

Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill

[AS AMENDED AT STAGE 2]

CONTENTS

Section

PART 1

CHILDREN'S SERVICES

- 1 Joint inspection of children's services
- 2 Participation in inspections
- 3 Conduct of inspections

PART 2

SOCIAL WORK SERVICES

- 4 Appointment of social work inspectors
- 5 Functions of inspectors

PART 3

GENERAL

- 6 Regulations and orders
- 7 Interpretation
- 8 Consequential amendments and repeals
- 8A Ancillary provision
- 9 Short title and commencement

Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision for the carrying out of joint inspections of the provision of services to children; and to make provision as to the appointment of persons to act as social work inspectors and their functions.

PART 1

CHILDREN'S SERVICES

5

1 Joint inspection of children's services

- (1) Any two or more of the persons and bodies to which this section applies must, at the request of the Scottish Ministers, conduct an inspection relating to the provision of children's services.
- 10 (2) The Scottish Ministers may request under subsection (1) that there be conducted an inspection of the provision of—
- (a) all children's services in the relevant area;
 - (b) such children's services provided in the relevant area as they may specify; or
 - (c) such children's services provided to a particular child or particular children as they may specify.
- 15 (3) In paragraphs (a) and (b) of subsection (2), the "relevant area" is the whole of Scotland or such part of Scotland as the Scottish Ministers specify in their request.
- (4) The purposes of an inspection under this section are—
- 20 (a) to review and evaluate the effectiveness of the provision of the services which are the subject of the inspection or, in the case of an inspection referred to in subsection (2)(c), the effectiveness of the provision of those services to the particular child or particular children in question; and
 - (b) to enable those conducting the inspection to report to the Scottish Ministers and to make recommendations to them.

(5) An inspection under this section is to be conducted in accordance with—

- (a) a timetable approved by the Scottish Ministers;
- (b) any directions issued by the Scottish Ministers.

5 (5A) A person or body conducting an inspection under this section shall have regard to any code of practice prepared and issued by the Scottish Ministers for the purpose of—

- (a) giving practical and general guidance on matters relating to such an inspection (including, without prejudice to that generality, such matters as access to confidential information and the holding, sharing and destruction of such information); and
- 10 (b) promoting what appear to them to be desirable practices with regard to such matters.

(6) The persons and bodies to which this section applies are—

- 15 (a) Her Majesty's inspectors of schools (that is to say, the inspectors of schools appointed by Her Majesty on the recommendation of the Scottish Ministers under the Education (Scotland) Act 1980 (c.44));
- (b) social work inspectors appointed under section 4 of this Act;
- (c) the Scottish Commission for the Regulation of Care;
- (d) Her Majesty's Chief Inspector of Constabulary;
- (e) Her Majesty's Chief Inspector of Prisons for Scotland;
- 20 (f) any special Health Board constituted by order under section 2(1)(b) of the National Health Service (Scotland) Act 1978 (c.29); and
- (g) any other person or body specified by the Scottish Ministers in an order made by statutory instrument.

2 **Participation in inspections**

25 (1) The Scottish Ministers may direct a person or body not listed in, or specified under, subsection (6) of section 1 to participate in the conduct of an inspection under that section to the extent and for the purposes specified in the direction.

30 (2) In directing under subsection (1) a person or body to participate in an inspection, the Scottish Ministers may also direct that the person, or any person authorised by the body, is not to be able to exercise any such power conferred by regulations under section 3 as is specified in the direction or is to be able to exercise any such power only to the extent or for the purposes there specified.

3 **Conduct of inspections**

(1) Regulations may make provision—

- 35 (a) requiring or facilitating the sharing or production of information (including medical records) for the purposes of an inspection under section 1;
- (b) requiring any person to provide to an authorised person an explanation of information produced to the authorised person;

(c) requiring information produced to an authorised person to be held in compliance with prescribed conditions and further disclosures to be made in compliance with such conditions;

5 (d) empowering an authorised person to enter any premises for the purposes of an inspection under section 1;

(e) empowering an authorised person to disclose to a person prescribed for the purposes of this paragraph any information of a prescribed nature which the authorised person holds in consequence of such an inspection;

10 (f) creating offences punishable on summary conviction by a fine not exceeding level 4 on the standard scale for the purpose of enforcing any provision of the regulations.

(1A) Where an authorised person is in possession of confidential information which has been obtained for the purposes of an inspection under section 1, the authorised person shall not use or disclose that information other than—

15 (a) for the purposes of that inspection;

(b) so as to comply with an enactment or court order requiring disclosure;

(c) to the extent considered necessary by the authorised person for the purpose of protecting the welfare of any child; or

20 (d) to the extent considered necessary by the authorised person for the purpose of the prevention or detection of crime or the apprehension or prosecution of offenders.

(2) In this section, “authorised person” means an individual responsible for, or authorised by a body responsible for, conducting an inspection under section 1 and, subject to section 2(2), includes an individual directed under section 2(1) to participate in the conduct of an inspection or authorised by a body so directed.

25 **PART 2**

SOCIAL WORK SERVICES

4 Appointment of social work inspectors

30 The Scottish Ministers are to appoint persons to be known as social work inspectors and those inspectors are to carry out the functions conferred on them by or under this Act or any other enactment.

5 Functions of inspectors

(1) The inspectors shall—

(a) conduct inspections of, and investigations into, the provision of social work services; and

35 (b) encourage improvement in the provision of those services.

(2) An inspection or investigation under this section is to be conducted in accordance with—

(a) a timetable approved by the Scottish Ministers;

(b) any directions issued by the Scottish Ministers.

- (3) Regulations may make provision concerning the exercise of functions under subsection (1) and in particular provision—
- (a) as to the types of inspection or investigation which may be conducted;
 - (b) requiring or facilitating the production by a social work service provider to an inspector of information (other than relevant medical records);
 - (c) requiring or facilitating the production by a social work service provider to a medically qualified inspector of relevant medical records;
 - (d) requiring explanations of information to be provided to an inspector;
 - (e) empowering an inspector to enter any premises;
 - (f) empowering an inspector to disclose to a person prescribed for the purposes of this paragraph any information of a prescribed nature which the inspector holds in consequence of exercising functions under subsection (1);
 - (g) creating offences punishable on summary conviction by a fine not exceeding level 4 on the standard scale for the purpose of enforcing any provision of the regulations.

PART 3

GENERAL

6 Regulations and orders

- (1) Any regulations under this Act shall be made by the Scottish Ministers and the power to make regulations is exercisable by statutory instrument.
- (2) Any power to make an order or regulations includes power to make—
- (a) such incidental, supplementary or consequential provision as the Scottish Ministers think necessary or expedient;
 - (b) different provision for different cases.
- (3) A statutory instrument containing an order under this Act (except, where subsection (4) applies, an order under section 8A) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) No statutory instrument containing—
- (a) regulations under this Act; or
 - (b) an order under section 8A which adds to, replaces or omits any part of the text of an Act,
- may be made unless a draft of the statutory instrument has been laid before and approved by a resolution of the Parliament.

7 Interpretation

- (1) In this Act—
- “child” means a person under 18 years of age;
 - “children’s services” means services provided predominantly to, or for the benefit of, children to which the provisions of section 15(1) of the Local Government in Scotland Act 2003 (asp 1) apply;

“inspector” means a person appointed under section 4;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

5 “medical records” means records relating to the physical or mental health of an individual;

“medically qualified inspector” means an inspector who is a registered medical practitioner;

“registered medical practitioner” shall be construed in accordance with section 2 of the Medical Act 1983 (c.54);

10 “relevant medical records” means medical records which have been prepared by a registered medical practitioner who is, or has been, responsible for the clinical care of the individual to whom the records relate;

“social work service” means—

15 (a) a service which is provided by a local authority in the exercise of any of their social work services functions; or

(b) a service which is provided by another person pursuant to arrangements made by a local authority in the exercise of their social work services functions;

20 “social work services functions” means functions under the enactments specified in subsection (2).

(2) The enactments referred to in the definition of “social work services functions” in subsection (1) are—

(a) Part IV of the Children and Young Persons (Scotland) Act 1937 (c.37);

25 (b) sections 22(2) to (5A) and (8), 26(2) to (4), 43, 45, 47 and 48 of the National Assistance Act 1948 (c.29);

(c) the Disabled Persons (Employment) Act 1958 (c.33);

(d) section 11 of the Matrimonial Proceedings (Children) Act 1958 (c.40);

(e) the Social Work (Scotland) Act 1968 (c.49);

30 (f) the Social Work (Scotland) Act 1968 as read with sections 1 and 2(1) of the Chronically Sick and Disabled Persons Act 1970 (c.44) and the Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33);

(g) the Children Act 1975 (c.72);

(h) the Adoption (Scotland) Act 1978 (c.28);

35 (i) sections 21 to 23 of the Health and Social Services and Social Security Adjudications Act 1983 (c.41);

(j) the Foster Children (Scotland) Act 1984 (c.56);

(k) sections 38(b) and 235 of the Housing (Scotland) Act 1987 (c.26);

(l) Part II of the Children (Scotland) Act 1995 (c.36);

(m) section 51 of the Criminal Procedure (Scotland) Act 1995 (c.46);

40 (n) section 10 of the Adults with Incapacity (Scotland) Act 2000 (asp 4);

(o) the Community Care and Health (Scotland) Act 2002 (asp 5);

(p) the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

(3) The list of enactments in subsection (2) may be amended by regulations.

(4) For the purposes of this Act, information is “confidential information” where—

(a) the identity of an individual is ascertainable—

(i) from that information; or

(ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person holding that information; and

(b) the information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.

8 Consequential amendments and repeals

(A1) In section 36(5) of the Children (Scotland) Act 1995 (c.36) (welfare of certain children in hospitals and nursing homes etc.)—

(a) after “inspection)” insert “(as in force immediately prior to their repeal by section 8 of the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2005)”; and

(b) for “apply” where it occurs for the second time substitute “applied”.

(1) In paragraph 19 of schedule 1 to the Freedom of Information (Scotland) Act 2002 (asp 13) (Scottish public authorities), for the words from “(that is to say” to “(c.49))” substitute “appointed under section 4 of the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2005 (asp 00)”.

(1A) In the Management of Offenders etc. (Scotland) Act 2005 (asp 14)—

(a) for paragraph (c) of section 2(2) (co-operation for purposes of inspections) substitute—

“(c) a social work inspector”; and

(b) for paragraph (a) of section 6(2) (power of Scottish Ministers to require action by community justice authority) substitute—

“(a) a social work inspector”.

(2) The following enactments are repealed—

(a) section 6 of the Social Work (Scotland) Act 1968 (c.49);

(b) paragraph 50 of Schedule 3 to the Children Act 1975 (c.72);

(c) paragraph 10 of Schedule 3 to the Adoption (Scotland) Act 1978 (c.28);

(d) paragraph 5 of Schedule 2 to the Foster Children (Scotland) Act 1984 (c.56);

(e) section 53 of, and paragraph 10(4) of Schedule 9 to, the National Health Service and Community Care Act 1990 (c.19);

(f) paragraph 15(6) of Schedule 4 to the Children (Scotland) Act 1995 (c.36);

(g) in Part II of Schedule 2 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), the entry relating to section 6 of the Social Work (Scotland) Act 1968; and

- (h) paragraph 1(5) of schedule 4 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

8A Ancillary provision

- 5 (1) The Scottish Ministers may by order made by statutory instrument make any supplementary, incidental or consequential provision which they consider necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) The provision which can be made under subsection (1) includes provision amending or repealing any enactment.

10 **9 Short title and commencement**

- (1) This Act may be cited as the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2005.
- (2) This Act comes into force on the day after Royal Assent.

Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision for the carrying out of joint inspections of the provision of services to children; and to make provision as to the appointment of persons to act as social work inspectors and their functions.

Introduced by: Peter Peacock
On: 28 October 2005
Supported by: Robert Brown, Mr Andy Kerr
Bill type: Executive Bill

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2005.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary
Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
Astron.

ISBN 1-4061-1642-4



9 781406 116427