



## Update on the Forthcoming Legislative Changes

**Report to:** Board  
**Date:** 28 March 2014  
**Report by:** Annette Bruton, Chief Executive  
**Report No:** B-06-2014  
**Agenda Item:** 14

### **PURPOSE OF REPORT**

To update the Board on the principal provisions of, and implications for the Care Inspectorate, of recent legislation, including the Children and Young People (Scotland) Bill and Public Bodies (Joint Working) (Scotland) Bill, as passed, and the Regulatory Reform (Scotland) Act.

### **RECOMMENDATIONS**

That the Board:

1. Notes the information within this report.

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**Version Control and Consultation Recording Form**

Version	Consultation	Manager	Brief Description of Changes	Date
	Senior Management			
	Legal Services			
	Resources Directorate			
	Committee Consultation (where appropriate)			
	Partnership Forum Consultation (where appropriate)			
<b>Equality Impact Assessment</b>				
To be completed when submitting a new or updated policy (guidance, practice or procedure) for approval.				
Policy Title:			N/A	
Date of Initial Assessment:				
EIA Carried Out			YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
If yes, please attach the accompanying EIA and briefly outline the equality and diversity implications of this policy.				
If no, you are confirming that this policy will have no negative impact on people with a protected characteristic and a full Equality Impact Assessment is not required.			Name: P Lowe Position: Policy Analyst	
Authorised by Director	Name: K Anderson		Date: 20 March 2014	

## **1.0 INTRODUCTION**

Once enacted, the Children and Young People (Scotland) Bill and Public Bodies (Joint Working) (Scotland) Bill will have significant implications for the Care Inspectorate and the services we inspect and regulate.

This paper provides an update on the Bills, which have both been significantly amended from their original form. Both having been passed by the Scottish Parliament, they now await royal assent. A brief update on the Regulatory Reform (Scotland) Act is also included.

## **2.0 CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL**

The Children and Young People (Scotland) Bill was passed on 19 February 2014 and includes a wide range of provisions designed to “further the Scottish Government’s ambition for Scotland to be the best place to grow up in by putting children and young people at the heart of planning and services and ensuring their rights are respected across the public sector”.

The Bill’s provisions include:

- Duties on ministers to “keep under consideration” steps they could take to further children’s rights in Scotland.
- Powers for Scotland’s Commissioner for Children and Young People (SCCYP) to carry out an investigation on behalf of an individual child or young person.
- Requirements on local authorities and health boards to prepare a three-year ‘children’s services plan’ for each local authority, reporting on this each year.
- A ‘Named Person’ for every child up to age 18, provided by the health board for pre-school children and the local authority for school-aged children. The Named Person will “promote, support or safeguard the wellbeing of the child or young person” through a number of activities, including “advising, informing or supporting the child or young person or their parent; helping them to access a service or support; or discussing or raising a matter about that child or young person with a service provider or relevant authority”.
- New duties on service providers and relevant authorities in relation to information sharing, such as sharing information when it is “likely to be relevant” and deciding “if the likely benefit to the wellbeing of the child or young person arising in consequence of [sharing information] outweighs any likely adverse effect on that wellbeing arising from doing so”.
- A ‘Child’s Plan’ for every child that is deemed to need one, to be prepared by the health board for pre-school children and the local authority for school-aged children.

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- Increased provision of mandatory ‘early learning and childcare’ to 600 hours for each eligible child, from August 2014. (Eligibility will include, via regulations, all three and four year olds and looked after two year olds or those in families seeking work. This will be expanded to two year olds in families eligible for free school meals from August 2015.)
- Duties on local authorities to consult on and plan the delivery of early education and childcare once every two years, to ensure flexibility to meet parents’ needs and to also consult and plan in relation to day care and out of school care once every two years.
- A list of public bodies to become ‘Corporate Parents’ and a definition of what that entails.
- An extension of the age up to which care leavers can request support (‘aftercare’) from local authorities from 21 to 26.
- ‘Continuing care’ allowing looked after young people to stay in their placement beyond the age of 16. (This commitment will apply up to the age of 21 from 2015 and is to be considered by a working group to determine how best to take forward).
- A duty on local authorities to provide services to families with children at risk of becoming looked after, including information, advice and counselling.
- Support for kinship carers, including a ‘kinship care order’ and duties on local authorities to provide counselling, advice and financial assistance.
- The statutory establishment of ‘Scotland’s Adoption Register’.
- A new right to appeal a local authority decision to place a child in secure accommodation.
- A range of proposals in relation to school closures, a presumption against closing a rural school, an expansion of the role of Education Scotland to advise ministers in relation to the call-in of a school closure proposal, the establishment of an independent referral mechanism following ministerial call-in and the prevention of a closure proposal from being repeated for five years.
- Some changes to children’s hearings arrangements and children’s legal aid, including the establishment of ‘Area Support Teams’.
- Provision for the extension of free school meals. (To be provided for all P1 to P3 pupils via regulations).
- A definition of wellbeing, with reference to the SHANARRI indicators.

### 2.1 Implications for the Care Inspectorate arising from the face of the Bill

The Bill imposes a number of duties on the Care Inspectorate, and a range of other implications will also need to be considered as the Bill is implemented. The Care Inspectorate (or ‘Social Care and Social Work Improvement Scotland’) is mentioned directly a number of times on the face of the Bill.

#### 2.2.1 As a public body the Care Inspectorate is expected to publish, “in such manner as the authority considers appropriate”, a report every three years of steps

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taken during that period to “secure better or further effect within its areas of responsibility of the United Nations Convention on the Rights of the Child requirements”.

This can be reported on jointly with other bodies and could be satisfied through an annual report or in the triennial report.

- 2.2.2** As a ‘relevant authority’ in relation to the named person provisions, the Care Inspectorate must comply with requests for help or provide information where it appears that it could help a named person carry out its functions. The explanatory notes state that this could entail the relevant authority “providing assessments or analysis, chronologies of significant events or any other information which would assist the named person in assessing the overall needs of the child and determining how they can be met”.

The Care Inspectorate already provides support and information to other agencies by means of memoranda of understanding and also in response to requests for information. The Care Inspectorate has also provided scrutiny of significant events and major incidents in the areas of its expertise. The Care Inspectorate does not generally hold information about an individual child, in that way that a doctor or teacher might and would need to share with a social worker. It is unlikely that, in practical terms, we would hold data like this and so it is likely that existing resources and processes will suffice.

- 2.2.3** As a ‘Listed Authority’, the Care Inspectorate is expected to: "comply with any reasonable request" to provide information, advice or assistance to persons responsible for the preparation, delivery and management of a child's plan; "have regard" to any guidance issued by ministers about the exercise of functions within Part 5 of the Bill (Child’s Plan); and "comply with any direction issued" by ministers in relation to the exercise of functions within Part 5.

As above, the Care Inspectorate undertakes some such work at present in response to requests, and provides generic advice on effective and innovative practice which is not tailored to individual young people. There may be circumstances where regulatory decisions, for example, to de-register a particular service may result in increased requests for advice and assistance around support a child’s plan, but it we would not in practical terms be advising on an individual child’s plan. We might comment on the efficacy of the planning process and the impact of children’s plans (or otherwise) across a service.

- 2.2.4** As a ‘Corporate Parent’, the Care Inspectorate assumes a range of responsibilities such as being alert to matters which could adversely affect the wellbeing of children and young people and promoting the interests of children and young people. Corporate parents must prepare a plan for how they propose exercising their responsibilities and must keep this under review, as well as reporting on how they have done so. Corporate parents must also

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collaborate with each other where they consider that doing so would safeguard or promote the wellbeing of children or young people.

This approach is a logical extension of our safeguarding functions and our regulatory and improvement work is closely aligned to this. Work will be needed to formalise our policies in this area, including establishing clarity on the Board's role as the body corporate of the Care Inspectorate.

- 2.4.5** Local authorities must contact the Care Inspectorate in the event of death of "a person who is being provided with advice, guidance or assistance" in relation to 'aftercare' or "a person who is being provided with continuing care".

This formalises and extends work currently undertaken by the Care Inspectorate. We currently publish periodic reviews of the deaths of looked after children and so a clear approach is already in place to take this forward.

### **2.3 Other potential implications for the Care Inspectorate**

There are a number of parts of the Bill which do not explicitly mention the Care Inspectorate but which have implications for our work.

There will be a need to adapt, from a regulatory standpoint, to the increased provision in childcare and care settings for looked after children likely to arise as a result of the Bill's provisions in those areas. We are already planning processes to accommodate the variations that will be necessary where places will increase, but there may also be implications for registration, inspection and complaints. Discussions with the Scottish Government have already been initiated in this area.

There may be a potential overlap between the SCCYP's new powers and those of other bodies which consider complaints, such as the Care Inspectorate. The Bill states that the Commissioner may carry out an investigation if "satisfied on reasonable grounds that the investigation would not duplicate work that is properly the function of another person". It may be desirable to progress work with the SCCYP to formalise our mutual understanding of this provision, noting that the legislation and associated guidance makes clear that the SCCYP should not take on functions already held by us.

It is likely that we will need to take into account the Bill's provisions, such as new children's services plans and child's plans, when assessing how effectively partners are working together to improve outcomes for children in local areas. This will have implications for the planning and delivery of our joint inspections of services for children and young people. The focus for this will be by reviewing the Children's Services Plan at community planning partnership level, which we already do as part of our LAN work.

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The approach to joint inspections may also need to consider outcomes arising from (a) the new duty on local authorities to provide services to families with children at risk of becoming looked after, including information, advice and counselling, (b) the use of 'kinship care order' and duties on local authorities to provide counselling, advice and financial assistance and (c) the new right to appeal a local authority decision to place a child in secure accommodation.

The Care Inspectorate is already using the SHANARRI indicators as the framework for our new inspections of childminders, starting in April 2014, and will need to consider their further use as the review of regulated care methodologies continues.

### **3.0 PUBLIC BODIES (JOINT WORKING) (SCOTLAND) BILL**

The Public Bodies (Joint Working) (Scotland) Bill was passed on 25 February 2014 and provides a framework for improving the quality and consistency of health and social care services through the integration of health and social care. The Bill:

- removes community health partnerships from statute and provides two broad models for integration: the 'body corporate' or 'lead agency'
- requires health board and local authority partners to arrange an 'integration scheme' for their area, setting out which integration model is to be used and how functions are to be delegated
- provides for national outcomes for health and wellbeing which health boards and local authorities will be accountable to; these will be prescribed by the Scottish Government in consultation with a wide range of stakeholders
- sets out integration planning and delivery principles which integration partners must have regard to, such as "includes the quality of the service" and "protects and improves the safety of service-users"
- requires integration partners to prepare a strategic plan for their area, setting out arrangements for the delivery of integration functions and how the national health and wellbeing outcomes will be met.

### **3.2 Implications for the Care Inspectorate**

The Care Inspectorate and Healthcare Improvement Scotland (HIS) are named on the face of the Bill and will have a significant role in working together to evaluate the effectiveness of the new integrated landscape and support improvement.

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The Bill updates the Public Services Reform (Scotland) Act 2010 and the National Health Service (Scotland) Act 1978 to allow the Care Inspectorate and HIS to inspect the “planning, organisation and co-ordination” of integrated services.

Inspections will:

- review and evaluate how integrated services are complying with the integration delivery principles and contributing to achieving the national health and wellbeing outcomes;
- review and evaluate the effectiveness of strategic plans; and
- encourage improvement and make recommendations where necessary.

The Bill also allows for the Care Inspectorate and HIS, when undertaking a joint inspection, to invite other scrutiny bodies to carry out an inspection with them without requiring Ministerial direction.

The Bill’s financial memorandum outlines costs to the Care Inspectorate and HIS in assessing the performance of partnerships in meeting the nationally agreed outcomes. This is estimated to be £173,362 per joint inspection, with six inspections expected to take place per year. It is also noted that “additional resources, longer term” will be required to fund the Care Inspectorate and HIS for scrutiny of strategic commissioning. This recurrent cost is estimated to be £670k per annum with costs incurred from 2015/16 onwards. Additional cost would only be incurred were we to undertake new and additional inspections. Our current budget already assumes six adult strategic inspections per year.

The Care Inspectorate has a duty of co-operation and we already work closely with other scrutiny bodies in carrying out our work. Following a programme of strategic child protection inspections, inherited from HMIE, we now lead strategic inspections examining the performance of services for children and young people, alongside scrutiny partners, so start from a good position in the area of joint inspections.

We are currently working closely with HIS in the development and rollout of joint inspections of services for older people. Inspections in Aberdeenshire and Moray are due to be concluded soon. An aim of this process is to examine care pathways and the experiences of people using services to ensure that gaps between the care system and the NHS are being bridged. We are currently finalising the methodology to take account from learning from pilot inspections. We are also finalising joint working arrangements with HIS around the planning, resourcing and delivery of the inspections. This includes consideration of the new provisions facilitating other bodies being invited to take part in the inspections and the criteria for doing so.

The role and practice of link inspectors in adult services will need to be considered to ensure that they are in a position to engage in the integration agenda locally.

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#### **4.0 REGULATORY REFORM (SCOTLAND) ACT**

The Regulatory Reform (Scotland) Act received royal assent on 19 February 2014. The Act seeks to improve the way regulations are developed and applied in Scotland, by placing a duty on listed regulators, including the Care Inspectorate to exercise functions in a way which contributes to achieving sustainable economic growth “except to the extent that it would be inconsistent with the exercise of those functions to do so.”

##### **4.1 Implications for the Care Inspectorate**

The Act includes powers for Scottish Ministers to issue a code of practice. The stated aim of the Scottish Regulators’ Strategic Code of Practice is to “describe in more detail how regulators should apply regulatory principles and build good practice to achieving sustainable economic growth while concurrently delivering their core functions.”

The draft code is currently out for consultation, due to close on 28 April 2014. The Care Inspectorate plans to respond to this consultation and work is being undertaken by various teams to contribute to a response.

#### **5.0 RESOURCE IMPLICATIONS**

Changes to working practices will need to be considered more fully before any resource implications can be assessed. We will incorporate any necessary changes in to the review and revision of all inspection methodologies for regulated services and will review the strategic inspection models to make sure we get as much as we can from those inspections.

#### **6.0 BENEFITS FOR PEOPLE WHO USE SERVICES AND THEIR CARERS**

By being aware of the major implications of these Bills for both the Care Inspectorate and the services we inspect and regulate, we can effectively plan for, and appropriately adapt to, new duties to be imminently placed upon us. This preparation will put the Care Inspectorate in a strong position to continue providing assurance for people using services and supporting partners in improving the quality of care.

#### **7.0 CONCLUSION**

The Children and Young People (Scotland) Bill and Public Bodies (Joint Working) (Scotland) Bill, both passed by Scottish Parliament, will have significant implications for the Care Inspectorate and the services we inspect and regulate.

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The Children and Young People (Scotland) Bill includes a number of new reporting duties for the Care Inspectorate, while the organisation will also be expected to comply with a range of requests for information and assistance in relation to the Bill's provisions. The Public Bodies (Scotland) Bill also has direct implications for the Care Inspectorate, facilitating the inspection and evaluation of new integration arrangements alongside HIS.

There will be further consideration of the implications of both the above Bills when the work is concluded on secondary legislation and guidance which is now being developed. The Care Inspectorate is fully involved in all working groups so should be aware of any proposals as they emerge.

The Regulatory Reform (Scotland) Act will also have implications for the Care Inspectorate and the organisation plans to submit its views on a proposed Scottish Regulators' Strategic Code of Practice, currently out for consultation.

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