General Principles of the Bill and the Scottish Government’s Overall Policy Objectives

1. No-one could seriously object to general principles and policy objectives that include the following: that it is desirable to avoid overlap in external scrutiny and to standardise provision of information by providers to scrutiny bodies so as to avoid unnecessary interference with their getting on with the job; that assessing performance and seeking improvement should be part of the provider’s job; that it is appropriate to have service user input and an outcomes focused approach in external scrutiny; and that public money should be used as effectively and efficiently as possible. To that extent I endorse the Government’s policy objectives and the principles of the Bill.

2. However, I consider it important to warn that there are dangers in an approach which is too doctrinaire and which involves some degree of political machismo – e.g. in deciding in advance that the number of public bodies and the number of scrutiny bodies should be reduced by an arbitrary figure of 25%, then working out the rationale for abolishing and merging bodies afterwards. Much better and safer is a pragmatic approach which identifies unhelpful and wasteful overlap of functions or excessive scrutiny and makes sensible adjustments accordingly.

3. The Scottish Government’s approach relies heavily on the Crerar Review\(^1\) which in my view had serious flaws. It accepted in advance\(^2\), before any objective and careful review of the public sector landscape, that there was too much scrutiny. This did not appear to be borne out by the figure quoted\(^3\) in the report for the percentage of the total money spent on public services which was directly spent on scrutiny – less than one fifth of one percent, or 18p per £100. The rather rushed timescale\(^4\) did not permit a careful review once it was underway. It appeared to listen more to the complaints of those subject to scrutiny than to the experience of those providing it, especially those providing scrutiny of services for vulnerable groups, e.g. those vulnerable through mental disorder.

4. The Scottish Parliament should review the Government’s plans, noting significant events in the wider world, with two things in mind.
   (a) Now is not the time to weaken external scrutiny of services where the recipients are vulnerable to ill-treatment or neglect. The Baby P and similar scandals in child-care services tend to indicate the weakness of paper-based

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\(^2\) In his foreword, Prof. Crerar says that before he started the review he believed that “… there are too many scrutiny bodies; they cost too much; they create needless burden and divert resources away from delivering services.”
\(^3\) Crerar Report Para 6.23.
\(^4\) In the Crerar Report, Chapter One, it is stated that the 12 month timescale led to the adoption of an “overview” approach and to a lack of a detailed study of scrutiny organizations and regimes.
and light touch scrutiny of services. In a different sector, we are all vulnerable people in relation to collapse of the financial system, and there is general agreement that deregulation with weak scrutiny was one of the key factors leading to major banking failures. People tend to complain about scrutiny, but it is essential for public protection.

(b) Bigger is not always better. RBS shareholders might testify to this after one take-over too far, and it is interesting to note recent comments\(^5\) by the Equalities Minister in relation to the amalgamation of 3 equality bodies into the UK Equality and Human Rights Commission. The Minister’s comments suggested this merger was experiencing difficulties and had not been a good idea in the first place. This is a significant danger of a process that is driven by an imperative to reduce numbers of bodies by a predetermined proportion.

5. A further consideration is that, while it is good in itself to involve the public and users of services more in the process of scrutiny, as the Crerar report suggested, it should not be naively assumed that the involvement of the public in setting priorities will protect the most vulnerable people. Groups such as the mentally ill and prisoners have not generally been at the forefront of public concern (for evidence of this look at the conditions in which many mentally ill people are treated). Neglect and abuse of the mentally ill have occurred in the past because such groups have not commanded public attention. The provision of specialist scrutiny bodies has helped to remedy this unfortunate deficiency in general public concern. Losing or weakening such bodies would present significant risk.

6. With all these caveats in mind, the Scottish Government is to be commended for removing from its plans the proposed merger between the Mental Welfare Commission for Scotland (MWC) and NHS Quality Improvement Scotland (NHS QIS)\(^6\). These are very different organizations: The MWC is basically a human rights organization, emphasizing individual protection of vulnerable people, and NHS QIS a service organization. It was worrying that stakeholders were not consulted before this proposal was produced but welcome that the views of stakeholders were attended to after it was announced.

7. It is also encouraging that the Scottish Government has not adopted the rather naïve and Utopian suggestion of Crerar that there should be only one scrutiny body for all public sectors. Indeed I think it is right on pragmatic grounds not to seek to amalgamate the scrutiny bodies for health and social care at present, despite the strong theoretical arguments that there is so much overlap between health and social care that they should not be separate.

Is this the appropriate time to be pursuing the Bill and the Public Service Reform Programme?

8. From scrutiny of the Financial Memorandum accompanying the Bill, the eventual financial benefits of all the changes incorporated in the Bill are decidedly modest. This is not surprising – functions are generally still required though structures of bodies may change, and a large proportion of the costs of these bodies are for the staff that provide the functions.

\(^5\) The Sunday Times, 2 August 2009 “Harriet Harman: You can’t trust men in power”.
\(^6\) See Policy Memorandum Paras. 222-223.
Having said that, there is an estimated net loss of money as a result of the changes up until 2010-11 which is not fully recouped until 2012-13. Since there is no urgency in making the changes, there is a case for delaying them until the financial situation improves.

**The Order Making Powers Proposed in Part 2 of the Bill**

9. The Scottish Parliament should give very careful attention to this part of the Bill, as section 10 potentially gives the Government sweeping powers to make further changes to public bodies. This is of concern, especially if the Government is wedded to a doctrinaire approach to their reduction.

10. Of course the Bill incorporates safeguards. The Government must lay a Statutory Instrument before the Parliament, must consult relevant interests and accompany the SI with an explanatory document. Parliament therefore must agree any change, but this will engender less scrutiny than would primary legislation. An organization created by primary legislation may face abolition or substantial change by secondary legislation. The Parliament should consider very carefully whether the safeguards included in the Bill are adequate, or whether reliance should remain on primary legislation – it is not as though the Parliament is overburdened with a legislative programme.

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