



SCOTTISH
CHILDREN'S REPORTER
ADMINISTRATION

**SCRA CONSULTATION RESPONSE TO THE
JOINT INSPECTION OF CHILDREN'S SERVICES
AND INSPECTION OF SOCIAL WORK
SERVICES (SCOTLAND) BILL**

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SCRA Response to the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill

Introduction

The Scottish Children's Reporter Administration (SCRA) welcomes the opportunity to respond to the consultation on the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill and related draft regulations.

SCRA is fully supportive of the joint inspection of children's services and of the proposals contained within the Bill which aim to ensure the effectiveness of the inspection process. The joint inspection of children's services is an important element in the Scottish Executive's strategy to improve the integrated delivery of services to children, young people and families. The proposals contained within the Bill provide valuable support to development of a common approach to inspection across inspectorates concerned with services for children and young people and will help ensure a proportionate and intelligence led inspection framework.

SCRA recognises the benefit of clarity which the legislation intends to provide in terms of the powers granted to bodies charged with conducting joint inspections. The focus of SCRA's response to the provisions of the Bill is on the extent of those powers granted to the persons and bodies listed at Section 1.6, and those directed under Section 2, to conduct joint inspections and to access and share information.

Section 1: Joint inspection of children's services

Section 1(1) This is a significant power enabling Scottish Ministers to direct joint inspection in respect of the whole range of children's services as defined in Section 7. Neither the Act nor the Regulations set parameters for the exercise of this power by Ministers. This is a significant development for an organisation such as SCRA in that while clearly anticipating that the Administration would be subject to inspection by the HMIE Services for Children inspection team, this provision opens up the possibility of any of the persons or bodies specified in Section 1(6) inspecting services provided by SCRA at the request of Scottish Ministers as part of a joint inspection process.

Consideration should be given to the need for high level criteria which reflect the basis on which this power will be exercised by Ministers. A shared understanding of the circumstances in which Ministers may request a joint inspection would help ensure transparency and accountability in the exercise of this power.

Section 1(2) Allied with the power granted in Section 1(1), this enables Ministers to direct inspection at all levels, a wide ranging power in respect of which there is similarly no specification of the basis on which Ministers will decide the level at which an inspection will be conducted. Linked to criteria which direct the need for a joint inspection, consideration should be given to the need for high level criteria which reflect the basis on which decisions on the level at which a joint inspection is to be undertaken are made. A shared understanding of the circumstances in which Ministers may request a joint inspection at area, service and child specific level would help ensure transparency and accountability in the exercise of this power.

Section 1(5) The accompanying regulations should make provision for the directions issued by Scottish Ministers to be shared with the Chief Executive or equivalent of the service(s) which are to be included in the inspection process at the point at which notification of the inspection is given.

Section 1(6)(g) The provision to allow Scottish Ministers to direct engagement of any other person or body in an inspection process will appropriately allow for specialist knowledge to be added to an inspection team. It would be helpful if the basis for appointment under this subsection was clarified given the duties and obligations which would be incumbent on such a person or body.

Section 2: Participation in inspections

Section 2(1) It would be helpful to clarify whether it is under this provision that associate assessors, or equivalent, are to be empowered to participate in an inspection process or whether an associate assessor is a distinct appointee who is authorised to conduct inspection through the powers of the appointing inspectorate. It is important to ensure that the basis of appointment and empowerment of associate assessors, or equivalent, is clear given the differing provisions which are applicable to Section 1(6) bodies and authorised persons.

Section 2(2) It is clearly appropriate to ensure that a person or body appointed under Section 2(1) is empowered only to the extent necessary to conduct an inspection and to share information. It is noted that draft regulations 3 and 4 distinguish the circumstances in which information can be disclosed by authorised persons and Section 1(6) bodies. Further clarification regarding this would be helpful.

Section 3: Regulations for purposes of joint inspection

Section 3(1) The scope of the regulations which may be made pursuant to this section is extremely wide. The ability to access premises, to remove records, to check the operation of computer systems, to access and obtain copies of computer records, to require an explanation of information from the compilers of information and all other enabling regulations should be underpinned by clear operating principles. The related regulations as presently drafted present a level of detail in respect of the responsibilities incumbent on both inspectors and services being inspected. However, to ensure consistent application and proportionate exercise of such wide ranging powers, the regulations themselves should direct the provision of an operating protocol as a key element of each inspection, tailored to the needs of each inspection.

Section 3(2) Refer to comments above under Section 2(2) in respect of regulations 3 and 4.

The Joint Inspection (Scotland) Regulations 2005

In the course of the pilot inspections, HMIe inspectors attended children's hearings. While wide ranging access to information is granted under Section 3 and the accompanying regulations, no specific mention is made of inspectors' entitlement to attend meetings relevant to a child whose case has been included in the inspection process. In respect of attendance at a children's hearing, should a specific enabling

provision be made or is it anticipated that access to a hearing would be possible under existing provision¹ with the consent of the child and family sought?

Regulation 3(1) This regulation states that an authorised person may share information obtained in the course of an inspection with any other authorised person. There is no statement within the terms of the regulation which clarifies the basis on which that sharing *may* take place. Is the intention only to enable the sharing of inspection information obtained during an inspection with the other inspection functions jointly undertaking the same inspection for the purposes of conducting and reporting that joint inspection? As currently drafted, it is not clear that any such parameters have been set around the circumstances in which an authorised person can share information with another authorised person, notwithstanding the terms of Section 3(2) of the Bill.

Regulation 3(2) The drafting of 3(2) differs from that of 3(1) in that it makes specific reference to the circumstances in which an authorised person may disclose information to a person or body listed or specified in Section 1(6), namely, where they consider such disclosure would assist the person or body to carry out their functions. However, is it the intention that this power of disclosure be exercised only during the conduct of the inspection or can it be exercised at any time by an authorised person where it is believed that such information may be of use to a person or body in the performance of their functions?

Regulation 4 The drafting of regulation 4 differs from that of 3(1) in that it makes specific reference to the circumstances in which the person or body may disclose information to an authorised person, namely, where they consider such disclosure would assist the authorised person for the purposes of a joint inspection. However, can this power of disclosure be exercised at any time by a person or body listed or specified under Section 1(6) where the person or body believes that such information may be of use to an authorised person in the conduct of a future inspection?

Regulation 8 The basis on which someone will be deemed by an inspector to be responsible for compiling or for holding any document, record, item or information should be agreed pre conduct of an inspection on a service by service basis as part of an agreed operating protocol relating to access to information. Given that the original compiler of information may often not be available to an inspector it is particularly important that there is clarity on who is deemed to be the holder of information to ensure the effectiveness of the inspection and in light of the provisions of regulation 10.

Regulation 9 The regulations focus on the need to provide clarity in respect of access to confidential health records. However, similar issues may well arise for other children's services providers. The opportunity should be taken to provide similar clarity in respect of the handling of sensitive information held by other service providers. Regulation 9 should be extended to cover all children's service providers or a separate, similar regulation should be drafted to provide the same clarity in respect of the handling of sensitive information held by other service providers. An equivalent interpretation provision would be required as per draft regulation 2(2).

¹ Ref. Children's Hearing (Scotland) Rules 1996, Rule 13.

The Draft protocol for Access to Health Information

At page 9 of the Draft protocol for Access to Health Information, it is stated that “A general protocol for access to personal information was considered but the level of sensitivity about such information was on the part of both individuals and health professionals is such that a separate protocol on access to clinical information has been retained. Given the extent of powers to conduct inspection and to access and share information, a general protocol which can be signed up to by all services subject to inspection would help ensure a shared understanding of the process of inspection and would enhance the effectiveness of the inspection process. Such a general protocol should be open for adaptation dependant on (i) the nature and scope of the inspection to be conducted and (ii) the persons or bodies directed to conduct the joint inspection functions.

The draft protocol is helpful in providing guidance on the profile of the inspection team, the process of inspection, the powers of inspectors and entitlement to gain entry to premises, access people and records and to share information. However, while there are helpful statements in relation to the criteria on which, in this instance, health records will be accessed, the protocol as drafted appears to be predominantly a vehicle for explanation of the process. Given the range of powers covered by the regulations, more detailed statements in relation to accessing and handling information would support better service understanding of their responsibilities and thereby the effectiveness of the inspection process. In view of the provisions of regulation 10, clarity and shared understanding of responsibilities is essential.
