

## SPICe Briefing

# Public Services Reform (Scotland) Bill: Social Services

25 August 2009

09/54

**Camilla Kidner**

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'.



# CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	<b>3</b>
<b>EXISTING AGENCIES</b> .....	<b>4</b>
THE CARE COMMISSION .....	4
SOCIAL WORK INSPECTION AGENCY .....	5
HMIIE .....	7
<b>ESTABLISHMENT OF SCSWIS</b> .....	<b>7</b>
<b>INSPECTIONS</b> .....	<b>8</b>
INSPECTION OF SOCIAL SERVICES .....	8
JOINT INSPECTIONS .....	10
<b>DEFINITIONS AND FUNCTIONS</b> .....	<b>12</b>
DEFINITION OF CARE SERVICES AND SOCIAL WORK SERVICES .....	13
STANDARDS AND OUTCOMES .....	13
OTHER FUNCTIONS .....	13
<b>EFFICIENCIES AND COST SAVINGS</b> .....	<b>14</b>
<b>ORDER MAKING POWERS</b> .....	<b>14</b>
<i>Children’s Hearings</i> .....	15
<i>General Teaching Council Scotland (GTCS)</i> .....	16
<i>Children’s Commissioner</i> .....	16
<b>USER FOCUS AND CO-ORDINATION OF SCRUTINY BODIES</b> .....	<b>16</b>
<b>SOURCES</b> .....	<b>17</b>
<b>RELATED BRIEFINGS</b> .....	<b>20</b>



(SB 09/54)

## **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 HMle. However it is intended that lead responsibility will move to the new agency, SCSWIS. Part 6 also requires that HMle 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 HMle. The following outlines the functions of existing agencies which will transfer to SCWIS.

## THE CARE COMMISSION

The Care Commission is a 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 1: Social Work Services Functions**

<b>Provision</b>	<b>Description of functions</b>
Part IV of the Children and Young Persons (Scotland) Act 1937	Anonymity of children in court proceedings, power to send children to 'approved schools' i.e secure residential schools.
Sections 22(2) to (5A) and (8), 26(2) to (4), 43, 45, 47 and 48 of the National Assistance Act 1948	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.
Disabled Person's (Employment) Act 1958	Provision of sheltered employment
s.11 Matrimonial Proceedings (Children) Act 1958	Reports to a court in divorce proceedings relating to the future upbringing of children.
<b>Social Work (Scotland) Act 1968</b>	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.

Social Work (Scotland) Act 1968 read with ss 1 and 2(1) of the Disabled Persons (Services, consultation and Representation Act 1986	Ability of local authority to appoint someone as representative of a disabled person where they are unable to do so themselves.
Children Act 1975	Payments to children not living with their payments (eg kinship care), some provisions relating to secure accommodation.
<b>Adoption (Scotland) Act 1978/ Adoption and Children (Scotland) Act 2007</b>	Provision for adoption services. NB: due to be replaced by Adoption and Children (Scotland) Act 2007.
ss 21 – 23 Health and Social Services and Social Security Adjudications Act 1983	Recovery of sums due to Local Authority for residential care.
Foster Children (Scotland) Act 1984	Local authority duties regarding private fostering.
ss 38(b) and 235 of the Housing (Scotland) Act 1987	Review of decision regarding local authority's duty to a person who is homeless or threatened with homelessness
<b>Part II of the Children (Scotland) Act 1995</b>	Provisions for looked after children, the Children's Hearings system, some provision for adoption services, inquiries into matters affecting children, day-care for children.
s.51 Criminal Proceedings (Scotland) Act 1995	Child on remand to be accommodated by local authority – including in secure accommodation.
s.10 Adults with Incapacity (Scotland) Act 2000	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.
<b>Community Care and Health (Scotland) Act 2002</b>	Free personal care, direct payments and joint working between the NHS and local authorities.
<b>Mental Health (Care and Treatment) (Scotland) Act 2003</b>	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.

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, HMle 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" (HMle, 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 2: Comparison of inspection powers**

	<b>SCSWIS</b>	<b>Care Commission</b>	<b>SWIA</b>
<b>Services inspected</b>	Care services and social work services known jointly as 'social services'	Care services	Social work services
<b>Frequency</b>	As set in regulations and at Minister's request	As specified at s.25, 2001 Act and in regulations.	At Minister's request
<b>Type of inspection</b>			
	Joint inspections, inspections of social services individual investigations, and other types as specified in regulations	Integrated (with HMle) of care services provided with education, joint inspections of children's services, inspection of individual care services	Joint inspections of children's services, individual investigations, social work function.
<b>Powers of Inspection</b>			
power to require information	including health records.	only medical staff can inspect medical records. s.25(9)(b)(ii)	can require any documents, records or other items, but only medical staff can inspect medical records.
powers to share/disclose information	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).	Not specified – except in joint inspections	Can share info with HMIC, HMIP, Care Commission, special Health Board, HMle, Audit Scotland, Mental Welfare Commission (SSI 2006/553)
power to require explanation	As set in regulations	Not specified	Can require explanation of documents or records produced
power to enter premises	Can enter at any time s.45(3).	Can enter at any time (s.25(2)) can take measurements, recordings and photographs s.27	Can enter at any reasonable time, can take measurements, photographs and make recordings.

	<b>SCSWIS</b>	<b>Care Commission</b>	<b>SWIA</b>
power to interview and examine	As set in regulations	interview the manager, employees, service user. Medical examination if suspect that a person is not getting proper care.	Not specified
power to seize and remove documents	As set in regulations	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).	Can inspect, copy and remove documents or records except medical records.
enforcement	care services– issue improvement notices, conditional registration, can cancel registration.  All services – reports with recommendations.	Care services - issue improvement notices, conditional registration, can cancel registration.  Reports with recommendations.	reports with recommendations
disposal of personal records. [n.b. also Data Protection principle - data not kept longer than necessary].	Not specified, but regulations under s.47 can make similar provision as made by regulations under the 2006 Act.	Not specified	Under regulations must return or destroy records after a year /when the report is published/submitted to Ministers.
offences	Offences not exceeding level 4 to be set in regulations.	Obstruction or failure to comply. Fine at level 4. 2001 Act s.25(13).	Obstruction or failure to comply. Fine up to level 4 on standard scale.

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, HMle, NHS-QIS, HMIP and HMIC to undertake them. In practice, HMle 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 HMle. 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 3: Comparison of joint inspection powers**

	<b>Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006 and regulations</b>	<b>Public Services Reform (Scotland) Bill</b>
coverage	Children’s services, including individual child. Part or all of Scotland. (s.1)	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)
instigation	Minister’s request (s.1(5))	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)).
purpose	review and evaluate the effectiveness of services (s.1)	As specified by Ministers (s.95) without the need for subordinate legislation
outcome	Recommendations to Ministers(s.1(3))	Recommendations to Ministers. (s.95(8). Reports to be specified in regulations.
conduct	according to Minister’s directions and any Code of Practice issued by Ministers (s. 1(5), (6))	According to Minister’s directions, timetable (s.95(5)) and any code of practice issued by Ministers (s.95(8))
power of entry	At any reasonable time and can take measurements and photographs (regs 5, 6)	Not specified
powers to require information	Can require document (including personal records) to be produced, can inspect, copy and remove them,	To be specified in regulations

	and can require an explanation of them. (regs 6, 7,8)	
interviews and examinations	Not specified	To be specified in regulations
offences	Obstruction or failure to comply (reg 11) Offence at level 4 (s.3).	Up to level 4, to be specified in regulations.
bodies conducting	HMIe, SWIA, Care Commission, HMIP, HMIC, any special health board (eg NHS-QIS), or others as set in regulations. (s.1(7))	HMIe, 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 carryout inspections to be set in regulations (s.97)
confidentiality and sharing information	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))	To be specified in regulations and Code of Practice.

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 1<sup>st</sup>, 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 HMle 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: HMle 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 HMle and SCSWIS. Ministers can add to or remove a body from the list by regulations. The Care Commission and HMle 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

- British Medical Association. (2009) *Evidence to the Education, Lifelong Learning and Culture Committee on the Public Services Reform (Scotland) Bill*. Edinburgh: BMA
- Children 1<sup>st</sup> (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
- City of Edinburgh Council. (2009) *Evidence to the Education, Lifelong Learning and Culture Committee on the Public Services Reform (Scotland) Bill*. Edinburgh: City of Edinburgh Council
- 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. (2008) *Annual Report and Account 2007/08*  
Livingston: HMIE. Available at: <http://www.hmie.gov.uk/documents/publication/hmiearaa0708-04.html>
- 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
- Her Majesty's Inspectorate of Education: Services for Children Unit [Online]. Available at: <http://www.hmie.gov.uk/SelectEstablishment.aspx?typeid=12>
- Public Services Reform (Scotland) Bill [as introduced] Session 3 (2009)*. SP Bill 26. Edinburgh: Scottish Parliament. Available at: <http://www.scottish.parliament.uk/s3/bills/26-PubSerRef/b26s3-introd.pdf>
- Public Services Reform (Scotland) Bill: Explanatory notes (and other accompanying documents) Session 3 (2009)*. SP Bill 26-EN. Edinburgh: Scottish Parliament. Available at: <http://www.scottish.parliament.uk/s3/bills/26-PubSerRef/b26s3-introd-en.pdf>
- Public Services Reform (Scotland) Bill: Policy Memorandum Session 3 (2009)*. SP Bill 26-PM. Edinburgh: Scottish Parliament. Available at: <http://www.scottish.parliament.uk/s3/bills/26-PubSerRef/b26s3-introd-pm.pdf>
- 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/>
- Scottish Commission for the Regulation of Care. (2008) *Care Commission Annual Report and Account 2007/2008* Dundee: Care Commission. Available at: [http://www.carecommission.com/images/stories/documents/publications/reportingperformance/annual\\_report](http://www.carecommission.com/images/stories/documents/publications/reportingperformance/annual_report)
- Scottish Government. (2009a) *Update to MSPs on Child Protection Issues*. Edinburgh: Scottish Government.
- Scottish Government. (2009b) *Draft Children's Hearings (Scotland) Bill*. Edinburgh: Scottish Government. Available at: <http://www.scotland.gov.uk/Publications/2009/06/29113351/2>

Scottish Government. (2009c) *Towards an Independent General Teaching Council for Scotland*  
Edinburgh: Scottish Government. Available at:  
<http://www.scotland.gov.uk/Publications/2009/04/011102731/0>

Scottish Parliament Review of SPCB Supported Bodies Committee. (2009) *1<sup>st</sup> report 2009*. SPP  
266. Edinburgh: Scottish Parliament. Available at:  
<http://www.scottish.parliament.uk/s3/committees/rssb/reports-09/rssb09-01.htm>

Social Work Inspection Agency [Online]. Available at: <http://www.swia.gov.uk/>

Social Work Inspection Agency. (2008) *Annual Report and Accounts 2007/2008*. Edinburgh:  
Social Work Inspection Agency. Available at:

[http://www.swia.gov.uk/swia/files/SWIA\\_Annual\\_Report\\_and\\_Accounts\\_2007-08.pdf](http://www.swia.gov.uk/swia/files/SWIA_Annual_Report_and_Accounts_2007-08.pdf)

This page is intentionally blank

## 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](#)

Earle, M. (2009) *Public Services Reform (Scotland) Bill: Creative Scotland*. Edinburgh: Scottish Parliament Information Centre. Forthcoming.

Edwards, T. (2009) *Public Services Reform (Scotland) Bill: Rural and Environment Bodies*. Edinburgh: Scottish Parliament Information Centre. Forthcoming.

Burnside, R. (2009) *Public Services Reform (Scotland) Bill*. Edinburgh: Scottish Parliament Information Centre. Forthcoming.

Payne, J. (2009) *Public Services Reform (Scotland) Bill: Healthcare Improvement Scotland*. Edinburgh: Scottish Parliament Information Centre. Forthcoming.

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Camilla Kidner on extension 85376 or email [camilla.kidner@scottish.parliament.uk](mailto:camilla.kidner@scottish.parliament.uk). Members of the public or external organisations may comment on this briefing by emailing us at [spice@scottish.parliament.uk](mailto:spice@scottish.parliament.uk). However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk).

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

[www.scottish.parliament.uk](http://www.scottish.parliament.uk)