue and to bring forward relevant amendments at Stage 2.

Scottish Government
June 2009