

INDEPENDENT REVIEW OF REGULATION, AUDIT, INSPECTION AND COMPLAINTS HANDLING IN SCOTLAND

INTERIM REPORT TO MINISTERS – FOR INFORMATION ONLY

1. In June 2006, the Minister for Finance and Public Service Reform announced that an independent review would be carried out into the regulation, audit, inspection and complaints handling of public services in Scotland. Professor Lorne Crerar was asked to Chair the Review. Professor Crerar will publish his findings in August 2007. An overview of the Review is attached at **Annex A**.

2. Ministers asked Professor Crerar to provide this interim report by the end of March 2007. The report sets out the rationale for conducting such a Review at this time, its remit, the evidence base consulted, and progress made to date.

Rationale for the Review

3. The Scottish Executive published its Efficient Government Plan (*Building a Better Scotland*) in November 2004. The plan included a commitment to improve the way bodies responsible for regulating, auditing, inspecting and handling complaints on public services operate, as part of the drive to streamline bureaucracy. The perception of increasing amounts of external scrutiny and the burden it imposes on front line services has been a regular theme in Ministerial contact with public bodies. The concern is not only that the system is expensive to operate and contains duplication and overlap, but also that it detracts from the focus on performance improvement within public service organisations.

4. The Review is also a key initiative within the wider public service reform agenda in Scotland. Reform is based on five principles – increased personalisation and choice; quality and innovation; efficiency and productivity; joining up; and accountability. Any future scrutiny regime must respond to this agenda. The Review will evaluate the existing system and make recommendations to Ministers on:

- The purpose, principles and role of effective regulation, audit, inspection and complaints handling, including clarifying who the customers and beneficiaries are;
- Governance arrangements;
- How regulation, audit, inspection and complaints handling can better support continuous improvement in public services;
- How regulation, audit, inspection and complaints handling can be more efficient and better co-ordinated;
- The priorities for change; and
- Any legislative or organisational changes that would be required to implement the recommendations.

5. The Review is taking account of scrutiny reform elsewhere in the UK. In England, the Better Regulation Commission advises Ministers and, along with the Better Regulation Executive in the Cabinet Office, is taking forward a number of measures to reform public service regulation in England (and regulation of business for reserved UK-wide functions). Most of this activity does not apply to Scotland. The UK Government published a policy document in 2005, setting out a range of reforms with the aim of refocusing inspection on what is most relevant to service users; rationalising and simplifying the inspection system, and reducing the amount of inspection activity. Eleven inspectorates are being merged into

four, based around four service groupings. Implementation is planned for 2008. The UK Government is also taking forward a review of ombudsman offices, to rationalise numbers and promote shared support services between offices.

Scope of the Review

6. Given the timeframe and complexity of the subject the first task was to decide where most value could be added by this Review, a decision helped by a number of conversations with key stakeholders during last summer.

7. Given the number of scrutiny organisations, their diverse remits and areas of responsibility, and the complexity of the issues surrounding scrutiny, the Review is not going to attempt to undertake a detailed diagnostic of each organisation or of individual scrutiny regimes. It will take a helicopter perspective and make recommendations for the whole scrutiny system. The Review has not started from examining the current structure, rather it is asking a series of fundamental questions, the answers to which will provide a picture of where the current system falls short of the most appropriate system for the future and the overarching reform required. Recommendations for change will take Scotland to the next stage of designing and implementing a system of external scrutiny that is fit for purpose within the agenda of public service reform.

8. It was clear from the outset that there were certain areas of public service that were subject to a greater intensity of scrutiny than others, and as these made up the bulk of public expenditure in Scotland, the Review has focused evidence gathering on these sectors, they include health, local government, social care and social housing.

Evidence Base

The Review is taking evidence from arrange of stakeholders:

9. A quantitative mapping survey took evidence from **36 scrutiny organisations**. Ten of the most significant scrutiny organisations were also asked further qualitative questions. Views were also sought from around **30 sponsor and policy teams across the Scottish Executive**, who either established or sponsored scrutiny bodies;

10. Evidence is also being taken from service providers. **All health boards**, and around **250 care or social housing providers**, as well as **35 independent health care providers** have been offered an opportunity to contribute evidence to the Review, through workshops (from Inverness to Dumfries), forums, submissions and questionnaires.

11. **Local authorities** have been asked to provide evidence on the current scrutiny regimes overseeing local government, their impact and strengths and weaknesses. This work is being co-ordinated by CoSLA , SOLACE and the Improvement Service.

12. **Audit Scotland** is conducting an impact assessment of the costs, both direct and indirect, associated with complying with the current regime – this will complement the study being carried out by COSLA and the Improvement Service.

13. The Review Team are working with **the SPSO** to map the various complaints handling processes existing within public services in Scotland and the various jurisdictions of

the existing scrutiny bodies. The Review will work with key stakeholders, including the Scottish Consumer Council to make recommendations which address the concerns about current complaints systems, in particular accessibility and speed of redress.

14. The views of **service users and the public** are being sought through research by the **Scottish Consumer Council**, and through a specific project to obtain wider views from a range of public focus groups.

15. The Review has established a panel of **Experts** from the scrutiny sector to provide the Chair with an external perspective and to challenge the methodology and findings of the Review. A group of **Academics** has also been asked to contribute to an event in April.

16. At this stage the Review has only a partial picture of the current scrutiny system, as evidence is still being gathered. However, it is clear from the evidence received so far that there are some key themes and priorities emerging which would benefit from further exploration with stakeholders. **These are summarised in Annex B.** The Review team has organised **4 regional discussion events** in May for stakeholders, which will consider the key issues and discuss future options and models for external scrutiny. Events will be held in Aberdeen, Edinburgh, Glasgow and Stirling.

Interim conclusions

17 A summary of the Review's emerging findings and conclusions is below:

- The burden of external scrutiny has grown significantly since devolution;
- The costs of scrutiny have increased significantly;
- The external scrutiny system is unnecessarily complex, lacks coherence and there is lack of evidence on impact;
- There is duplication and overlap between scrutiny bodies causing unnecessary burdens on providers;
- The public voice is not sufficiently represented in external scrutiny; and
- The complaints system is unnecessarily complex and not fit for purpose.

There is a real opportunity now, within the context of public service reform, to improve the structure, processes and outcomes of external scrutiny. The recommendations from the Review will aim to deliver this.

Professor Lorne Crerar
March 2007

INDEPENDENT REVIEW OF REGULATION AUDIT, INSPECTION AND COMPLAINTS HANDLING OF PUBLIC SERVICES IN SCOTLAND

OVERVIEW

The review remit

The independent review is chaired by Professor Lorne Crerar, the Chairman of Harper Macleod law firm, and former Convener to the Standards Commission of Scotland, responsible for patrolling ethics in public life.

Professor Crerar will evaluate the existing system of regulation, audit, inspection and complaints handling, and make recommendations to Ministers in August 2007 on a framework for the future external scrutiny of public services including:

- The purpose, principles and role of effective regulation, audit, inspection and complaints handling, including clarifying who the customers and beneficiaries are;
- Governance arrangements;
- How regulation, audit, inspection and complaints handling can better support continuous improvement in public services;
- How regulation, audit, inspection and complaints handling can be more efficient and better co-ordinated;
- The priorities for change; and
- Any legislative or organisational changes that would be required to implement the recommendations.

What the review will achieve

- The review is part of a wide range of public service reform activity that is underway. There is broad agreement that we need to consider the role and purpose of external scrutiny in a changing public service landscape, where services are being designed and delivered in new ways.
- The review will look at how improvements can be made to regulation, audit, inspection and complaints handling in Scotland. Its main aim is to suggest a framework for the future external scrutiny of public services which is focused on the needs of the people who use them, drives improvement, and ensures that public money is used as efficiently and effectively as possible.
- It will also pave the way for more proportionate and streamlined regulation, audit inspection and complaints handling of public services, including how unnecessary external scrutiny can be minimised or removed.

How we will work

The review will seek the views of everyone with a stake in the external scrutiny of public services. It will aim to start a debate and build consensus around a clear vision for improvement. We will take evidence and develop our recommendations through dialogue with interested parties at appropriate points in the process, including scrutiny bodies, service providers, service users, citizens, professional

bodies, third sector organisations and the Scottish Executive. We have set a tight but realistic timetable for this work.

Key tasks

The review will carry out six substantive areas of work:

- i. **establishing the purpose of external scrutiny** - clarification of the principles and defining the purpose of effective regulation, audit, inspection and complaints handling across all public services, initially through a review of UK and international literature and research;
- ii. **mapping** - of existing audit, inspection, regulation, and complaints handling arrangements across public services;
- iii. **evaluation of the impact of the current system on service delivery/service users** - analysis of the burdens and added value of external scrutiny on front line services, and the extent to which the current arrangements currently meet the principles of effective external scrutiny;
- iv. **prioritisation of critical issues** – i.e. those parts of the external scrutiny system where issues are most significant and where reform is most needed;
- v. **development of options/models** for a revised external scrutiny framework, addressing the specific questions in the remit;
- vi. **final report** with recommendations on a framework for external scrutiny with key principles and options/ models for delivery.

Definitions

The following definitions apply to the distinct elements of external scrutiny and will be used consistently throughout the review.

Regulation focuses on providing a licence to operate, enforcement of legislation & regulation and monitoring the quality of services provided. Regulation may also include elements of service inspection and can be designed to drive up quality as well as to enforce standards.

External audit is the periodic scrutiny of corporate governance & management systems, financial systems, risk & performance management systems and public reporting.

Inspection is the periodic, targeted scrutiny of specific services to check whether they are meeting national & local performance standards, legislative & professional requirements and the needs of service users.

Complaints handling is the investigation of complaints about public services carried out by a range of commissioners, ombudsmen and other public bodies with specific roles and responsibilities.

Key questions to be considered by the review

1. What is the main purpose of external scrutiny?
2. Who are the beneficiaries of external scrutiny and how are their various needs best met?
3. What balance is required between regulation, audit and inspection to achieve an effective system of external scrutiny and if so, how is this achieved?
4. How do you make external scrutiny focus effectively on the needs of service users? How should you balance evidence from service users with other knowledge and information?
5. Should complaints handling be an integral part of a system of external scrutiny? If so, how should the information from complaints be used?
6. How should external scrutiny balance the competing demands placed upon it? For example, responding to individual service failures against development of longer term strategic focus on policy issues.
7. How best do you achieve independent, credible external scrutiny in terms of structures, legislation, relationships with Government?
8. How far should an external scrutiny system have legal enforcement powers?

Review Secretariat
March 2007

INDEPENDENT REVIEW OF REGULATION, AUDIT, INSPECTION AND COMPLAINTS HANDLING IN SCOTLAND: INTERIM REPORT TO MINISTERS

Emerging findings and priorities for a national framework

This paper highlights the emerging findings from the evidence submitted to the Review so far and the priority issues for discussion at stakeholder events about a national framework.

The information below illustrates some facts about the growth and complexity of scrutiny arrangements for public services in Scotland based on the Review evidence so far.

Growth in scrutiny

Scrutiny has grown in recent years in at least three demonstrable ways. Firstly, the Review's initial analysis of recent growth suggests that ten completely new bodies have been created since 1999 to perform scrutiny functions not previously carried out – four of which are already functioning and a further six are due to start operating in or after 2007. Secondly, a number of new bodies have been created to carry out scrutiny previously performed by other organisations, and in many cases these have been given additional functions as well. Thirdly, some existing bodies have been given new or expanded scrutiny functions. Some examples of these kinds of developments include:

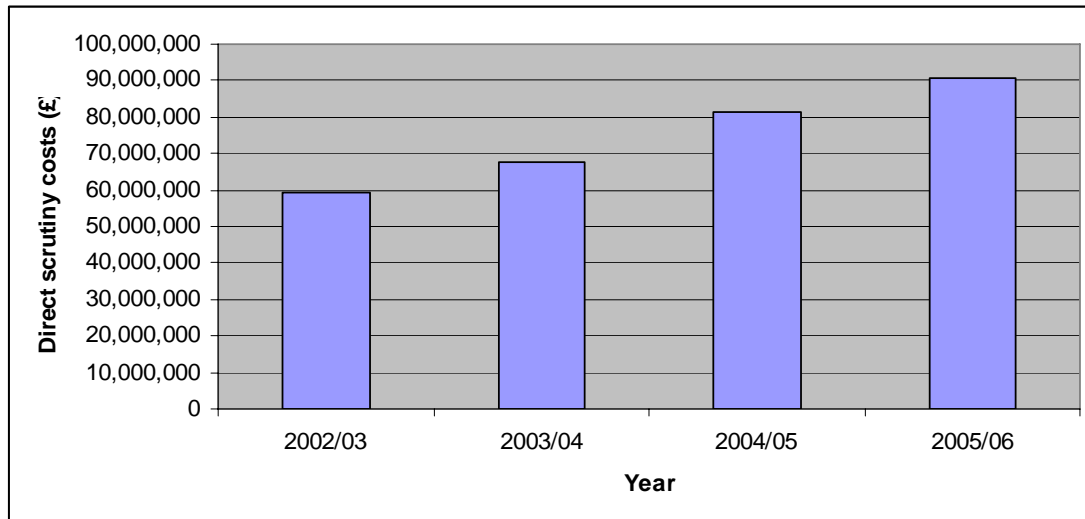
- the audit of Best Value, initially in local authorities by Audit Scotland on behalf of the Accounts Commission, and eventually to be rolled out across all public services;
- the creation of Communities Scotland in 2001 and a new role in regulating and inspecting local authority housing services;
- the establishment of the Care Commission in 2002 as a national regulator of all care services in Scotland (approximately 15,000 providers in both the public and private sector ranging from child-minders to care homes for older people) and all independent health care. The Care Commission brought together the regulatory functions of 32 Local Authorities and 15 Health Boards;
- the establishment of NHS Quality Improvement Scotland in 2003, bringing together the functions of the Clinical Standards Board for Scotland, Health Technology Board for Scotland and Scottish Health Advisory Service;
- the establishment of a new Inspectorate of Prosecutions, covering Crown Office Procurator Fiscal Services in 2005;
- a new system of inspections of criminal justice social work;
- the development of a multi-agency inspection regime for children's services, starting with child protection, led by Her Majesty's Inspectorate of Education;
- the launch of the Social Work Inspection Agency in 2001 to inspect social work services at a local authority level;
- the development of multi-agency inspection regimes of social work services for older people, people with learning disabilities; people who misuse substances and mental health problems;

- the establishment of the Office of Scottish Charity Regulator in 2006.

Costs

Our initial analysis shows that the direct cost of scrutiny has increased significantly since devolution (Diagram 1).

Diagram 1: The growth in direct scrutiny costs



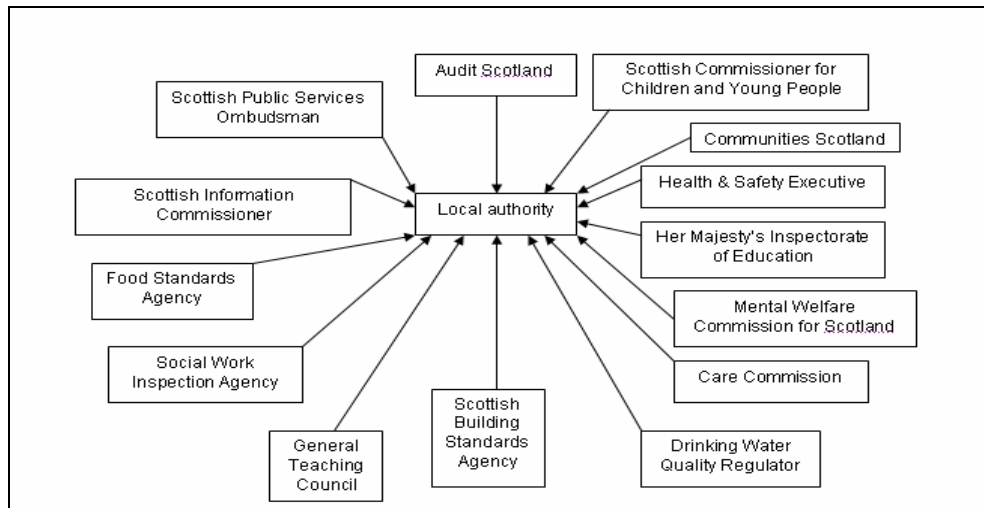
Source: Scrutiny Review Stage 1 mapping survey. Note: these figures are interim and subject to further validation.

The direct costs of scrutiny are only one element of what is referred to as the scrutiny burden. There are also significant costs associated with preparing for, participating in, and responding to the outcomes of scrutiny activity. These compliance costs are difficult to quantify and hard figures are not yet available. There is some evidence that public bodies with good governance and performance management arrangements find the scrutiny compliance burden less onerous than less well-managed organisations.

A complex and confusing scrutiny landscape

The information below in Diagram 2 illustrates the complexity of the scrutiny landscape for one sector. It is based on evidence collected through a mapping survey completed by 36 bodies involved in public sector scrutiny. Fourteen respondents said they scrutinised local authority functions or the services they manage or deliver. This diagram is not comprehensive for local government as it reflects only those bodies we surveyed. It also does not reflect other activity, often considered to represent scrutiny, such as performance monitoring by the Executive or parliamentary questions from elected representatives (MSPs, MPs, MEPs), nor does it include scrutiny by EU organisations.

Diagram 2: The range of scrutiny bodies which impact on a local authority in Scotland



Source: Scrutiny Review Stage 1 mapping survey

Our evidence indicates that this complexity is replicated across all major sectors of public service delivery. We recognise that some scrutiny organisations have discrete responsibilities that do not duplicate each other. However, there is evidence that some regimes do duplicate and place overlapping compliance burdens on providers. We intend to carry out further analysis of this issue.

Another aspect of the landscape is complaints handling, for which the arrangements are also complex. In responses to the Review mapping survey 18 out of 36 Scrutiny bodies mentioned that they handle complaints in some form, while the following 6 said this was their main scrutiny function:

- Scottish Information Commissioner
- Scottish Legal Services Ombudsman
- Scottish Parliamentary Standards Commissioner
- Scottish Prisons Complaints Commission
- Scottish Public Services Ombudsman
- Standards Commission for Scotland

Scrutiny and the citizen/service user

The final issue to highlight at this stage is the public focus of scrutiny. An aim of public service reform is to focus services more directly on the needs of the public, and this has implications for how we conceive and organise scrutiny. External scrutiny through audit, inspection, regulation and complaints handling holds public service providers to account on behalf of the public and includes providing the public with information about the services they use and pay for. The evidence so far suggests that the system is not adequately focused on the needs of service users or citizens highlighting that:

- there are complex issues in defining what the public interest is as we move to more diversity in provision and greater personalisation of services;
- there are issues with the transparency and accessibility of information and the trust placed in this by the public;
- complaints handling arrangements are complex and confusing;

- scrutiny bodies do not always report on the things that really matter to the public; and
- the public voice is not sufficiently represented in inspection audit and regulatory practices.

Creating a National Framework

The Review has been asked to make recommendations for an external scrutiny framework. Our expectations at this stage are that this will contain substantial changes to existing arrangements. The research carried out by the Review has not found evidence of a whole-system scrutiny model anywhere in Europe or the wider developed world. Scotland has an opportunity through this Review to achieve something unique by adopting a whole-system approach which establishes the place of external scrutiny in the context of wider accountability arrangements and performance improvement processes. Our recommendations will aim to enable wholesale reforms and to identify mechanisms to implement these.

Developing and implementing wholesale change will require significant time. We have signalled what this will involve in the final section of this paper. However we think that there are some changes which could be introduced now to address some of the issues with the current arrangements, these are outlined below.

Options for change in the immediate term

A number of suggestions have been put forward to tackle the most pressing problems with the current situation, which could be targeted at public services which experience high intensity of scrutiny. It should be noted that the review has not accepted that these suggestions will deliver all necessary improvements but it does believe that they are worthy of further consideration. The benefits and practicalities will be considered further at the dialogue events. The suggestions include:

- a national scrutiny plan setting out priorities, to be agreed between scrutiny bodies and in consultation with delivery bodies;
- a national timetable, agreed in conjunction with delivery bodies, that sets out which scrutiny body is going where within a defined period;
- an agreed core dataset to be provided by each delivery body, which all scrutiny bodies use in the course of their work, with the proviso that any additional information request should meet a specific set of criteria before being complied with;
- the development of a common self-assessment framework for delivery bodies to enable greater focus on self-assessment reports by scrutiny bodies;
- scrutiny bodies to report on how their work focuses on the experience and outcomes for service users and citizens;
- all scrutiny and delivery bodies to develop common public reporting language and assessments in their reports.

Developing a longer term national framework

There is a real opportunity, within the context of public service reform, to improve the structure, processes and outcomes of external scrutiny and to develop a national scrutiny framework for the longer term. We have identified some priority issues that appear to be the root cause of some of the growth and complexity of current arrangements and will need to be addressed to create the framework. These include:

- clarification of the role and purpose of external scrutiny;
- strengthening citizen/service user focus;
- clarification of responsibilities including lead roles;
- clarification of principles of effective scrutiny; and
- strengthening accountability, governance and control.

In addressing these issues we anticipate that we will also require to consider:

- structural change
- changes to the way that scrutiny bodies focus and organise their work; and
- legislative change.

The discussion at the dialogue events will focus on these issues and on the development of options and models for a national framework.