

JOINT INSPECTION OF CHILDREN'S SERVICES AND INSPECTION OF SOCIAL WORK SERVICES (SCOTLAND) BILL

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The Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill (the Bill) was introduced to the Scottish Parliament on 28 October 2005. It will enable certain statutory bodies to collaborate on a joint inspection of the effectiveness of children's services and allow Scottish Ministers to appoint social work inspectors.

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KEY POINTS

- the development of integrated inspections is part of wider reform of child protection and promotion of integrated working in children's services generally
- a 'tough new inspection system for child protection services' was a Partnership Agreement commitment and the First Minister's [statement](#) on the legislative programme on 6 September 2005 referred to the intention to strengthen inspection powers

"We will push forward our plans to introduce a tough new inspection system for our child protection services. We will strengthen inspection powers to make sure inspectorates can work together effectively in the interests of securing improved protection for children."

- the Bill enables certain agencies to undertake joint inspections of children's services. Inspections could be on a particular theme, such as child protection, or concerned with services to a particular child or be an inspection of children's services generally
- the Bill will allow inspection teams to share confidential health information without the need for explicit consent from the patient
- good practice in dealing with confidential records is to ask for consent, anonymise where possible and inform the patient of the use to which information is likely to be put
- the Bill puts social work inspections on a new statutory footing by replacing s.6 of the Social Work (Scotland) Act 1968 and enables the range of social work services subject to formal social work inspections to be widened
- orders made under the Bill will deal with issues such as: access to medical information, entry to premises and offences
- draft orders under part 1 of the Bill and a draft Protocol have been issued in confidence to certain key interests. Copies of the draft regulations and draft protocol are available from Jackie Brock on 0131 244 0274

PROVISIONS OF THE BILL

Joint Inspections of Children's Services

Part 1 of the Bill enables Ministers to require a joint inspection of children's services to be carried out by certain public bodies. This can cover children's services in general, a specific theme such as child protection or the services provided to a particular child or children. Inspections will consider the effectiveness of services and report to Ministers with recommendations. Ministers can specify the timetable and issue directions concerning the inspection.

Certain public bodies charged with inspecting education, social care, prisons, police and social work and health can be required to conduct a joint inspection. Ministers can add to this list through an order.

The Bill provides at s.3 power to make regulations regarding the sharing of information (including medical information), powers of entry and the creation of offences relating to the enforcement of the regulations made. These will be subject to affirmative procedure.

The Explanatory Notes state that the primary legislation is required to access and share information in a way that is lawful and complies with the European Convention on Human Rights (ECHR) and Data Protection Act 1998 requirements. The Explanatory Notes state at para 4 that:

“the Bill's provisions will be supported by robust protocols that enable information to be provided and ensure the necessary confidentiality”

The 'Children's Services' which can be inspected are defined as those which provide services predominately to or for the benefit of children to whom Community Planning requirements apply. The Local Government in Scotland Act 2003 requires all local authorities to facilitate the community planning process amongst both public bodies and community bodies. The community bodies could be public, private or voluntary sector bodies.

Social Work Services

Part 2 of the Bill creates 'social work inspectors' who will inspect social work services. This replaces s.6 of the Social Work (Scotland) Act 1968 (the 1968 Act). The services covered by the 1968 Act were services registered under part IV of the 1968 Act, mental health support services, services for looked after children, foster and adoption agencies. In the Bill the precise definition of 'social work services' is left to regulations, but it will include services provided directly or indirectly by the local authority. It will therefore include private and voluntary sector bodies where these provide services on behalf of the local authority.

The Inspections will be subject to timetables and directions set out by Ministers. Ministers may also make regulations concerning

- provision of information to the social work inspectors. Medical records can only be required by a medically qualified inspector
- power to allow SWIA to share information with other inspectorates' 'authorised persons' for the purposes of their inspection programmes
- power to enter any premises
- creating offences related to the enforcement of these regulations

The regulations will be subject to affirmative procedure.

POLICY CONTEXT

The creation of joint inspections is part of a wider policy agenda to improve integrated working in children's services and reform child protection. Increasingly, service delivery and individual assessment involves a range of agencies working in partnership. Key policies address the different stages of service planning, delivery and evaluation:

- **service planning** – separate local plans for education, children's social work, child health and youth justice are, since April 2005, brought together as integrated children's services plans
- **assessment** – an integrated assessment planning and recording framework for all children is proposed in 'Getting it right for every Child: Proposals for Action.' The complexity of the plan will vary according to the needs of the child
- **co-operation between agencies** - a new duty on agencies to co-operate in meeting the needs of children is proposed in 'Getting it right for every child'
- **self evaluation** – based on the 'How good is our school' approach, HMIE has developed a self-evaluation framework for children's services; 'How well are children and young people protected and their needs met?'
- **inspection** – The Partnership Agreement in 2003 stated that the Executive intends to: 'protect our most vulnerable children through a tough new inspection system for child protection services.' In 2004 Ministers announced their intention to introduce integrated inspection of all children's services by 2008. This will include the ability to share necessary information in the inspection process

In addition to the above, recent and forthcoming reforms of key areas of children's services include:

- **Review of Children's Hearings:** proposals were set out in 'Getting it Right for Every Child: Proposals for Action.' They will be implemented by the expected Children's Hearings and Integrated Services Bill.
- **Adoption Reform.** A bill reforming adoption law is expected in early 2006 to take forward recommendations from the Adoption Policy Review Group.
- **21st Century Social Work Review,** has considered all social work services, including children's social work and was due to report to Ministers in October.
- **Child Protection Reform Programme** The Scottish Executive's three year child protection reform programme began in November 2002 and takes forward the '[it's everyone's job to make sure I'm alright](#)' recommendations in addition to other action. The Children's Charter and Framework for Standards were published in March 2004 and [Guidance for Child protection committees](#) in January 2005.

The Education Committee's report on its inquiry on child protection emphasised that 'the pace of change must not be slackened' (para 32) and that effective integrated working was needed at a local level and within the Scottish Executive itself.

*"14. The Committee notes that the Ministers for Education and Young People, Justice and Health have recently sought collective reassurance from local authorities, NHS Boards and Chief Constables that progress is being made in the implementation of the recommendations and that the various agencies are working together effectively to protect children's interests. **The Committee recognises that the Scottish Executive is in a unique position to drive an integrated approach to the protection of children***

and believes that Ministers must continue to encourage agencies to ensure that they adapt to the needs of individual children.

[...]

The Committee is concerned that the momentum behind the child protection reform programme may be lost if there is not cross departmental commitment to supporting the Minister's commitment to child protection."

APPROACH TO INTEGRATED INSPECTIONS

The Services for Children Unit within HMle is developing integrated inspections and consists of a multi agency inspection team with representatives from the Social Work Inspection Agency (SWIA), the Scottish Commission for the Regulation of Care (Care Commission), Her Majesty's Inspectorate of Constabulary (HMIC), NHS Quality Improvement Scotland (QIS) and HMle.

In November 2004, HMle held a conference on '[Making Services Better for Scotland's Children](#)'. The approach to inspection of children's services was further developed in '[A Common Approach for Inspecting Services for Children and Young People](#)' (HMle, 2005a). This has been published for consultation until 17 December 2005. The inspection approach is linked to the development of self-evaluation and improved integrated working. It will be 'child centred' in that inspectors will place high priority on seeking users' views of what it is like to be at the receiving end of services.

Integrated Children's Services Inspection will occur within the framework of existing inspections, and will use information already available from these inspections. 'Inspectors will only carry out audit trails and other investigations to gather more evidence where it is necessary to do so.' (p 10 HMle, 2005a)

Services to be inspected:

Inspection will cover all services for children and young people including:

- universal, targeted and specialist services
- care, education, community safety, protection, youth, health, justice, police and social work services
- the public, private and voluntary sectors

Inspection will include those services for children not yet subject to systematic inspection and include consideration of those children not accessing services – for example, because they are ill or excluded from school (p9 HMle, 2005a).

Purpose of inspection

In broad terms, inspection needs to evaluate three levels of service delivery:

- impact and outcomes for children and families
- strategic leadership and direction, and
- operational management and processes

Methodology of the integrated inspections

The inspection process will be in three phases: scoping, core and 'proportionate' phases.

1. **Scoping phase:** inspectors will collate existing information from existing inspections and self evaluation reports.

2. **Core phase:** gaps in evidence will be filled by field work and audit trails. This will include carrying out case studies on individual families and children through ‘in depth sampling of cases and evaluating practice.’
3. **Proportionate phase:** if necessary, more in depth work may require to be done, either by the multi-disciplinary team or by a single inspectorate.

Inspections will result in feedback to service providers and a widely publicised report.

Achieving Coherence

Existing inspectorate/monitoring agencies will need to be able to share information held on services to children. This will require information relevant to children’s services to be separated from general service inspections.

“different inspectorates will develop procedures for aggregating and disaggregating information relating to services for children and young people in that area.” (p 14, HMle, 2005a)

There are some examples where inspectorates and quality assurance bodies can work jointly. For example:

- joint inspections by HMle, Care Commission and SWIA
- joint work by NHS-QIS and Care Commission relating to inspection of care and health
- joint work by Audit Scotland and HMle on inspection of education authorities
- joint work by Audit Scotland and NHS-QIS on evaluation of hospital cleaning and catering

A programme of area based inspections will be developed and led by HMle, but carried out by a multi-disciplinary team. The frequency of inspections will be based on assessment of risk rather than a fixed timetable. Some proposals for reducing duplication in inspections were made. These include incorporating some elements of existing statutory duties as a theme within the integrated inspection model, and working towards a common framework so that information can be used for different inspections.

The key stages in achieving integrated inspection of all children’s services by 2008 are described as follows:

Table 1: Key Stages Towards Integrated Inspection	
October to Spring 2006	Consultation on the development of the coherent system of inspection as set out in ‘A common approach for inspecting services for children and young people.’
Spring 2006	Consultation on draft generic quality indicators for services for children and young people
Autumn 2006	Publication of generic indicators for inspection and self-evaluation of services for children and young people. This will make clear the links between service specific indicators and set out arrangements for future development of quality indicators. This will draw on work on sharing of inspection findings, harmonisation of inspection activities and use of evidence from self evaluation.
By June 2007	Pilot inspection to test out approaches to evaluating the outcomes of services for children at a local or neighbourhood level
By Spring 2008	Pilot of integrated inspection of services for children
By end 2008	Introduction of a full programme of integrated inspections of services for children
Late 2010	Interim report on the quality of services for children based on inspection from 2008-10

(p 21, HMle, 2005a)

THE PILOT INSPECTIONS OF CHILDREN'S SERVICES

As a precursor to developing integrated inspections of all children's services, the Services of Children Unit within HMIE ran two pilot multi-disciplinary inspections of children's services in East Dunbartonshire (HMIE, 2005b) and Highland (HMIE, 2005c).

The inspection team looked at a broad range of children's services including those provided by health, the police, the local authority, the Children's Hearing System, services provided by voluntary and independent agencies and services which deal mainly with adults but come into contact with children. In addition to looking at the provision of services to children in need, the inspection also looked at universal children's services such as the awareness of primary school children about keeping themselves safe.

The pilot inspections used the following draft quality indicators:

- how effective the help is that children and young people get when they need it
- how actively agencies and professionals work together to share information, assess and manage risk and needs, and plan effectively for children and young people
- how well professionals and the community work together to protect children and young people
- how effective individual and collective leadership is

The pilot inspections reviewed practice through reading and following up individual cases with a range of professionals, meeting groups of children and young people in schools and observing meetings and case reviews. They also met and interviewed some children and young people with their families who were receiving services.

The pilots were completed in May 2005, but following legal advice, the two Health Boards, NHS Glasgow and NHS Highland, refused access to medical information and to health professionals for discussion of individual cases. The inspection report from East Dunbartonshire states that:

"Inspectors were not able to access health records nor talk to individual health practitioners about specific cases during the inspection. This limited the ability to evaluate the effectiveness of services provided by health professionals" (p 3, HMIE, 2005b)

The reports make several references to the kind of information they would have liked to have seen. This includes effectiveness of mental health services and the monitoring done by Health Visitors and school nurses

"Children could be referred for support from the child and family mental health services, but only when they were in a stable home setting. Inspectors were not able to establish whether any children or young people from East Dunbartonshire had been helped by this service, or evaluate its contribution to their recovery, because they were not able to look at evidence relating to individual children and families."(p 6, HMIE, 2005b)

"Health Visitors and school nurses had responsibilities in relation to supporting vulnerable families through regular visiting, but, because during the inspection there was no access to case records held by health professionals, it was not possible to evaluate their contribution to monitoring care and welfare in families and reducing risk of harm or abuse." (p 5, HMIE, 2005b).

"lack of access to medical records meant it was not possible to evaluate the outcomes of health visitors following up concerns, or the impact of the lack of these general

practitioner and psychiatrists' reports on the safety and wellbeing of the children concerned." (p 9, HMle, 2005b).

Reviewing Files

Inspectors reviewed files held by social services, police and education services. These included the files of those on the child protection register, those recently removed from the register and a sample of the most recent referrals to social work services (p 19, HMle, 2005b).

The reports mentioned evidence gained from the review of files with regard to:

- evidence of professionals sharing information (p 8, HMle, 2005b)
- whether staff took appropriate action in response to concerns about children or young people (p 5, HMle, 2005b)
- communication with children and young people (p 7, HMle, 2005b)
- whether notes in files give a clear, chronological record of contact between professionals (p 9, HMle, 2005b)
- whether concerns in a school file were passed to social work (p 9, HMle, 2005b)
- whether a risk assessment was properly carried out (p 10, HMle, 2005b)
- whether assessment of physical injuries was made (p 11, HMle, 2005b)
- whether basic information about a child was recorded and kept up to date (p 9, HMle, 2005c)
- whether there was a standard format for records (p 9, HMle, 2005c)

Sometimes similar information was sought in interviews with staff (e.g p 9 HMle, 2005b)

Other methods used in the inspections

Looking at individual files was one amongst a broad range of activities undertaken by the team during the pilots. For example in East Dunbartonshire the team also undertook the following:

- visits to seven schools, an afterschool club, breakfast club, children's centre, youth club, housing support service and Accident and Emergency Departments
- interviews with key staff e.g local authority and NHS Chief Executives, senior managers, children's reporter, observation of child review meetings and Children's Hearings
- obtaining the views of some children, young people, parents and carers
- meeting a wide range of professionals from health, local authority services and police; this included a range of operational managers and staff in health, social work, education, social inclusion, community development, housing, legal and administrative services, children's panel members and police officers
- meeting staff and visiting projects in a range of voluntary organisations involved in service provision for children. This included Women's Aid, school counselling service, mental health worker and Who Cares? Scotland, travellers' site manager
- questionnaires were sent to professionals across all agencies, including those who do not work directly with children but may come into contact with them in the course of their work

The reports contain a mix of description and general reflections on levels and type of service provision gained from visits, questionnaires and interviews. They also highlight where individual case files reveal particular working practices regarding, for example, sharing information with other professionals.

Conclusions of the pilot inspections

The inspection report concluded with 'key strengths' and 'areas to secure improvement.' For example:

"Increasing the range and accessibility of services to help intervene early to support vulnerable families and help children and young people recover from abuse or neglect."

The Services for Children Unit now plan to review the methodology and the quality indicators used. This will be done in partnership with representative professionals.

CURRENT LAW ON INSPECTIONS

The Bill specifies five agencies which can work on joint inspections, although Ministers will be able to add to this through an order. The existing powers of these agencies are summarised in table 2.

Social Work

Social Work services are currently inspected under s. 6 Social Work (Scotland) Act 1968 (the 1968 Act). Part 2 of the Bill replaces this. The Social Work Inspections Agency was created in 2005 as an Executive Agency. The powers were previously undertaken by the Social Work Services Inspectorate which was a department in the Scottish Executive.

Her Majesty's Inspectors of Education (HMIE)

HMIE became an Executive Agency in 2001. Previously it had been a department in the Scottish Executive. Its powers and functions are set out in the Education (Scotland) Act 1980. Its inspection functions have recently been extended to nurseries and education authorities.

Care Commission

The Care Commission was established by the Regulation of Care (Scotland) Act 2001 to register and inspect 'social care services' for adults and children. This includes many types of children's services such as nurseries, children's day care, children's homes, adoption and fostering services and residential schools. HMIE and Care Commission undertake integrated inspections of those children's services which also provide education. However, there are no separate powers for these inspections – each agency retains its existing function and powers.

Her Majesty's Inspectors of Constabulary (HMIC)

HMIC is a Royal Appointment under the Police (Scotland) Act 1967 with the function to inspect and report on any matter concerning or relating to the operation of a police force or of police forces generally and the National Criminal Intelligence Service. They are required to make an annual report on 'the state and efficiency of the police forces generally'.

Her Majesty's Chief Inspector of Prisons (HMIP)

HMIP is a Royal Appointment under the Prisons (Scotland) Act 1989 with the function to inspect prisons and report to Scottish Ministers.

Special Health Boards

Ministers can establish special health boards under s.2 of the National Health Service Scotland Act 1978. There are currently seven special health boards. These are;

- Goldeen Jubilee National Hospital
- NHS 24
- NHS Education for Scotland

- NHS Health Scotland
- NHS Quality Improvement Scotland
- Scottish Ambulance Service
- State Hospitals Board for Scotland

All the special health boards have a duty to 'promote the improvement of the physical and mental health of the people of Scotland' (s.9, NHS (Scotland) Act 2004). For the purposes of the Bill the most relevant Special Health Board is NHS Quality Improvement Scotland (NHS-QIS). NHS-QIS sets targets, develops quality standards, monitors their implementation and investigates instances of serious service failure. NHS-QIS was created in 2002 (SSI 2002/534) bringing together five existing bodies:

- Clinical Resource and Audit Group (CRAG)
- Clinical Standards Board for Scotland (CSBS)
- Health Technology Board for Scotland (HTBS)
- Nursing, Midwifery, Practice Development Unit (NMPDU)
- Scottish Health Advisory Service (SHAS)

Table 2: Comparison of inspection powers

	Services inspected	Powers of entry	Powers to require information	Offences
Care Commission Regulation of Care (Scotland) Act 2001	Registered Care Services	Yes. Must produce a 'duly authenticated document showing the Commission has given the requisite authority, s.25(12) Can take measurements, recordings and photographs as considered necessary, s.27.	Yes. Can inspect and take copies of documents other than medical records. s.25(6)(b) If inspectors reasonably believe that a person is not getting proper care then medical staff can inspect medical records. s.25(9)(b)(ii) Can seize or remove documents if believe that they are evidence of failure to comply with requirements. s.27(1)	Obstruction or failure to comply. Fine at level 4 on standard scale. s.25(13)
HMIE and Care Commission	Integrated inspection	No separate powers for integrated inspection. Each agency uses their existing powers.		
HMIE Executive Agency since 2001 Education (Scotland) Act 1980, Schools general regulations, 1975/1135	Education authorities	no	Required to give 'all the assistance reasonably able to give'	no
	schools	Yes. At any time, to inspect documents held there.	Yes any documents kept at the school	Obstruction. fine at level 4 on standard scale or 3 months imprisonment [66(3)]

<i>Table 1, cont.</i>	Services inspected	Powers of entry	Powers to require information	Offences
HMIC Royal appointment, Police (Scotland) Act 1967.	Police forces National Criminal intelligence service.	no	no	no
HMIP Royal appointment, Prisons (Scotland) Act 1989.	Prisons and prisoner transport	no	no	no
Special Health Board National Health Service (Scotland) Act 1978, and NHS- QIS Quality Improvement Scotland order 2002/534	Monitoring quality of health care, advice on clinical effectiveness of health technologies.	no	no	no
Social Work A person authorised by the Secretary of State Social Work (Scotland) Act 1968 <i>[s.6 is repealed by the Bill]</i>	Services providing accommodation, advice, guidance or assistance re: fostering, adoption, mental health support, looked after children (local authority or voluntary organisation)	Yes – must produce 'duly authenticated document showing authority to inspect. s.6(4) At any reasonable time in order to inspect records Power to access computer records at any reasonable time	Yes. Owner must give any information requested. s 6(2A) Can inspect records or registers relating to service provision s.6 Except that: medical records can only be inspected by medically qualified practitioner (and for most services the records relate to the treatment given at the place in question)	Obstruction or failure to comply. Fine at level 4 on standard scale. s.6(5)

COMPARISON OF JOINT INSPECTION POWERS WITH EXISTING INSPECTIONS

The Bill provides for Regulations to be made to allow a joint inspection to enter premises and access information. The following refers to draft regulations issued in confidence to key interests for consultation.

Right of Entry

The Bill provides for regulations to enable right of entry to children's services for the purposes of a joint inspection. Draft regulation 5 provides that this can only be exercised by someone responsible for conducting a joint inspection and must be at 'a reasonable time'. They must 'produce some duly authenticated document showing the authority to exercise the power'. Some form of formal identification will be sufficient. They are able to take away any documents

providing research and information services to the Scottish Parliament

relating to the provision of children's services. They can also take measurements, photographs and make recordings and take any information held in a computer. Any person holding required records must produce them. (Draft regulation 6). Anyone who obstructs or fails to comply is guilty of a criminal offence and liable to a fine not exceeding level 4 on the standard scale. (Draft regulation 10).

The rights of entry and provision of documents are very similar to those powers of the Care Commission in its inspection of registered care services. (See table 2) However, the purpose of the inspection and the powers to enforce decisions are different. Whilst the Care Commission inspects registered services to ensure they are meeting the conditions of registration – and can revoke registration if they are not, the proposed Joint Inspections are for the purpose of 'reviewing and evaluating the effectiveness of the provision of the services' and result in reports with recommendations for improvement. There are no powers provided requiring compliance with recommendations.

Access to information

There are differences between the proposals for joint inspections and existing powers to access medical information. In Care Commission inspections medically registered practitioners can access records but only if they reasonably believe that a person is not getting proper care. In current social work services inspections, only medically qualified practitioners can access medical records. By contrast, the Bill proposes that any authorised person can access confidential health information for the purposes of a joint inspection. However, draft regulation 9 requires that data is anonymised where possible, is used only for the purposes of a joint inspection, is not processed any more than is necessary and access to it is restricted. It is understood that a draft protocol has been issued to key interests that sets out how sensitive information will be gathered, handled and stored. (Scottish Executive, 2005d).

Offences

The offences provided in the draft regulations are similar to those available to the Care Commission and social work inspections. That is, a level 4 fine for obstruction or failure to comply.

SOCIAL WORK INSPECTORS

Part 2 of the Bill creates 'social work inspectors' and replaces the powers under s.6 of the Social Work (Scotland) Act 1968. Some of the provisions in the Bill are similar to those provided for under the 1968 Act. These are: the power to enter premises, examine records (with the proviso that only registered medical practitioners can inspect medical records), and offences at level 4 on the standard scale for obstruction or failure to comply.

Some additions are that the new social work inspectors will have a power to encourage improvement in the provision of services and inspections are to be conducted according to a timetable and directions specified by Scottish Ministers.

The services covered under the 1968 Act and to which these statutory powers currently apply include: services for looked after children, mental health support services, adoption and fostering agencies, and any services registered under Part IV of the 1968 Act. Through draft regulations, it is proposed to define social work services by reference to all local authority social work statutory functions. This extended definition means that all local authority social work functions will be subject to inspections which include the power to enter premises, require information etc.

PROVISIONS IN ENGLAND

In the 'Every Child Matters' Green Paper the Government stated its intention to create an integrated inspection framework across children's services (p 76, DfES, 2003). Joint Area Reviews started in September 2005 and replace some of the separate inspections by different inspectorates.

“Over the three years from September 2005, all local authority services for children and young people, and the wide range of services from other agencies and organisations, will be subject to a joint area review (JAR). The review will provide a comprehensive report on the outcomes for children and young people in the local area. It will incorporate the inspection of youth services and replace the separate inspections of local education authorities, local authorities' social services, Connexions services, and the provision for students aged 14–19. Normally the JAR will be carried out at the same time as the Audit Commission's corporate assessment of the council, and is aligned with the inspection of youth offending teams undertaken by HMI Probation” ([Ofsted, Joint Area Reviews](#)).

The bodies which can conduct joint reviews are:

- Chief Inspector of Schools
- Adult learning inspectorate
- Commission for Social Care Inspection
- Commission for Healthcare Audit and Inspection
- Audit Commission for Local Authorities and National Health Service in England and Wales
- The Chief Inspector of Constabulary
- Her Majesty's Chief Inspector of the National Probation Service for England and Wales
- Her Majesty's chief inspector of court administration, and
- The Chief Inspector of Prisons.

(The Children Act 2004, s. 20)

Joint Area Reviews involve surveys of children and service users, consideration of data from existing inspections and, like the proposed joint inspections in Scotland they also include consideration of a sample of case files of more vulnerable children.

The DfES [consulted](#) on regulations under the inspection provisions of the Children Act 2004 from March to June 2005. The Children Act 2004 (Joint Area Reviews) Regulations 2005, [2005/1973](#) came into force on 1 September 2005. The powers that apply to reviews are those which are already held by the various inspectorates, and the regulations enable them to use their existing powers for the purpose of a Joint Area Review. It also makes provision for publicity of the review report, (including publication of a 'child friendly' version) and a requirement that a children's services authority must make a 'written statement of proposed action' within 70 working days of receiving a report.

This differs from the Scottish Bill and draft regulations, in that in England the legislation gives no new powers. Each agency retains their existing powers, but exercises them for the purpose of a Joint Area Review. However, these existing powers include rights of entry and access to information. For example, CHAI, a regulatory body created by the Health and Social Care (Community Health and Standards) Act 2003 has a right of entry to premises (s.66) and a right to access and remove records under s.67 and 68. This includes access to personal records which relate to the provision of health care by or for an NHS body or the discharge of any of the functions of an NHS body (s.68). The bodies which conduct a joint review can therefore access

information, including personal records, without requiring the express consent of individuals. A first tranche of Joint Area Reviews have been completed. These have, however, been based on seeking express consent. CHAI, the healthcare commission, with the other bodies involved, is currently evaluating the results and finalising the reports.

The Scottish Executive considered a similar approach, but did not follow it for the following reasons:

“There are a number of important differences in the inspection regimes in England and Scotland, not least of which is the size of the sample to be taken. There is a risk that if consent were withheld in a number of cases, this could lead to systematic bias in the final sample. This could mean that inspection results would not give a true picture of the quality of services. Also, in relation to our inspections of child protection services it would not be in the best interests of children who have experienced abuse to ask them for access to their records and, in so doing, revive memories of what they are trying to overcome” (Scottish Executive, 2005c).

Experience to date of joint area reviews in England highlighted some confusion of the purpose of using case files, the time taken to work through them and the difficulties of generalising from a very small sample. An evaluation of Joint Area Review Trials found that:

Case files and case studies

- There was some confusion over the purpose of the case study amongst teams; leading to differences in the approach used to review case files, and their use for: a) determining compliance in relation to assessments and timescales; b) where inter-agency working did and did not work.
- Both approaches provided evidence and enabled lines of enquiry to be developed; but no conclusive evidence that case files were sufficient to provide the depth of evidence, or illustrate the breadth of inter-agency support.
- Case files provided some clarity about service benefits to users; but only sufficient to lead to ‘safe’ judgements that a standard was partially met, as opposed to being a clear strength or area for development.
- Inspectors and senior officers are unsure how conclusions drawn from eight case files could effectively inform the higher-level outcomes.
- Analysis of each case file took too long, required specialist understanding, and usefulness of evidence was limited because there was no common agreement about the time period the range of files should cover.

(CSCI, 2005)

CSCI and nine other inspectorates started working together to inspect local authority children's services in September 2005. Joint area reviews will be carried out in all 150 local authorities by the end of July 2008.

To date, West Sussex Children's Services have been reviewed. [West Sussex Children's Services](#) The methodology of the review was described as follows:

“The review evaluates the collective contribution made to each outcome for children and young people by relevant services in the area. It also judges the contributions made by the council's services overall and, specifically, its education and children's social care services. Particular attention is given to joint action by local services on behalf of those groups of children and young people who are vulnerable to poor outcomes. Two such groups are covered in detail: children and young people who are looked after

by the council; and children and young people with learning difficulties and/or disabilities.

The review took place in two stages consisting in total of three weeks over

- a six-week period. The first stage reviewed all existing evidence including:
- self-assessment undertaken by local public service providers;
- a survey of children and young people;
- performance data;
- the findings of the contemporaneous inspection of the youth service ; planning documents;
- information from the inspection of local settings, such as schools and day care provision; and
- briefings from staff within inspectorates, commissions and other public bodies in contact with local providers.

The second stage included inspection fieldwork. This included studies of how far local services have improved outcomes for a small sample of children and young people, some of whom have the most complex needs, and a study of provision in one neighbourhood in Littlehampton. It also included gathering evidence on seven key judgements, selected because of their critical importance to improving outcomes for children and young people in the local area. This included discussions with elected members of the local authority and their equivalents in other public agencies, officers from these agencies, service users, and community representatives.”
(Ofsted, 2005)

ACCESS TO CONFIDENTIAL HEALTH INFORMATION

The Bill provides for regulations to enable access by the inspectors to medical records for the purposes of an inspection. This raises issues of patient confidentiality, data protection and ECHR article 8 right to respect for private life. The broader context, as outlined above is the need to ensure effective integrated working across children’s services. The HMle November 2004 discussion document highlighted that:

“A number of inquiry reports into child protection have highlighted that lack of co-ordination is a major contributor to poor outcomes for vulnerable children.”

The Explanatory Notes state that access to health records will provide a key source of evidence in inspections.

“the Executive considers that it is essential for the success of the planned programme of child protection inspections that the joint inspection team can access individual records from appropriate agencies, including health records and the holders of individual records are empowered to release it.” (para 6 Explanatory notes)

At First Minister’s questions on 27 October, in answer to a question on patient confidentiality in the area of child protection cases Nicol Stephen stated that:

“We are considering carefully the issue and legislation may be needed in this area. We are determined to ensure that there is the co-operation and openness to which I have referred. Clearly, proper issues of sensitivity arise for the British Medical Association in respect of patient confidentiality. However, the interests of the child should come first.

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From the problems that we are seeing, it is clear that we have to change the system; we have to get a more co-operative approach. I am determined to deliver on that, as are my fellow ministers” (Scottish Parliament, 2005).

As seen above, the pilot inspections were not able to access all the information they considered necessary.

Confidentiality of personal health information is the cornerstone of the patient/doctor relationship. The issue has been considered in the health service in terms of sharing information for better care of an individual patient as well as sharing information in the broader ‘public interest’. The following highlights key points from various codes of practice and advice on patient confidentiality.

In general, it is considered best practice to seek consent to disclose information or where possible, anonymise health records. There are circumstances when consent is not required although it is considered best practice to inform patients of the way in which information will be used.

Consent is not required where:

- sharing the information is necessary to protect the vital interests of the patient, or other vulnerable person
- it is in the public interest
- there is a statutory requirement to provide the information

This Bill would be such a statutory requirement, and so would dispense with the need for explicit patient consent.

In 2001, the Scottish Executive and the Confidentiality and Security Advisory Group for Scotland (CSAG) consulted on ‘Protecting Patient Confidentiality.’ This discussed the sharing of information with other caring agencies and the seeking of consent for the disclosure of otherwise confidential patient information. The resulting report in 2002 concluded that best practice required either patient consent or anonymisation of records:

- *explicit consent is best practice and should become the norm as better informed patients share in decisions about the uses of information about them (ch 7, CSAG, 2002).*
- *consent is not required where information has been acceptably anonymised but patients should still be informed of its use (ch 8, CSAG, 2002).*

In 2004, the Executive issued guidance ‘[Sharing Information About Children at Risk: A guide to good practice](#)’ (Scottish Executive, 2004b). Sharing information without consent is possible where this is necessary to protect the safety of the person or other vulnerable persons. The CSAG’s 2002 report [Protecting Patient Confidentiality](#) advises that

“The concept of processing and sharing information without consent to protect the vital interests of a patient or patients has been widely accepted. An example would be where a health professional is concerned that a child or vulnerable adult may be at risk of abuse. Professionals who have such concerns would be expected to draw the attention of the relevant authorities” (para 21, CSAG, 2002).

The General Medical Council only allows doctors to share information to prevent or detect a serious crime. Common law enables the disclosure of information where this is necessary to protect a vulnerable person from harm (para 7, Scottish Executive, 2004c).

One possible limit to asking for consent would be concern for the welfare of the child. Para 20 of recent guidance which addresses sharing information states that consent should be gained unless asking for that consent places the patient at greater risk of harm.

“20. When concerns about children's safety or welfare require a professional or agency to share confidential information without the person's consent, they should tell the person that they intend to do so, unless this may place the child, or others, at greater risk of harm. They should also tell them what information and to whom that information will be disclosed. Each agency should make clear to people using their service that the welfare and protection of children is the most important consideration when deciding whether or not to share information with others. No agency can guarantee absolute confidentiality as both statute and common law accept that information may be shared in some circumstances” (para 20, Scottish Executive, 2004c).

The Bill would allow sharing information within the inspection team for the purposes of evaluating the general effectiveness of the service, rather than for the immediate prevention of harm to the individual concerned. However, information can also be disclosed when to do so is in the public interest.

Public Interest

Article 8 of the European Convention of Human Rights (ECHR) guarantees respect for a person's private and family life, home and correspondence. However, these rights are limited by what is in accordance with the law, or necessary to protect health or morals, or necessary to protect the rights of others. It requires a balance to be found between the rights of the individual and the interests of the general community.

The NHS Code of Practice on Protecting Patient Confidentiality (updated 2003) states that information can be shared 'in the public interest', but that patients should be informed of the possible uses of the information. For example,

“Patients should also be informed about other uses, which provide benefits to society, e.g health surveillance, disease registries, medical research, education and training. As far as possible information should be anonymised. Where uses are not directly associated with the health care that patients receive, staff cannot assume that patients who seek health care are content for their information to be used in these ways. Staff must consider whether patients would be surprised to learn that their information was being used in a particular way – if so, then patients are not being informed effectively” (para 5.2, NHS Scotland 2003).

The NHSScotland Code of Practice states that confidentiality requirements should be balanced, among other things, against the public interest.

“An example might be the production of statistics (where the individual is not identified) to assist in the planning of public services; or disclosure of information to the police to help in the prevention or detection of a serious crime. The Data Protection Act and professional standards specifically allow for information to be disclosed in this way” (para 7.5, NHS Scotland 2003).

The General Medical Council has recently published '[Confidentiality: Protecting and Providing Information.](#)' (April 2004). The GMC recommend that where a Clinical Audit is undertaken by another organisation, the patient information should be anonymised wherever possible. Information that is not anonymous should only be shared with the explicit consent of the patient.

“Disclosing information for clinical audit

13. Clinical audit is essential to the provision of good care. All doctors in clinical practice have a duty to participate in clinical audit¹. Where an audit is to be undertaken by the team which provided care, or those working to support them, such as clinical audit staff, you may disclose identifiable information, provided you are satisfied that patients:

- have been informed that their data may be disclosed for clinical audit, and their right to object to the disclosure; and*
- have not objected.*

14. If a patient does object you should explain why information is needed and how this may benefit their care. If it is not possible to provide safe care without disclosing information for audit, you should explain this to the patient and the options open to them.

15. Where clinical audit is to be undertaken by another organisation, information should be anonymised wherever that is practicable. In any case where it is not practicable to anonymise data, or anonymised data will not fulfil the requirements of the audit, express consent must be obtained before identifiable data is disclosed.

[...]

Disclosures required by law

18. You must disclose information to satisfy a specific statutory requirement, such as notification of a known or suspected communicable disease. You should inform patients about such disclosures, wherever that is practicable, but their consent is not required.”
(General Medical Council, 2004).

The Explanatory Notes for the Bill state that:

“It will allow those who hold relevant information to provide it to the joint inspection team, without the need to seek express consent from any individual to whom the information relates. Robust protocols to ensure the necessary confidentiality will reinforce the Bill’s provisions.

[there is a need to] access and share information on an anonymised basis and under prescribed conditions with other inspectorates if this information is necessary for the conduct of their service specific inspections” (para 6,9, Explanatory Notes, 2005).

The draft protocol sets out the pre-inspection arrangements for informing the local area that an inspection is forthcoming and any further information that may be appropriate as part of the joint inspection. This protocol sets out draft proposals for the purpose of joint inspection of child protection services. It will be modified to meet the needs of other joint inspections of children’s services, where consent issues may be dealt with differently. (Scottish Executive, 2005d).

DATA PROTECTION

Regulations would have to comply with Data Protection legislation. The eight principles of good practice are that personal data must be:

1. fairly and lawfully processed
2. processed for limited purposes
3. adequate, relevant and not excessive

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4. accurate and up to date
5. not kept longer than necessary
6. processed in accordance with the individual's rights
7. secure
8. not transferred to countries outside the European Economic area unless country has adequate protection for the individual

However, Personal Data can be processed where this is required by law or where it is necessary in the public interest. (Schedule 2, para 5). (Processing includes obtaining, recording, holding, using and disclosing information).

Information about someone's mental or physical health condition is sensitive personal information under the Data Protection Act and processing it requires at least one of certain listed conditions are met. These include:

1. having the explicit consent of the individual, or
2. needing to process the information in order to protect the vital interests of the individual or another person, or
3. dealing with the administration of justice or legal proceedings, or
4. is necessary for the exercise of any functions conferred on any person by or under an enactment, or
5. for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
6. the processing is necessary for medical purposes and is undertaken by a health professional or a 'person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.' (Information Commissioner, Data Protection Factsheet and schedule 3 to the Data Protection Act 1998).

The Joint Inspection team can require information (including personal records) from any person which relate to children's services and are 'considered necessary or expedient to have for the purposes of a joint inspection.' (draft regulation 9). Where this includes confidential health information, i.e information subject to patient confidentiality or where the identity of the person involved can be discovered, then certain limitations apply:

- inspectors should not process the data any more than is necessary
- data should be anonymous where possible
- access to the data should be restricted and unauthorised processing of it prevented

These reflect the Data Protection principles mentioned above, in particular 2, 3, 5 and 7. These principles already apply to all personal data – not just confidential health information. However, the Data Protection Act does allow processing of personal sensitive information where it is 'necessary for the exercise of any functions conferred on any person by or under an enactment.'

It is understood that the draft regulations and draft protocol are intended to ensure that the joint inspection team's handling of sensitive data is compliant with these Data Protection Act requirements.

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