INTRODUCTION

1. This document relates to the Regulation of Care (Scotland) Bill introduced in the Scottish Parliament on 20 December 2000. It has been prepared by the Scottish Administration to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Administration and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 24–EN.

THE NEED FOR LEGISLATION

Regulation of care and early education services

2. There are more than 40,000 vulnerable people, including children, living in residential care and nursing homes in Scotland. Many people also receive day care services and an increasing number also receive care and support in their own homes. Effective regulation of these services is essential if people using them and their families are to be confident that the services they receive will be of good quality and appropriate to their needs.

3. The current regulatory framework is fragmented. Not all care services are subject to statutory regulation and the majority of those that are regulated are governed by legislation that is now largely out of date. For example, nursing homes and independent healthcare are covered by legislation dating from 1938 and residential care homes are covered by legislation from 1968. Although day care for children is governed by a more modern regulatory regime, under the Children Act 1989, this system is in need of modernisation too, particularly in view of the expansion taking place in such services and links to early education.

Problems with the current system

4. The current system of regulation has been criticised on four main counts:

- coverage and responsibility for regulation - residential care homes and day care for children in the private and voluntary sectors are regulated by local authorities and nursing homes and independent healthcare are regulated by health boards. Secure
accommodation for children is approved by the Social Work Services Inspectorate. Residential care homes run by local authorities are not subject to registration, although they should be inspected by the local authority. Other care services, such as support for people at home, are neither registered nor inspected;

- lack of independence – local authorities are responsible for purchasing from, and regulating residential care homes, and may also provide homes themselves, while health boards may purchase independent healthcare and nursing home care as well as regulating it;

- lack of consistency – with regulation by individual local authorities and health boards standards inevitably vary across Scotland which creates uncertainty for both service providers and users; and

- lack of integration – in particular separate regulatory regimes for residential care and nursing homes makes it difficult for both residential and nursing care to be provided from one establishment and can result in traumatic moves as the needs of people using services change.

5. This has led to a system that is not sufficiently user focused and does not place enough emphasis on responding to the needs of service users. There are good standards and working practices established in many areas but these are by no means universal.

6. There is widespread agreement that new legislation is needed to bring together and modernise these existing arrangements, to introduce a stronger user focus and to expand the scope of regulation to include those care services that are not currently regulated. A national, regulatory body will be established by the Bill to undertake this work and it will take account of new national care standards in its registration, inspection and enforcement work.

7. These proposals build on the Report of the Working Group on Residential Care Home Registration Procedures published in 1996, which recommended closer collaboration between the different care service providers and an integrated legislative framework. The present Government further developed these proposals in the White Paper Aiming for Excellence, published in March 1999 and in subsequent consultation exercises, all of which showed widespread support for the changes proposed.

**Workforce regulation**

8. Unlike the position in other allied fields such as teaching, nursing and medicine, there is no comprehensive workforce regulation in the personal social services. Nor is an appropriate framework in place to support and enhance the professionalism of the workforce.

9. Employers are with very limited exception not required to employ staff with particular qualifications. There is also no formal mechanism for tracking people in the workforce who are
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unsuitable for the jobs they are doing, for example because of incompetence or abuse of service users. Although such people may be removed from their post by their employer, they may be re-employed elsewhere in the social services workforce both in Scotland and elsewhere in the UK.

10. While some employers have developed codes of conduct to which their staff must conform and some professional bodies have developed codes of ethics, these are not widely used across Scotland and do not apply to the whole workforce.

11. There has been growing public concern in recent years about examples of bad practice and gross misconduct by a very small minority of the social services workforce. Serious incidents have occurred in the local authority, private and voluntary sectors and have involved children, older people and people with learning and physical disabilities. There is evidence that the nature of the work attracts some people who take advantage of the opportunities to abuse their position and exploit service users.

12. There is thus wide support to establish a national regulatory body which will raise standards, tackle abuse and bad practice and enhance the competence of the workforce. Regulation will be maintained by keeping registers of key groups of staff and publishing codes of conduct and practice.

13. Education and training is integral to the enhancement of practice and the new body will therefore take over the regulation of professional social work education and training from the Central Council for Education and Training in Social Work (CCETSW). CCETSW’s operation in Scotland will cease once the Bill is implemented.

14. Major stakeholders across the UK have urged the Government to regulate the social services workforce for some ten years. The present Government was elected in 1997 with a commitment to establish such regulation. Following the referendum on devolution there was separate consultation in Scotland on models of regulation. Stakeholders universally opted for a Scottish national body to regulate the workforce. In December 1997 the then Scottish Office Minister announced the intention to establish a regulatory body which would be aligned with other regulatory bodies across the UK. *Aiming for Excellence* took forward this policy and was endorsed by the Partnership document which followed the establishment of the present Scottish administration.

*General provisions*

15. The Bill also contains a number of general provisions in related policy areas that are needed to update certain existing legislation and to modernise further the delivery of care and early education services. For example, these relate to enabling local authorities to make grants in respect of childcare and family support and make direct payments to children and to improving training opportunities for safeguarders.
POLICY OBJECTIVES

16. The policy objectives of the Bill are to address the concerns described above by introducing a new approach to the regulation of care and early education and the social services workforce which will provide better safeguards for vulnerable adults and children. The legislation will establish two new independent bodies: the Scottish Commission for the Regulation of Care (“the Commission”) to regulate care and early education services; and the Scottish Social Services Council (“the Council”) to regulate the workforce.

17. This new system of regulation will ensure that we have flexible services which recognise and respond to the needs of children, vulnerable adults and their families. We are seeking a system that ensures that people receive high standards of care whoever they are, wherever they live and whoever the service is provided by and that arrangements are in place for dealing with situations where this does not happen. We want a system that gives service users confidence in the care they receive and the workforce who deliver these services.

The Scottish Commission for the Regulation of Care

18. The policy objective is to create an efficient and effective national body to regulate care, which properly takes into account the various interested parties, including service users, providers and professional groups.

19. The Commission will operate under the overall control of Scottish Ministers who will be responsible for setting out a clear framework for accountability through the agreement of a management statement, a financial memorandum and a corporate plan for the Commission. The legislation will also give Scottish Ministers the power to direct how the Commission should carry out its functions and to require it to produce any information they need in order to answer satisfactorily for the Commission’s affairs and to assess its performance.

20. Within the framework laid down by Scottish Ministers, the Commission will be independent in its day to day operation having no interest in providing services itself. The main function of the Commission will be the regulation of a range of services. These will be:

- early education and childcare;
- support services (including home care and day care);
- care homes for adults and children;
- independent healthcare;
- nurse agencies;
- housing support services;
- secure accommodation for children;
- care and welfare in boarding schools and school hostels; and
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- care and welfare in accommodation for offenders.

21. The system of regulation the Commission will oversee will be focused on the people using the services, with the standards used based on the quality of life the services enable people to experience. It will be an integrated regulatory system, particularly to enable individuals to remain in the same place with the type and intensity of care changing as their needs change. For example, the Bill will enable all care homes to provide nursing care by allowing local authority residential homes to employ nurses. In general, the Bill will assist the move away from institutional care towards a flexible system of community care.

22. The Bill will give Scottish Ministers the power to publish national care standards, following consultation with relevant interests. These standards will cover all care services regulated by the Commission. A National Care Standards Committee set up for the purpose is already preparing standards. The Commission will take the care standards into account in all decisions it makes about the registration and inspection of care services, and in considering whether, and at what level, enforcement action should be taken. These national standards will help ensure that people receive high quality care wherever they live.

23. The Commission will also 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 to steward the interests of older people. The Bill will not limit this role to older people, but will place a statutory power on the Commission to advise Ministers on care provision generally. The Commission will also have a role in encouraging improvement in the quality of services and making available information to the public about the quality of services.

The Scottish Social Services Council

24. The policy objective is to improve the quality of services by introducing a system of workforce regulation. This will strengthen and support the professionalism of the social services workforce, raise standards of practice and protect the people who use the services. The Council will be an independent statutory body but will exercise its functions under the general guidance and directions of Scottish Ministers.

25. The main functions of the Council will be to publish codes of practice and to establish registers of particular groups in the workforce. The Council must secure the commitment of the workforce to high standards of conduct and practice and gain the co-operation of employers in support for good practice, tackling misconduct and abuse and excluding from the workforce those in breach of the standards.

26. The Council will also regulate the education and training of social workers (currently undertaken by CCETSW) and undertake the functions of the National Training Organisation (NTO), the Training Organisation for the Personal Social Services (TOPSS) in Scotland. The Council will seek to raise the standard of education and training available, and improve accessibility to education and training opportunities.
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27. The Council will also be expected to co-ordinate its activities with bodies regulating other professionals, such as teachers and nurses, who will be part of the workforce providing services to be regulated by the Commission. It will also be expected to work closely with allied NTOs, including the Early Years National Training Organisation and the Sport and Recreation Industrial Training Organisation which will retain responsibility for setting national occupational standards for early years staff and playworkers.

Related policy issues

28. In addition to the main purpose of establishing new systems for the regulation of care and early education services and the workforce the Bill will also deal with a range of other, related issues.

- **Childcare and family support powers**: this provision will give Ministers a statutory basis for their central expenditure on the childcare strategy and related matters. These powers will enable them to support all types of organisations or persons for a broad range of activities involving children and parents, as well as connected developmental, promotional and research activities.

- **Child protection**: this provision will put beyond doubt that under a Child Protection Order granted in terms of section 57 of the Children (Scotland) Act a child may be removed to a suitable place that is not a medical-type place, for example the home of a relative, friend or foster carer. As the definition presently stands there could be doubt as to whether or not such accommodation constituted a place of safety as an “other suitable place”.

- **Direct payments**: this provision will promote and improve the take up of direct payments by extending the scope of the scheme to younger people. It will allow 16 and 17 year olds with disabilities to receive direct payments.

- **Extend authority to make grant payments**: this provision will put beyond doubt that Ministers have the power to provide grants to voluntary organisations for those organisations to distribute in whole or in part among other organisations and/or persons.

- **Safeguarders**: (safeguarders act on behalf of children who have been brought to the attention of the Children’s Hearing system.) These provisions will clarify the statutory provisions surrounding the appointment and payment of fees and expenses for safeguarders, will place a duty on local authorities to provide training for safeguarders and give Ministers discretionary powers to provide financial support for this training.

ALTERNATIVE APPROACHES

Regulation of care services

29. Five options for regulating care services were considered:
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(i) retain the present system of regulation;

(ii) amend the present system;

(iii) introduce a self-regulatory system;

(iv) make regulation a central government function; or

(v) create an independent national body to regulate care.

Retaining the present system

30. The present system does not meet the policy objectives. The main regulatory bodies are health boards and local authorities. Local authorities are also significant providers of services. The private and voluntary services they are regulating may be in competition with their own directly provided services. There is therefore a theoretical conflict of interest and a lack of independence. Also, local authorities’ own provision is not subject to full regulation.

31. The number of separate regulatory bodies (i.e. local authorities and health boards), often operating to different standards, considerably weakens consistency of regulation across Scotland. It is also unacceptable that the full range of care services is not regulated. The present distinction in registration requirements between nursing homes, regulated by health boards, and residential care homes, regulated by local authorities, means that the system is not integrated and individuals may have to move home because of this, often when they are at their most frail and vulnerable.

32. There is also no requirement on the current regulatory authorities to take the views of users and their carers into account either in the standards used or the regulatory process. While some registration and inspection units are already doing this, it must be given greater emphasis.

Amending the present system

33. It would be theoretically possible to require the existing regulatory authorities to work to national care standards, to extend the coverage of the regulatory system and to operate the regulatory system in a consistent way. We could also look to improve enforcement and staff training and qualifications by issuing voluntary codes of practice and guidance.

34. This would, however, be inconsistent with the policy objective of ensuring an independent system, particularly as local authorities can be purchasers, providers and regulators. It is also unlikely that voluntary guidance would consistently have the desired effect. Amending the present system would not therefore achieve all our policy objectives.

Introducing a self-regulatory system

35. It would be possible to give providers of care services responsibility for determining standards and establishing registration and inspection arrangements. However, this would again
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mean that there was no consistency of standards or independent regulation. Such a system would not bring about the necessary improvements to the arrangements currently in place or provide adequate reassurance to service users, their carers or the workforce.

Regulation by central government

36. Regulation could be carried out by a Scottish Executive department or executive agency. This is, however, considered inappropriate. Government departments and agencies carry out direct central government functions and registration and inspection of individual care services are not functions of that sort. Moreover, Scottish Ministers are directly responsible for all actions of their departments and agencies. It is appropriate for Scottish Ministers to be accountable for the overall framework within which the Commission operates but not for each individual day to day decision on registration and inspection.

Creating a national body

37. Establishing the Scottish Commission for the Regulation of Care (as described in paragraphs 18-23) is the most appropriate way of ensuring that all the policy objectives are met. Similar bodies will be established in England and Northern Ireland, and the National Assembly in Wales will take over the much narrower regulatory function there.

Regulation of early education and childcare and independent healthcare

38. The arguments for regulation by a national body described above hold true for all the services set out in paragraph 20. However, given the nature of the care involved, separate consideration has been given to the arrangements for national independent regulation of early education and childcare and independent healthcare.

Early education and childcare

39. For the reasons set out above, the Executive believes it is appropriate for responsibility for the regulation of childcare (day care and childminders) to transfer from local authorities to the Commission. The Executive also considered the relationship between regulation of childcare and the role of Her Majesty’s Inspectors of Schools (HMI) in the inspection of pre-school education. At present, providers of childcare in the private and voluntary sector who are commissioned to provide publicly funded pre-school education are subject to inspection under the provisions of the Children Act 1989 in relation to care, and are also inspected separately by HMI in relation to education. This is a burden on providers and does not reflect the nature of care and education for 3-5 year olds. Good quality care includes attention to learning opportunities and good quality education includes attention to social, emotional and care needs.

40. The policy objective is regulation which requires achievement against certain core indicators by all providers; expects full delivery of the curriculum from providers of pre-school education; and a commitment from all to work towards continuous improvement in quality.
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41. The Executive considers that this will best be achieved by the Commission regulating all provision for 0-5s whether defined by the provider as education or care. Standards for registration and inspection will include issues of care and development. They will draw on the broad based performance indicators recently developed by HMI and set out in The Child at the Centre.

42. HMI will continue to inspect those centres commissioned to provide publicly funded pre-school education. The cycle of inspection will be at least as frequent as that for primary school education and may be more frequent for some centres. This will ensure delivery of the curriculum, the required high quality of pre-school education and appropriate links to primary provision. But as care standards will be developed from performance indicators used by HMI, users and providers will be able to identify one clear set of expectations. Also, the Commission and HMI will co-ordinate their activities and in a year in which HMI inspects the Commission will not be required to do so.

43. Alternative approaches were examined. HMIs might be seconded to the Commission and integrated within inspection teams. The Executive considers that this would not promote continuity and progression in children’s learning and smooth transition from the pre-school to the primary sector. Nor would it provide such a transparent check on the quality of publicly funded pre-school education.

44. Another option would be for HMI to manage regulation of childcare as well as education. The Executive considers that the volume of childcare inspection would fundamentally alter the nature and focus of HMI.

Independent Healthcare

45. Consideration was given to whether independent healthcare should be regulated by the Commission or by another national body dealing exclusively with the independent healthcare sector. While there would be some advantages to having a specialist regulator that would only be responsible for independent healthcare, this would run against the principle of a single national body to regulate care. Moreover, there are benefits to be gained from developing standards of regulation that apply to all care services. The Commission will, however, ensure that regulation of independent healthcare takes account of the particular context of that sector.

Royal Commission on Long Term Care

46. The Royal Commission report recommended the establishment of a UK wide National Care Commission to take a strategic overview of the care system. The Executive accepted the thinking behind this recommendation, but decided that this role could most effectively be carried out in Scotland by the Scottish Commission for the Regulation of Care, extended to all care services rather than those solely for older people.
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Workforce regulation

47. Six options for regulating the workforce were considered:

   (i) retain the present system;

   (ii) give responsibility for maintaining standards to employers;

   (iii) introduce a self-regulatory system;

   (iv) make regulation a central government function;

   (v) regulation by a UK wide body; or

   (vi) create a national regulatory body for Scotland.

Retaining the present system

48. The present system does not meet the policy objectives. It does not offer effective regulation of the workforce. There are no statutory systems in place for monitoring the qualifications or competence of staff, and therefore no way of ensuring that service users are getting the quality of service or protection that they have the right to expect.

Giving responsibility to employers

49. It would be possible to place responsibility on social services employers to articulate more clearly the standards they expect and to enforce them through employment and managerial relationships with their staff. They would be assisted in this by the Executive, which would issue codes of conduct and practice that would be recommended for general adoption.

50. Such a system would not, however, meet the policy objectives and would fail to offer a statutory regulatory process that would properly protect the public and raise professional standards. There is no guarantee that employers would interpret and implement the codes of conduct and practice consistently and the documents themselves would lack statutory force.

Introducing a self-regulatory system

51. It would be possible to give responsibility to the workforce for its own regulation, in a way similar to the operation of the General Teaching Council. However, self-regulation would be particularly difficult for a workforce which is diverse in character and where large sections are not qualified. Such a system would also be unlikely to provide users and carers with a meaningful role in the regulatory process.
Regulation by central government

52. Regulation could be carried out by a Scottish Executive department or executive agency. This is, however, considered inappropriate. The arguments against regulating care services in this way are set out in paragraph 36, and the same is true for the workforce. Government departments and agencies carry out direct central government functions and regulation of the workforce and its education and training are not functions of that sort. It is appropriate for Scottish Ministers to be accountable for the overall framework within which the Council operates but not for each individual day to day decision it takes.

Regulation by a UK wide body

53. It was originally proposed that a UK wide body would be established to regulate the workforce and its education and training. However, following consultation Ministers decided that a UK wide body would not be appropriate given that responsibility for social services has been devolved to the Scottish Parliament.

Establishing a Scottish regulatory body

54. Establishing the Scottish Social Services Council (as described in paragraphs 24-27) is the most appropriate way of ensuring that the policy objectives are met, and that regulation has widespread stakeholder support. Similar bodies will be established in England, Wales and Northern Ireland.

CONSULTATION

55. There has been considerable and wide ranging consultation on the proposals in the Bill. This has included formal papers inviting views on proposals, consultation seminars and individual meetings and discussions with interested parties. The Executive also established a Reference Group of experts to provide advice on the development of the proposals for legislation.

56. Some of these consultation exercises have covered the range of issues under discussion, whilst others have focused on specific aspects of regulation. The related policy issues were, as appropriate, also subject to consultation before inclusion in the Bill.

Reference Group

57. The Reference Group was set up in October 1999 to assist with the development of legislation. The Group has met regularly and has also provided comments and advice during the development of consultation and policy papers. In order to help with some of the more detailed aspects two sub-groups were formed to discuss specific issues relating to the Commission and Council respectively. The Group also had the opportunity to comment on draft proposals for the Bill.
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58. Members of the Group were selected for their personal contribution not because they represent particular interests, although a range of stakeholder interests was sought. The Group, of some 25 members, includes those with social work, early education, health, local authority, voluntary sector, private sector, union, professional and academic backgrounds and has also invited others with specific expertise to attend certain meetings to give further assistance.

General consultations

Aiming for Excellence

59. The White Paper Aiming for Excellence – Modernising Social Work Services in Scotland was published in March 1999 by the then Scottish Office, and was issued widely. It set out the Government’s proposals for a more modern and dependable social work service, in particular the establishment of the Scottish Commission for the Regulation of Care and the Scottish Social Services Council.

60. Comments were not specifically asked for, but more than 30 responses to the Paper were received. There was almost unanimous support for the overall thrust of its proposals and the vast majority of responses also supported the proposals to establish the two new bodies and to introduce national care standards. There were also a number of specific comments about the establishment of the new bodies. In particular there was concern that:

- regulation by the Commission should be as inclusive as possible, incorporating the full range of care services; and

- both bodies would need considerable levels of central government funding, in addition to the funds secured from fee income if they were to operate the proposed systems of regulation effectively.

Consultation seminar

61. The then Deputy Minister for Community Care hosted a consultation seminar in September 1999. More than 60 different interest groups in the public, private and voluntary sectors attended. Those present welcomed the establishment of the new bodies and discussion focused on what the remit of the two bodies should be and how they would operate in practice. This discussion and the conclusions drawn helped with the on-going development of the proposals and also in establishing close links between the Minister, the Executive and those working in the field.

Regulating Care and the Social Services Workforce

62. This consultation paper was issued in December 1999 and invited comments by March 2000. This paper had a wider distribution than Aiming for Excellence through increasing contact with, and requests from, interested parties.
63. The paper was drawn up in conjunction with the Reference Group. It developed further the proposals for the establishment of the Commission and the Council and asked a number of specific questions about how the new regulatory systems should operate and what services they should cover. It also highlighted the proposal that the new Commission should undertake the work recommended by the Royal Commission, that the Bill would amend the Adults with Incapacity Act, and that the Bill would also cover a number of related policy issues.

64. Some 216 responses to the consultation were received from a wide range of public, private and voluntary organisations and individuals. There was widespread support for the proposal to establish the new bodies and systems of national regulation and many specific and helpful comments were received about the detailed arrangements for establishing and running them. In particular:

- there was general agreement that the existing legislation is out of date and unrelated to the delivery of progressive services primarily in the community;

- the distinction between residential care and nursing homes should be removed in favour of a single category of “care home”;

- regulation by the Commission should be as wide ranging as possible, and should include care provided at home, boarding schools and nurse agencies;

- the Council should establish inclusive registers covering as many staff as possible, as soon as possible;

- clarity is needed about the respective roles of employers, the Council and the Commission in order to ensure a streamlined and cost effective system of regulation;

- there was concern about how the Commission and Council would be funded;

- user and carer involvement in both bodies was welcomed; and

- there was support for the Commission undertaking the Royal Commission work, but there was also some concern about how holding a strategic overview would relate to a regulatory role.

The Way Forward for Care

65. This policy position paper was published in July 2000 and was again distributed more widely than its predecessors. It sets out in some detail the shape of the legislation required to implement the proposed new regulatory systems. It was not issued specifically as a consultation paper, but it welcomed comments from interested parties.
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66. Around 40 responses were received, the majority of which were positive about the proposals, for example there was broad support for the concept of unified care homes. It was also welcomed that many of the comments made on the consultation document had been taken on board, and where it did not do so it generally explained why. A number of comments were received on the detail of the proposals. In particular:

- clarity is needed on how the Commission will operate locally, and how it will maintain and build upon existing local knowledge and links;
- uncertainty exists about fees, and how the Commission can meet the cost of regulation from the fees paid by regulated providers;
- while there was support for the proposed 5-year period for existing providers to meet the care standards, a majority favoured shortening the timescale to 3 years;
- there was concern that setting a statutory minimum of one inspection per annum may be perceived as a diminution of current arrangements; and
- the proposed appeal provisions were considered an improvement on the present arrangements.

Consultation on specific issues

Quinquennial Review of the Central Council for Education and Training in Social Work (CCETSW)

67. This review took place in 1997. It was undertaken by the 4 government departments in Scotland, England, Wales and Northern Ireland which jointly sponsored CCETSW.

68. Some 159 responses were received from a wide range of organisations across the UK, 22% (35) were received from stakeholders in Scotland. Respondents confirmed that the regulation of education and training was essential to maintain standards and ensure consistency. Respondents from Scotland called for a Scottish body to be established to regulate the social services workforce and its education. A Scottish body was seen as necessary to reflect the particular nature of social services and education in Scotland. However, the need for alignment with similar bodies in the UK was recognised. The review recommended that CCETSW should be abolished and replaced by regulatory bodies across the UK and that a further review should be undertaken of social work education.

Modernising Social Work Services, Workforce Education and Regulation

69. This consultation document was published in November 1998 and was sent to all interested organisations and individuals.

70. There were almost 150 responses and they demonstrated broad support for workforce regulation and the enhancement of social work education. The protection and benefit of those
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using social services was recognised as the primary objective of regulation and the importance of a competent and confident workforce in the delivery of high quality services was emphasised. All the main stakeholders agreed that there should be enforceable codes of conduct and practice for both employees and employers. There was concern about the detail of how the codes would be enforced, concern that the codes were truly complementary and concern that the responsibility of employers was not undermined.

Regulation of Early Education and Childcare

71. This consultation paper was published by the Scottish Office alongside Aiming for Excellence in March 1999. Comments were invited by the end of June 1999. It was sent to local authorities, private and voluntary providers of childcare and early education, professional bodies and other organisations with an interest.

72. The paper examined how regulation could be made more effective and consistent, whilst also being proportionate to risk. It elaborated on the reasons for independent regulation as set out in Aiming for Excellence and looked at the case for extending the scope of regulation for example to childcare services (day care and childminding) for children over the age of eight, including those services provided by local authorities, and at the case for exceptions to regulation.

73. There was widespread support for the proposal that childcare services provided for older children should be regulated in future. Some respondents favoured a cut off at age 14 while others suggested 16. Respondents were generally not in favour of exempting nannies or friends from the requirement to register but generally did not indicate how regulation of nannies should be given effect.

The Way Ahead

74. Regulation of Early Education and Childcare: The Way Ahead was published in May 2000 and set out the Executive’s plans for the future regulation of early education and childcare following the earlier consultation. It was issued widely to those with an interest, requesting comments on detailed proposals rather than the broad policy intentions (already covered in the earlier consultation) by July 2000.

75. The paper concluded that:

- the Commission should regulate relevant services whether provided by the private, voluntary or local authority sectors;

- the Commission should regulate all pre-five provision – childcare and education - and not just childcare;
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- that regulation by the Commission would be extended to include childcare services for children under the age of 15 (under 17 for services for children with disabilities);

- that childcare for school aged children delivered in schools where managed by the school itself would be exempt from the requirement to register, as would care provided in the child’s own home and childcare provided in NHS hospitals;

- that there should be full regulation (ie registration and inspection) for services for children of primary school age with limited registration – restricted to “fit person” checks – for services for children of secondary school age; and

- the National Care Standards Committee will develop the standards against which regulated early education and childcare services will be registered and inspected.

76. Following consideration of views submitted it has now been concluded that services for children under the age of 16 should be the subject of full regulation, including childcare in NHS hospitals which is not part of patient treatment.

Regulating Private and Voluntary Healthcare

77. This consultation paper was published in March 2000. It was distributed to all interested parties, requesting comments by June 2000. The paper set out Scottish Ministers proposals for improving the system for regulating independent healthcare services in Scotland.

78. Almost 100 individuals and organisations commented on the proposals. There was widespread support for a new, national regulatory system from both service providers and users. A number of detailed comments about specific proposals were also received, in particular:

- the scope of regulation should be extended to cover private primary medical and dental facilities, NHS paybeds and services provided by the professions supplementary to medicine;

- those who responded would prefer a new national regulatory body dealing exclusively with independent healthcare; and

- there was widespread support for replacing the current emphasis on an establishment’s facilities with a framework which regulates standards of care.

Regulating the Independent Healthcare Sector

79. This policy position paper was published in November 2000. It sets out the Scottish Executive’s response to the feedback received during the consultation on regulating private and voluntary healthcare. It confirms that regulation of this sector will be carried out by a specialist
division of the Commission, outlines the scope of that regulation and explains how standards will be set.

Draft National Care Standards

80. The National Care Standards Committee was established in September 1999 to oversee the development of draft care standards. The Committee has over 40 members appointed through a process of nomination from statutory, private and voluntary sector agencies with an interest in the provision of care. The Committee has established a number of working groups who will develop care standards for specific care groups. These working groups are comprised of experts in particular fields and place a heavy emphasis on the interests of users and carers. Consultation with relevant staff groups and users and carers has been very much part of the process of drawing up the draft standards.

81. The first tranche of draft care standards was published for consultation in June 2000. The paper covered care standards for residential care for older people, people with mental health problems and young people and children. The paper was distributed to all those with an interest, requesting comments by the end of September 2000.

82. More than 100 consultation responses have been received, and initial indications are that reaction to the overall structure and focus of the draft standards has been generally positive. As requested, many responses offered very detailed comments on the specific standards and these comments are currently being analysed. The Scottish Executive will respond once this exercise is completed. Draft care standards for other types of care services will be issued shortly.

Consultation on related policy issues

Childcare and family support grant payments

83. No formal consultation has been carried out in relation to the proposal to take grant powers in relation to childcare and family support. These powers will support existing policy objectives and activities within the childcare strategy and measures to support families. The proposals were, however, included in The Way Forward for Care, although no comments were received.

Child protection

84. This change was not consulted upon as part of the consultation process leading up to the Bill. It is, however, simply a minor clarifying amendment to remove possible doubt about what may constitute a place of safety.
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Direct Payments

85. A UK-wide review of direct payments was announced in April 1998. Local authorities were asked to complete a questionnaire on their experiences of direct payments and comments were also sought from voluntary organisations representing older people and people with disabilities. In Scotland the consultation attracted 23 replies from local authorities and a further 9 from voluntary organisations. One voluntary organisation suggested that the age limit should be lowered to 16 to bring it into line with the Independent Living Fund.

86. Views were also sought on the extension of direct payments to disabled 16 and 17 year olds in Regulating Care and the Social Services Workforce and The Way Forward for Care. No comments were received.

Extend authority to make payments

87. The proposal to make this change was highlighted in Aiming for Excellence. It was also included in Regulating Care and the Social Services Workforce and The Way Forward for Care. There was general agreement from the consultation that the legislation should be clarified so that Ministers’ powers to provide grant are not constrained by the doubts which presently exist in relation to section 10 of the Social Work (Scotland) Act 1968.

Safeguarders

88. The proposal to make the changes for safeguarders was highlighted in Regulating Care and the Social Services Workforce and The Way Forward for Care. A small number of responses commented on the safeguarders proposal, and they were generally supportive of it.

EFFECT ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, LOCAL GOVERNMENT, ISLAND COMMUNITIES, SUSTAINABLE DEVELOPMENT ETC.

89. In general, the Bill introduces a modern, flexible framework of legislation that will improve the quality of care available, and both the rights and protection of the people who use care services.

Equal Opportunities

90. The Scottish Executive considers that these proposals will considerably improve equal opportunities for people using care services. They are aimed specifically at making sure that vulnerable people, including older people, those with disabilities and children, are able to access high quality services. The proposals will ensure that people can expect high quality care services delivered by a well-trained and motivated workforce.

91. The introduction of national care standards will help ensure that the same high quality of service and care is available to everyone, whoever they are, wherever they live and whoever it is
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provided by. It is also intended that the care standards will contain specific provisions to ensure that service providers have respect for people’s individual diversity. The increased focus on service users and serving their best interests will also help ensure that everyone is able to access care services that meet their needs.

92. The provisions of the Bill are not discriminatory whether on the basis of gender, race, disability, marital status, religion or sexual orientation.

**Human Rights**

93. The Scottish Executive considers that the provisions of the Bill are consistent with the European Convention on Human Rights.

**Local Government**

94. The provisions of the Bill will result in local authorities losing their existing role as regulators of certain care services. The regulatory function currently undertaken by local authority registration and inspection units will pass to the new Commission. It is expected that the majority of existing registration and inspection staff will also transfer to the Commission, as will resources reflecting the present cost of regulation.

95. Local authorities will however retain their role in planning and co-ordinating the availability of care services. Their role as purchasers of care services will remain, but the Bill will prevent them from purchasing services from service providers who are not registered with the Commission.

96. The accompanying Financial Memorandum assesses the financial impact of the Bill on local authorities in detail. In general, the Bill should have no significant financial effects on local authorities. The transfer of resources to the Commission will take account of the work that will remain with authorities and that they will be required to pay registration and inspection fees in respect of their own provision for the first time.

97. The provisions of the Bill will affect local authority run care services. They will for the first time be subject to statutory regulation and will be registered and inspected by the Commission like all other services. They will also be required to meet the national care standards and staff and management will have to adhere to the Council’s codes of conduct and practice.

**Island Communities**

98. Under the provisions of the Bill people living in island communities will have the same right as people elsewhere in Scotland to expect the delivery of high quality care services.
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99. It is expected that the Commission will have a small number of regional offices dealing with registration and inspection in their local areas, and that many staff, particularly in rural and island areas, will work mainly from home. Enabling staff to live and work within their own communities, and not expecting them to work exclusively from a central base possibly many miles away, will allow them to build up or continue good relationships with local care service providers and to be aware of particular local issues.

100. The introduction of a more flexible system of regulation should also help people in island communities access the type of care that is most appropriate for them. For example, there are currently no nursing homes in the Northern Isles, but the provision in the Bill for “care homes” will enable nursing care to be provided, as appropriate, in existing residential care homes.

**Sustainable Development**

101. The management statements of both the Commission and the Council will take account of sustainable development practice. The work of both bodies will be in keeping with key Scottish Executive objectives such as social inclusion and safeguarding the most vulnerable in society. Both bodies will also be expected to work where possible to support the economy, to protect the environment, and to make extensive use of modern information technology and systems.
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REGULATION OF CARE (SCOTLAND) BILL

POLICY MEMORANDUM

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