This briefing provides information on the current and past Scottish regulatory regime for care services, as it relates to older people. Focussing on the regime prior to and following the passing of the Regulation of Care (Scotland) Act 2001, it discusses the background to the regime under the Scottish Commission for the Regulation of Care (the Care Commission), and also the Scottish Social Services Council, given its role in regulating the social services workforce. It then discusses the role and functions of the new regulator Social Care and Social Work Improvement Scotland, relating it to the programme of public services reform pursued by the Scottish Government. Throughout the briefing statistics, largely related to the final year of operation of the Care Commission, are provided where appropriate.
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EXECUTIVE SUMMARY

INTRODUCTION

- There are around 14,500 registered care services in Scotland, of which over 900 are care homes for older people and over 800 services providing home care to older people.
- The Scottish Parliament Health & Sport Committee has launched an inquiry into the regulation of care for older people, which was thought timely given it has been ten years since the passing of the Regulation of Care (Scotland) Act 2001 (the 2001 Act).

REGULATORY SYSTEM PRIOR TO THE 2001 ACT

- Prior to the 2001 Act the system of registering and inspecting care services differed according to the type of care establishment, with the responsibility for implementation being divided between local authorities and health boards.
- There were four principal concerns with this approach: variations in the coverage of services to be regulated and in the regulation itself; lack of independence; lack of consistency and lack of integration.
- A number of reports and consultations from across the UK led to the introduction of legislation in Scotland, including the report of the Royal Commission on Long Term Care, chaired by the then Sir Stewart (now Lord) Sutherland.
- Following a Scottish Executive consultation in 2000 the Regulation of Care (Scotland) Bill was introduced. This contained provisions to institute a new national regulatory system for adult and children’s care services, to be overseen by the Scottish Commission for the Regulation of Care (the Care Commission). It also proposed the creation of the Scottish Social Services Council, which was to regulate the social services profession in Scotland (i.e. social workers and social care staff). The Bill was passed by Parliament on 31 May 2001.

REGULATORY SYSTEM FOLLOWING THE 2001 ACT

The Care Commission

- The Care Commission came into being on 1 April 2002. Its role was to regulate and inspect all care services that were defined in the 2001 Act. Altogether 15 types of services were identified, including care homes and housing support services.
- Services were inspected against the legislation and the National Care Standards. There are 23 sets of National Care Standards ten of which are specifically for adult services. Each set of standards is written from the point of view of the service user, and details what they can expect from the service. There were a number of standards for care homes, depending on the service user group being supported e.g. older people and people with learning disabilities.
- The system of regulation overseen by the Care Commission was comprised of four main parts: registration, inspection, complaints and enforcement. However, throughout its existence, it modified the way it undertook its work, within this overall system of regulation.
The most notable examples are the introduction of grading and self-assessment, and changes to the minimum frequency of inspections (though these did not affect the inspections of care homes).

**The Social Services Council**

- The Scottish Social Services Council (SSSC) began operating in October 2001. Under the 2001 Act, it is responsible for registering people who work in social services and regulating their education and training. This includes all social workers and social care workers.
- Its key functions include: setting up registers of key groups of social service staff; publishing Codes of Practice for all social service workers and their employers; workforce planning and development, including undertaking the functions of the sector skills council.
- In 2003, it was estimated there were 138,000 social services staff in Scotland. The figure is now estimated to be 198,000.

**Registration**

- The primary focus of registration is to ensure staff have the skills and knowledge to carry out their roles, improve standards of delivery of services and protect service users. One of the criteria for registration is that staff hold, or attain, the required qualifications for the role they undertake.
- The registration of key staff began in April 2003. In 2000, Ministers announced the groups of workers that would be included in two phases of registration. Given the numbers of staff involved registration of key groups was always to take place in a staged approach:
  -Whilst it is expected that workers will apply for registration when the register is opened, the date when registration must be completed is at a later date, which allows employers to plan for registration and the SSSC to have all applications processed. Thus, for adult care home support workers, staff could apply for registration in 2009, but the date of required registration is in 2015. The dates are earlier for supervisors, and all managers are required to be registered within six months of commencing employment.
- Employers have a legal responsibility to ensure that all of their staff are appropriately registered. Employers commit an offence if they continue to employ an unregistered worker in a regulated role for more than six months after their start date.

**Complaints and investigations**

- All social services workers should adhere to the relevant codes of practice that have been instituted by the SSSC. If the SSSC carries out an investigation and finds a worker guilty of misconduct, it has a variety of sanctions open to it. Ultimately, a worker can be removed from the register, which effectively means the person cannot work in a regulated care service, as employers are under a legal obligation to ensure all their staff are appropriately registered.
- A five year plan is currently in place whereby the Care Commission/SCSWIS has agreed to take account of the SSSC’s codes of practice when undertaking inspections.

**PUBLIC SERVICES REFORM**

- The Care Commission was part of a much wider review into public services, following the publication of the Crerar Review in 2007. Crerar considered the then scrutiny system of public services to be over-complex, which resulted in increased costs. He recommended a system of regulation where the service provider was ultimately responsible for their performance, with external scrutiny being part of a much wider performance management and reporting framework, which included self assessment.
The Scottish Government accepted many of the recommendations in the Crerar Review. The Government announced its intentions in November 2008, which included the proposal to create a new health scrutiny body, which would undertake the functions of the Care Commission as regards independent health services. It was also proposed to amalgamate the Care Commission’s functions with those of the Social Work Inspectorate Agency and Her Majesty’s Inspectorate for Education’s responsibilities for child protection. No changes were proposed to the structure or functions of the Scottish Social Services Council.

The proposals were taken forward through the Public Services Reform (Scotland) Bill, which sought to have the regulation of care and social work undertaken by a new body, Social Care and Social Work Inspection Scotland (SCSWIS). Many of SCSWIS’ functions concerning the regulation of care services were to the same as those of the Care Commission, including registration, complaints and enforcement. However, there were a number of differences.

SCSWIS AND THE REGULATION OF CARE SERVICES FOR OLDER PEOPLE

SCSWIS formally came into being on 1 April 2011. It has been set up as a Non-Department Public Body, is responsible for its own governance and is accountable to Ministers.

SCWIS is funded through a combination of Scottish Government funding, registration fees and continuation fees. The combined operating costs of the SCSWIS predecessor bodies, in 2010-11, were £35.894m. SCSWIS’ approved gross budget for 2011-12 is £35.444m. This is to be funded from £12.266m income from fees and £23.178m grant-in-aid. This includes £2.53m one-off off transitional costs in 2011-12. Future funding will be announced in the forthcoming spending review.

Registration

To operate a care service, the provider must be registered with SCSWIS. As part of the application process SCSWIS will check a number of factors, including that the applicant is a fit and proper person and that the premises in which the proposed care service will be provided are fit to be used for that purpose.

Fees are payable on application, and if it successful, the provider will pay an annual license continuation fee. The fees payable are dependent on the type and size of the service concerned. The structure has remained unchanged since 2005-06.

Inspections

As with the Care Commission, all care services are inspected taking into account the National Care Standards. Scottish Ministers have the power under the 2010 Act to change the standards used, or indeed can delegate that to SCSWIS itself. However, there has been no change thus far.

As regards the minimum frequency of inspections, originally services offering 24 hour accommodation could expect to be inspected twice per year and all other services once per year. In 2007 and 2009, changes were made to make the system more flexible for certain services (though not care homes). The 2010 Act removed the statutory minimum frequency for inspections altogether. The aim of this was to allow SCSWIS the flexibility to concentrate on those services requiring most input, using a risk assessment system, which fits with some of the principles developed by Crerar.

SCSWIS now produces a non statutory plan, approved by Scottish Ministers. This is based on an assessment of risk, which takes account of the service’s previous performance, the annual self-assessment and the risk analysis. In addition, SCSWIS will randomly sample and inspect a selection of services which would not otherwise have been due for inspection.
The plan sets out the frequency of, largely unannounced, inspections based on this assessment. However, this does not preclude SCSWIS from inspecting a service more frequently should circumstances change.

- As with the latter years of the Care Commission, services will continue to be graded according to the quality themes and statements linked to the national care standards. As before the level of risk of the service and previous gradings will determine how many quality themes and statements will be reviewed during the inspection of a particular service.
- Data related to inspection targets, gradings and obtaining views of service users and carers is outlined in the main body of the briefing.

**Complaints**

- Under the 2010 Act, SCSWIS is required to establish a complaints procedure, so that service users, someone acting on their behalf, or any concerned member of the public can make representations concerning: the provision of a care service to the service user; the provision of a care service generally; or, the exercise by SCSWIS of any of its functions
- The 2010 Act also places duties on SCSWIS and other regulatory bodies to cooperate with one another when required. As a result SCSWIS is entering into formal protocols or working agreements with a range of bodies to allow joint working and for the sharing of information.
- SCSWIS is not responsible for handling complaints outwith its area of regulatory responsibility, though it will refer complainants to the most appropriate body.
- In terms of the key older people’s services, in 2010-11, a total of 485 complaints were received in relation to care homes, 177 regarding care at home support services and 19 in other support services. In all the majority of complaints were upheld.

**Enforcement**

- As was the case with the Care Commission, SCSWIS has powers to enforce requirements when a care service does not meet the national standards expected of it. It has a graduated approach to enforcement, where the first step is usually to enter into discussions with the service provider. However, that does not mean that legal sanctions will be taken if it is deemed necessary for the good of service users.
- Where necessary SCSWIS will make recommendations or requirements for improvement. In areas where there are serious causes for concern SCSWIS has the power to place improvement notices with the provider, including time limits. Ultimately, SCSWIS has the power to cancel the registration of that service if the improvement notices are not adhered to. Cancellation of the registration means that the provider can no longer provide that service and is effectively prevented from operating.
- In 2010-11, there were a total of 16 non-technical enforcements, in key older people services, with the majority of these being in private care homes.
- Local authorities often procure care services as well as providing services themselves. Therefore, they often consider that they have a responsibility to ensure that those services they are funding are providing a safe and quality level of service. They have a number of powers available to take action against a service if it concerns are raised about its standards of care. Local authorities through contracts with service providers can, ultimately, withdraw funding from the service if they are not providing good quality of care under the terms of the contract. However, they also have duties and powers to protect adults at risk, through the Adult Support and Protection (Scotland) Act 2007 (the 2007 Act).
INTRODUCTION

On 30 June 2011, the Scottish Parliament Health & Sport Committee launched an inquiry into the regulation of care for older people. Given it has been ten years since the passing of the Regulation of Care (Scotland) Act 2001 (the 2001 Act), the Committee considered it timely to assess how robust the system was in identifying problems, and how it takes the views of services users into account. The inquiry began with a call for written evidence, which closed on 24 August 2011. (Scottish Parliament Health & Sport Committee, 2011).

This briefing provides background information on the system of regulation in Scotland, as it relates to older people, in its current and previous forms.

Number of registered services for older people

As at 1 July 2011 there were a total of 14,502 services registered with SCSWIS. Of this, 914 were care homes for older people and 804 were support services for older people, together representing 11.8% of the total number of regulated services. How this breaks down by service provider is shown below:

Table 1: Registered Services by sector as at 30 June 2011

<table>
<thead>
<tr>
<th>CareService</th>
<th>Data</th>
<th>Health Board</th>
<th>Local Authority</th>
<th>Private</th>
<th>Voluntary or Not for Profit</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Care Homes for older people</td>
<td>services %</td>
<td>0.0%</td>
<td>17.7%</td>
<td>69.4%</td>
<td>12.9%</td>
<td>914</td>
</tr>
<tr>
<td>Support Services for older people</td>
<td>services %</td>
<td>1</td>
<td>120</td>
<td>253</td>
<td>430</td>
<td>804</td>
</tr>
<tr>
<td>All service types</td>
<td>services %</td>
<td>10</td>
<td>2820</td>
<td>8721</td>
<td>2951</td>
<td>14502</td>
</tr>
</tbody>
</table>

As can be seen, private providers are responsible for over two thirds of care homes for older people, whilst the key deliver of support services for older people is the voluntary/not for profit sector. The table does not show the actual number of people receiving the services, though the Care Commission (2010, p 44) found that the average number of places in a new care home for older people in 2009-10 was 39.

REGULATORY SYSTEM PRIOR TO THE 2001 ACT

Prior to the 2001 Act the system of registering and inspecting care services differed according to the type of care establishment, with the responsibility for implementation being divided between local authorities and health boards:

- Private and voluntary sector residential care homes were registered and inspected by local authorities
- Nursing homes, independent hospitals and hospices were registered and inspected by local Health Boards
- Local authorities’ residential care homes and day care services were subject only to inspection by local authorities themselves

There were four principal areas of concern (SPICe, 2001) about that system:
1. Variations in the coverage of services to be regulated, and the responsibility for regulation
2. Lack of independence - local authorities were responsible for purchasing, providing and regulating residential care, while health boards could purchase nursing home care and regulate the service
3. Lack of consistency - standards varied across Scotland, creating uncertainty for people using services and providers
4. Lack of integration - separate regulatory regimes for residential and nursing homes made it difficult for both residential and nursing care services to be provided from one establishment, and could result in disruptive moves as the needs of people using the service changed

A number of reports and consultations from across the UK led to the introduction of legislation in Scotland (see SPICe, 2001, p. 9-14). These included the report of the Royal Commission on Long Term Care (1999), chaired by the then Sir Stewart (now Lord) Sutherland. Whilst remembered more for its recommendations that led to the institution of free personal care in Scotland, the Commission also called for a UK National Care Commission to monitor demographic and spending trends, represent older people’s interests, keep under review the market for residential and nursing care and set national benchmarks for care standards.

Following a Scottish Executive consultation in 2000 the Regulation of Care (Scotland) Bill was introduced in the Scottish Parliament in December 2000. It contained provisions to institute a new national regulatory system for adult and children’s care services, to be overseen by the Scottish Commission for the Regulation of Care (the Care Commission). In addition it proposed the creation of the Scottish Social Services Council, which was to regulate the social services profession in Scotland (ie social workers and social care staff). The Bill was passed by the Scottish Parliament on 31 May 2001 and received Royal Assent on 5 July 2001.

REGULATORY SYSTEM FOLLOWING THE 2001 ACT

THE CARE COMMISSION

The Care Commission came into being on 1 April 2002. Its role was to regulate and inspect all care services that were defined in the 2001 Act. Altogether 15 types of services were identified, including care homes and housing support services. Some of these were then themselves defined eg “a care home service” is one where accommodation is provided, together with nursing, personal care or personal support, for those who are vulnerable and in need. Thus, there were no legal differences between residential and nursing homes, as previously.

Services were inspected against the legislation and the National Care Standards. The latter were developed on behalf of Scottish Ministers by a Committee and published by the then Scottish Executive. Altogether there are 23 sets of National Care Standards, ten of which are specifically for adult services. Each set of standards is written from the point of view of the service user, and details what they can expect from the service. The aim is to ensure that people using care services receive the same quality of care no matter where they live or who provides the service. There were a number of standards for care homes, depending on the service user group being supported eg older people and people with learning disabilities.

The system of regulation overseen by the Care Commission was comprised of four main parts:

- **Registration** – necessary for a service to legally operate in Scotland. Following an application, a number of checks were carried out, including ensuring the operator was fit and proper, that any premises being proposed for use in providing a
service were fit for purpose and that the service to be provided complied with standards.

- **Inspection** – this was to ensure that services were meeting relevant care standards. A minimum frequency of inspections was set out in legislation (see below). As a result of the inspection the service could receive recommendations (ie suggestions for improvement, where there is no breach of regulations) or requirements (ie where the service being provided is not meeting legal standards and regulations).

- **Complaints** – this is so that those involved in the service provision, service users themselves, family members or any member of the public could alert (anonymously if preferred) the Commission to problems that have been identified in a service. Complaints are investigated, often through inspections.

- **Enforcement** – where a service had not complied with legal requirements, the Care Commission could take one of a number of steps, including not allowing the service to take on any further service users, applying to a Sheriff to cancel the service’s registration or removing its registration and thus effectively closing the service.

### Care Commission developments

Throughout its existence, the Care Commission modified the way it undertook its work, within this overall system of regulation. In the context of this briefing there are three developments of note.

#### Grading

In 2008, the Care Commission introduced a grading system into its inspection process. This still exists under SCSWIS. The rationale for this was two-fold. On the one hand it would be clearer to service users, potential services users and relatives how particular services were performing. On the other, as reports and the grades are published, it was to act as an incentive for services to improve. There are four grade themes:

- Quality of care and support
- Quality of environment
- Quality of staffing
- Quality of management and leadership

Within each theme are a number of statements, which are related to the National Care Standards. Inspector will assess performance against a selection of these quality statements within a selection of the quality themes (SCSWIS, 2011a, p 3). The level of “sampling” is determined through the use of a Regulatory Support Assessment (RSA). This tool considers matters such as the size of the service, the needs of the individuals using the service, and the history of complaints and enforcement actions against the service. An assessment can then be made as to whether the service is ‘low’, ‘medium’ or ‘high’ risk. The higher the risk the more inspections the service will receive. In addition, services with high risk assessments or poor grades can expect to be inspected according to all themes, and at least two statements from each theme (SCSWIS, 2011b). SCSWIS is currently refining its risk assessment process.

Grades are awarded according to a six point scale, where one is unsatisfactory, three is adequate and six is excellent. Services receiving a one or two grade for any theme are required to make improvements (either through recommendations or requirements) with enforcement
procedures being used if they do not comply. There is further discussion of grading, together with data, in the discussion of SCSWIS, below.

**Self Assessment**

The Care Commission also introduced a system of self assessment in 2008, and again this continues under SCSWIS. Under this system each service is required to grade itself against a series of quality statements under each quality theme (see grading, above). The service is required to provide evidence for its statements. Forms are available online and services are encouraged to complete them over a period of time. However, the service is alerted to when the self-assessment is due, and is given a four week period to finalise and submit the form. The grades a service gives itself are supposed to be a helpful guide as to how it is performing, and, as a result, while they will be discussed with the inspector they are not published. As discussed below, self assessment is a key element of the scrutiny model adopted through the public services reform programme.

**Minimum frequency of inspections**

The minimum frequency of inspections was stipulated within the 2001 Act itself. It stated that services providing care and accommodation 24 hours a day would be inspected at least twice within a twelve month period. At least one of these inspections was to be unannounced. Other services were to receive one inspection per year. The Smoking, Health and Social Care (Scotland) Act 2005 amended the 2001 Act to give Ministers the power to alter the minimum frequency of inspections, but only to extend the frequency at which inspections took place and not shorten it. The first set of regulations to be made under this power were made in 2007\(^1\) and these changed the minimum frequency for housing support services and day care of children. Following a consultation (Scottish Government, 2008a) a further set of regulations were made in 2009\(^2\). These reduced the minimum frequency of inspections for school care accommodation services and school hostels and independent hospitals and hospices. However, all adult care home services were unaffected by these changes.

The policy intention was to enable the Care Commission to move to a more proportionate and risk based inspection regime, utilising the new grading, RSA and self-assessment processes (see above). This would then allow the Care Commission to target its resources where they were most needed eg in others sectors where there were poorer standards of care. However, this did not prevent the Care Commission from inspecting more frequently if they felt it was required for a particular service.

**THE SOCIAL SERVICES COUNCIL**

The Scottish Social Services Council (SSSC) began operating in October 2001. Under the 2001 Act, it is responsible for registering people who work in social services and regulating their education and training. This includes all social workers and social care workers. Its role is to raise standards of practice, strengthen and support the workforce and increase the protection of people who use services. Its key functions are to:

- Set up registers of key groups of social service staff
- Publish Codes of Practice for all social service workers and their employers
- Regulate the training and education of the workforce

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\(^1\) Regulation of Care (Scotland) (Minimum Frequency of Inspections) Order 2007 (SSI 2007/231)

\(^2\) Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2009 (SSI 2009/131)
• Promote education and training
• Workforce planning and development, including undertaking the functions of the sector skills council – Skills for Care & Development

The Scottish Social Services Council is funded mainly by grant in aid and grants for specific projects from the Scottish Government. The SSSC’s operating income during the financial year 2009/10 was £3.513m. This includes registration fee income of £0.811m. (SSSC, 2010, p 39). Fees are payable on application to join the register, an annual fee to retain registration and re-registration (which takes place every two or more years depending on the service and post held). The current fee structure shows that all fees range from £15 to £30.

The sections below concentrate on the registration process and dealing with complaints. This is because as will be discussed below, most workers in the key services for older people are not required to registered for between two and nine years (see below).

Registration of social services staff

In 2003, it was estimated there were 138,000 social services staff in Scotland. The current estimate is that this is now approximately 198,000 staff. (SSSC, 2005 and 2010).

The primary focus of registration is to ensure that such staff have the skills and knowledge to carry out their roles, improve standards of delivery of services and protect service users. One of the criteria for registration is that staff hold, or attain, the required qualifications for the role they undertake. If an applicant does not currently hold all the required qualifications they can still be granted registration subject to the condition that they achieve the required qualifications within a specified period (normally the first three year period of registration). In applying for registration the SSSC will also require full disclosure of any criminal offences and also any action taken by the SSSC (in the case of those re-registering).

The registration of key staff began in April 2003. The year and a half prior to that were spent developing systems and introducing codes of practice. In 2000, Ministers announced the groups of workers that would be included in phase 1 and 2 of registration (Scottish Government, 2011). Given the numbers of staff involved registration of key groups was always to take place in a staged approach:

- **Phase one** –
  - *Social Workers* - commenced April 2003
  - *Social work Students* – commenced May 2004
  - *Managers in Adult Day Care Services* – commenced January 2006
  - *Managers in Adult Care Home Services* – commenced January 2006

- **Phase two** –
  - *Day Care of Children Services* – commenced for Managers - October 2006; Practitioners – March 2007; support workers – October 2008
  - *Housing Support Services* – commenced Managers January 2011
  - *Care at Home Services* – commenced Managers January 2011

It is important to note that it was expected that workers would apply for registration when the register was opened. The dates for applying for registration were staggered not only due to the
number of workers in each group but also to allow employers time to plan for registration. However, the Scottish Government (2011) stated that the pace of registration remained slow.

In terms of those working within care homes for adults, whilst managers should be registered within six months of taking up employment, other workers are to be registered in the following timescales:

<table>
<thead>
<tr>
<th>Group</th>
<th>Applications must be submitted to the SSSC</th>
<th>Date of required registration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervisors</td>
<td>30 September 2011</td>
<td>30 March 2012</td>
</tr>
<tr>
<td>Practitioners</td>
<td>28 September 2012</td>
<td>29 March 2013</td>
</tr>
<tr>
<td>Support workers</td>
<td>30 September 2014</td>
<td>30 September 2015</td>
</tr>
</tbody>
</table>

Given the fact that the registers for adult care home staff opened in 2007 and 2009 (see above), the Scottish Government (2011) has advised that staff in adult care homes should have been applying for registration from when it commenced. The date for submission of applications is to allow the SSSC to have all applications processed by the required registration dates.

As regards those working in care at home services, another key service for older people, there are no timescales set as yet for supervisors or support workers to submit applications. However, the Scottish Government (2011) states that registration of supervisors should commence in 2014, with achievement of registration taking place in 2017. In addition, the registration of support workers should commence in 2017 with achievement of registration by 2020. Managers of these services should be registered within six months of commencing employment.

In 2009-10, the SSSC (2010, p 10) registered 12,657 first time registrants taking the total number of registrants to 35,637. However, over the next five years it expects to register more than 50,000 new registrants, as compulsory registration is extended.

Complaints and investigations

Employers have a legal responsibility to ensure that all of their staff are appropriately registered. Employers commit an offence if they continue to employ an unregistered worker in a regulated role for more than six months after their start date.

As a regulator, the SSSC will consider complaints made about a social service worker and their conduct. All social services workers should adhere to the relevant codes of practice that have been instituted by the SSSC. In the first instance it is expected that such matters would be dealt with locally, given that employers are responsible for the governance of the practice of their staff, and that they are best place to tackle any practice issues that arise. However, in some circumstances this may not be appropriate or the complainant may not be satisfied with the process locally.

If, after investigating the case the SSSC finds a social services worker guilty of misconduct, it can take one or a combination of the following sanctions:

1. issue a warning that is kept on the registrant's record for a period of up to five years
2. place conditions on the worker's registration eg require them to complete specific training
3. suspend the registrant from the Register for up to two years
4. remove the registrant from the Register

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Full removal from the register will effectively mean the person cannot work in a regulated care service, as employers are under a legal obligation to ensure all their staff are appropriately registered.

**SSSC and the Care Commission**

Given the SSSC’s role for regulating the social service workforce and the Care Commission’s role in regulating care services, it is unsurprising that the organisations have worked together. In practical terms both organisations are situated in the same headquarters building in Dundee and have service level agreements covering property costs, ICT costs, staff costs and professional services. As regards the scrutiny of the social services workforce, there is a five year plan currently in place whereby the Care Commission (and now SCSWIS) has agreed to take account of the SSSC’s codes of practice when undertaking inspections. (SSSC, 2010).

It is also of note that there are two grading themes of relevance to this section of the briefing – quality of staffing, and quality of management and leadership. There are statistics available on both of these, which are outlined, below, in the section on SCSWIS’ inspection process.

**PUBLIC SERVICES REFORM**

**The Crerar Review**

The Care Commission became part of a much a wider review into public services, following the publication of The Crerar Review (Crerar) in September 2007. Crerar had been commissioned, in 2006, by the then Scottish Executive to evaluate the system of regulation, audit, inspection and complaints handling of public services in Scotland. He found there was:

“…a wide variety of scrutiny methodologies, organisational structures and governance arrangements, and large numbers of different players with the ability and right to both direct and create new scrutiny” (2007, p 3).

Crerar believed this lead to an over-complex system, but that it resulted in increased scrutiny costs. He developed five principles to govern the application and use of external scrutiny – independence, public focus, proportionality, transparency and accountability – and described what he believed to be the key features of any scrutiny system (see Appendix 1).

A central argument in the report was that service providers themselves were ultimately responsible for their performance, and that external scrutiny should be part of a much wider performance management and reporting framework:

“Over time Ministers and the Parliament should rely more on self-assessment by providers, enabling a reduction in the volume of external scrutiny. In future Ministers and Parliament should consider the extent to which the assurance they require can be provided by providers, before commissioning external audit, inspection or regulation” (2007, p 3).

Ultimately, Crerar envisaged a single national scrutiny body for all public services. However, he proposed, as a first step, a simplification of current scrutiny bodies. As regards the Care Commission his key recommendation was that its regulatory powers over independent health services should be transferred to an external and independent health scrutiny body. However, it is clear that Crerar had an effect on the Care Commission, which, as discussed above, adopted self assessment as part of its scrutiny process.
Scottish Government consideration and the Public Services Reform (Scotland) Bill

Despite the Crerar review being commissioned by its predecessor, the then Scottish Government (2008b) committed itself to considering the report and accepted many of the recommendations. It published its response in January 2008 and set up a number of action groups to consider the themes arising from the report. In November 2008, the Cabinet Secretary for Finance and Public Services announced the outcome of the Government’s consideration. This included the proposal to create a new health scrutiny body, which would undertake the functions of the Care Commission as regards independent health services. It was also proposed to amalgamate the remaining functions of the Care Commission with those of the Social Work Inspectorate Agency (which scrutinised the work of social work departments) and those of Her Majesty’s Inspectorate for Education’s (HMIe) relating to child protection. No changes were proposed to the structure or functions of the Scottish Social Services Council.

The Government’s proposals were taken forward, legislatively, through the Public Services Reform (Scotland) Bill (the Bill), which was introduced to Parliament on 28 May 2009. This was a significant piece of legislation covering a range of bodies and functions. In the context of this briefing, the Bill sought to have the regulation of care and social work undertaken by a new body, Social Care and Social Work Inspection Scotland (SCSWIS). Many of SCSWIS’s functions concerning the regulation of care services were to the same as those of the Care Commission, including registration, complaints and enforcement. However, there were a number of differences, and these will be discussed when outlining SCSWIS and how it carries out its role, below. The Bill completed its passage through Parliament on 25 March 2010, when it was passed. It received Royal Assent on 28 April 2010, becoming the Public Services Reform (Scotland) Act 2010 (the 2010 Act).

SCSWIS AND THE REGULATION OF CARE SERVICES FOR OLDER PEOPLE

SCSWIS formally came into being on 1 April 2011. It is responsible for the regulation of social work services, child protection services and care services. It has been set up as a Non-Departmental Public Body, is responsible for its own governance and is accountable to Ministers. As with the Care Commission, it is funded through a combination of Scottish Government funding, registration fees and continuation fees (see below). In terms of the current inspection workforce, SCSWIS (2011b) has advised that in its inspectorate teams there are a total of 22 Senior Inspectors and 266 inspectors.

The 2010 Act set out a number of general principles that SCSWIS (as well as other bodies) must exercise when carrying out its functions:

- The safety and wellbeing of all persons who use, or are eligible to use, any social service are to be protected and enhanced
- The independence of those persons are to be promoted
- Diversity in the provision of social services is to be promoted with a view to those persons being afforded choice
- Good practice in the provision of social services is to be identified, promulgated and promoted

Its vision (SCSWIS, 2011) states: “people in Scotland should experience a better quality of life as a result of accessible, excellent services that are designed and delivered to reflect their individual needs and promote their rights”. Its purpose is to contribute to this vision by:

- Providing assurance and protection for people who use services and their carers
• Delivering efficient and effective regulation and inspection
• Acting as a catalyst for change and innovation
• Supporting improvement and signposting good practice

FUNDING

SCWIS is funded through a combination of Scottish Government funding, registration fees and continuation fees. The Scottish Government (2011) has advised that the combined operating costs of the SCWIS predecessor bodies, in 2010-11, were £35.894m. SCWIS’ approved gross budget for 2011-12 is £35.444m. This is to be funded from £12.266m income from fees and £23.178m grant-in-aid. This includes £2.53m one-off transitional costs in 2011-12. The majority of the costs and savings will come from reductions in staffing and organisational changes due to the need to merge the 3 predecessor organisations together. The SCWIS budget for 2011-12 reflects the fact that the new body had to be streamlined so that it could deliver the expected savings and efficiencies over the period of the spending review.

There has been some debate concerning the future funding of SCWIS in recent months. In June 2011, the First Minister stated in Parliament: “…budgets for future years are looked at as part of the spending review and against a framework that considers the risk and inspection regime” (Scottish Parliament, 2011, col 128). The spending review is due to be published in September 2011.

REGISTRATION

To operate a care service, the provider must be registered with SCWIS. The registration process is discussed in guidance (SCWIS, 2011b and 2011c, p4). The individual or corporation wishing to be registered must first make a written application to SCWIS. The application process itself is designed to assess whether or not:

• The applicant is a fit and proper person to provide the service, which includes assessing a potential provider’s integrity, character and financial background. It will also check that the manager of the service has the relevant registration with SSSC and qualifications.
• The premises in which the proposed care service will be provided are fit to be used for that purpose, through the use of building control, planning and environmental health reports
• The proposed service will make all the proper provisions for the health, welfare, independence, choice, privacy and dignity of everyone using the service, which is largely done through considering the statements, policies and procedures that will be put in place by the applicant

As the guidance shows, different forms of referencing and records checks are carried out depending on whether the applicant is an individual or corporation. The guidance also emphasises in several areas that the registration process can or will include meetings between representatives from SCWIS and the applicant or a representative of them.

Fees are payable on application, and if successful, the provider will pay an annual license continuation fee. SCWIS (2011d, p 1) states that the latter contributes to the cost of SCWIS carrying out is regulatory functions and other work necessary for it to meet its duties. The full fee structure for all care services in 2011-12 is shown in Appendix 2. The structure has remained unchanged since 2005-06. As can be seen fees differ depending on the type and size of the service concerned. Thus a care home will pay £3849 when applying for registration and an annual fee comprising of the total of £162 per registered place. Meanwhile a housing
support service will, depending on its size, pay between £1,261 and £2,798 to submit an application and between £676 and £2,255 for its annual continuation.

**INSPECTION**

As was the case with the Care Commission, all care services are inspected taking into account the National Care Standards. Scottish Ministers have the power under the 2010 Act to change the standards used, or indeed can delegate that to SCSWIS itself. However, there has been no change thus far.

The minimum frequency of inspections is one element of the process that has changed since the 2010 Act came into force. As noted in ‘Care Commission developments’, originally, services offering 24 hour accommodation could expect to be inspected twice per year and all other services once per year. In 2007 and 2009, changes were made to make the system more flexible for certain services (not care homes). The 2010 Act removed the statutory minimum frequency for inspections altogether. The aim of this was to allow SCSWIS the flexibility to concentrate on those services requiring most input, using a risk assessment system, which fits with some of the principles developed by Crerar.

SCSWIS now produces a non statutory plan (2011e), which is approved by Scottish Ministers. The plan is based on an assessment of risk, which takes account of the service’s previous performance, the annual self-assessment and the risk analysis (see ‘Care Commission developments’, above). The plan sets out the frequency of, largely, unannounced, inspection based on this assessment, though this does not preclude SCSWIS from inspecting a service more frequently should circumstances change eg following a complaint. Table 2 outlines the frequency of inspections for 2011-12, and shows how care homes for older people compare with all adult care services:

**Table 2: SCSWIS Frequency of inspections for adult care services 2011-12**

<table>
<thead>
<tr>
<th>Type of service</th>
<th>If quality grades are good (4+) and assessed risk is low</th>
<th>If quality grades are &lt;4 and/or assessed risk is high</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult placement services</td>
<td>1 inspection in each 24 months</td>
<td>1 inspection each 12 months</td>
</tr>
<tr>
<td>Care homes for older people</td>
<td>1 unannounced inspection in each 24 months</td>
<td>2 unannounced/short notice inspections in each 12 months</td>
</tr>
<tr>
<td>All other adult care homes</td>
<td>1 unannounced inspection in each 24 months</td>
<td>1 unannounced inspection in each 12 months</td>
</tr>
<tr>
<td>Housing Support (combined with care at home)</td>
<td>1 unannounced inspection in each 24 months</td>
<td>1 unannounced inspection in each 12 months</td>
</tr>
<tr>
<td>Housing Support (not combined with care at home)</td>
<td>1 unannounced inspection in each 36 months</td>
<td>1 inspection in each 12 months</td>
</tr>
<tr>
<td>Support Services – adult day care</td>
<td>1 unannounced inspection in each 36 months</td>
<td>1 inspection in each 12 months</td>
</tr>
<tr>
<td>Support services – care at home</td>
<td>1 unannounced inspection in each 24 months</td>
<td>1 inspection in each 12 months</td>
</tr>
<tr>
<td>Type of service</td>
<td>If quality grades are good (3+) and assessed risk is low</td>
<td>If quality grades are &lt;3 and/or assessed risk is high</td>
</tr>
<tr>
<td>Nurse agencies</td>
<td>1 unannounced inspection in each 36 months</td>
<td>1 inspection in each 12 months</td>
</tr>
</tbody>
</table>

Source: SCSWIS (2011e)

In addition, SCSWIS will randomly sample and inspect a selection of services which would not otherwise have been due for inspection.
As with the latter years of the Care Commission, services continue to be graded according to the relevant quality themes and statements linked to the national care standards. As before, the level of risk of the service and previous gradings will determine how many quality themes and statements will be reviewed (see ‘Care Commission developments’, above).

In addition, inspectors should also consider evidence from various sources when judging a service’s performance since it was last graded, such as: upheld complaints and incidents and how the service has dealt these; evidence that previous action plans have been implemented; and, information contained in self-assessments. In addition, they should obtain feedback from service users and their carers, about the quality of the service and that they get their say in the way the service is delivered. (SCSWIS, 2011a).

**Inspection data**

*The meeting of inspection targets*

SCSWIS (2011b) has provided data on the extent to which the Care Commission, in its final year (2010-11), met the inspection targets expected of it. In terms of care homes for older people (which the Care Commission aimed to inspect twice per year), this target was met in all but one service which was only inspected once. In terms of care at home services (which should have been inspected once per year), this target was met in all but one service.

*Data concerning the gradings of services*

Table 3 provides available data on those care home and supports services for older people, where inspections gave them a unsatisfactory/weak grade (ie 1 or 2) against all quality themes, very good/excellent grades (ie 5 or 6) and those with a mixture. It also includes those with no grade, which could arise where the service is newly registered and yet to be inspected. The reports are the latest available for each service at 30 June 2011.

<table>
<thead>
<tr>
<th>Care Service</th>
<th>Data</th>
<th>1&amp;2</th>
<th>Grade Spread</th>
<th>Mix</th>
<th>No grade</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>5&amp;6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Care Homes for older people</td>
<td>services</td>
<td>11</td>
<td>158</td>
<td>720</td>
<td>25</td>
<td>914</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>1.2%</td>
<td>17.3%</td>
<td>78.8%</td>
<td>2.7%</td>
<td>100.0%</td>
</tr>
<tr>
<td>Support Services for older people</td>
<td>services</td>
<td>5</td>
<td>227</td>
<td>486</td>
<td>86</td>
<td>804</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>0.6%</td>
<td>28.2%</td>
<td>60.4%</td>
<td>10.7%</td>
<td>100.0%</td>
</tr>
<tr>
<td>All service types</td>
<td>services</td>
<td>52</td>
<td>4076</td>
<td>8818</td>
<td>1556</td>
<td>14502</td>
</tr>
<tr>
<td></td>
<td>%</td>
<td>0.4%</td>
<td>28.1%</td>
<td>60.8%</td>
<td>10.7%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Source (SCSWIS, 2011b)

The data shows that 1.2% of care homes for older people and 0.6% of support services for older people received a report where all gradings received were either a 1 or 2, slightly higher than the average for all services. In terms of the strongest services, only 17.3% of care homes for older people received all 5 or 6 grades in their reports, whilst across all services the figure was 28.1%. The vast majority of services had mixed grades.

In its overview of findings from 2002 to 2010, the Care Commission (2010a) considered the gradings for services registered at 31 March 2009 and 2010. It found that in terms of the quality of environment and the quality of staffing care homes for older people had, overall, the poorer grading profiles. As discussed above, the grading of the quality of staff has links to the to the
role of the SSSC. Therefore, it is interesting to looking at how care homes for older people performed in the quality themes of staffing, and management and leadership.

Table 4, below, shows that as at 31 March 2010, 6.8% of care homes for the elderly were graded as unsatisfactory or weak under the quality of staffing theme, compared to 4% of all adults services. At the other end of the scale 32.3% of care homes for older people were graded as very good or excellent, compared with 39.3% amongst all adult services.

Table 4: Spread of Grades – Quality of staffing, list of services and most recent gradings as at 31 March 2010

<table>
<thead>
<tr>
<th>Service</th>
<th>Grade</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Care homes for older people</td>
<td></td>
<td></td>
</tr>
<tr>
<td>services services</td>
<td>11</td>
<td>51</td>
</tr>
<tr>
<td>%</td>
<td>1.2%</td>
<td>5.6%</td>
</tr>
<tr>
<td>All adult services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>services services</td>
<td>23</td>
<td>128</td>
</tr>
<tr>
<td>%</td>
<td>0.6%</td>
<td>3.4%</td>
</tr>
</tbody>
</table>

Source: (Care Commission, 2010b)

In terms of the quality of management and leadership theme, Table 5 shows that 5.8% of care homes for the elderly were graded as unsatisfactory or weak, compared to 3.4% of all adults services. In terms of those services being graded as very good/excellent in terms of this theme, 27.1% of care homes for older people were graded thus, compared with 33.9% amongst all adult services.

Table 5: Spread of Grades – Quality of management and leadership, list of services and most recent gradings as at 31 March 2010

<table>
<thead>
<tr>
<th>Service</th>
<th>Grade</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Care homes for older people</td>
<td></td>
<td></td>
</tr>
<tr>
<td>services services</td>
<td>8</td>
<td>45</td>
</tr>
<tr>
<td>%</td>
<td>0.9%</td>
<td>4.9%</td>
</tr>
<tr>
<td>All adult services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>services services</td>
<td>22</td>
<td>103</td>
</tr>
<tr>
<td>%</td>
<td>0.6%</td>
<td>2.8%</td>
</tr>
</tbody>
</table>

Source: (Care Commission, 2010b)

It is difficult to assess care at home services and other support services for older people in the same way as the published data does not differentiate between different service user groupings.

Data on the views of service users and their relatives and carers

As noted above, as part of the inspection process, service users and their relatives or carers will be asked for their views. A key way of ascertaining this is through the completion of questionnaires.

In 2009-10, the Care Commission received 2,550 care standards questionnaires from people who use care homes for older people, and 98% of them indicated that they were happy with the overall quality of care they received. The questionnaires received from relatives and carers of people who use care homes for older people showed that 98% of respondents were happy with the care provided and only 2% were not. (2010a, p 46)

As regards care home services (which include those services for older people and other service user groups) in the same periods, the Care Commission received 894 questionnaires from
service users and 1522 from relatives and carers. The Care Commission stated that, overall, people were satisfied or very satisfied with the service they use. However, around 9% of people who use the service and 6% of relatives and carers indicated that they were not satisfied with the quality of the service. (2010, p 70)

COMPLAINTS AND INVESTIGATIONS

Under the 2010 Act, SCSWIS is required to establish a complaints procedure, so that service users, someone acting on their behalf, or any concerned member of the public can make representations concerning: the provision of a care service to the service user; the provision of a care service generally; or, the exercise by SCSWIS of any of its functions. Under normal circumstances SCSWIS will only consider complaints where the matter concerned took place less than 12 months prior to the complaint.

SCSWIS operates a four stage complaints process, which is outlined in Appendix 3 and discussed in the complaints procedure itself (SCSWIS, 2011f). This section will concentrate on situations where a complaint may involve an investigation by SCSWIS and other regulatory bodies.

Joint working with other bodies

The 2010 Act also places duties on SCSWIS and other regulatory bodies to cooperate with one another when required. As a result SCSWIS is entering into formal protocols or working agreements with a range of bodies to allow joint working and for the sharing of information. These bodies include: the SSSC; the NHS; the police; and, the Mental Welfare Commission Scotland. There will also be agreements with local authorities, but this is discussed separately below.

SCSWIS (2011f) states that immediate notification with other bodies will be taken when a complaint is received concerning:

- Allegations of abuse or neglect of service users
- Conduct which may amount to a criminal offence
- Serious malpractice
- Circumstances indicative of a present or potential risk to the health, welfare or safety of service users

Where another body has a legitimate interest in the complaint then an agreement will be reached between SCSWIS and that body on how it should be handled, by whom and within what timescales. Where SCSWIS considers it has a secondary role it will await the findings of the other body before determining what action to take. However SCSWIS is not obliged to suspend its investigation because another body has an interest in the case or there is a concurrent investigation, unless there is serious criminal investigation. If necessary SCSWIS can take interim measures to protect the interests of service users.

In circumstances where a complaint is raised that requires a joint investigation, the provider is advised of this. When a complaint is raised concerning staff registered with other bodies SCSWIS will signpost the complainant to the appropriate professional regulatory body. It will also advise the care provider to refer the matter to the relevant body. SCSWIS itself may also or share information with the body eg a complaint concerning the practice of a registered nurse may be referred to the Nursing and Midwifery Council.
Anonymous and confidential complaints

SCSWIS (2011f, 6) considers anonymous complaints as one method of obtaining early warning of potential or actual problems in care services. However, its policy is to only consider such complaints where the “principle of openness ought to be over-ridden in the interests of persons in receipt of a care service”. However, even if such a complaint is taken forward, the extent to which SCSWIS can carry out a full investigation, come to a conclusion and take necessary action will be limited.

As regards confidential complaints, in normal circumstances SCSWIS (2011f, p 6) will respect the wishes of complainants who ask that their identity remain confidential throughout the investigation. However, on occasions this will not be possible, such as where it appears that a criminal offence may have been committed, where SCSWIS must pass any relevant information to the police.

Matters excluded from the SCSWIS complaints procedure

SCSWIS is not responsible for handling complaints outwith its area of regulatory responsibility, though it will refer complainants to the most appropriate body. Examples of complaints that would not be handled by SCSWIS include:

- A community care assessment of need carried out by a social work department
- In the event of a death of a care home resident the role of SCSWIS would be restricted to investigating any complaint about the standards of care delivered, but would not include an opinion on the extent to which this may have been implicated in the death of the resident. This would be a matter for the attending physician and/or the Sherriff in conducting a fatal accident inquiry
- An individual employer/employee relationship. However, SCSWIS will investigate complaints which relate to employment procedures and practices, eg recruitment and training
- To challenge the findings of an inspection report – there is a different process for this

Complaints and enforcement data

As regards the key care services for older people, Table 6, shows that in 2010-11 a total of 485 complaints were received in relation to care homes, 177 regarding care at home support services and 19 in other support services. In all the majority of complaints were upheld.

Table 6: Completed complaints handled by the Care Commission, by key older people service and outcome, 2010-11

<table>
<thead>
<tr>
<th>CareService</th>
<th>Subtype</th>
<th>Upheld or Partially Upheld Complaints</th>
<th>Not Upheld Complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>No. of complaints</td>
<td>% of Complaints investigated</td>
</tr>
<tr>
<td>Care Home Service</td>
<td>Older People</td>
<td>480</td>
<td>82.1%</td>
</tr>
<tr>
<td>Support Service</td>
<td>Care at Home</td>
<td>153</td>
<td>86.4%</td>
</tr>
<tr>
<td></td>
<td>Other than Care at home</td>
<td>14</td>
<td>73.7%</td>
</tr>
</tbody>
</table>

Source: (SCSWIS, 2011b)
ENFORCEMENT

As was the case with the Care Commission, SCSWIS has powers to enforce requirements when a care service does not meet the national standards expected of it. SCSWIS (2011g) states that its enforcement policy is based on the principles of good external scrutiny outlined by Crerar (see ‘The Crerar Review’ above). As a result, SCSWIS has a graduated approach to enforcement, where the first step is usually to enter into discussions with the service provider. However, that does not mean that legal sanctions will be taken if it is deemed necessary for the good of service users. Generally, there are four steps that will be taken, as shown in the following Table:

Table 2: SCSWIS graduated approach to enforcement

<table>
<thead>
<tr>
<th>Step</th>
<th>Recommendation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Recommendation</td>
<td>Usually noted in inspection reports and complaint resolution letters following discussion with the provider. These should be made when a change in existing practice would be beneficial in order to improve the service, and not when regulations have been breached.</td>
</tr>
<tr>
<td>2</td>
<td>Requirement</td>
<td>This should take place when a regulation or condition of service has been breached e.g. National Care Standards not being met. These will usually be written in an inspection report or in a complaint resolution letter following discussion with the provider. A timescale for implementation will be included. Service providers need to provide an action plan detailing how they will meet the requirement. This will be used by SCSWIS in deciding the level and timing of regulatory monitoring activity. The response of the provider to the requirement and evidence of compliance is monitored and recorded. Requirements are enforceable at the discretion of SCSWIS.</td>
</tr>
<tr>
<td>3a</td>
<td>Formal Enforcement – section 66 condition notice</td>
<td>Where step 2 has not succeeded or where circumstances merit formal enforcement as a first step, the provider can be served with this so as to impose an additional condition or to vary an existing condition of registration. Such conditions are designed to ensure the service complies with the 2010 Act and associated regulations. The provider can make representations against such an order, and in most cases SCSWIS will meet with the provider prior to the written notice being issued.</td>
</tr>
<tr>
<td>3b</td>
<td>Formal Enforcement – section 62 improvement notice</td>
<td>Issued where the evidence of breach of regulations or circumstances may justify cancellation of registration. The notice details the nature of the improvement required, the legal basis for this action, and the timescale for implementation. Whilst this step may follow step 3a, it can also be issued without a condition being imposed. In addition steps 3a and 3b can be imposed at the same time. Again, in most cases, SCSWIS will meet the service provider prior to the improvement notice being issued.</td>
</tr>
<tr>
<td>4</td>
<td>Formal Enforcement – Section 64, Cancellation Notice</td>
<td>Where the timescale for meeting the terms of an improvement notice has expired without compliance, SCSWIS can give notice of a proposal to cancel registration. The service provider will be advised of the legal basis of the action and details of the service provider’s rights to make written representations against cancellation.</td>
</tr>
</tbody>
</table>

Source: SCSWIS (2011g)

Outwith this graduated process are emergency procedures, which are acted upon in specific circumstances and only after operational SCSWIS staff take legal advice, as shown in Table 3, below.
Table 3: SCSWIS Emergency procedures

| Emergency Condition Notice – Section 67 | This can be imposed by SCSWIS at any time, if it believes that not doing so would pose a serious risk to the life, health or well being of service users. It would come into effect immediately on receipt by the service provider. The notice will explain the reason for the action being taken as well as the rights of the provider to make representations concerning any dispute they have at the imposition of the notice. On receipt of such representations, SCSWIS can decide whether to leave the condition in place, vary it or remove it. Ultimately a provider can choose to take an appeal to a sheriff. |
| Emergency Cancellation of Registration – section 65 | SCSWIS can apply to a sheriff at any time to have the service’s registration cancelled where it believes there is a serious risk to the life, health or wellbeing of service users. The sheriff will need to be convinced there is such a risk in order to grant the order. |

Source: SCSWIS (2011g)

The 2010 Act, and associated regulations, stipulates that any formal enforcement actions taken by SCSWIS must be notified to the relevant local authority, NHS Board and the other scrutiny bodies. SCSWIS will also publish enforcement notices and inspection reports on its website.

Service providers themselves have the primary responsibility to inform service users and carers of any enforcement, though SCSWIS may undertake this role if there is a serious risk of harm. Where there is a possibility of criminal behaviour, SCSWIS will alert the police and local authority before making a decision to inform service users and carers. In addition, SCSWIS will contact the Scottish Social Services Council with a copy of any enforcement notice where the fitness of the manager or staff of a care service is an issue. The same action takes place in the case of those registered with other regulators.

Enforcement data

Table 9 shows that, in total, there were 16 non-technical enforcements, in key older people services, with the majority of these being in private care homes.

Table 9: Non-technical enforcements of care homes for older people and care at home support services, 2010-11

<table>
<thead>
<tr>
<th>Service Type</th>
<th>Subtype</th>
<th>Private</th>
<th>Voluntary or Not for Profit</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Care Home Service</td>
<td>Older People</td>
<td>14</td>
<td>1</td>
<td>15</td>
</tr>
<tr>
<td>Support Service</td>
<td>Care at Home</td>
<td>-</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>14</td>
<td>2</td>
<td>16</td>
</tr>
</tbody>
</table>

NB: This does not include enforcement procedures used to cancel services if they cannot be contacted any longer or procedures relating to inactive services. In addition, the values shown above refer to number of services only. Some services will have had more than one notice issued, for example in 2009/10 20 notices were issued against 11 care homes for older people.

SCSWIS (2011b)

The role of local authorities

Local authorities often procure care services as well as providing services themselves. Therefore, they often consider that they have a responsibility to ensure that those services they are funding are providing a safe and quality level of service. SCSWIS is developing memoranda of understanding with each local authority, to determine joint working arrangements. However, local authorities have a number of powers available to take action against a service if it concerns are raised about its standards of care.
Local authorities through contracts with service providers can, ultimately, withdraw funding from the service if they are not providing good quality of care and break the terms of the contract. However, they also have duties and powers to protect adults at risk, through the Adult Support and Protection (Scotland) Act 2007 (the 2007 Act). This Act provides local authorities with powers and duties concerning the protection of “adults at risk of harm”. It defines an “adult at risk”, the circumstances under which an adult is at risk of harm and “harm” itself (see Appendix 4). In order for a local authority to act, the person must fulfil criteria in all three definitions. The local authority must also ensure that any intervention proportionate and the least restrictive to the adult’s freedom. In addition, the wishes of the adult and the wishes of others who have a role in their life must be taken into account where relevant.

Provisions in the Act include:

- Duties on specified organisations to co-operate in investigating suspected or actual harm
- Duties on councils to make inquiries and investigations to establish whether or not further action is required to stop or prevent harm occurring
- Introduces a range of protection orders including assessment orders, removal orders and banning orders

The Scottish Government (2009) has published a ‘Code of Practice’ to accompany the Act, which provides more detail on the steps that a local authority must take in order to take any such actions.

In the past, concerns have been raised by service providers that some local authorities duplicated the regulatory role of the then Care Commission. Given the emphasis on joint working arrangements within the 2010 Act, it may be hoped that this will prevent such duplication. The Scottish Government (2011) has stated that no local authority should be duplicating the processes of SCSWIS or any other regulatory body.

Another issue in the past was that there was nothing to stipulate that a local authority should take into account the then Care Commission’s inspection reports, gradings or notices when commissioning or re-commissioning services. Under the 2010 Act, local authorities must now take account of reports, information and notices produced by SCSWIS in relation to care services when they are providing care services or procuring them from external organisations.

FUTURE SCSWIS PERFORMANCE INDICATORS

SCSWIS is currently developing a number of key performance indicators to measure its progress in meeting a number of key outcomes, including:

- The quality of services is improving
- People understand the quality of service they should expect and have a good experience of services centred on their needs, rights and risks
- SCSWIS performs effectively and efficiently as an independent, scrutiny and improvement body and works well in partnership with other bodies

Under each of these is a series of objectives that SCSWIS will seek to achieve, together with a series of indicators by which progress will be measured. However, SCSWIS (2011b) has provided key headline data related to all services from its most recent quarterly report, including:

- 1707 intensive inspections undertaken between 01 April – 30 June 2011
- 371 services had grades of 1 (unsatisfactory) or 2 (weak) on 1 April 2011. Of this, 119 have improved, whilst requirements or enforcement notices have been served on the remainder.
- 3.8% of all registered care services (14,502) have grades of 3 of less across quality themes
SOURCES


National Care Standards. [Online]. Available at: http://www.nationalcarestandards.org/52.html

National Care Standards. *Care Homes for Older People.* [Online]. Available at: http://www.nationalcarestandards.org/74.html


Scottish Government. (2008a) *Regulation of Care (Scotland) Act 2001: Consultation on Proposals to Reduce the Minimum Frequency of Inspections of Certain Care Services by the Care Commission from 1 April 2009.* Edinburgh: Scottish Government. Available at: http://scotland.gov.uk/Publications/2008/10/01153935/0


APPENDICES

APPENDIX 1: CRERAR REVIEW – KEY FEATURES OF A SYSTEM OF SCRUTINY

- Strategic priorities agreed by Ministers and Parliament, and focusing on areas where assurance about public services are most important. We recommend that financial audit should be one of the priorities.

- Core risk criteria agreed by Ministers, and considered by the Parliament, to assess the need for current and future external scrutiny.

- Self-assessment by providers as the main source of information about performance. Performance management frameworks are still being developed, so reliance on self-assessment is a longer term goal.

- Two stages in considering the application of scrutiny. First, there must be an assessment of risk against the core criteria agreed by Ministers. Second there must be an assessment of the appropriate external scrutiny required.

- Where scrutiny is needed, if there is more than one existing organisation, only one should be asked to do the work and to be responsible and fully accountable. Creating a new external scrutiny organisation to attend to the issue should not be an option.

- A timeframe with a preset 'sunset'; clause for each external scrutiny initiative or programme.

- Cyclical inspection, audit and regulatory programmes happening only where all other options have been considered and ruled out.

- Existing scrutiny being removed or scaled back when new scrutiny is introduced

Source: Crerar (2007, p 3)
# APPENDIX 2: SCSWIS FEE STRUCTURE 2011-12

<table>
<thead>
<tr>
<th>Service</th>
<th>Application for registration</th>
<th>Annual continuation</th>
<th>Variation, removal of condition, cancellation, or new certificate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Childminding</td>
<td>£28</td>
<td>£17</td>
<td>£0</td>
</tr>
<tr>
<td>Nurse agency</td>
<td>£1,399</td>
<td>£699</td>
<td>£0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Service</th>
<th>fee per registered place</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Care home service</td>
<td>£3,849</td>
<td>£162</td>
<td>£0</td>
</tr>
<tr>
<td>Secure accommodation service</td>
<td>£5,544</td>
<td>£221</td>
<td>£0</td>
</tr>
<tr>
<td>Offender accommodation service</td>
<td>£4,510</td>
<td>£180</td>
<td>£0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Service</th>
<th>Small</th>
<th>Other</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Support service - day care</td>
<td>£1,711</td>
<td>£856</td>
<td>£0</td>
</tr>
<tr>
<td>Child care agency</td>
<td>£3,422</td>
<td>£1,711</td>
<td>£0</td>
</tr>
<tr>
<td>Secure accommodation service</td>
<td>£1,087</td>
<td>£676</td>
<td>£0</td>
</tr>
<tr>
<td>Offender accommodation service</td>
<td>£2,624</td>
<td>£2,255</td>
<td>£0</td>
</tr>
<tr>
<td>Daycare of children</td>
<td>£28</td>
<td>£11</td>
<td>£0</td>
</tr>
<tr>
<td>Limited registration service</td>
<td>£1,087</td>
<td>£676</td>
<td>£0</td>
</tr>
<tr>
<td></td>
<td>£220</td>
<td>£165</td>
<td>£0</td>
</tr>
<tr>
<td></td>
<td>£2,183</td>
<td>£1,804</td>
<td>£0</td>
</tr>
</tbody>
</table>

A ‘Small’ service is a service that does not employ more than three whole-time equivalent persons to provide and manage the service.

An ‘Other’ service is a service that employs more than three whole-time equivalent persons to provide and manage the service.

Source: SCSWIS (2011d, p 10)
<table>
<thead>
<tr>
<th>Service</th>
<th>Type</th>
<th>Application for registration</th>
<th>Annual continuation</th>
<th>Variation, removal of condition, cancellation, or new certificate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Support service - care at home</td>
<td>Small</td>
<td>£1,261</td>
<td>£676</td>
<td>£0</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>£2,050</td>
<td>£1,476</td>
<td>£0</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>£2,798</td>
<td>£2,255</td>
<td>£0</td>
</tr>
<tr>
<td>Adoption service</td>
<td>Small</td>
<td>£2,112</td>
<td>£1,250</td>
<td>£0</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>£3,516</td>
<td>£3,126</td>
<td>£0</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>£4,449</td>
<td>£4,372</td>
<td>£0</td>
</tr>
<tr>
<td>Fostering service</td>
<td>Small</td>
<td>£2,112</td>
<td>£1,250</td>
<td>£0</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>£3,516</td>
<td>£3,126</td>
<td>£0</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>£4,449</td>
<td>£4,372</td>
<td>£0</td>
</tr>
<tr>
<td>Housing support service</td>
<td>Small</td>
<td>£1,261</td>
<td>£676</td>
<td>£0</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>£2,050</td>
<td>£1,476</td>
<td>£0</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>£2,798</td>
<td>£2,255</td>
<td>£0</td>
</tr>
<tr>
<td>Adult placement service</td>
<td>Small</td>
<td>£2,112</td>
<td>£1,250</td>
<td>£0</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>£3,516</td>
<td>£3,126</td>
<td>£0</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>£4,449</td>
<td>£4,372</td>
<td>£0</td>
</tr>
</tbody>
</table>

A ‘Small’ service is a service that does not employ more than three whole-time equivalent persons to provide and manage the service.

A ‘Medium’ service is a service that employs more than three but no more than 15 whole-time equivalent persons to provide and manage the service.

An ‘Other’ service is a service that employs more than 15 whole-time equivalent persons to provide and manage the service.

<table>
<thead>
<tr>
<th>Service</th>
<th>Type</th>
<th>Application for registration</th>
<th>Annual continuation</th>
<th>Variation, removal of condition, cancellation, or new certificate</th>
</tr>
</thead>
<tbody>
<tr>
<td>School care accommodation service</td>
<td>Small</td>
<td>£4,340</td>
<td>£3,472</td>
<td>£0</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>£5,952</td>
<td>£4,920</td>
<td>£0</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td>£8,841</td>
<td>£7,688</td>
<td>£0</td>
</tr>
</tbody>
</table>

A ‘Small’ service is a service with up to 40 registered boarding places.

A ‘Medium’ service is a service with more than 40 but no more than 100 registered boarding places.

An ‘Other’ service is a service with more than 100 registered boarding places.

Source: SCSWIS (2011d, p 1)
APPENDIX 3: KEY STAGES OF SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND COMPLAINTS (SCSWIS) PROCEDURE

Within three working days

Initial contact with complainant
- Letter/complaint logged and recorded in Area office (and at HQ, if received there)
- Passed to Complaints Resolution Officer (CRO) in national complaint team

Fast track/urgent action – liaison with other agency

Consult with other Complaint IM’s as necessary

CRO to contact complainant to clarify elements of the complaint
- Is complainant agreeable to taking the issue up with the provider in the first instance?
- Is complaint within remit of SCSWIS to deal with?

Consult with Inspection Programme Manager

CRO to allocate Complaint Investigation Officer (CIO) to investigate complaint/conduct interviews with provider/complainant

Investigation report completed and passed to CRO

Within 28 working days

CRO to prepare resolution letters to be issues to complainant and complained against

CRO to issue decision to complainant and complained against. Advise complainant of right of review. Include Action Plan in decision to complain against where appropriate.

Level 1
Three working days

Level 2
28 working days

Where for any reasons, SCSWIS is unable to respond within 28 working days, the complainant will be informed of this and a new timescale agreed.
Who is an adult at risk?

The Act refers throughout to "adult". In terms of Section 53 of the Act, "adult" means a person aged 16 or over.

Adult at risk - Section 3(1) defines "adults at risk" as adults who:

- are unable to safeguard their own well-being, property, rights or other interests;
- are at risk of harm; and
- because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.

The presence of a particular condition does not automatically mean an adult is an "adult at risk". Someone could have a disability but be able to safeguard their well-being etc. It is important to stress that all three elements of this definition must be met. It is the whole of an adult's particular circumstances which can combine to make them more vulnerable to harm than others.

Risk of harm - Section 3(2) makes clear that an "adult" is at risk of "harm" if:

- another person's conduct is causing (or is likely to cause) the adult to be harmed, or
- the adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm.

The assessment of "harm" and the "risk of harm" are important elements under the Act. The definition of "adults at risk" requires an assessment to be made about the "risk of harm" to the individual at the outset.

Because any protection order under the Act represents a serious intervention in an adult's life, a sheriff must be satisfied that an adult is at risk of serious harm, rather than harm, before granting any such order.

Harm - Section 53 states harm includes all harmful conduct and, in particular includes:

- conduct which causes physical harm,
- conduct which causes psychological harm (for example by causing fear, alarm or distress),
- unlawful conduct which appropriates or adversely affects property, rights or interests (for example theft, fraud, embezzlement or extortion),
- conduct which causes self-harm.

The definition of "harm" in the Act sets out the main broad categories of harm that are included. The list in the definition is not exhaustive and no category of harm is excluded simply because it is not explicitly listed. In general terms, behaviours that constitute 'harm' to others can be physical (including neglect), emotional, financial, sexual or a combination of these. Also, what constitutes serious harm will be different for different persons.

Source: Scottish Government (2009, para 8-12)
RELATED BRIEFINGS

Payne, J. (2011) Adult Community Care – Key Issues

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