As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Regulation of Care (Scotland) Bill introduced in the Scottish Parliament on 20 December 2000:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on Legislative Competence; and
- the Presiding Officer’s Statement on Legislative Competence.

A Policy Memorandum, also prepared by the Scottish Administration, is printed separately as SP Bill 24–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Administration in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY

4. A consultation paper on Workforce Regulation and Education was published in November 1998. In March 1999 the Government published a White Paper on its proposals to modernise social work services in Scotland. Detailed proposals for new regulatory arrangements for care services and for the social services workforce were set out in a consultation paper published in December 1999. Following this consultation a policy position paper was published in July 2000 setting out proposals for legislation. A consultation paper on the first tranche of Draft National Care Standards was published in June 2000, setting out proposals on care standards for older people, people with mental health problems and for children and young people. Separate consultations were also carried out on the regulation of early education and childcare and private and voluntary healthcare.

5. The relevant documents are listed below:


   • Aiming for Excellence: Modernising Social Work Services in Scotland (Cm 4288), published in March 1999;

   • Regulation of Early Education and Childcare, published in June 1999;

   • Regulating Care and the Social Services Workforce: A Consultation Paper, published in December 1999;

   • Regulating Private and Voluntary Healthcare, published in March 2000;

   • Regulation of Early Education and Childcare: The Way Ahead, published in May 2000;
This document relates to the Regulation of Care (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 20 December 2000


All these publications are available on the Scottish Executive website www.scotland.gov.uk.

6. In summary this Bill:

- establishes a new independent body to regulate care services in Scotland to be known as the Scottish Commission for the Regulation of Care ("The Commission");

- establishes a system of care regulation, encompassing the registration and inspection of care services against a set of national care standards and the taking of any enforcement action;

- establishes a new independent body, to be known as the Scottish Social Services Council ("The Council") to regulate social service workers and to promote and regulate their education and training; and

- makes a number of amendments and minor changes in related areas and legislation.

**Regulation of care services**

7. Regulation of care services is patchy at present. Many services are regulated under a range of legislation that is now largely outdated and some services are not regulated at all. The Bill is intended to modernise and standardise the regulation of care services.

8. The Bill will reform the regulatory system for care services in Scotland. Care services include care homes for adults, residential care for children, children’s early education, day care and childminding, agencies providing care at home, nurse agencies, independent healthcare services, day care services for adults, housing support services, care and welfare in boarding schools and school hostels and care and welfare in accommodation for offenders.

9. The Bill provides for an independent Scottish Commission for the Regulation of Care to undertake this regulatory function. The Commission will register and inspect all care services against national care standards. These standards will be taken into account when the Commission makes any decisions about registering and inspecting services and in considering whether, and at what level, enforcement action should be taken. For the first time, all local authority care services will be required to register and to meet the same standards as independent sector providers.
10. The current system of care service regulation is principally embodied in the Nursing Homes Registration (Scotland) Act 1938, the Nurses (Scotland) Act 1951, the Social Work (Scotland) Act 1968, and the Children Act 1989, together with various regulations, circulars and guidance notes. The new legislation will replace the entire 1938 and 1951 Acts, Sections 61-68 of the 1968 Act and Part X and Schedule 9 of the 1989 Act, insofar as it applies to Scotland. A number of minor and consequential changes will also be made.

11. It is intended that the Commission should fulfil the recommendation of the Royal Commission on Long Term Care that there should be a National Care Commission to take a strategic overview of the care system and its funding and to steward the interests of older people. This role will not be limited to older people. The Commission will therefore have a statutory power to advise the Scottish Ministers on trends in care provision generally.

**Regulation of the workforce**

12. There is no comprehensive regulation of the social services workforce at present. Nor is an appropriate framework in place to support and enhance the professionalism of the workforce.

13. The Bill provides for the regulation of the social services workforce, by establishing the Scottish Social Services Council. The Council will regulate the education and training of social service workers and raise standards through the publication of codes of conduct and practice. For the first time a national register of social services staff will be set up and maintained by the Council. The Bill also provides for the Central Council for Education and Training in Social Work (CCETSW) to cease its functions in Scotland. It currently regulates education and training in social work throughout the UK. CCETSW’s functions will transfer to the Council, as will the functions of the Scottish arm of the National Training Organisation, the Training Organisation for the Personal Social Services.

14. The Bill sets out the functions and powers of the Council. The Council’s main functions will be to publish codes of practice and conduct, establish registers of particular groups in the workforce and to regulate their conduct, education and training.

**Other provisions**

15. Other provisions in the Bill include:

- powers to enable local authorities to make grants in respect of child care and family support and in some care services, make direct payments to children;

- a power to enable local authorities in Scotland to employ nurses to provide nursing care in any residential accommodation they may provide;

- a power to enable the Scottish Ministers to delegate a power to make grants and loans for social work;
THE BILL: OVERVIEW

16. The Bill is in five Parts:

- **Part 1** provides for the establishment of the Scottish Commission for the Regulation of Care and for the regulatory procedures, including inspections, that it will follow. The Scottish Ministers are given powers to issue national care standards applicable to all registered care services and to make regulations in relation to the care services regulated under this Part;

- **Part 2** provides for the establishment of the Scottish Social Services Council and sets out its functions and the procedures to be followed in the exercise of these functions.

- **Part 3** concerns provisions that are common to both the Commission and the Council, for example a power for the Scottish Ministers to make grants to either body;

- **Part 4** contains provisions relating to minor amendments and a number of other policy issues (as outlined in the previous paragraph); and

- **Part 5** contains general provisions, including interpretation of terminology for the purposes of the Bill and commencement powers.

17. The Bill provides for the Council to have rule making powers on administrative and procedural matters in relation to the exercise of the functions granted to them in this Bill. These will not be subject to Parliamentary scrutiny but the Bill requires that all the rules made under Part 2 will require the consent of the Scottish Ministers. These are in contrast to the use of regulations for functions of the Commission. A measure of self-regulation is normal for professional bodies like the Council whereas the measures being implemented by the Commission will have a wider application and so need greater public scrutiny.
PART 1: THE COMMISSION AND CARE SERVICES

Constitution of Commission

Section 1: Constitution of the Scottish Commission for the Regulation of Care

18. Subsection (1) establishes the Scottish Commission for the Regulation of Care. It will be a statutory body corporate which will exercise the functions given to it by or under the Bill or other relevant legislation. Subsection (1)(b) provides that as part of its function, the Commission will be expected to promote improvements in care services in Scotland.

19. The Commission will be a non-departmental public body. It will be independent in its day to day running, but will be accountable to the Scottish Ministers through its corporate plan and management statement.

20. Subsection (2) provides that the Commission must, act in accordance with directions given to it by, and under the general guidance of, the Scottish Ministers. Subsection (3) gives effect to schedule 1 which sets out the constitutional arrangements and general provisions for the establishment and operation of the Commission.

Care Services

Section 2: Care services

21. Section 2 sets out the range of “care services” which will be regulated by the Commission and defines each of the services for the purposes of the Bill. This section also provides that certain services can be excepted from these definitions by regulation.

22. Subsection (2) defines a support service. This definition includes services traditionally referred to as “home-care” or “domiciliary care” services provided to people in their own homes or in supported accommodation, sheltered housing or elsewhere. It also includes those services traditionally referred to as “day care” whether they are provided in the home, in a care setting or elsewhere. It covers services provided or purchased by a local authority, services provided by health bodies which are not part of core NHS functions and other services independently provided which include an element of personal care or personal support, except for services provided by an individual through direct arrangements with the recipient (e.g. an informal family carer, a paid personal assistant). It does not include field social work services carried out by social workers in connection with their functions of assessment, care management, child protection, supervision of offenders etc.

23. Services are included if they are provided because of a person’s vulnerability or need, as defined in 2(20). Personal care is also defined for the purposes of the Bill as being care related to day to day physical tasks and to mental processes connected with those tasks, for example eating and washing and remembering to eat and wash. It does not include domestic services which are not provided or purchased by a local authority or health body.
24. Subsection (3) defines a care home service as the provision of accommodation together with personal care, personal support or nursing for any person, including children, because of their vulnerability or need. Care homes provided by local authorities will be required to register, and section 52 allows them to employ nurses and to provide nursing care. The care and accommodation provided must be inextricably linked for a care service to be considered a care home. If this is not the case, the Commission will register and inspect the care being delivered as a support service under section 2(2). This provision brings together the previously separate definitions of residential care homes and nursing homes under the single definition of care home.

25. Subsection (4) defines a school care accommodation service as the provision of residential accommodation with personal care or personal support to a school pupil by a local authority or an independent or grant-aided school. This covers services provided to children boarding at an independent school and those staying in a school hostel provided by a local authority.

26. Subsection (7) defines secure accommodation for children as residential accommodation approved by the Scottish Ministers in accordance with regulations under section 60(1)(bb) of the Social Work (Scotland) Act 1968 and or paragraph 4(2)(i) of Schedule 4 to the Children Act 1989. These care services cater for some of the most vulnerable children and young people in Scotland. The Commission will regulate these services, but statutory approval of secure accommodation will remain with the Scottish Ministers under section 24(9).

27. Subsection (8) defines an offender accommodation service. These services, traditionally referred to as residential accommodation for offenders, provide advice, guidance and assistance to people who are subject to specified supervision orders or have recently been released from prison or other detention. They are provided under Section 27 of the Social Work (Scotland) Act 1968.

28. Subsections (9) and (13)(a) define child minding as looking after one or more children on domestic premises for a minimum of two hours per day, for reward. Subsections (10) and (11) provide exceptions to this, for example for care provided by parents or relatives of children and care provided in the parent’s home.

29. Subsections (12) and (13)(b) define day care of children as a service providing care for children for more than two hours a day on premises other than domestic premises. Subsections (14)-(17) provide exceptions to this definition, for example medical treatment in hospitals (16) and care for children of school age provided in and managed by schools (17).

30. Subsection (19) defines a housing support service as a service that is prescribed by the Scottish Ministers in regulations made under the Housing Bill that is currently before the Scottish Parliament. These services will be provided under the Supporting People initiative and will be targeted on, for example, homeless or potentially homeless people, women fleeing domestic abuse, ex-offenders and people with HIV/AIDS. The services will provide general support, for example assistance with life skills such as budgeting, minor repairs, security and the use of electrical appliances.
Section 3: Power to amend the definition of “care service”

31. This section enables the Scottish Ministers to amend by order the definition of care service. This allows the Scottish Ministers to respond to any future changes in the delivery or focus of care services by adding additional services to the regulatory remit of the Commission as and when appropriate.

Section 4: Information and advice

32. Subsection (1) provides that the Commission must make available to the public information on the availability and quality of care services. This might include information about the location and types of services available as well as the results of its inspections of individual care services or whether enforcement action is currently being taken against any specific service. This will help members of the public to decide which care services they wish to use.

33. Subsection (2) allows the Commission to provide advice to the Scottish Ministers, local authorities, health boards and care service providers or prospective providers about any aspect of its work. For example, the Commission might offer guidance to service providers on how to meet the national care standards. The Commission should also provide information to the Scottish Ministers under this section about trends in care provision to fulfil the role recommended by the Royal Commission on Long Term Care. The Commission must provide advice to the Scottish Ministers on relevant matters, if so requested. Subsection (3) allows the Commission to charge a reasonable fee for any goods and services it provides.

National care standards

Section 5: National care standards

34. Section 5 provides for the Scottish Ministers to prepare and publish national care standards applicable to all care services. These will specify the standards applicable to care services. Subsection (3) provides that these standards and the Council’s codes of practice must be taken into account by the Commission when making any decisions related to registration, inspection and enforcement in respect of care services. This section also ensures that consultation must be undertaken prior to any amending of the care standards. The standards will be user focussed, and are being devised by working groups under the auspices of the National Care Standards Committee.

Complaints

Section 6: Complaints about care services

35. Subsection (1) requires the Commission to establish suitable procedures for dealing with any complaints made to it about registered care and early education services by users, their
relatives or advocates or staff. Subsection (3) requires that, before establishing such procedures, the Commission will be required to consult local authorities and health bodies and submit details to the Scottish Ministers for approval.

36. While local resolution of complaints by the provider will be the norm there should be no requirement for a user of a service to go through the provider’s own system before approaching the Commission or for the complainer to be identified as part of the process. Any procedures developed must be easily understood by service users and the general public and kept under review by the Commission. The Commission must also ensure that the established procedure is given the appropriate publicity.

Registration

Section 7: Application for registration

37. This section sets out the framework for applications for registration. Subsection (1) requires that the application for registration must be made to the Commission. Subsection (2) sets out what an application must include. For the purposes of the Bill “person” does not only mean an individual but includes, for example, a company or firm.

38. Subsection (3) requires a person providing more than one care service to apply for registration for both services. This would mean, for example, that someone who provides a care home and a separate home care service would have to make a separate application for each. But someone who provides a care home which includes some day care provision would only apply once. It would be for the Commission to decide on receipt of applications whether services could be registered as one or not.

39. Subsections (4) and (5) require that where a person is providing a care service from two or more settings, each setting must be registered as a separate service ie a provider who has more than one care home has to register each. This is to cover situations whereby an organisation or business operates a number of care services but effectively manages them each individually on a day to day basis.

Section 8: Grant or refusal of registration

40. Registration will only be granted if the Commission is satisfied that the applicant has demonstrated that they have complied with or will comply with the relevant standards and other relevant requirements. The burden of proof is with the applicant rather than the Commission.

41. Subsection (1) provides that if the Commission is satisfied that the applicant is complying with, or will comply with, all relevant requirements set out in the standards and in regulations under section 24, and the requirements of any other legislation that it considers relevant, it must grant the application for registration, otherwise it must refuse it. Subsection (2) provides that the Commission will be able to grant an application either unconditionally or subject to such conditions as it thinks fit. Specific conditions may be required to take account of the
circumstances in an individual service, for example, a condition that a particular door is kept
locked to prevent children from wandering directly onto a busy road, or that a particular mix of
staff is needed.

42. Subsection (3) provides that the Commission may impose a condition restricting the
number of persons for whom a care service may provide accommodation.

43. If the Commission grants the application, it must issue a certificate of registration
(subsection (4)), which the service provider must display in a prominent position (subsection
(5)), either in the premises where the care service is operated from, or in the case of services
where only the providing agency is regulated, the management offices of that agency.

44. In making a decision under this section, the Commission must take the national care
standards and the Council’s codes of practice into account.

Improvement Notices

45. There has been considerable concern that the present statutory arrangements for
enforcement are inflexible and resource intensive and do not lend themselves to swift action to
protect service users. The legislation therefore enables the Commission to take swift action
when appropriate (particularly under section 16) whilst also ensuring that there are adequate
safeguards for service providers.

Section 9: Improvement notices

46. This section gives the Commission the power to serve an improvement notice on a care
service. Such a notice will specify the improvements required to bring a care service up to the
standards required and the timescale for meeting these standards. If the necessary improvements
are not made within the time allowed the Commission can begin procedures under section 10 to
cancel a service’s registration. Improvement notices do not form part of the urgent cancellation
procedure set out in section 16.

Proposals and applications in relation to registered care services

Section 10: Cancellation of registration

47. This section gives the Commission the power to cancel the registration of a care service
that, having been issued with an improvement notice under section 9, is still not meeting the
relevant requirements. This could be concern about how effectively the care standards are being
taken into account or that a condition of registration has been breached or where a relevant
offence has been committed. Further grounds for cancelling registration may be prescribed by
order. Registration can be formally cancelled even if an owner closes a care service before the
cancellation process is complete. This will ensure that the owner’s record accurately reflects the
situation and the Commission will be aware of previous history in dealing with any future
applications. Again, the Commission must take the national care standards and the Council’s codes of practice into account in coming to its decisions.

48. Relevant offences for the purpose of section 10 are:

- failure to display a current certificate of registration (section 18(2));
- obstructing an inspector (section 21(11)); and
- any other offence which in the Commission’s view makes it appropriate to cancel a registration.

49. Cancellation of registration would not normally be the first step in a formal enforcement action. It is only likely to be used where the service has not met conditions of registration over time and has ignored the serving of an Improvement Notice. If an owner is convicted of a relevant offence, such as obstructing an inspection (an offence under section 21(11)) and fails to remedy matters at fault, the Commission will be able to cancel registration. Cancellation of registration procedures are not part of the urgent cancellation procedure set out in section 16.

**Section 11: Condition notices**

50. This section empowers the Commission to impose a “condition notice” on a care service. This notice can vary or remove a condition of registration or impose an additional condition. Condition notices do not form part of the urgent cancellation procedure set out in section 16.

**Section 12: Applications in respect of a registration**

51. Subsection (1) enables a provider of a care service to apply for a change to their conditions of registration, for example to change the number of people accommodated in a care home, or to apply voluntarily for the cancellation of registration, for example, if they plan to close or sell the business. Subsection (2) prevents a person voluntarily cancelling their registration if the Commission have given notice of intention to, or decided to, cancel registration. Subsection (3) enables the Scottish Ministers to make regulations specifying what should accompany such an application including an appropriate fee. Subsection (4) provides that if the Commission grants an application for a change of conditions they must give notice in writing and issue a new certificate of registration.

**Section 13: Further provision as respects notice of proposals**

52. Subsection (1) provides for the Commission to give notice of decisions it intends to take, in respect of applications for registration made under section 7, if it intends to grant application subject to conditions or refuse it. For example, in the case of a person applying for registration for the first time, the notice of proposal will state the conditions subject to which the Commission proposes to grant the application.
53. Subsection (2) requires the Commission to give notice if it intends to cancel a registration other than under the emergency procedures set out in section 16(1). Subsection (3) requires the Commission to give notice if it decides to refuse an application for a variation of conditions made under section 12. Notice must set out the reasons (subsection (4)). Section 13 does not apply where the Commission decides to grant an application for registration unconditionally, or subject to agreed conditions.

Section 14: Right to make representations as respects proposals

54. Section 14 states that a notice given under section 13 must indicate that the person can, if they so wish, make written representations to the Commission within a time limit of 14 days (subsection (1)). This stage ensures that the applicant has the opportunity to make their point of view known. Subsection (2) provides that the Commission may not make a decision until the 14 day period has ended unless they receive representations during the 14 day period or the person notifies the Commission that he will not be making representations.

Section 15: Notice of decision

55. Subsection (1) provides that the Commission should give notice when granting an application for registration unconditionally or subject to a condition that has been agreed in writing between the Commission and the applicant.

56. Subsections (3)-(6) deal with situations where the representations stage has been completed, requiring the Commission to serve a notice in writing of their decision on the applicant. The notice must explain the right of appeal conferred by section 17 and in the case of a decision to grant an application subject to conditions or to vary conditions, set out those conditions. A decision to cancel registration, to grant an application subject to conditions which are not agreed, or to change conditions will take effect only after the outcome of any appeal has been determined, or after 14 days if no appeal is brought. In the case of a decision to grant an application subject to conditions which are not agreed, if the applicant decides not to pursue his appeal the decision will take effect immediately.

Section 16: Urgent procedures for cancellation of registration etc.

57. This section provides that the Commission may apply to a sheriff for the immediate cancellation of registration or change in the conditions of registration of a care service. The sheriff may only make the order where it appears that unless the order is made there is a serious risk to a person's life, health or well-being. The conditions might include that no new clients are taken on by the service, or that the manager or a particular member of staff is replaced.

58. Subsection (2) requires the Commission to notify the local authority and health board as well as any other statutory authority it considers appropriate, of the making of an urgent application. This is necessary so that the local authority can comply with their statutory duties as required, for example to provide or arrange alternative care for the service users in accordance
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with their duties under section 12A of the Social Work (Scotland) Act 1968, and that the health
board may consider whether to make provision for NHS services.

59. The Commission will be expected to inform such bodies as soon as possible in order that
necessary arrangements can be made. The Commission will be expected to have agreed
protocols with the Convention of Scottish Local Authorities (COSLA) and the NHS to deal with
such situations should they arise. Subsection (5) defines a statutory authority for this purpose.

Section 17: Appeal against decision to implement proposal

60. Section 17 provides for an appeal against a decision on registration made by the
Commission under section 15. The appeal must be made to a sheriff within 14 days of the notice
decision. Subsection (2) provides for the sheriff’s powers on considering an appeal.

61. A person aggrieved with the decision of a sheriff would have the right to appeal further to
the sheriff principal of the area and following that the Court of Session. Details of this are not
included in this Bill as this is standard to all areas of Scots law.

62. Appeals against an order made by a sheriff under section 16 would automatically be
made to a sheriff principal without the need for a specific provision in this Bill. Such an appeal
would not prevent the immediate action, for example cancellation of registration, outlined in the
order from taking place.

Offences

Section 18: Offences in relation to registration under this part

63. Section 18 sets out the offences under this part of the Bill. Subsection (1) makes it an
offence for a person to describe any service as a care service for the purposes of this Bill when it
is not registered as such. This would catch, for example, an unscrupulous hotel owner who tried
to pretend their hotel was a care home. If convicted of an offence under this subsection, the
person would be liable to a fine not exceeding level 5 on the standard scale (£5,000 at present) or
up to three months imprisonment, or both.

64. Subsection (2) makes it an offence not to display a certificate of registration in a
prominent place. The penalty on summary conviction is a fine not exceeding level 2 on the
standard scale (£500 at present).

Section 19: Offences by bodies corporate etc.

65. This section provides that if an offence under Part 1 is committed with the consent or
connivance of an officer of a body corporate, a partnership, or an unincorporated association, or
if that officer has turned a blind eye or been negligent, then the officer as well as the organisation
are guilty of the offence. Individual officers of a body corporate, partners of a partnership, or
persons managing or controlling an unincorporated association who are complicit in an offence under the Part will not be able to escape prosecution simply because the organisation is liable: both they and it may be liable to prosecution.

Fees

Section 20: Registration fees

66. Section 20 sets out the fees which are payable to the Commission. Subsection (1) gives the Scottish Ministers power to prescribe maximum levels of fees which may be imposed and to determine whether or not a fee is payable by order. Subsection (2) sets out the activities for which the Commission is able to impose fees. Subsection (3) gives power to the Commission to have regard to its own expense in setting particular fees within the maxima set by the Scottish Ministers. This subsection also allows the Commission to waive fees, for example in the situation described under section 7 where a person operates more than one care service.

Inspections

Section 21: Inspections

67. Subsection (1) provides that the Commission may require a person who provides a care service to supply it with any information to enable the Commission to discharge its functions. This may include such aspects as pre-inspection questionnaires or other information.

68. Subsection (2) enables inspection at any time of a care service and in particular allows an inspector authorised by the Commission to enter and inspect premises at any time if they are used or are believed to be used in connection with a care service. These powers are necessary to ensure compliance with the regulatory framework.

69. Subsection (3) requires the Commission to ensure that all care services are subject to a minimum of one inspection every twelve months. However, the Commission will not generally inspect a service (in particular early education and childcare) in a year that HMI carry out an inspection. The Commission will inspect new services and services about which there are concerns more frequently, and may inspect in the same year as HMI if that is considered appropriate. Inspections by the Commission can be planned in advance with the provider or carried out unannounced at any time.

70. Subsections (4), (5) and (6) provide that inspectors may also require relevant records or other documents to be produced for inspection on the premises wherever they may be kept. Where they are stored on computer they should be produced in a legible, not encrypted, form. Inspectors will also be able to copy or remove relevant records (other than medical records), and will be able to interview, in private, the manager, employees, or any persons accommodated or cared for by the service who consent to be interviewed, including with family, carers or other representative where appropriate.
71. Subsection (7) allows an inspector who is a medical practitioner or registered nurse to examine in private, with their consent, a patient or resident, or their medical records, where they believe that the person may not be receiving proper care. Subsection (8) makes the same provision in respect of dentists. When any other inspector has such concerns, they would arrange for a medical practitioner, nurse or dentist to examine the individual as appropriate. The person may choose to be examined in the presence of, say, a friend or member of their family where appropriate.

72. Subsection (11) makes it an offence for a person to intentionally obstruct an inspection under this section or section 22. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale (£2,500 at present).

Section 22: Further provision as regards inspections

73. Section 22 allows an inspector (authorised to enter and inspect premises by virtue of section 21) to remove any material which could be used as evidence of possible non-compliance with requirements. Subsection (2) imposes a requirement on owners, managers and employees to assist the inspector and permits the inspector to take such measurements and photographs and make such recordings as considered necessary to enable him or her to exercise powers under this section.

74. Subsection (5) requires the Commission to prepare a report after carrying out an inspection under section 21 and send a copy of the report to the registered person. Subsection (6) provides that the Commission must make the report available to the public. The Commission will need to consider whether or not to make these reports available in other formats, e.g. Braille.

Regulations

Section 23: Regulations relating to the Commission, to registration and to registers

75. Subsection (1)(a) gives the Scottish Ministers the power to make regulations conferring additional functions on the Commission. Providing for the Scottish Ministers to give the Commission further functions through regulations will give it the necessary flexibility to react to future needs of service users and developments in care service provision without the need for primary legislation.

76. Subsection (1)(b) provides for the Scottish Ministers to make regulations about how the Commission should maintain registers under Part 1. Subsection (1)(c) allows regulations to be made about the information that should be provided in an application and what certificates of registration should include, for example the conditions of registration of a care service. Subsection (1)(c)(iii) provides for regulations specifying types of applicants who cannot make applications.

77. Subsections (1)(d) and (e) allow regulations to be made that define the circumstances and conditions, including the payment of a fee, under which the Commission should provide access
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Section 24: Regulations relating to care services

78. Section 24 provides regulation-making powers which will cover the management, staff, premises and conduct of care services. It also provides for regulations to be made regarding the health and welfare of service users.

79. Subsection (1) provides a general power to make regulations imposing any requirements the Scottish Ministers see fit. Subsection (2) allows regulations to be made to ensure that care services are suitably managed, staffed and equipped and that premises are fit for their purpose.

80. Subsections (2)(e) and (6) provide powers to make regulations regarding the welfare of persons provided with care services. Subsection (6) allows for regulations under subsection (2)(e) to specifically make provision about promoting and protecting people’s health and about the control and restraint of service users where necessary.

81. Subsection (2)(j) provides that people acting as a GP, or another professional capacity to be specified by regulation, for persons at a care service should not have a financial interest in that service.

82. Subsection (3) in conjunction with 24(2)(l)(i) provides that the Scottish Ministers may make regulations requiring any receiver or liquidator of a company, a trustee of an individual registered as an owner of a care service or a supervisor/administrator of a company appointed under the Insolvency Act 1986 to notify the Commission of their appointment. 24(2)(l)(ii) provides for regulations to be made requiring that such a person appoint a person to manage the care service in question. The Commission will need to know if another individual has taken over managing of a care service because of financial difficulty. The replacement manager will have to meet the registration requirements set out in regulations.

83. Subsections (4) and (5) provide that regulations may be made prohibiting a person’s appointment as manager of, or employment in, a care service unless they are on a register of social care workers, maintained by the Social Services Council.

84. Subsection (7) gives the Scottish Ministers power to regulate how the provision of a care service should be conducted, including the provision of facilities and services, record keeping, notification of events, arrangements for dealing with complaints and in relation to independent hospitals and clinics, the arrangements to be made to secure that any medical or psychiatric treatment or listed services meet appropriate standards.
85. Subsection (7)(d) gives the power to make regulations that a person providing a care service must produce reports to the Commission, while (e) sets out what should be in reports and the timing of their submission. Subsection (7)(f) provides for regulations to require care service providers to notify the Commission of events arising in relation to care services. It will be necessary to inform the Commission of events such as accidents, fires or death.

86. Subsection (7)(m) requires notice of changes in the ownership or the officers of a company which was registered in respect of a service. Subsection (7)(k) sets out when notice is required, while (l) sets out arrangements for when the provider of a care service dies.

87. Subsection (7)(o) allows the Scottish Ministers, through regulations, to require owners or managers of independent health care services to put in place policies and procedures to secure that the quality and standards of healthcare are appropriate. Subsection (7)(o)(i) requires that these are in place for medical or psychiatric treatments. Subsections (7)(o)(ii) and (8) allow regulations to specify other types of treatment or technology that should also be covered.

88. The regulations might specify what policies and procedures are required and, where necessary, how they should be managed and recorded. The regulations might say, for example, how a critical incident should be dealt with, what must be recorded and what needs to be reported and to whom. By setting these requirements out in secondary legislation, policies and procedures can be modified to respond to changes in safety procedures and other aspects of healthcare delivery, without having to amend primary legislation.

89. Subsection (9) concerns regulations made in respect of secure accommodation for children, which may cover both its provision and its use.

90. Subsection (10) requires the Scottish Ministers to consult such persons as they consider appropriate before making or significantly amending regulations under the powers in subsections (1), (2) and (7) and (9) under this section.

Transfer of staff

Section 25: Transfer of staff

91. This section provides that schemes may be made for the transfer of staff to the new bodies, provided that prescribed requirements for consultation have been met in respect of every individual to be transferred.

92. All transfers made under the Bill will reflect the Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1981 No 1794) (TUPE) principle that staff transferred will do so on their existing terms and conditions. In addition, the new bodies may make provision for occupational pensions and compensation for loss of employment.
93. Subsection (4) provides that under a scheme an employee’s existing contract of employment would not be terminated, but would transfer to the new employer and be treated as having effect from the date it was originally made.

94. Subsections (6) and (7) provide that an employee may object to transferring to a new employer, and that their contract of employment can be terminated before the date of transfer. This would not be treated as a dismissal.

95. Subsection (8) provides that these arrangements will not affect the right of an employee to terminate his or her contract if their working conditions were to suffer a significant change which was to their detriment.

Miscellaneous

Section 26: Arrangements entered into by local authority or health body: services to be registered

96. This section makes it clear that, although a service commissioned by the body in question need not exist as a registered care service at the time the contract is entered into, the service must be a registered one by the time it is actually provided.

Section 27: Giving of notice

97. Section 27 deals with the serving of notice on a care service provider or a person seeking to be a provider of a care service, and sets out when notice is deemed to have been delivered.

PART 2: THE COUNCIL

Constitution

Section 28: Constitution of the Scottish Social Services Council

98. Subsection (1) establishes the Scottish Social Services Council. It is a statutory body corporate which will exercise the functions given to it by or under the Bill or other relevant legislation. Subsection (2) provides that the Council must, in the exercise of its functions act in accordance with directions given to it by, and under the general guidance of, the Scottish Ministers. Subsection (3) gives effect to schedule 2 which sets out the constitutional arrangements and general provisions for the Council. In effect, the Council will be a non-departmental public body.
Registration

Section 29: Register of social workers and of other social service workers

99. This section provides for the Council to establish and maintain a register of social service workers. Subsection (2) provides that there should be separate parts of the register for social workers, for each prescribed description of other social service worker, and for students training to become social workers or prescribed social service workers.

100. The social services workforce is large and diverse: more than 100,000 people with a range of qualifications and experience. It would be impractical to register this many people in one go and it was therefore decided to begin with a limited qualifications based register. The White Paper identified 3 groups of staff which would be registered. The responses to the Consultation document urged that these groups should be extended. It was therefore decided that initially, registers will cover social workers and 4 specified groups of other social service workers. A further tranche of 2 other groups of staff would be registered in due course. Section 29 will allow the Scottish Ministers, in consultation with the Council, to instruct that further registers should be established. Subsection (3) will enable specific parts of the register to be closed, for example to reflect any changes to the nature of service delivery in future.

Section 30: Applications for registration

101. This section provides for the Council to make rules, subject to approval by the Scottish Ministers, governing how applications to register shall be made.

Section 31: Grant or refusal of registration

102. Section 31 lists the conditions an applicant must satisfy in order to be registered with the Council. Applicants must satisfy any requirements imposed by the Council as to training, conduct and competence. The Council must also be satisfied as to an applicant's good character and that they meet any other conditions that the Council may establish through rules. The Council must refuse an application for registration if it is not satisfied an applicant meets the conditions.

103. Subsections (2)-(5) provide for the Council to recognise, for the purposes of registration, qualifications gained outwith Scotland. The Council can accept professional qualifications of nationals from any EEA state if these are prescribed as having Community equivalence. Such nationals may also have to satisfy other requirements imposed by rules made by the Council. Where the training of applicants from outwith Scotland is not recognised by the Council, additional training can be required, in accordance with Council rules.

104. As each of the UK countries will have its own regulatory body, this section applies to qualifications from England, Wales and Northern Ireland as well as those gained in other EEA states and in other parts of the world.
Section 32: Variation etc. of conditions in relation to registration under this Part

105. This section allows for the Council to give notice to a person on its register that it intends to vary or remove an existing condition of registration or to impose a new condition. Subsection (2) provides for the Council to set out in rules how this procedure will operate, including how the person in question may appeal.

Section 33: Removal etc. from the Council’s register

106. This section provides for the Council to make rules, subject to the approval of the Scottish Ministers, about the circumstances under which a person can be removed or suspended from any part of the register. The section explains that the rules will make provision for the procedure to be followed, standard of proof required, and for the rules of evidence in proceedings by which the matter can be determined. The intention is that the burden of proof should be on the balance of probabilities. These proceedings may be held in public.

Section 34: Appeal against decision of the Council

107. This section gives the right of appeal to a sheriff about the decisions of the Council. People will have the right to appeal against decisions made by the Council in respect of registration, for example, a decision not to register them or to remove them from the register. Access to an appeals procedure is essential because such decisions could affect an individual’s ability to secure employment.

Offence

Section 35: Use of title “social worker” etc.

108. Section 35 provides for protection of the title “social worker” by the creation of an offence punishable by a fine up to level 5 on the standard scale (£5,000 at present), for a person who is not registered as a social worker to use that title or hold themselves out as a registered social worker with an intention to deceive. Subsection (1)(b) provides that the Scottish Ministers may prescribe by order other job titles to be protected under this section.

109. Subsection (2) provides that an individual will not be guilty of an offence if they are registered with an equivalent regulatory body elsewhere in the UK. Registration as a social worker with the Council will in effect grant a license to practice and thereby provide access to work with vulnerable people.
Section 36: Codes of practice

110. Under section 36 the Council is required to produce codes of conduct and practice for social service workers and for employers of such staff. No such nationally agreed codes exist at present. This is a fast developing field, therefore the codes will not be static. The Council will be obliged to gain consent from the Scottish Ministers before publishing codes, and to consult the Commission, other bodies that may be prescribed and anyone else, as appropriate. The Council shall keep the codes under review and amend them where it thinks necessary, consulting as above. Adherence to the codes will be taken account of in the work of the Commission.

Training

Section 37: Approval of courses etc.

111. The Council will take over the regulation of professional social work training and related post-qualifying training from the Central Council for Education and Training in Social Work (CCETSW).

112. Section 37 gives wide powers to the Council to promote education and training and to approve courses with the intention of ensuring the consistency and quality of the education and to secure or provide appropriate training when this is not, in the opinion of the Council, already being made available.

113. The new Council will co-operate with relevant regulatory bodies and awarding bodies to ensure that education and training for all social service workers is appropriately provided and regulated.

Section 38: Grants and allowances for social service workers’ training

114. This section provides that the Council may make grants and pay allowances to persons resident in Scotland to enable them to undertake education and training, and make grants to organisations providing approved courses. Subsection (2) provides that the Council can only make grants or pay allowances to individuals for purposes specified by the Scottish Ministers. Subsection (3) provides that the Scottish Ministers may, by direction, specify the terms and conditions under which the Council is able to make such grants and allowances, and subsection (4) allows them to determine which students and which courses may receive grants and the maximum grants payable.
This document relates to the Regulation of Care (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 20 December 2000

Regulations and rules

Section 39: Regulations relating to the Council

115. Subsection (a) gives the Scottish Ministers the power to make regulations conferring additional functions on the Council in relation to workforce regulation and the education and training of those on the Council’s register. Regulations might, for example, extend the scope of staffing registers, or require that parts of the register should close. In order to provide the best protection for the public the register must be able to reflect the changing pattern of service delivery.

116. Subsection (b) allows regulations to be made that require the Council, for the payment of a fee, to provide access to parts of the register. For example, there might be circumstances under which it is not appropriate to make registers, or parts of registers such as home addresses, available.

Section 40: Power of Council to make rules

117. This section refers to the power of the Council to make rules about the issues in Part 2 of the Bill. Rules can only be made with the consent of the Scottish Ministers.

118. Subsection (1) deals with the register and registration. Subsection (2) concerns rules about the charging of fees in connection with the Council’s functions. For example fees may be charged for registration, approval of courses, provision of training or providing codes of practice.

119. It is common in many professions e.g. nursing, for continued registration with a regulatory body to be linked to continuing professional education and development. Subsections (3) and (4) provide that the Council may, having consulted as appropriate, require registered persons to undertake additional education and training. If they do not undertake this education and training, their registration may be suspended or cancelled. Subsection (5) gives wide powers to the Council to make rules about the approval of courses with the intention of ensuring the consistency and quality of the education to be provided for social workers at pre- and post-qualifying levels.

120. As part of its powers to approve and monitor the effectiveness of individual training courses in social work the Council will need to be able to visit and report on the places delivering this training. Subsections (6)-(8) gives the Council powers to be able to appoint and pay the visitors to undertake this work on its behalf and to visit the places offering training. Provision is made in respect of visits to both Higher Education Institutes, which deliver the academic element of the training, and social services agencies that provide the practice placements where students can develop their practical skills.

121. Subsection (9) sets out the scope of the Council’s rule making powers and provides that rules should be consistent, but should reflect different circumstances as appropriate.
Functions of the Scottish Ministers

Section 41: Functions of the Scottish Ministers under this part

122. Section 41 gives certain functions to the Scottish Ministers, who can delegate such functions to the Council.

123. Subsection (1) gives the Scottish Ministers responsibility to ascertain the size of the social services workforce that will be needed and its training needs. They are also given responsibility to encourage provision of assistance, and for the drawing up of occupational standards in social services. It will be necessary for the Council to work closely with National Training Organisations in allied fields and awarding bodies.

124. Subsections (2) and (3) establish the promotion of social services training as a function of the Scottish Ministers, which they can devolve to the Council. Promotion of social services training is one of the functions currently undertaken by CCETSW. Promotion of training includes publicising training opportunities, attracting potential students to training and providing information for social care staff and recruits enquiring about training.

PART 3: PROVISIONS COMMON TO THE COMMISSION AND COUNCIL

Grants and guarantees

Section 42: Grants

125. This section makes provision for the Scottish Ministers to make grants to the Commission and Council in relation to the expenses that they incur. Both bodies will be funded wholly through this route initially, although it is intended that once they assume their functions registration fees paid by care services for the Commission and social services staff for the Council will meet or largely meet the cost of the bodies.

Section 43: Guarantees

126. Section 43 gives the Scottish Ministers the power to guarantee any borrowing of funds which the Commission or Council undertake. The Scottish Ministers will be required to lay details of any such guarantees before the Parliament, and also provide the Parliament with an annual statement setting out the sum or sums borrowed, until these have been repaid. It is not expected that this power will be widely used but it is considered that to include it provides flexibility.
Duty to consult

Section 44: Duty of Commission and Council to consult each other

127. Section 44 provides that the Commission and Council should have a constant dialogue with each other on matters which are of interest to both parties. This may include consultation about cases such as the manager of a care home being removed from the Council’s register.

Complaints, inquiries and maladministration

Section 45: Complaints procedure

128. This section requires the Commission and the Council to put in place a complaints procedure to deal with complaints about their own operation. Subsection (2) provides that both bodies shall get consent from the Scottish Ministers before establishing procedures. Subsection (3) provides that they should keep these procedures under review. Subsection (4) provides that the bodies also make appropriate arrangements to publicise the procedures they establish.

Section 46: Inquiries

129. Subsection (1) enables the Scottish Ministers to act on any concerns over the Commission or Council’s exercise of their functions, or, in the Commission’s case, concerns over the provision of a care service, by setting up an inquiry. Subsection (2) allows the Commission to set up an inquiry on the exercise of its functions, or over the provision of a care service. Subsection (3) allows the Council to set up an inquiry on the exercise of its functions. The Commission and the Council need to have legal authority to investigate issues of serious concern that may arise in respect of their functions or any particular care service.

130. Subsection (4) enables an inquiry to be held in private. This might be necessary to protect, for example, a victim of child abuse.

131. Subsections (5) and (6) provide for section 210(2)-(8) of the Local Government (Scotland) Act 1973 to apply in relation to an inquiry. This will enable the person holding the inquiry to issue a summons requiring an individual to give evidence or produce any documents in their custody or under their control at a stated time and place. If that person fails to attend (for reasons other than not having the necessary expenses of their visit paid or tendered), they are liable to a fine or imprisonment.

132. Subsections (7) and (8) allow the Commission and the Council to determine who should pay their expenses in relation to an inquiry. Subsection (9) allows both bodies also to award expenses to parties involved in an inquiry and to direct who should pay those expenses.
Section 47: Maladministration

133. Section 47 gives the Scottish Parliamentary Commissioner for Administration power to investigate the Commission and the Council in cases of maladministration.

PART 4: MISCELLANEOUS

Central Council for Education and Training in Social Work: cessation of Scottish functions

Section 48: Cessation of exercise of certain functions by Central Council for Education and Training in Social Work

134. This section abolishes CCESTW in relation to Scotland. It has already ceased to exercise functions in relation to England and Wales.

Grants, loans and other payments

Section 49: Grants in respect of activities relating to child care and family support

135. Section 49 gives the Scottish Ministers a statutory power to make grants to a wide range of organisations or persons involved in child care and family support activities.

136. Organisations or persons to whom grants could be made would include local authorities, other public bodies, private companies, voluntary organisations, charities, academic researchers, or any other relevant persons. Grants could be made to support a wide range of activities; including (but not limited to) service provision, research activities, and developmental and promotional work.

Section 50: Amendment of Social Work (Scotland) Act 1968: delegation of power to make grants and loans to certain voluntary organisations etc.

137. Section 10 (1) of the Social Work (Scotland) Act 1968 empowers the Scottish Ministers to make grants and loans to voluntary organisations and others engaged in any activity connected with the functions of the Scottish Ministers or local authorities under the Social Work (Scotland) Act 1968 and other specified enactments. It is not entirely clear that the organisations in receipt of grants and loans under this section can then pass on some or all of the money to other organisations or people. Section 50 adds a new subsection to section 10 of the 1968 Act to clarify the position and enables secondary grants and loans to be made for the activities described in section 10(1). The Scottish Ministers may also determine that specific conditions are attached to the secondary grants and loans.
Section 51: Amendment of Social Work (Scotland) Act 1968: direct payments to children for care services

138. The Community Care (Direct Payments) Act 1996 amended the Social Work (Scotland) Act 1968 (“the 1968 Act”) to insert new sections 12B and 12C and to make a consequential amendment to section 13, with the effect of enabling local authorities responsible for providing (or arranging the provision of) community care services, to make direct payments to persons in respect of their securing the provision of such services. The definition of ‘community care services’ excludes children’s services. The Community Care (Direct Payments) (Scotland) Regulations 1997 and The Community Care (Direct Payments) (Scotland) Amendment Regulations 2000 specify the persons to whom direct payments may be made under the Act.

139. Section 51 amends the definition of ‘community care services’ for the purposes of sections 12B and 12C of the 1968 Act so that direct payments can be made to children for services available under section 22(1) of the Children (Scotland) Act 1995. The 1997 Regulations will be further amended to specify that direct payments may only be made to disabled children aged 16 and 17.

Nursing in local authority residential accommodation

Section 52: Provision by local authorities of residential accommodation in which nursing is provided

140. Section 52 amends sections 13A(1)-(2) and 59(1) of the Social Work (Scotland) Act 1968 to allow local authorities to provide and maintain residential accommodation where nursing care is provided. This will allow local authorities to maintain care homes under the single definition in section 2(3).

Place of safety

Section 53: Amendment of Children (Scotland) Act 1995: “place of safety”

141. Section 57 of the Children (Scotland) Act 1995 includes a provision for sheriffs to make child protection orders for the emergency protection of children. A child protection order may among other things authorise the removal of the child to a “place of safety” which is defined in section 93(1) of the Act. In practice the interpretation of the definition has not always been straightforward, particularly in relation to private houses. Section 53 therefore amends the definition to remove possible doubt about what may constitute a place of safety so that children can be placed in the home of a relative, friend or foster carer as appropriate.
Panels

Section 54: Panels for curators ad litem, reporting officers and safeguarders

142. Section 41 of the Children (Scotland) Act 1995 requires a children’s hearing (or sheriff) to consider whether to appoint a person to safeguard the interests of the child in certain proceedings before them. Such individuals are known as “safeguarders”. Panels of persons from which safeguarders may be appointed, exist at local authority level. Appointments are made, following consultation with the sheriff principal and the chairman of the local authority children’s panel. The primary role of the safeguarder is to provide an independent opinion on the child’s circumstances and recommend what he or she considers is in the best interests of the child. In doing so the safeguarder must take into account the child’s wishes and feelings and, if necessary represent them to the hearing or court. Safeguarders may belong to more than one panel.

143. Section 54 will clarify the arrangements for the training of safeguarders and for the payment of their fees, allowances and expenses. Section 101 of the 1995 Act currently permits the Scottish Ministers to make regulations on certain matters in respect of a single panel. This needs to be amended to allow for the establishment and running of panels at local authority level. The amendment places a duty on local authorities to provide training for safeguarders and will enable the Scottish Ministers, as they do for children’s panel member training, to assist with training.

144. This will require amendment to section 101 of, and amendment to the application of paragraphs 9 and 10(b) of Schedule 1 to, the Children (Scotland) Act 1995.

PART 5: GENERAL

Section 59: Short title and commencement

145. This section sets out the short title of the Bill, makes standard provision for commencement and enables the Scottish Ministers to decide when certain sections of this Bill will come into force. For example, not all the care services set out in section 2 will be regulated by the Commission from the start of its operation. Regulation of some services, such as home care will probably start at least a year later.

Schedules 1 and 2 (introduced by sections 1 and 28)

146. Schedules 1 and 2 make detailed provision as to the constitution of, respectively, the Commission and the Council.

SCHEDULE 3: (introduced by section 57)

147. Schedule 3 details existing legislation that will be repealed by the Bill.
FINANCIAL MEMORANDUM

INTRODUCTION

148. The cost of implementing the provisions of the Bill will, over time, be spread across the Scottish Administration, local authorities, business, other bodies and individuals, both those purchasing care services and those within the social services workforce.

149. In the first instance, the principal costs will fall on the Scottish Executive. There will be significant start-up costs involved in establishing the Scottish Commission for the Regulation of Care (which will regulate care services) and the Scottish Social Services Council (which will regulate the social services workforce). For example, suitable office accommodation and appropriate IT systems must be put in place before the bodies assume their responsibilities.

150. There will also be on-going running costs that will fall on the Executive, but in general, providers and purchasers of care will bear the costs of the measures taken under the legislation to regulate care services and the social services workforce will bear the cost of its regulation. It is not considered that this will impose a disproportionate burden on care providers or individuals in the context of the greater protection of vulnerable people that will be achieved by the regulatory regime.

151. As both purchasers and providers of care, there will be financial implications for local authorities. They will be losing their regulatory function and will, for the first time have to pay registration fees for the care services they provide. As set out below, these changes should not adversely affect local authority finances.

Financial implications of the Scottish Commission for the Regulation of Care

152. The Commission is scheduled to take on responsibility for regulating those services regulated at present on 1 April 2002, and the remaining services as soon as possible after that, probably in April 2003.

153. The costs and financial implications of establishing the Commission are discussed in detail below. They are based on the assumption that the regulatory functions of the Commission will be self-funding through fees from 2004-05, with the exception of early education and childcare regulation. It is also assumed that (subject to consultation) registration fees will be increased by around 10% for each of the next three years as steps towards full cost recovery. Detailed consideration of what fee rates will be required to ensure full cost recovery in 2004-05 and beyond will be undertaken once a more accurate assessment of running costs can be made. The regulation of early education and childcare is discussed in paragraphs 168-169 below.
This document relates to the Regulation of Care (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 20 December 2000

Financial implications of the Scottish Social Services Council

154. It is intended that the Council will assume its responsibilities in October 2001. Funding will come initially from the transfer of functions and resources from the Central Council for Education and Training in Social Work (CCETSW) and from central funding. As the Council establishes registers of the workforce, registration fees paid by the workforce will provide the income necessary to allow the registration function to be self-financing.

Other policy areas

155. The financial impact of legislative changes made by the Bill in other policy areas is expected to be minimal.

COSTS ON THE SCOTTISH ADMINISTRATION

156. There will be costs to the Scottish Administration during the start-up phase of both bodies and for initial running costs. This funding will decrease over time as fee income from registered providers (for the Commission) and from registered workers (for the Council) increases.

The Scottish Commission for the Regulation of Care

Start-up costs

157. The Scottish Executive will meet the start-up costs of the Commission in full as it will not have a source of income until it assumes responsibility for registration and inspection in April 2002. These start-up costs will cover, for example, the establishment of infrastructure such as appropriate IT systems and accommodation. Most of these costs, expected to be about £4m, will fall in 2001-02. There will also be some minor costs this financial year for recruitment and consultancy and some in 2002-03 in preparation for expanding regulation to include all the care services covered by the Bill.

Running Costs

158. It is expected that the Commission will have a headquarters building and either 5 or 6 regional offices, one co-located with the headquarters and the Council. Each regional office will contain a small managerial team and clerical staff, plus a range of accommodation for team meetings. Much work, particularly in rural areas, will be undertaken by inspectors working in locally based teams in a variety of settings, which may include working from home or providers' premises, by laptop but with support from their core team.

159. The main on-going cost of the Commission will therefore be its staff. It is estimated that the Commission will require approximately 310 registration and inspection staff, compared with approximately 300 staff at present. Extra staff will be required to regulate services which are not regulated at present. The Commission will also require managers, support staff (on a ratio of
about 1 to every 3 inspectors) and professional staff such as legal advisers. Support staff will be needed, for example, to handle complaints, provide information to the public, compile statistics and organise the inspection programme.

160. We estimate that after start-up the Commission will cost about £17-£18m per annum to run, of which as much as £14-£15m will be for staff. A more detailed assessment of running costs will be possible once decisions have been taken about where the Commission’s offices are to be, which existing staff will transfer and so on. In addition, a working group on inspection methodology is to be set up early in 2001, and this group will have an impact on the precise number of inspectors required.

Meeting the cost

161. The White Paper Aiming for Excellence proposed that the running costs of the Commission should be met in part through central funding, including an amount to be transferred from local authorities reflecting the current cost of regulation, but that the main cost of regulation should be met by fees paid by regulated providers.

162. A number of comments have been received on this issue, in response to the consultation exercises that have been undertaken, many of which were opposed to the Commission being funded through fees. The policy position paper The Way Forward for Care acknowledged this opposition, but re-affirmed the Executive’s position. It did, however, indicate that there may be exceptions to this where full cost recovery through fees runs counter to other policy objectives.

163. Concern about funding the Commission through fees stems from the increase in existing fee levels that would be required. A survey of registration and inspection units, conducted early in 2000, confirmed that the cost of regulation currently far outstrips fee income. In 1998-99 only around 17% of the cost of regulating residential care for adults and early education and day care for children in Scotland was met from fees. For that reason it is proposed that, as originally suggested in Aiming for Excellence, funding for the Commission in 2002-03 and 2003-04 should be a mixture of central funding and fee income.

164. For the purposes of this memorandum, it is assumed that fee rates will increase by around 10% per annum over each of the next three years and that a transfer of about £6m from local authority resources will be agreed with COSLA. The approximate amount that will need to be found from central resources is £5.3 in 2002-03 and £5.5m in 2003-04.

165. The Scottish Executive will consult soon on increasing registration fees for residential care homes, nursing homes, childminding and day care and possibly nurse agencies in 2001-02.

2004-05 and beyond

166. From 2004-05 the regulatory functions of the Commission should be self-financing through fees. This will involve further increases in fee rates and the likely impact of these increases on providers and purchasers of care is discussed in detail below.
167. The exception to this policy would be for childminders and day care for children. It is proposed that, subject to consultation, childminding and day care fees should increase by 10% for each of the next three years. Major fee increases would be needed thereafter to make regulation of early education and childcare self-financing. For example, annual inspection fees for day care providers would go from £85 at present to between £425 and £850 depending on decisions on the inspection time required. Fees for childminders would go from £10 to as much as £250 to £500.

168. The largest businesses might be able to pass on increases but smaller ones will probably find this very difficult. Some might go out of business or seek to operate without regulation (a potential problem for childminders in particular). Significantly increased fees would adversely affect the objective of further expansion of the childcare market. Expansion of childcare is a key Scottish Executive objective and is linked to employment objectives. The Scottish Executive will therefore provide a continued subsidy of childcare regulation to help meet these policy objectives. The amount of subsidy will depend on an assessment of what fee levels are affordable and what the full cost of regulating early education and childcare will be, but the intention is that it will be sufficient for fees to be held to a maximum of £250 for day care providers and £50 for childminders.

169. In addition, a small grant, probably of under £1m, would also have to be paid to the Commission to cover the cost of advising Ministers about trends in care provision. This will fulfill the recommendation of the Royal Commission on Long Term Care that there should be a National Care Commission. Meeting this recommendation through the Commission is a sensible alternative to a separate body.

Scottish Social Services Council

170. Costs on the Scottish Administration must be seen against the 4 main functions of the Council, which are:

   (i) establishing registers of particular groups in the workforce;
   (ii) publishing codes of conduct and practice for the workforce and for employers;
   (iii) regulating the education and training of social service workers; and
   (iv) undertaking the functions of the Training Organisation for the Personal Social Services (TOPSS).

171. Functions (iii) and (iv) are currently carried out by CCETSW and TOPSS, with funding from the Scottish Executive. Staff and operational costs in 2000-01 total £740,000. The functions will transfer to the Council together with the resources.

172. Functions (i) and (ii) are new functions. New costs for the Administration will arise from the extra staffing and administrative costs of establishing and maintaining a register of the social services workforce. Additional costs will be in the region of £700,000-£900,000, including staffing, accommodation, administration (encompassing investigation and disciplinary
procedures for registrants) and operational costs. Co-location with the Commission will provide an opportunity to share costs, for example for IT support and facilities management.

173. Registration will generate a fee income. The aim is for the workforce regulation arm of the Council to be self-financing within 5-8 years. Costs to the Administration will reduce as the Council begins to collect fees for registration of the workforce, from April 2002. The annual fee for registrants will be around £20, which is the level assumed for the purposes of this Memorandum. With a fee of £20, income from the initial tranche of registrants will be around £230,000. The initial phase of registration should be complete by March 2004, involving social workers, registration and inspection staff, staff in residential child care and heads of residential homes and adult day care services.

174. The total fee income from all registrants once the second tranche is fully registered will be around £1.2m. This second phase of registration will include all staff in adult residential care and all staff working in early education and childcare, many of whom will require further training prior to registration. Full registration of all staff in these groups is unlikely to be achieved before March 2006.

175. Further phases of registration will be implemented as soon as is practicable. The speed with which the workforce can be registered will depend on the level of qualification required for registration by the various groups and the qualifications currently held by staff. With a total workforce of approximately 100,000 and a fee of £20, the potential is for an eventual annual income from fees of around £2m.

**Related policy areas**

176. **Safeguarders:** the Bill will give Ministers the discretion to provide financial assistance to local authorities providing training for safeguarders, in particular the cost of the trainers who will carry out the training. The number of safeguarders is small and the training will only be for a couple of days each year.

**Provisions with no financial impact**

177. The provisions relating to childcare and family support, direct payments, child protection and extending the authority to make grant payments will not impose any additional financial burden on the Scottish Administration.

**COSTS ON LOCAL AUTHORITIES**

178. The new environment that the establishment of the Commission and Council will bring will mean a very different role for local authorities in future. They will play no part in regulating care services or the workforce, but will continue to play a vital role as commissioners and providers of care and as employers of a large part of the social services workforce. This change of focus has been taken into account in setting local authority funding for the future.
This document relates to the Regulation of Care (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 20 December 2000

The Scottish Commission for the Regulation of Care

Financial implications prior to April 2004

179. When responsibility for registration and inspection transfers to the Commission it is expected that the majority of registration and inspection staff will also transfer. A transfer of resources from local authorities to the Commission will take place to reflect this shift in responsibility. The transfer is expected to be around £6m in both 2002-03 and 2003-04.

180. The calculation is based on projected expenditure and income for 2001-02, the final year that authorities will have responsibility for registration and inspection. It takes account of existing functions (eg contract compliance) that are being done by registration and inspection staff at present but that will remain with local authorities. It also takes account of the new burden that authorities will face in having to pay registration and inspection fees for the services they provide for the first time.

181. Subject to consultation, fee rates for residential care homes are expected to increase by around 10% per year over the next three years. It is likely that private and voluntary care providers will seek to pass at least some of these increases onto the purchasers of care. In particular, they will be seeking an above inflation rise from local authorities buying places in their homes (around 80% of places are currently financed by local authorities). It is for individual authorities to agree with the care providers with whom they contract what they will pay for places, taking account of matters like registration fees. Total revenue grant to councils is increasing by 6.2% next year and by a further 5.4% and 3.8% in the following 2 years, to a total of over £6.5 billion. The increases in the first 2 years are more than twice the rate of inflation and the year 3 increase is higher than the rate of inflation. These significant increases should enable authorities to meet any increase in charges.

182. There will also be financial implications for local authorities as providers of care. Local authorities' own care homes will be subject to regulation and required to pay fees. Annual continuation fees are intended to go up £10 per year between now and 2004, reaching £95 per bed from the current level of £65. Full cost recovery thereafter would require fees of £120-£180 per bed, depending on decisions on the time required for inspections. Local authorities will also have to pay fees in respect of the early education and day care they provide. Annual inspection fees are expected to increase by around 10% in each of the next three years, reaching £113 in 2004-05 compared to £85 at present. Fees for day care for children beyond 2004 are discussed in detail in paragraphs 168-169.

183. Other local authority services, such as home care, will be regulated for the first time by the Commission. It is the intention that these services are fully funded through fees as soon as registration and inspection begins. It is estimated, for example, that registration of a large adult day care service between £1400 and £1,800 per year, starting in 2002 and a home care service will cost between £1,200 and £1,800 per year, starting in 2003. Consideration will be given as to whether a sliding-scale is most appropriate for these services, with smaller services which are quicker to inspect paying a smaller fee.
2004 and beyond

184. From 2004-05, the regulatory functions of the Commission with the exception of early education and childcare are expected to be self-financing through fees. Detailed decisions on what fee levels are needed for full cost recovery will be taken once a more accurate assessment of the Commission’s running costs is made, but as set out in paragraph 183, our current estimate is that for full cost recovery care home continuation fees will need to be between £120 and £180 per bed, per year.

185. A significant increase in fees like this will affect local authorities as both commissioners and providers of care services. As commissioners they will come under pressure from home owners to increase the rates they pay in respect of those they place in private and voluntary care homes. As providers they will need to pay higher fees to the Commission in respect of the care homes they provide themselves, and will also continue to pay fees for the other services they provide.

186. The costs to local authorities of regulation fees for their own provision will be one of the factors taken into account in considering the level of revenue grant beyond 2003-04.

Scottish Social Services Council

187. Potential costs of training staff to meet qualification requirements for registration with the Council will vary between local authorities, depending on the requirements set by the Council and the level of qualifications held by staff in individual authorities. In the case of social workers, approximately 95% of staff in local authorities are already qualified to Diploma in Social Work or equivalent level; few training costs, except for continuing professional development, will therefore arise from the Bill for this group.

188. Local authorities will be expected to fund staff training from within existing resources. Funding is already provided, however, for this purpose. A total of £8.2m of core expenditure in local authorities was focussed on staff training in 2000-01. Specific grant for social work training is also provided to local authorities by the Scottish Executive. Specific grant awarded in 2000-01 amounts to £2.4m. There is potential for these funds to be re-focused in future years on training for the groups requiring to be registered by the Council. Further funding is also available for practice placements for social work students, with £270,000 available in 2000-01.

189. Additional training for other social service workers may lead to ongoing extra costs for local authorities whose contracts of employment offer increased salaries to staff obtaining specific vocational qualifications. The overall cost will depend on the number of local authorities who contract with staff on this basis, the number of staff involved and the number who gain relevant qualifications.

190. Local authorities are not expected to pay Council registration fees for their staff. Some service providers might decide, however, to pass on the costs of registration to local authorities.
The effect on local authorities will depend on the number of service providers who take this approach and the increase they make to their charges.

191. As employers, local authorities will be responsible for carrying out police checks required for registration. New criminal record certificates will be introduced when the relevant provisions of the Police Act 1997 are implemented, probably in July 2001. Decisions have yet to be taken on the fees to be charged for the new certificates but initial estimates suggest the cost will be between £10 and £15. This will mean costs to local authorities of between £80,000 and £120,000 for the first phase of registration and between £90,000 and £140,000 for the second phase. There will be some costs beyond this, since police checks will be required for new staff and for further groups of staff who are required to register with the Council.

192. Implementation of codes of conduct and practice published by the Council will involve local authorities in ensuring that recruitment procedures, training, complaints systems and disciplinary procedures are in place and working. Systems should already exist and additional costs will be minimal.

193. Investigations and hearings by the Council, in relation to disciplinary cases against staff, will have cost implications for local authorities. Costs will arise from staff time in assisting with investigations, preparing for and attending hearings and possibly writing up reports. Costs will also be incurred through the involvement of the staff member who is subject to disciplinary procedures in both investigations and hearings. Expenditure will vary between authorities, depending on the number of staff involved in disciplinary cases, the nature of the cases themselves and the disciplinary procedures of the Council.

Provision of nursing care

194. Giving local authorities the power to provide nursing care within their own care homes should not have any adverse financial effect on local authorities. The mix of staff employed in particular homes may change. But under proposals announced in response to the Royal Commission on Long Term Care, the cost of nursing care will be for the NHS.

Related policy areas

195. Safeguarders: The payment of safeguarders’ fees and other expenses will be as agreed from time to time between local authorities and COSLA. The overall impact of these payments should be minimal, although there is a chance that the provision in the Bill to fix both fees and expenses might increase local authority expenditure overall. But the determination of the amount of fees and expenses is for local authorities and COSLA to agree.

196. The provisions placing a duty to train safeguarders should also have only a minimal impact on local authorities. Local authorities are currently responsible for the appointment of safeguarders and many already undertake training. The exercise of the discretionary power to assist training by the Scottish Ministers will relieve local authorities of some of the training costs.
This document relates to the Regulation of Care (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 20 December 2000

**Provisions with no financial impact**

197. The provisions relating to childcare and family support, direct payments, child protection and extending the authority to make grant payments will not impose any additional financial burden on local authorities.

**COSTS ON BUSINESS AND OTHER BODIES**

**Scottish Commission for the Regulation of Care**

Costs on health boards

198. The establishment of the Commission will result in health boards, like local authorities, losing their regulatory role. Health board registration and inspection staff are also expected to transfer to the Commission. The health board registration and inspection function is already funded fully from fee income. The net result should be no adverse affect on health board finances: they will lose a function and the funds used to pay for it simultaneously.

Costs on the voluntary sector

199. Voluntary sector providers of care will pay increased fees for services regulated at present and fees for services which will be regulated for the first time when the Commission is operational.

200. For these increases they will benefit from a national, independent, consistent regulation of care homes which treats all providers on the same basis. Their clients will benefit from a system which is focussed on the needs of users and designed to afford them appropriate protection.

Financial implications prior to April 2004

201. Voluntary sector providers of residential and nursing care already pay an annual continuation fee on a “fee per bed” basis of £65 per bed. It is proposed, subject to consultation, that this fee should increase by £10 per bed for each of the next three years. Voluntary providers of day care for children pay an annual inspection fee at present, based on whether they offer “full” day care (£85) or “sessional” day care (£10). It is proposed that, again subject to consultation, these fees should increase by around 10% for each of the next three years. The table below sets out the existing fees and proposed increases.

<table>
<thead>
<tr>
<th>Year</th>
<th>2000-01</th>
<th>2001-02</th>
<th>2002-03</th>
<th>2003-04</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Actual</td>
<td>Proposed</td>
<td>Proposed</td>
<td>Proposed</td>
</tr>
<tr>
<td>Care home</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>continuation fee</td>
<td>£65</td>
<td>£75</td>
<td>£85</td>
<td>£95</td>
</tr>
</tbody>
</table>
This document relates to the Regulation of Care (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 20 December 2000

<table>
<thead>
<tr>
<th>Full day care regulation fee</th>
<th>£85</th>
<th>£94</th>
<th>£103</th>
<th>£113</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sessional day care regulation fee</td>
<td>£10</td>
<td>£11</td>
<td>£12</td>
<td>£13</td>
</tr>
</tbody>
</table>

202. Costs for all voluntary care homes will therefore rise. A 10-bed home paying £650 in continuation fees for this year will have to pay £950 in 2003-04; for a 40 bed home the cost will rise from £2600 to £3800. Such fees are, and will remain, a very small part of the total cost of providing a care service. Homes on average charge around £13,000 per bed per year, so an increase of £30 per bed in fees spread across three years will only represent a tiny proportion of the home’s income. A 10-bed home likely, on average, to have income around £130,000 would, in 2003-04, have to pay fees of £950 (less than 0.75%). And the fees would be one of the costs to be taken into account in setting charges for users and purchasers of care.

203. There will also be financial implications for voluntary sector providers offering home care and other care services to be regulated for the first time by the Commission. As with local authority services, it is the intention that the cost of regulating these services is met fully through fees as soon as registration and inspection begins. It is inconsistent that these services are not regulated. Providers will have advanced warning of the fees that will be imposed and can take them into account during forward planning. Again, the expectation is that some of the cost of the fees would be absorbed and some passed on to purchasers.

204. As for local authority care homes a move to full cost recovery in 2004-05 will mean an annual continuation fee of around £120-£180 per bed for care homes. This would therefore mean a 10 bed home having to pay £1,200-£1,800 per year, against £650 at present; for a 40 bed home the cost would rise from £2600 to £4,800-£7,200.

205. Although, this represents almost a 100% increase on 2003-04 the additional cost is small in relative terms, representing a small proportion of turnover for providers. The Scottish Executive therefore expects that some of the increase will be absorbed, with the rest passed on to purchasers of care, ie self-funders and local authorities. If passed onto self-funders the amounts involved would be a very small increase on existing bills, perhaps an extra £50 per year, for the benefit of a system focussed on and responsive to the needs of users. As set out in paragraph 187 above, consideration will be given to adjusting local authority revenue grant in the light of future fee increases.

206. The Scottish Executive will be looking closely at the possible effects on voluntary providers of early education and childcare in considering the possible subsidy for regulation from 2004-05, bearing in mind the policy objective of making childcare more accessible. The cost impact on the voluntary sector will depend on fee levels set in the light of decisions on the subsidy.
Costs on business

207. There is a wide range of businesses who provide care services which will be subject to regulation by the Commission. For example, privately run care homes, private hospitals and clinics, independent boarding schools and private nurseries.

208. For reasons of equity, the Scottish Executive does not intend to increase fees in the private and independent sectors above the levels paid by local authority and voluntary sector providers to act as a cross subsidy. Fees payable by private care homes and private nurseries will mirror those payable in the other sectors. Those payable by services unique to the independent healthcare sector, such as laser clinics and diet clinics will be set at a level to ensure that registration and inspection of these services is fully funded through fees.

209. The fees will be very small compared with the total cost of running the business and will “buy” the provider a level playing field across the sectors and the selling point of assured user-focussed quality for its customers.

Scottish Social Services Council

210. The private and voluntary sectors will have training costs for staff seeking to meet the qualification requirements for registration with the Council. Costs will vary depending on the qualification requirements that are set for registration and the current level of education of staff. Insufficient information is available on current qualification levels to enable potential costs to be estimated accurately. Many businesses already have training budgets which will help fund the necessary training although it is likely that most will need to increase their investment in this area. Section 9 of the Social Work (Scotland) Act 1968 provides for a grant system to voluntary bodies for social work training. National voluntary organisations can apply for this central funding. We expect applications to focus increasingly on assisting staff to achieve the required qualifications for registration. In 2000-01 just over £1m was made available to voluntary organisations.

211. Businesses and voluntary organisations will need to ensure that their recruitment procedures, training, complaints systems and disciplinary procedures satisfy the requirements of the codes of conduct and practice published by the Council. Most of these systems should already be in place and additional costs should be minimal.

212. Businesses and voluntary organisations will be responsible for carrying out police checks required for registration with the Council. Costs will be in the region of £40,000-£60,000 for the first phase of registration and £380,000-£570,000 for the second phase. There will be continuing costs because of staff turnover and as other groups of the workforce are required to register.
Provisions with no financial impact

213. The provisions relating to childcare and family support, direct payments, child protection, extending the authority to make grant payments and safeguarders will not impose any additional financial burden on businesses or other bodies.

COSTS ON INDIVIDUALS

Scottish Commission for the Regulation of Care

214. The impact on individuals will be as purchasers of care services. It is likely that increasing regulation fees will result in providers seeking to increase their income through the fees paid by people buying care services. Assuming the fee increases set out above are introduced and providers absorb some of the costs, individuals paying for their own care in a care home should not face a significant increase. For example, a self-funder paying on average £13,000 for a place might have to pay an extra £65-£115 per year in 2004-05 on top of what they are paying at present. This represents an increase of less than 1%. It is difficult to assess the impact on individuals of fee increases in other care services precisely, but it is not expected that the impact will be significant. The impact on parents purchasing childcare should be minimal given the proposal to subsidise regulation to ensure that the services remain affordable.

Scottish Social Services Council

215. The main cost to the individual will be the registration fee, which will be around £20 each year. This is not excessive – it is the same as the current charge for teachers registering with the General Teaching Council. There will be clear benefits to individuals in terms of increased professional and public confidence. The first fees, for staff included in the initial phase of registration, will not be paid until 2002-03 at the earliest. The second group of registrants are unlikely to pay fees until at least 2004-05.

216. In line with the principle that lifelong learning is primarily the responsibility of the individual, social service workers might also be required to contribute to the cost of their own continuing professional development. Assistance might be available through Individual Learning Accounts (ILA), which are administered by Learn Direct Scotland. ILAs are available for training that goes beyond that which should be provided by the employer to enable an individual to carry out their work effectively. ILAs are also available for training which the employer cannot afford to provide. Learn Direct would normally provide about £150 per person, requiring the individual to meet at least £25.

Provisions with no financial impact

217. The provisions relating to childcare and family support, direct payments, child protection, extending the authority to make grant payments and safeguarders will not impose any additional financial burden on individuals.
EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

218. On 19 December 2000, the Minister for Health and Community Care (Susan Deacon) made the following statement:

“In my view, the provisions of the Regulation of Care (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

219. On 20 December 2000, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Regulation of Care (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”