

REGULATORY IMPACT ASSESSMENT

INTRODUCTION

1. This Regulatory Impact Assessment (RIA) provides information on the impact on the care, social services and healthcare sectors of the creation of two new scrutiny bodies, Healthcare Improvement Scotland and Social Care and Social Work Improvement Scotland.

TITLE OF THE PROPOSAL

2. Public Services Reform (Scotland) Bill Parts 4 and 5.

PURPOSE AND INTENDED EFFECT OF REGULATION

Objectives

3. The legislation will create the two new bodies by April 2011. The Government expects to bring about a number of improvements in the approach to scrutiny of the care, social services and healthcare sectors. These include:

- ceasing or scaling back cyclical inspection and developing a more proportionate approach based on assessment of risk
- promoting verified self evaluation and the opportunity for delivery bodies to 'earn' a reduction in scrutiny where they can demonstrate delivery of high quality services and continuous improvement
- recognising that the main responsibility for improvement lies with service providers themselves but that the Government and scrutiny bodies also have a key role in facilitating improvement
- strengthening multi-agency working and collaboration between scrutiny bodies
- creating a greater focus on outcomes
- maximising the opportunity to share business processes, business functions, knowledge and expertise
- providing broader powers to collect and share information to improve the efficiency of scrutiny and ensure that the health and care needs of the public, and in particular vulnerable people, are fully addressed
- the provision of powers for the Scottish Ministers to review and if necessary revise the range of care services that require regulation.

Background

4. These changes to external scrutiny are part of the Scottish Government's desire to simplify the public sector landscape. In September 2007 Professor Crerar published his report (*the Crerar Review*) on 'The Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland.' This received cross party support for the need to improve the way in which scrutiny is organised and carried out and in November 2008 the Cabinet Secretary for Finance and Sustainable Development announced the government's response to the Crerar Review. This included first steps towards reducing the number of scrutiny bodies by 25% in line with the government's broader target for the number of public bodies.

The proposals included the creation of a new health scrutiny body bringing together the existing functions of NHS Quality Improvement Scotland, the Mental Welfare Commission (MWCS) and the responsibilities of the Care Commission for the scrutiny of independent healthcare, and the creation of a single scrutiny body for social services bringing together the functions of the Social Work Inspection Agency, the Care Commission (less its independent healthcare remit) and the responsibilities of Her Majesty's Inspectorate of Education for the inspection of services to protect children and the integration of services for children. More recently, in response to concerns raised by the mental welfare community, the Minister for Public Health and Sport announced that the Scottish Government will step back from taking the MWCS's functions into either the health or social services bodies at present to allow a four to six month period to establish how best to include the MWCS in the simplification programme.

5. Healthcare Improvement Scotland and Social Care and Social Work Improvement Scotland have been agreed as the working titles for the two new bodies.

Rationale for government intervention

6. Without government intervention the simplification of scrutiny sought by the Parliament, service providers and the public will not be achieved and the emphasis on making and sustaining improvements is likely to be less than desired. Measures to bring about a more proportionate approach to scrutiny are being developed and implemented by the existing organisations but creation of the new bodies should help to accelerate the pace of change and reduce the adverse impact scrutiny has on Local Authorities, NHS Boards and other service providers. Intervention is also necessary to resolve the complexities created by the variety of Acts, Regulations, Codes of Practice and Standards that impact on the ability of scrutiny bodies to access and share information.

CONSULTATION

Within government

7. Appendices I and III of the Crerar Review list the wide variety of Scottish Government and public sector organisations that contributed to the report through discussion events, meetings and the submission of evidence. Since the Government's announcement in response to the Crerar Review the Project Implementation Team has established a stakeholder engagement programme which includes discussions with other Scottish Government departments and meetings with the Boards and senior staff of the organisations affected by the draft legislation and with trade union representatives.

Public consultation

8. Evidence supplied to the Crerar Review included a literature review by the Scottish Consumer Council examining the consumer perspective of scrutiny and a report by Ipsos Mori and the University of Edinburgh providing feedback from the public about their awareness of external scrutiny arrangements and their views on how external arrangements could be strengthened. Seminars were also held with a cross section of care and social housing providers and independent providers of healthcare services. Organisations representing patients and the public are included in the Project Implementation Team's engagement programme.

OPTIONS

Option 1 (Do nothing)

9. With this option there would be no reduction in the number of public bodies and the desire of the Government, Parliament, service providers and the public to create a simpler and more easily understood scrutiny landscape would not be achieved. Models of joint working have been piloted but these are limited in their effectiveness by existing legislation and the specific remits of the current bodies. Although the existing bodies are scaling back cyclical inspection and adopting more proportionate approaches, there is a risk that service providers will not experience a reduction in scrutiny. Creation of the new scrutiny bodies will significantly reduce the forgoing risk. Although there is scope for greater sharing of business processes, facilities and knowledge, there is a further risk that these benefits will not be exploited fully.

Option 2 – Creation of Healthcare Improvement Scotland and Social Care and Social Work Improvement Scotland

10. This option builds on the work being undertaken by the existing scrutiny bodies to develop more proportionate and risk-based approaches, by providing more flexible and broader powers to overcome some of the current barriers to progress. The creation of the two new bodies will also encourage a more consistent approach, help reduce the scrutiny related workload of service providers and promote a stronger emphasis on improvement. The proposed model creates the framework that will facilitate collaborative working and break down the barriers to joint working that exist in the current landscape. There is a risk however that stronger information powers may meet with some opposition particularly where there is a need to access health records. Consequently the two new bodies will be required to produce a joint code of practice, consulting with appropriate representative organisations. This will be approved by Scottish Ministers and observance by staff undertaking inspections will be mandatory.

COSTS AND BENEFITS

Sectors and groups affected

11. The principal impact of these proposals will be on the Local Authorities that provide care and social work services and the Regional Health Boards that provide NHS healthcare. However the scope of the services affected will be much broader and will include the full range of service providers currently defined in section 2 of the Regulation of Care (Scotland) Act 2001 and any additional health or care services that the Scottish Ministers decide it is necessary to regulate. The proposals will also impact on the general public and in particular those who use care, social work and healthcare services.

Benefits

12. The principal benefits for Local Authorities and NHS Boards should result from the adoption of a more risk-based approach to scrutiny and the stronger emphasis the new bodies will place on promoting and supporting improved outcomes for service users. The reduction in the number of bodies, greater integration and multi-agency working will also bring about benefits in reducing the scrutiny burden on Local Authorities and NHS Boards. In addition broader information powers will make

it easier to identify and highlight shortcomings where services are provided by more than one agency.

13. Assurance of the quality of healthcare and social services across the public and independent sector will continue. The more proportionate approach to inspection will ensure that the impact on those that provide the high quality services is reduced. For the public, simplification should make it easier to understand the remit of each body, to access reports on their activities and receive assurance that services are safe and achieving the required national standards.

Costs

14. At present it is expected that the bodies will achieve recurring savings that will match the setting up costs of each body. These savings will be achieved by measures to integrate and share services and develop new models for scrutiny. It is estimated that these efficiencies will total £2m a year for the social care and social work body and £ 0.16m for the healthcare body. It is anticipated that local authorities may also make some savings as a result of the reduction in the number of inspection visits, but providing an estimate of the size of these savings will be difficult until the new care and social work body has developed a detailed business model. The cost of external scrutiny will reduce over time as self-assessment provides greater assurance of the quality of services and demonstrates continuous improvement.

15. To set up the new bodies, there will be a number of transitional and ongoing costs, many of which will have to be met before the benefits of the efficiencies described above are fully realised. These will include engagement with stakeholders, organisational development and operational costs associated with rationalising IT systems, developing new websites and rebranding. They will also include recruitment and staff costs, which will be the most significant element. For Social Care and Social Work Improvement Scotland these transitional costs (£5.560M) will be much larger than for Healthcare Improvement Scotland (£391K) reflecting the greater number of staff to be integrated in the new social care and social work body and the likely impact of harmonisation, early severance and retirement.

SMALL/MICRO FIRMS IMPACT TEST

16. It is not expected that the provisions in this proposal will have a direct or immediate impact on small and micro businesses. Changes in regulation brought about by the additional powers proposed may ultimately affect small businesses providing care and healthcare services that will be required to meet the cost of regulation through fees. However as with the Regulation of Care (Scotland) Act 2001, it is expected that an order creating such changes and making proposals for registration fees will be subject to a separate consultation and regulatory impact assessment.

LEGAL AID IMPACT TEST

17. It is not expected that these proposals will have a significant impact on use of the legal aid fund.

TEST RUN OF BUSINESS FORMS

18. Currently there is no intention to introduce any new forms as a direct result of this proposal. Eventually some new forms may be required to support changes in

the services regulated but as highlighted above these changes would be the subject of a separate impact assessment.

COMPETITION ASSESSMENT

19. It is unlikely that the proposals will have a significant impact on competition. Standards will be applied consistently to services and registration fees for independent providers of health and care services will be set proportionately, taking account of the size of the organisation and potential impact.

ENFORCEMENT, SANCTIONS AND MONITORING

20. Implementation of the proposals will be the responsibility of the Boards of the two new bodies which will be appointed by Scottish Ministers. Performance will be monitored informally by the Scottish Government and through formal meetings or reviews with the Scottish Ministers which will take place at least once a year and the formal requirement to produce an annual report on performance.

IMPLEMENTATION AND DELIVERY PLAN

21. If the Bill is passed, it should receive Royal Assent in mid 2010. This will allow the appointment of a shadow Board for each new body and the appointment of the Chief Executives and Directors. The existing bodies will be dissolved and the new ones established on 1 April 2011. It will be the responsibility of the Boards and senior executives of the new bodies to review progress and create a strategy and implementation plan to achieve the objectives of this part of the Bill. If necessary this will be supported by a further RIA.

POST IMPLEMENTATION REVIEW

22. In addition to the formal reviews by the Scottish Ministers outlined above, performance will also be monitored by the wide range of stakeholders and through representative bodies such as COSLA, meetings of the NHSScotland Chairs and Chief Executives, the Scottish Independent Hospitals Association and key patient groups. Their feedback on progress and the effectiveness of the changes that have been implemented will provide a valuable reflection of how successfully the objectives of this part of the Bill are being achieved. However it is considered important that a more rigorous and independent assessment also be undertaken. This will be commissioned by Scottish Government three years after the formation of the new bodies.

SUMMARY AND RECOMMENDATIONS

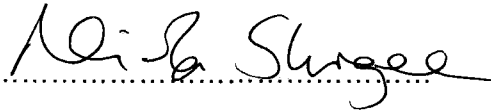
23. The provisions in this part of the Bill and summarised in Option 2, provide scope to reduce the number of bodies involved in the scrutiny and improvement of social services and healthcare and to implement a number of the recommendations made by Professor Crerar in his report on the regulation, audit, inspection and complaints handling of public services in Scotland. The proposals will create closer integration of the organisations currently involved in scrutiny, provide a greater opportunity to share business facilities, promote a more proportionate and risk based approach to inspection and provide more flexible information powers to support multi-agency working. Creation of the new organisations will generate transitional costs currently estimated as £5.951m but will be offset by recurring annual savings estimated as £ 2.16m.

24. The alternative option is to take no action which will fail to produce the simplification and improvements sought or the longer term savings. As a result the proposals outlined in Option 2 are recommended.

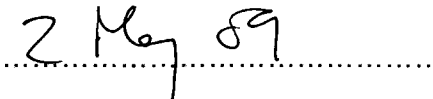
DECLARATION AND PUBLICATION

25. I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the Responsible Minister



Date



Contact

Any queries about this RIA should be addressed to:

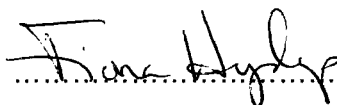
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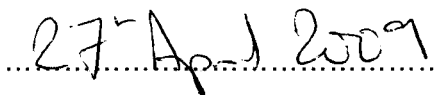
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