About SCVO

The Scottish Council for Voluntary Organisations is the national body representing the interests of the voluntary sector in Scotland. It does so through its policy committee which is elected from its membership of around 1300 Scottish voluntary organisations. SCVO’s mission is to advance the values and shared interests of the voluntary sector. As part of this, we provide the sector with information and assistance; support them to improve their effectiveness and efficiency and to represent their views to Government and other public bodies. Further details about SCVO can be found at [www.scvo.org.uk](http://www.scvo.org.uk).

INTRODUCTION

This document is a response from the Scottish Council for Voluntary Organisations (SCVO) to the Scottish Government’s draft Public Services Reform Bill, and the associated Policy Memorandum. Following a brief statement on SCVO’s overall response to the Bill, it then covers the main themes of interest to the Scottish voluntary sector.

REFORM OR RE-FORMATION - THE REAL TEST OF THE BILL

SCVO warmly welcomes this Bill. It represents a positive step forward on a number of fronts for developing our public services infrastructure. SCVO has called for a number of years for the burden of unnecessary red tape to be lifted from voluntary organisations, many of which deliver public services on behalf of the State. We believe the policy intentions of this Bill are in harmony with this ideal.

On the other hand, we also believe the Bill is over focused on the architecture of public services, and does not give as much attention to the objectives of these services, the changed context in which they operate, the market and regulatory climate, and the scale of the challenges faced in trying to maintain realistic delivery standards.

SCVO is concerned that the intention to reduce the numbers of “quangos” is producing a simple policy of coalescence, by reducing the gross numbers. This seems to be a response to the need to meet political targets. We would advocate a more considered approach, based on genuine business synergies and a considered view of wider public benefit. SCVO does not see in this Bill anything that could be called radical.

The Bill does not address the growing need to substantially reduce the scale of the legislative and compliance burden borne by the Scottish voluntary sector. That there will still be 120 such public bodies in Scotland by 2011/12 will not by itself ease this difficulty, if these are merely fewer, but larger, quangos.

Public debate is rightly focussed on securing savings to be then deployed in quality improvements to services. That requires more thoroughgoing reforms, based on improved accessibility for the public, reducing the size and costs of
senior management, improving best value from utilising capital assets and resolving the growing impact of pension liabilities.

In considering this Bill, SCVO believes there are some important structural issues that could and should have been addressed, and these are considered first in this response.

REGULATION

THE SCALE OF THE REGULATORY LANDSCAPE
The larger the size of the new individual regulatory bodies to emerge from the reform process, the harder it will be for the general public to access personnel and procedures. Accountability and transparency in regulatory activity have been well researched and described by Consumer Focus Scotland. They outline concerns about a growing lack of accessibility for stakeholders, including the wider public, and have shown that the more layers to an organisation, the more complex its internal policies and procedures, the less local its presence. Aggregation into ever larger public bodies creates barriers to effective engagement in community planning processes, limited redress for individuals, to effective consultation with stakeholders and real participation in the financial and policy planning processes. In some cases, there will be problems in trying to separate operational supervision, regulation and incremental policy making. All of this would be of concern to voluntary organisations who would seek to improve access both for themselves and the communities and beneficiaries they serve.

SCVO fully endorses the work done by Consumer Focus Scotland into how these issues should be addressed. We believe the Bill does not adequately explain how these new regulatory arrangements would improve accountability to the wider community. In the case of the very large new body (SCSWIS), there are additional issues of merging two very different cultures, as well as the acute scale of the resulting regulator’s operations.

The regulation of social care is well established and has been independent for a relatively long time. The need for regulation of care stemmed from the need to protect standards in mixed markets, where local authorities, the private (independent) and charitable/voluntary sector have all supplied services. In contrast, health has had a tradition of rather poor attempts at self-regulation.

REDRESS FOR STAKEHOLDERS AND MEMBERS OF THE PUBLIC
Redress for individuals is well understood in the care model and is an ongoing major issue for the existing regulators. Indeed, the care sector is a good example of a multiply regulated area of public service provision, where, e.g. OSCR also has a locus with charities providing care services.

In the health service, the supply side dominance of the NHS, particularly in Scotland, has not produced as strong a package of rights for patients and their carers/relatives as in social care. Only very recently has this begun to change, and policy now is to empower the patient and their representatives in a much more positive way. Attempts at NHS regulation have proven difficult.

The Bill tries to simultaneously introduce a new regulatory system for the NHS, and blend this with established regulatory arrangements for the care system, into a single regulatory body. Between them, care and health represent a very large sector in employment terms, have differing histories, have had very different views about the respective rights of clients and service providers, and where there are
real differences in the market structures in which they operate. In the NHS, history gives a difficult backdrop to building a more contemporary style of external regulation founded on statutory rights. SCVO emphasises the concerns of Voluntary Health Scotland on just how quickly it will prove possible to combine these two models of regulation in two very different market contexts. We highlight VHS’ concerns that a profession-led culture based on self-regulation may persist. The failure in the NHS of previous approaches at improved regulation may explain this attempt to blend the two regulatory areas into one. However for the reasons given above we are not convinced of the implied claim, that the care regulatory model will in itself overcome the identified weaknesses of the health model.

THE CONTINUITY OF REGULATION ACROSS STATUTORY REGULATORY BOUNDARIES

Merging the regulatory architecture for health and care, to implement the long hoped for “continuum of care” is, of course, not the complete picture because many people will see their care beginning in supported or semi-supported housing, before they move to a care regime and ultimately a combined health and/or care regime. Yet we will still have a separate housing regulator, as provided for in the Housing Bill currently before the Scottish Parliament. There are obvious cross-regulatory issues involved in the extensive development of “care in the community” initiatives, many of which are led by the Scottish voluntary sector, through such charities as the Scottish Association for Mental Health (SAMH). The realities of social policy practice are more subtle than the silos of existing and proposed regulatory structures, and difficult issues persist about how policy makers and regulators should handle such interface issues, which cause dislocation for clients, uncertainty for relatives and carers, inefficient use of public resources, poor prioritisation according to need, and poor net outcomes for all concerned. SCVO recognises the tensions inherent in any national regulatory framework. What is in place at present is not a national framework, but a series of one-off solutions to address thematic needs for regulation. SCVO believes that what is needed is a coherent national framework in Scotland which is common to all regulators dealing with devolved issues.

PROBLEMS OF CROSS REGULATORY ACTIVITY – UNLOCKING LOGJAMS

The present framework is in real danger of working only within the subject silos created by primary legislation. The toughest challenges of public policy are often at the interface between policy silos. SCVO sees a real need for recognised statutory procedures to allow for the examination and resolution of cross-regulatory issues. SCVO sees at least two possible means forward. The first would provide powers in the Bill for ministers to identify and empower a lead regulator in any given instance, who would be able to require cooperation from any and all other regulators deriving their powers from Scottish (and, where relevant, UK legislation). A second possibly complementary approach would provide for any member of the public, a charitable or voluntary organisation, private company, local authority, or any combination of these, to petition ministers where there were
concerns arising from what they considered a failure of multiple regulation and which required resolution.

**A SUGGESTED APPROACH TO REGULATION ON FULLY DEVOLVED ISSUES**

Beyond those matters, there is a greater prize that could, and perhaps should, be achieved through this Bill, namely the setting of statutory common standards which would give consistency to the presently inconsistent Scottish regulatory scene. For supply side stakeholders in the private, public and voluntary sectors, and the general public, there is a need for there to be a readily identifiable “Regulator Brand” which would clearly signpost how regulators relate to those with genuine complaints, positive comments, queries or concerns. Consistent approaches to best value, objective setting, performance and outcome evaluation are needed. These would enable the regulators themselves to share best practice and help them deliver the efficiency, effectiveness and economy desired by ministers and Scotland’s Parliament.

There are also issues around the reporting of activities to both Audit Scotland and the Scottish Parliament, such as whether there should be an annual debate on their activities, collectively as well as individually. An examination is needed on whether there needs to be reform of regulators' powers, duties and obligations to reflect changing realities. There also needs to be a better fit with UK level regulators, particularly where there is a clear policy interface that impacts on Scottish stakeholders differentially. As an example, tackling fuel poverty involves many Scottish voluntary organisations, and there are persistent concerns whether OFGEN fully takes into account the particular circumstances of house condition, styles of construction, levels of maintenance, climate and household income structures seen in Scotland.

**PART 7 OF THE BILL AND RELATED CONSULTATIONS ON CHARITY REFORM**

The devolved system of Charity Regulation in Scotland is still relatively new. While championed by the voluntary sector, there have been significant early challenges for OSCR, including setting up the Register, purging it of all redundant entries, including problems inherited from the previous system.

There is one specific provision in this Bill that proposes a change to the 2005 Act. SCVO finds it odd that providing for indemnity insurance for trustees was included in this Bill, when a parallel consultation on other changes to the 2005 Scottish Charities Act has recently concluded. A draft Housing Bill is also currently out to consultation which could allow the payment of trustees in certain closely specified circumstances. SCVO is responding on this particular point to the Housing Bill consultation separately.

On the indemnity insurance proposal, SCVO is well aware of the development of concerns on the part of trustees, and the possible disincentive to volunteering to be a trustee, were such indemnification insurance not to be made available as a valid charge on the activities of a charity. That is as far as SCVO would wish to see policy proceed. It does not wish to see charities put under an obligation to provide insurance.

**SCVO remains firmly opposed to any suggestion of trustees being paid for their service as trustees, beyond expenses incurred in the performance of**
trustee duties. Trusteeship is and should remain a wholly voluntary activity. That view fully accords with the general public’s belief, is a well respected and widely held belief among trustees themselves and is one of the core values at the heart of public confidence in the “charity brand.”

FUTURE REGULATION – THE NEED FOR CONSISTENCY

SCVO would be strongly supportive if ministers committed to a review of the operations of all the regulators handling devolved policy with a view to setting common standards, reporting and accounting arrangements, grievance procedures, policies and practices on public engagement and possible client/customer representation at Board level and a range of other regulatory issues. Such a review should lead to a comprehensive Bill. Such a review process could also consider the scope for collective reductions in red tape, based on the regulators’ operating experiences to date.

PART THREE – CREATIVE SCOTLAND

At a more general level, SCVO would suggest one governance issue where we would wish to have our comments recorded for the benefit of the Committee debate on the Bill. The current body, the Scottish Arts Council, has been able to benefit from its charitable status, thus retaining more of its available resources to be able to pursue its corporate planning objectives. Ministers have consistently said in public that they are advised that Creative Scotland will not be able to enjoy those same charitable benefits, once established. SCVO is puzzled by this assertion, since there are specific powers in the 2005 Scottish Charities Act for ministers to be able to grant such status on an exceptions basis.

PROCUREMENT AND CONTRACTUAL BEST PRACTICE

Much voluntary sector effort in recent years has been on the increasing problems with the operation of service delivery contracts. A complex of issues, including recovery of full costs of providing services, contract enforceability, securing EU compliant tendering procedures, potential conflicts of interest involving public bodies which are both service providers and commissioning agents, and the impact of differential tax treatment on the ability to compete fairly for contacts, have all produced difficulties for the sector. SCVO suggests that this Bill could provide an important opportunity to require regulators to review best practice in contracting thereby contributing to reform of public services.

The second level impacts of these procurement issues have included reductions in the supply of necessary capital resources, such as the sharp contraction in the numbers of charitable and private sector residential beds. The wider financial pressures on local authorities have also seen unilateral decisions to close facilities, ending the provision of services, where there were no legally enforceable consequences for the local authority. For charities and voluntary organisations, bearing the costs of redundancies, pensions and other statutory commitments have been considerable.

These issues are now being given attention in the Joint Task Group for the Third Sector which brings together SCVO, COSLA, SOLACE Scotland and Scottish Government. The present financial climate is not helping the pace of changes to
the wider framework within which these factors play out. SCVO believes that there are clear examples of best value not being secured for taxpayers at national and local government level from the present arrangements. We invite Scottish Government ministers to examine the case for action to ensure competition rules are enforced consistently, and where appropriate, to raise these with UK ministers. SCVO again asks that Scottish Government ministers make faster progress in implementing Full Cost Recovery as a key feature of contracts between themselves and voluntary sector bodies. We ask ministers to encourage Audit Scotland to devote more resources to examinations of cost/quality outcomes in terms of Best Value in contract outcomes, and to make recommendations for change where the evidence suggests that better value can be secured for the same outlay.

MORE MINOR PROVISIONS - THE DEER COMMISSION AND SCOTTISH NATURAL HERITAGE

The proposal to wind up the Deer Commission and transfer responsibility for its statutory purposes to Scottish Natural Heritage will be of interest to a number of voluntary organisations including those in conservation, environment, animal, food and health sectors.

SNH recently announced the outcome of a rigorous review of its landholdings. SNH proposes to dispose of up to 20% of its current holdings to third parties. This is a far sighted move, allowing it to focus on key locations and habitats, whose sustainability is central to SNH meeting its very demanding objectives set by Scottish ministers. SCVO hopes that management and ownership of much of this surplus will be secured by local and national conservation bodies, who will thus add to their growing importance as partners with SNH in habitat restoration and maintenance.

SCVO believes it will be essential for SNH to conduct a similar review of the Deer Commission’s land holdings, deer stocking policies in areas of internationally designated sensitive habitats, and the wider public interest in the management of Scotland’s national land resources. SCVO expects the new SNH will continue to work with voluntary groups whose contribution to Scottish landscape, biodiversity and sustainability are key to the preservation of fragile habitats. Among these are the many local voluntary groups managing community woodlands, crofting communities and those community groups who have exercised their right to buy under land reform legislation.

REPEALS

As in the SCVO response to the previous administration’s “Transforming Public Services” Consultation in 2006, we are glad to welcome the Bill’s focus on the repeal of unnecessary and overly –bureaucratic legislation. SCVO is actively discussing with its membership possible additions to the list of repeals and will seek to table these as amendments in Committee.

We believe that the harmonisation of standards to govern the operation of regulators dealing with exclusively devolved areas, could in itself contribute to significant de-cluttering of the Scottish regulatory landscape.

We also believe that the creation in subsidiary legislation and Guidance of a best practice, simple language public procurement model would enable a considerable
amount of outdated subsidiary legislation, Schedules and Guidance to be repealed.
SCVO believes that there is also a wider issue there is a case for ministers, when
bringing forward a new Bill, to seek to simplify existing legislation as a key part of
the Bill, and to put in place a single definitive piece of legislation for public services
in Scotland. This would go a long way to delivering the transparency, modern
language and ease of access for the general public. It would also promote better
understanding of the need for quality legislation, reduce the scope for ambiguity in
interpretation, and the waste of scarce Court, public and private resources in
securing resolution of problems of legislative conflict.

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