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Regulation of Care (Scotland) Bill: Childcare and Early Education

The Regulation of Care (Scotland) Bill was introduced to Parliament on 21st December. It aims to bring a greater degree of uniformity to the regulatory framework governing social care services. This paper considers the implications for children's day care and early education services. It focuses on how services are defined in the Bill, the increasing connection between education and care and the relation of the regulatory framework to the expansion of childcare and early education. It does not cover services for looked after children, foster services, adoption services or residential schools.

THE REGULATION OF CARE (SCOTLAND) BILL: IMPLICATIONS FOR CHILDCARE AND
EARLY EDUCATION

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SUMMARY

The Regulation of Care (Scotland) Bill was introduced on 21st December 2000. The Bill seeks to set up the Scottish Commission for the Regulation of Care (in 2002) and the Scottish Social Services Council (in 2001). The Council will register the workforce and regulate training and qualifications of staff. The Commission will register and inspect social care services. The new framework will bring together a wide range of care services under one national regulatory system, these are¹:

- Home care
- Services to promote the social inclusion of adults
- Care homes for adults
- Housing support services
- Nurse agencies
- Early education and childcare
- Care homes for children
- Care and welfare in boarding schools and school hostels and
- Care and welfare in accommodation for offenders.

The Bill defines ten types of care service:

- Support service
- Care home service
- School care accommodation service
- Independent health care service
- Nurse agency
- Secure accommodation service
- Offender accommodation service
- Child minding and day care of children
- Housing support service.

The Executive is considering how to include foster care and adoption services within the regulatory framework. These services were included in *The Way Forward For Care*.

Key general issues are whether services are similar enough to be part of a single regulatory framework and whether the balance of regulation and flexibility is right. The bill is largely 'enabling', in that it provides for the setting up of a regulatory framework but allows for much of the detail to be specified in regulations and subordinate legislation.

This paper will consider aspects of the Bill which relate to childminding and day care of children.

¹ Scottish Executive (July 2000) *The Way Forward For Care: A Policy Position Paper*

The Policy Memorandum sums up the need for legislation:

Although day care for children is governed by a more modern regulatory regime, under the Children Act 1989, this system is in need of modernisation too, particularly in view of the expansion taking place in such services and links to early education.²

In a statement to Parliament on 18th May 2000 Sam Galbraith, then Minister for Education announced;

Regulation has played a key role in ensuring quality provision for children and parents. We believe it must continue to play a key role. Children are vulnerable: we need to ensure their safety and to ensure that they are not simply "minded" but receive enjoyable and stimulating care.

"When we regulate we must ensure that we are fair to providers and fair to families. A level playing field will help ensure that providers respond to families' needs but regulation must also be proportionate to risk and consistent.

In setting up the Scottish Commission for the Regulation of Care the Bill will:

- Remove the current differences in registration and inspection which have arisen through services using either a Social Care or Education framework. For example, local authority nurseries and voluntary sector nurseries will be covered by the same regulatory framework.
- Remove the current differences between local authority areas by bringing in a national system based on national standards.
- Increase the age of children covered by registration and inspection from eight years to sixteen years.

The Scottish Social Services Council will:

- Introduce the registration of the workforce, rather than just registration of services. This will be done in phases for different types of services. Childcare and early education will be covered by the second phase.
- Regulate qualifications and training for all social service workers.

The Bill will also:

- Enable Local Authorities to make grants in respect of childcare and gives a statutory basis to Scottish Executive Childcare Strategy grants.
- Repeal Part X and Schedule 9 of the Children Act 1989.

The intention is that everything which is currently regulated will remain regulated. The main extensions to regulation will be

- the registration of the workforce
- the inclusion of services for children between 8 and 16 years
- the inclusion of day care services in independent schools

In relation to childcare and early education the following issues emerge:

² Policy Memorandum para 3

- **Increasing uniformity in regulation and inspection.** By encompassing early education and childcare within the definitions of 'day care' and 'childminding', the Bill continues the established policy of emphasising the close connection between education and care and of encouraging partnership between the public, private and voluntary sectors in planning care services.
- **Increasing Services.** The regulatory system needs to also take into account the current policy of expansion of childcare and early education services.
- **National System.** The Bill removes the regulation and inspection function from local authorities to a national Scottish Commission for the Regulation of Care.
- **Diversity of Provision.** Services needs to be similar enough to be covered by one system. In addition to the wide range of services covered by the Bill, there is a great diversity of provision within day care and early education. There is however, general support for a more uniform, national system of regulation.³
- **The balance of regulation and flexibility.** The Bill needs to define which services need to be included. In assessing which services should be regulated it is necessary to consider whether the burden of regulation outweighs the necessity for the safety and quality of care. This is highlighted in the discussion about whether nannies should be regulated. See p.20
- **Financing the Commission and the Council.** The intention was that regulation of all care services would be self financing by 2004-05. However, registration fees for childcare and early education services will be subsidised by the Scottish Executive.⁴ There will be annual registration fees for all social care service workers.
- **Financing the improved standards.** The Scottish Pre-school Play Association has pointed out that there are significant resource implications, especially for voluntary organisations which need to fund new training requirements.⁵
- **Differences in Wales and England.** In the recent Care Standards Act 2000, which applies only in England and Wales, a children's rights perspective was used to establish a Children's Rights Commissioner in Wales. In England, there will be a Children's Rights Director, whose functions will not be as wide as the Commissioner, but whose remit will cover children's services regulated by the Care Standards Act. The inspection framework also differs in England - childcare and early education are regulated by OFSTED.

³ For example, SINA response to Executive consultation on *Regulating Care and Social Services Workforce*.

⁴ Financial Memorandum p31.

⁵ SPPA response to *Regulating Care and the Social Services Workforce*

Aspects of the Bill relevant to the general working of the Scottish Commission for the Regulation of Care and the Scottish Social Services Council and the proposals for other areas of care provision will be considered in a forthcoming paper. An overview of the proposals is given in SPICe Research Note [RN-00/79 Regulating Care](#)

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INTRODUCTION

This paper outlines the context of the current expansion of early education and childcare and related policies. It considers the diversity of current provision and how to define which services should be included. The terms childcare, day care, early education and pre-school are all often used to describe children's services. In this paper, childcare is used to refer to non-residential care for children. The paper's structure reflects the order in which the issues discussed appear in the Bill.

Early education is used to describe the educational aspect of a service. More specifically, it describes a service which provides education as set out in the [3-5 Curriculum Framework](#). However, these services are not exclusively nurseries; they can include services which also have a care component.

Childcare is used to describe a wide range of services, from Playgroups to Breakfast Clubs and can usefully be considered to refer to the care aspect of a service rather than a specific service.

The Bill incorporates the above in definitions of Daycare and Childminding. Daycare is a service on non-domestic premises which can include education and care and Childminding is a service on domestic premises which can also include education and care.

Section 5 of the Bill introduces Section 4: National Care Standards. This aspect is dealt with in this paper under National Standards which outlines self assessment using *The Child at the Centre* and changes to adult to child ratios.

The section on complaints discusses the provisions in the Bill for users to complain about care services and compares them to the development of a Children's Rights Commissioner in Wales and a Children's Rights Director in England.

Further sections of the paper look at particular functions of the Scottish Commission for the Regulation of Care (the Commission) in relation to registration and inspection of services, including the relation of the HMI to the inspection of services.

The final two sections consider the functions of the Scottish Council for Social Services in respect to the registration and regulation of training and qualifications of the social services workforce.

The appendices give web links to relevant consultation and policy documents. A list of relevant current legislation is also included.

The Bill will be considered by three committees at stage one; Health and Community Care, Local Government and Education, Culture and Sport. The Health committee will be the lead committee. The Stage 1 debate is expected to be held in March. The Bill is expected to be passed by early summer.

SECTION ONE: POLICY CONTEXT

Consultation and Policy Development

There have been two consultation processes, one from a social services perspective and another from the perspective of childcare and early education. The conclusions from both these consultations are implemented through the Regulation of Care (Scotland) Bill.

Modernising Social Work Services - A Consultation Paper on Workforce Regulation and Education was published in December 1998. *Aiming for Excellence - Modernising Social Work Services in Scotland* was published in March 1999 and proposed a new regulatory body, the Scottish Commission for the Regulation of Care, which, in addition to registration and inspection of residential and home-based social care, would also regulate non-residential childcare. A more detailed paper *Regulating Care and the Social Services Workforce: a Consultation Paper* was published in December 1999.

The main period of consultation for the current proposals on childcare was between March and June 1999. Following this consultation, the proposed regulatory framework was extended to include local authority pre-school education provision. *Regulation of Early Education and Childcare* was published in March 1999 with consultation until June 1999. It looked in detail at issues specific to non-residential childcare and asked for views on:-

- Whether the age range for regulated services should be increased
- What types of provision should be regulated. It proposed that nannies, au pairs and informal care by relations and friends should not be regulated, but asked for views on how to help parents choose nannies.
- Whether there should be a change to the number of hours a service was provided for before it was registered.
- How to set standards in the quality of care, staff qualifications, staff ratios and space ratios.

Regulation of Early Education and Childcare - The Way Ahead

The Scottish Executive's response to the 1999 consultation was published in May 2000 and states their intention to extend the changes to regulation of care to include regulation of local authority pre-school education provision.

The main proposals, as announced by the Minister for Children and Education on 18 May 2000 are

- Extending regulation to a local authority's own provision for 0-5s. At the moment, nurseries, out of school clubs and childminders who provide for children under eight are regulated. But at the moment this regulation is limited to private and voluntary sector provision. Extending regulation will ensure safe and quality care and help create a level playing field.
- Extending protection to older children. At the moment care for under eights is regulated but we intend that regulation should apply to care for all children of primary school age.
- For children of secondary school age, we intend to require that fit person checks are made of all staff. We believe this limited form of regulation is in keeping with the level of risk.

Regulation of Early Education and Childcare: The Way Ahead covers proposals for education and childcare in more detail than *The Way Forward for Care, A Policy Position Paper* (July 2000)

The Way Forward for Care, A Policy Position Paper published in July 2000 incorporated the consultation on *Regulating Early Education and Childcare* and the consultation on *Regulating Care and the Social Services Workforce*.

Immediately prior to the introduction of the Bill, Nicol Stephen, Deputy Minister for Education, Europe and External Affairs, announced the extension of the age range discussed in *The Way Forward for Care*. The regulations would now apply services for children up to the age of 16 years.

Expansion of Early Education and Childcare

The changes to regulation of childcare and early education must be seen within the framework of the current expansion of services provided through for example, the Childcare Strategy, expansion of criminal records checks on individuals working with children, the consultation on the Consultancy Index and the changes to childcare regulation in England and Wales.

The [Childcare Strategy in 1998](#) outlined proposed action for improving the affordability, quality and access to formal childcare. It proposed local action through childcare partnerships in each local authority and encouraged the closer integration of early education and childcare.

The [programme for government](#) set out a series of commitments, with timescales, to deliver high quality, affordable, accessible childcare

- develop the Childcare Strategy for Scotland and set up a new National Childcare Information Line by December 1999.
- establish a new independent regulatory body by 2001 to ensure high quality care for children.
- Having delivered a nursery place for every 4-year-old, we will ensure a nursery place for every 3-year-old whose parent wants it by 2002.
- train 5,000 new childcare workers by 2002.
- expand support for families and very young children through family centres, and mobile and outreach services, for at least 5,000 additional children by 2002.
- provide out of school care places for 100,000 children by 2003.
- We will also establish a Consultancy Index of Adults deemed unsuitable to work with children.

These commitments are implemented mainly through the following developments:

- Childcare Partnerships were set up in 1998 in each local authority. They bring together public, private and voluntary sector providers to plan for the integrated expansion of early education childcare for 0 to 14 year olds. Scottish Executive Guidance was published in [1998](#) and [1999](#) on how to take forward audits of local provision and establish a programme of three year plans. They are statutory, but have an advisory role and are expected to contribute views and proposals for service development to the local authority. Scottish

Executive Education Department is presently undertaking a review of the way partnerships have been established, how they are operating and what kind of central support might be offered by the Executive to enhance their operation.

- The national childcare information line and the web site [Childcare Link](#) were launched in 1999. General information on early years provision is also available through the National Grid for Learning sites [Early Years](#) and [ParentZone](#)
- [Childcare the Training Challenge](#) announced funding to improve access to training and measures to encourage recruitment. (see section 9: Training and Qualifications)
- A [Curriculum Framework for Children 3-5](#) was launched in June 1999. It is now a requirement for all Executive funded early education providers.
- The Childcare Tax Credit in the [Working Families Tax Credit](#) provides money towards the cost of childcare. The government is planning to introduce an Integrated Child Credit in 2003 which will bring together the various strands of income related support for children. This is currently being considered by the House of Commons Social Security Committee.
- Child safety
*Criminal record checks.*⁶ The implementation of Part V of the Police Act 1997 will introduce three levels of checks. Private and voluntary sector organisations will be able to ask prospective employees to apply for a criminal record check. The system is intended to be self-financing. However, on 12th December Jackie Baillie announced⁷ that checks would be free for volunteers working in the voluntary sector.

Consultancy Index. The Executive has recently consulted on the desirability of keeping a register of adults considered unfit to work with children.⁸ The Index will include the names of people not otherwise covered by Part V of the Police Act 1997. Names to be included on the Index will be those of persons who have been dismissed or transferred from positions giving access to children by reason of misconduct which has caused a child (or children) harm or has put a child (or children) at risk of harm. The names of persons who resigned or simply walked out in such circumstances to avoid dismissal would also be notified to the Index by their employers.

Regulated employers would be required to notify the Index of people falling into the above categories and would also be required to check the Index when a prospective employee would have regular contact with children.

⁶ See SPICe RN 00/20 [Access To Criminal Record Information Under Part V Of The Police Act 1997](#)

⁷ [Scottish Executive News Release 12 December 2000](#)

⁸ Scottish Executive (2000) [Protecting Children, Securing Their Safety](#) Consultation period ended October 2000.

Reviewing The Public Complaints System In Scotland

The Executive published a consultation '[Modernising the Public Complaints System in Scotland](#)', in October 2000.⁹ The Executive propose to review the structure and introduce a 'one stop shop'. It covers the following ombudsmen:-

- Scottish Parliamentary Commissioner for Administration
- Health Service Commissioner for Scotland
- Local Government Ombudsman for Scotland
- Housing Association Ombudsman for Scotland
- Scottish Commissioner of Appointments to Public Bodies

The Executive is inclined not to extend the remit of ombudsmen with the possible exception of the External Complaints Adjudicators for Scottish Enterprise and Highlands and Islands Enterprise. The Executive also proposes that any new legislation would specify the authorities which are *not* within the Ombudsman's jurisdiction, removing any need for frequently amending the legislation as new authorities are established. (para. 3.2-3.3)¹⁰

Childcare Regulation in England and Wales

The Care Standards Act 2000 set out a new regulatory framework for care services in England and Wales.

The main general provisions of the Act are to:

- Set up a National Care Standards commission, whose responsibilities include registration and inspection of a range of services.
- Establish a General Social Care council to maintain registers of social care workers; to develop codes of practice for social care work; and to be responsible for approving relevant training courses.
- Establish a list of people considered unsuitable to work with vulnerable adults.

The main provisions of the Act specifically related to childcare are to:

- transfer the regulation of childcare from local authorities OFSTED and reform some of the rules
- provide for the post of Children's Rights Commissioner in Wales
- provide for the post of Children's Rights Director in England

There are therefore key differences between the approach in England and Wales and the approach in Scotland. In Scotland, regulation of childcare will be through the Scottish Commission for the Regulation of Care although HMI will continue to

⁹ See also SPICE Research Note RN-00/108 '[Public Sector Ombudsmen](#)' for an overview of the current system.

¹⁰ SPICe Research Note (2000) '[Public Sector Ombudsmen](#)' p14,

also inspect local authority early education. There is no provision for a Children's Rights Director or Commissioner in the Scottish Bill.

SECTION TWO: THE DIVERSITY OF CURRENT PROVISION

This section gives an overview of the nature of services which come within day care, childminding and early education. The following section 'Services to Be Regulated' will consider how the Bill incorporates these services into a definition of day care and childminding. There is great diversity in the type of childcare and early education provision available which has arisen due to their different origins and different emphases on either education or care. Childcare includes a spectrum of provision from relatively formal local authority nursery classes through to informal, unpaid care by friends and relatives.

Early Education – The Current System

This sub-section outlines the current system of local authority early education and how local authorities now commission early education from a variety of sources.

Nursery Classes and Schools are run by the local authority education department. They provide education in line with the 3-5 curriculum guidelines and are inspected by HMI. Standards regarding staff qualifications and adult to child ratios in these pre-school settings are given in the Schools Code 1956. Standards on space are set out in the Schools Premises (General Requirements and Standards) (Scotland) Regulations 1967.

The Education Scotland Act 1980 gave local authorities a power to establish new nurseries. The Standards in Scotlands' School Act 2000 made this a duty.

The overall policy context for the expansion of pre-school education has altered from the voucher scheme of 1996-98 to local authority led partnership arrangements. However, the aim of increasing the diversity of settings in which pre-school education is delivered has remained.

Under the pre-school education grant scheme, announced in 1997, education authorities are responsible for planning and co-ordinating pre-school education services. Authorities were invited to consider the scope for developing local provision through partnership with other providers, 'commissioning' pre-school places from private nurseries, playgroups and, in some authorities, from childminders. All services registered for the provision of pre-school education provide the 3-5 curriculum and are inspected by HMI.¹¹ This means that many services now provide both care and education.

The most recent pre-school census shows returns for all centres registered to provide early education, of which around 70% were local authority education department nurseries.

The latest annual [pre-school census](#) showed

¹¹ See HMI (2000) *The Quality of Pre-school Education In Registration Inspections In Scotland 1998-99*

- At February 1999, there were 1,712 pre-school education centres in Scotland. The large majority of these, 69.3 percent were Local Authority pre-school centres registered with Scottish Executive Education Department.
- Over 79,000 children were attending pre-school education centres in Scotland at February 1999. The majority of these, 79.5 percent were attending Local Authority pre-school centres. Over 54,000 children attending pre-school centres were in their pre-school year, which is estimated to represent around 97 per cent of all children of pre-school age.
- The number of qualified teachers (FTE) was around 1,380. The majority of these, 86.9 percent, were in Local Authority pre-school centres.
- At February 1999, the average child/teacher ratio in pre-school education centres was estimated to be 31. In Local Authority pre-school centres the child/teacher ratio was 29.2. This compares with 49.8 in partnership pre-school centres.
- The total number of all staff (FTE) in pre-school education centres was around 5,400. The majority of these, 73.3 percent were in Local Authority pre-school centres.
- At February 1999, the average child/all staff(including teachers) ratio in all pre-school education centres was estimated to be 7.9. In Local Authority pre-school centres the child/staff ratio was slightly higher at 8.9. This compares with 5.3 in partnership pre-school centres.
- Approximately 70 percent of all children in pre-school centres attend for 5 half days per week. 77 percent of children in their pre-school year attend for 5 half days, this compares with 53 per cent of children in their ante pre-school year, and 62 percent of children who have deferred entry to Primary one. Nearly 17 percent of all children attend for more than 5 half days. This compares with almost 14 percent of all children attending for less than 5 half days.

Childcare

This subsection considers daycare and childminding separately reflecting their separate definition in the Children Act 1989.

Daycare

Daycare for children under eight is currently regulated under the Children Act 1989 Part X . With some exceptions, care is regulated if it is provided for more than two hours per day for more than six days per year. In 1997 it was estimated that there was 3,540 facilities registered as day care providers under the Act.

All nurseries, playgroups, playschemes , out of school care schemes, creches and family centres were surveyed in November 1997 with the exception of those classed as educational establishments. However, results cannot be compared with the results of the pre-school census as there will be some overlap in the type of establishment surveyed. In addition, these figures will not show expansion resulting from the Childcare Strategy. However, the figures are useful in giving a rough guide to the relative numbers in different types of care. A combined survey of day care and childminding is planned for January 2001, which should report in late Summer 2001.

The 3,540 facilities in 1997 were of the following type

Nursery	723
Playgroup	1,734
Playscheme	277
Out of School Care	446

Creche	269
Family Centre	91

The Scottish Out of School Care Network estimate that there are now around 650 Out of School Care Clubs in Scotland. Out of School Care has been a service targeted through the New Opportunities Fund of the National Lottery.

Many of the facilities surveyed in 1997 provided more than one type of service. The range of services provided included

- Nursery
- Creche
- Playgroup
- Playscheme/Holiday cover
- Before school care
- After school care
- Family support services
- Adult education/activities
- Full day care/education
- Sessional daycare /education
- Parent's group
- Parent's room
- Mobile resource/ playbus
- Home visiting
- Parent and toddler group
- Toy library
- Transport duties
- Adventure playground
- Outreach work

Childminding

- In 1998/99 there were 7723 registered childminders in Scotland¹² compared with 8,243 childminders in 1997.¹³
- Sitter services, sometimes called 'flexicare' services offer care in the parents own home. There are around 12 sitter services in Scotland. There are local variations in the interpretation of legislation which means that in some areas services are not required to register.

Other childcare which is not regulated includes nannies, au-pairs, baby sitters and informal care by friends and relatives.

Nature of Diversity

Services are diverse in terms of staff, management and children's activities. Because Local Authorities have discretion in how they exercise their registration

¹² Scottish Childminding Association (1999) *Annual Report 1998/99*

¹³ Government Statistical Service, (1997) *Social Work Day Care Services For Children In Scotland, November 1997: Statistical information note.*

and inspection function based on Scottish Executive Guidance¹⁴ there is also a lack of uniformity between similar services in different local authorities.

Staff

In 1997, over 24,000 adults were involved in the daycare of children under eight years of age, 93 per cent of whom were female.¹⁵

The main characteristics of childcare employment have been described as insecurity, low pay, variable working hours and informal work arrangements.¹⁶ It is also a sector which includes a large number of volunteers. The 1997 survey found that half of adults employed were part-time and 37% of workers were volunteers.

There is great diversity in qualifications held by the childcare and early education workforce. Staff in local authority nurseries must include a fully qualified teacher, with the other staff primarily made up of nursery nurses. There is no requirement for nannies to hold particular qualifications. See section 9: 'Training and Qualifications'.

Management

Daycare is provided by the public, voluntary and private sector and there is great diversity of funding sources for services. Many private sector providers are self-employed childminders. In 1997 over half of all daycare establishments were funded to some extent by charges and around the same number were funded, partly or wholly, by fund raising from parents. Under a quarter received funding from local authority grants and almost ten per cent receive Education Department funding.¹⁷

Children's Activities

There is variation in the level of formality of children's activities reflecting the balance of early education or less formal child care in the service. Services have varying emphases on education, care or family support.

Balancing Flexible Provision With Consistent Standards

The Scottish Household Survey found that 27% of households with children use some form of childcare outside the household. The patchwork of childcare provision has meant that parents often rely on a number of different forms of childcare to cover the working day. Most parents use at least some informal provision to fill in the gaps between the availability of other provision such as nursery or play group.

A review of research in early education commented that,

Current policy acknowledges that parents' needs are very varied. Some parents of pre-school children may simply seek part-time pre-school education. Others will need additional childcare,

¹⁴ Scottish Office (1991) *The Children Act 1989 Regulation and Review of Childminding, Daycare and Education Services for Children under Eight: Guidance for Local Authorities: June 1991*

¹⁵ Government Statistical Service, (1997) *Social Work Day Care Services For Children In Scotland, November 1997: Statistical information note.*

¹⁶ Scottish Poverty Information Unit, (1999) Research Findings No.3 *Visible Childcare: Invisible Workers*

¹⁷ Government Statistical Service, (1997) *Social Work Day Care Services For Children In Scotland, November 1997: Statistical information note.*

for part or all of the day. Some may seek integrated education and childcare services in the one place; for others, it may be preferable to access pre-school education and childcare separately, perhaps using the services of a childminder or nanny for the latter.¹⁸

There is therefore a need to strike a balance between ensuring consistent quality and standards while avoiding over-regulation and allowing for flexibility. The intention in the reform of regulation of childcare is one of

‘ensuring that the regulatory burden is not disproportionate and that provision of similar types is subject to similar regulation’¹⁹

¹⁸ Scottish Executive,(1999) Pre-school Educational Research, *Linking Policy with Practice*. p133

¹⁹ Scottish Executive (2000) *Regulation of Early Education and Childcare: The Way Ahead* p.1.

SECTION THREE: SERVICES TO BE REGULATED

It is intended that all services which are currently regulated shall remain regulated. The Bill defines Care Services which are to be regulated but allow for new definitions of care services and exceptions to the definition to be brought in through regulations (section 3 and section 2.9).

A care service includes childminding and day care. Care services also include 'support services', but these are services for vulnerable people whose vulnerability is not only by virtue of their young age (section 2).

The Bill seeks to define childcare and early education by the service provided rather than by its origins in either social work or education, or in the private, voluntary or public sector. It therefore seeks to define the difference between informal childcare provided by friends and family and formal services which should be regulated.

The Bill distinguishes between ad hoc care arrangements and regular arrangements. As in the Children Act 1989, care for more than two hours per day is regulated. However, as in the Children Act 1989, the Bill puts a requirement on the person providing the care to notify the Commission about whether care is exempt because it is for less than six days in the year (section 12).

The following sections compare the definitions of childminding and daycare in the Bill with those used in the Children Act 1989.

Childminding

<i>Definitions under the Children Act (1989)</i>	<i>Childminding in Regulation of Care Bill²⁰</i>
Care <ul style="list-style-type: none"> • For children under eight years • On domestic premises • For reward • for more than two hours per day and six days per year Exceptions to this is care by <ul style="list-style-type: none"> • A relative • A parent • Someone with parental responsibilities • A foster parent • A nanny 	<ul style="list-style-type: none"> • Looking after one or more children on domestic premises • For reward, • For more than two hours per day and six days per year With the exceptions of <ul style="list-style-type: none"> • Parents and relatives • People with parental responsibilities • Foster parents • Care in the child's home

A nanny in the current system is defined as a person employed to look after a child in the parent's own home by the parent, a relative or someone with parental responsibilities.²¹

The main change is that the Bill removes the age limit of eight years.

²⁰ Section 2(9),(10),(11),(12),(13),(14)

²¹ Children Act 1989 s 71 (13)

Care in the Parent's Home

Care in the parents home is difficult to regulate in a way which would not have implications for informal care. Reasons given by the Executive²² for not regulating this form of care include:

- Parents are responsible for the suitability of premises
- The balance of risk and the need for regulation on relatively informal care
- The existence of other forms of check, such as SCRO checks, the proposed Consultancy Index of adults considered unsuitable to work with children and the existence of a Code of Practice for Nannies

Nannies

Whereas there is agreement among many organisations on the continued exception of unpaid, informal care²³, concern has been expressed regarding the regulation of nannies. For example, the Renfrewshire Childcare Partnership Forum felt that all paid childcare should be regulated to the same standard.²⁴

In the *Regulation of Early Education and Childcare Care: The Way Ahead* the exclusion of nannies was due to:

'the range of safeguards relating to employment of a nanny. Ministers believe these are more appropriate than regulation by the Commission.'²⁵

There is a Code of Practice on employment of nanny agencies and a guide for parents. The Department for Trade and Industry have drafted new regulations on employment agencies, introducing requirements to check persons who will be placed to work with children.

'by making the code part of the regulatory framework its status will be considerably strengthened.'²⁶

Both CoSLA and the Pre School Play Association have suggested that such a code be mandatory. CoSLA suggest that nanny agencies should be regulated, although not au-pairs. Children in Scotland suggest that nannies should be regulated.

In a statement on 18th May 2000 the Minister for Children and Education responded to concerns regarding the regulation of nannies:

"Many respondents had concerns about nannies. Where parents choose to employ a nanny we intend they will benefit from a range of safeguards. Regulation of nanny agencies is being strengthened as part of the Government's approach to employment agencies more generally. A Code of Practice specifically for nanny agencies will be part of this.

²² Scottish Executive (2000) [Regulation of Early Education and Childcare](#) p.5 discussion on care in the parents home in relation to nannies.

²³ Consultation responses to *Regulating Early Education and Childcare* from Children in Scotland, Pre-school Play Association, CoSLA

²⁴ Renfrewshire Childcare Partnership Forum, response to consultation on *Regulating Care and Social Services Workforce* March 2000.

²⁵ Scottish Executive (2000), *The Way Forward For Care* p.17

²⁶ Scottish Executive (2000) *The Way Forward For Care* p.5

"We do not believe restricting parents to employment of registered nannies is a practical option. A register could not be based on qualification; many parents opt for an older person with experience but not qualifications and there is no clear dividing line between nannies and babysitters.

"However we do believe that, as part of checking suitability of a nanny, vetting against criminal records should be available. Our aim is to assist parents in making a fully informed decision."

The [consultation document](#), the [Regulation of Early Education and Childcare](#), highlighted the difficulty in distinguishing between nannies and babysitters:

In seeking a nanny (qualified or unqualified) parents may, through an agency or advertisement, employ someone previously unknown to them. But they may also employ someone well known to them, perhaps a neighbour or family friend. Where parents employ someone previously unknown to them they can seek staff with particular qualifications if they so wish and take up references. Parents do, however, have worries about how they may both check the validity of qualifications claimed and become aware of any concerns expressed by *all* previous employers or, at the extreme, know of any criminal conviction. But steps that might be taken to help parents in this respect are not straightforward. Registering nannies has been suggested. Apart from the complexities of keeping a register up to date it would be necessary to decide who would be registered and whether any requirements could or should be put on parents to check such a register.

The position of nannies is only partly comparable with childminders who are subject to regulation. The regulator ensures that a childminding service being offered to parents is satisfactory. He looks at matters including suitability of premises, adult to child ratios and whether the childminder can be regarded as a fit person to care for children. But in the case of care in the home, parents are able to ensure suitability of premises. They also have direct control over numbers cared for. (If children from more than two families are cared for then care is subject to regulation as this becomes akin to a nursery). This leaves fit person issues.

Sitter Services

The exclusion of childminding in the parent's home (section 9) has implications for the registration of Sitter Services as they would appear to be excluded from registration according to this definition. This means that parents using these services would not be able to access help with childcare tax credits under Working Families Tax Credit. This has particular relevance for Sitter Services whose service is targeted at parents on low incomes.

However the intention is to include Sitter Services:

'Consideration is being given as to how definitions of daycare for the purposes of regulation can be extended to include such services.'²⁷

In the Bill the exclusion of care in domestic premises from day care (section 12) and exclusion of care in the child's home for childminding (section 11) would exclude it. The Scottish Executive is currently considering the issue of how to place Sitter Services within the regulatory framework.²⁸

²⁷ Scottish Executive (1999) *Regulation of Early Education and Childcare, The Way Ahead*, p.6

²⁸ Personal Communication, Scottish Executive 9th January 2001

Day Care

<i>Children Act 1989</i>	<i>Regulation of Care (Scotland) Bill</i>
<p>Day Care regulated under this act is care provided</p> <ul style="list-style-type: none"> • More than two hours in any day • More than six days per year • To children under eight years • On non-domestic premises <p>Exceptions to this are:</p> <ul style="list-style-type: none"> • Day care in independent schools • Activities on school premises managed by the school • Play centres maintained by the education authority under Section 6 of Education (Scotland) Act 1980²⁹ 	<p>Day care includes any form of care or activity for children on</p> <ul style="list-style-type: none"> • non-domestic premises during the day • more than two hours and • more than six days a year <p>Exceptions to this are</p> <ul style="list-style-type: none"> • Children who are patients in hospital. • School activities 'wholly or mainly provided in a public, independent or grant-aided school' which are provided by a school employee or the education authority.

The main change is that the Bill brings together the definition of all forms of nurseries, playgroups, creches and out of school care clubs within a single definition of day care. It also removes the age limit of eight years. This definition also brings childcare provided by independent schools and local authority nurseries within the regulatory framework.

School Activities

As previously, school activities are exempted from the Bill. Therefore after school activities managed by the school, the education authority or carried out by an employee of the school are not regulated by this Bill.

Out of school care clubs are often run on school premises. As in the Children Act 1989, where they are not run by the school, they are included in the Bill.

It would appear that this definition includes youth clubs, and organisations such as Scouts and Guides where the care is for more than two hours. However, the Bill provides for regulations to make exceptions from the definitions given for day care (section 1 (10)).

In *Regulating Childcare: The Way Ahead* it was stated that:

'the intention is not to regulate recreational clubs and uniformed organisations through arrangements for regulating childcare. Other safeguards are more appropriate in these circumstances.' p.7.

²⁹ For the purpose of securing the provision of facilities for social, cultural and recreational activities and physical education and training, an education authority may

(a) establish, maintain and manage

(i) camps, outdoor centres, playing fields and swimming pools

(ii) play areas and centres;

(iii) sports halls, centres and clubs

(iv) youth, community and cultural centres and clubs

and other places at which any such facilities as aforesaid are available;

(b) organise holiday classes, games, expeditions and other activities

The National Association of Inspection and Registration Officers (NAIRO) Scotland raised concerns about the exemption of nanny agencies, recreational clubs and uniformed organisations, suggesting that employers should at least be required to consult the Index of Adults unsuitable to work with children and that exemptions should be reviewed annually.³⁰

Age of Children in Regulated Services

The definition of day care refers to services for children, and a child is a person aged under 16 years (section 55). This has changed from the position in *The Regulation of Early Education and Childcare: The Way Forward*:

'The intention is therefore that in future services for children of primary school age will be regulated.' p.4

and in *The Way Forward For Care*, p.16

Regulation will be extended to services for children of under 15 (or under 17 for children with a disability) ... For services provided only for secondary school age children (under 15 or under 17) the focus will be on suitability of staff. For younger children the quality of care will be addressed too.'

Initially the Executive was going to bring in full regulation for services for children up to the end of primary school age, with a less strict regulation for older children.

Extending protection to older children. At the moment care for under eights is regulated but we intend that regulation should apply to care for all children of primary school age. For children of secondary school age, we intend to require that fit person checks are made of all staff. We believe this limited form of regulation is in keeping with the level of risk.

Minister for Children and Education 18th May 2000

Nicol Stephen, Deputy Minister for Education, Europe and External Affairs, has since confirmed that the Bill covers full regulation of services for all children up to the age of 16 years.³¹ However, most services which provide for older children do not do so exclusively, and so are already covered by the Children Act 1989 in respect of younger children. The Scottish Out of School Care Network estimate that out of 650 clubs in Scotland there are 15 services which are only for children between 8 and 16 years.³² However, as services for older children is an expanding area, the Bill is catering for future need.

³⁰ Quoted in Nursery World 3rd January 2001

³¹ Scottish Executive News Release 19th December 2000

³² Personal Communication, Scottish Out of School Care Network 9th January 2001

SECTION FOUR: NATIONAL STANDARDS

Too much attention has been paid to physical inputs—the number of people, spaces and so on. Although the physical inputs are important, it is the experience and the outcomes that are important. We want to agree a broad list of outcomes, which will be available to Her Majesty's Inspectorate and to the Commission, so that they both examine the same areas.³³

National Care Standards

Section 5 of the Bill provides for Scottish Ministers, to consult on, prepare and publish national care standards for all care services. Inspection of services will be in reference to care standards.

The National Care Standards Committee will develop national care standards for early education and childcare along with standards for all services to be covered by the Bill. The Scottish Executive has established sub-groups for each service area and collated guidelines from local authorities to inform the development of new National Care Standards.³⁴ The Early Education and Childcare group met in November and December 2000.

In England, consultation on national standards for day care and childminding closed on 31st October 2000. Their regulation and inspection framework is different to Scotland but has the same theme of increasing uniformity and integrating early education and childcare.

Currently standards for child care are applied by the local authority with regard to guidance from the Scottish Executive.³⁵ This has led to different standards for childcare being applied in different parts of Scotland. For example, a recent survey³⁶ of all 32 local authorities found that nineteen had some form of local guidance on good practice for care of very young children. Four authorities did not have any, while seven had guidance in either the planning or production stage. The research highlighted South Lanarkshire's guidance 'Learning for Living' as having many of the qualities associated with effective guidance for good practice. Its authors describe it as '...an overview of what we believe represents a high quality curriculum for children aged 0-5 years.'

Other guidance has been developed for playgroups by the Pre-School Play Association and by Scottish Independent Nurseries Association (SINA) for non-local authority nurseries.

Care standards are likely to include:

- 'fit person' considerations
- space standards
- adult to child ratios

³³ [Minister For Children and Education Col 413](#) Debate on Childcare and Early Education, June 15th 2000

³⁴ Scottish Executive (1999) [Good Practice In The Care Of Very Young Children](#). p.12

³⁵ HMI inspect standards in early education provision.

³⁶ Scottish Executive (1999) [Good Practice In The Care Of Very Young Children](#).

- show the service is on a sound financial footing
- good practice guidance based on the *Child at the Centre*
- qualifications and training

Space Standards

Current space standards are currently specified for childcare in guidance made under the Children Act 1989 and under the 1967 Schools Premises Regulations for local authority nurseries. The Care Standards Committee will draw up new space standards.³⁷

Adult to Child Ratios

Currently ratios for local authority services are specified in the Schools Scotland Code, and ratios for private and voluntary sector care in guidance made under the Children Act 1989.

There are different ratios for domestic and non-domestic care and Childminders will continue to be subject to stricter adult to child ratios. The current ratios for childminders are

- 1:3 for children aged under 5
- 1:6 for children aged between 5 and 7
- 1:6 for children aged under 8 of whom no more than 3 are under 5 years.

Ratios tighter than these minima may be imposed for specific reasons such as nature of the premises. The Executive suggest that these ratios should continue to apply to childminder with the inclusion of the extended upper age limit. The Commission will, however, set a stricter ratio than 1:6 where young children are included and until a childminder can demonstrate experience and appropriate training.³⁸

For non-domestic care the Executive has proposed³⁹

- 1:3 for children aged under 2
- 1:5 for children aged 2 to under 3
- 1:10 for children aged 3 and over
- 1:15 for children aged 8 or over (where cared for separately).

These proposals represent an increased ratio for private and voluntary based non-domestic care for 3-5 year olds. It is currently 1:8 and the above proposals would increase it to 1:10, in line with local authority provision. In justification of this the Executive have said that:⁴⁰

'In future all provision will be subject to rigorous inspection against outputs. Against that background, Ministers believe that a ratio of 1:10 is appropriate. That ratio would be applied also to school age children under eight in out of school care.'

³⁷ Scottish Executive (2000) *Regulation of Early Education and Childcare: The Way Ahead* p.16

³⁸ Scottish Executive (2000) *Regulation of Early Education and Childcare: The Way Ahead* p.16

³⁹ Scottish Executive (2000) *Regulation of Early Education and Childcare: The Way Ahead* p.16

⁴⁰ Scottish Executive (2000) *Regulation of Early Education and Childcare: The Way Ahead* p.17

There was concern expressed by some consultees regarding the increase in ratios. The Scottish Pre School Play Association (SPPA) felt that 1:10 is a lowering of standards. Their code of practice currently recommends a ratio of 1:6.⁴¹ Children in Scotland suggested the following ratios:

- 1:2 for 0-1 year olds
- 1:4 for 2 year olds
- 1:6 for 3 year olds
- 1:8 for 4-14 year olds.

In a sector where much of the workforce is part-time, the Executive have made clear that it is child contact time rather than number of workers which will count towards ratios.

There was unanimous support for the proposition that only adults in contact with children for the majority of the session should count towards ratios.⁴²

The Child at the Centre

The Scottish Commission for the Regulation of Care will use quality standards recommended by the National Care Standards Committee. They will use [The Child at the Centre](#) as a starting point. HMI is already inspecting early education centres according to these standards.

The Child at the Centre is a self evaluation guide aimed particularly at providers of day care and childminding for three to five year olds. However, it is intended that all centres should find it of use, regardless of their type, nature and focus.⁴³ The guide gives performance indicators and practical examples for use of the indicators.

The close connection between education and care is re-iterated:

*'Care and education go hand-in-hand. Children are learning all the time, in 'care' settings and in 'education' settings. Equally, the care and nurturing of children is paramount in both day care provision and in grant funded pre-school education. Young children do not perceive a difference between 'care' and 'education' and neither do staff working in centres. What is important is to view the whole experience as one which contributes greatly to a child's learning development.'*⁴⁴

The values underpinning the guide are:

- The child is at the centre of everyone's care and concern
- The well being, safety and security of children are paramount, and are a pre-requisite for their progression and development

⁴¹ SPPA (2000) Response to *Regulation of Early Education and Childcare*.

⁴² Scottish Executive (2000) *Regulating Childcare and Early Education: The Way Ahead*

⁴³ Scottish Executive (2000) *The Child at the Centre* p.4

⁴⁴ Scottish Executive (2000) *The Child at the Centre* p.4

- The development of early years services is founded on a commitment to equal opportunities and social inclusion for all
- Partnership with parents is essential to quality provision
- Services should be responsive to the individual needs of children and families
- The early years centre is an integral part of the wider community in which it works

Performance Indicators cover both care and education. Although the document recognises that the full 3-5 curriculum will not be provided by all centres, it encourages all centres to consider the broad aspects of it.

SECTION FIVE: COMPLAINTS – THE CHILDREN’S RIGHTS PERSPECTIVE

Section 6 of the Bill outlines the power of the Scottish Commission For The Regulation of Care to establish procedures to deal with complaints about care services.

There is no requirement for a user to go through a local complaints system before approaching the Commission. Procedures must be easily understood, kept under review, and given the appropriate publicity.

Childcare Regulation in Wales – The Children’s Rights Commissioner

In Wales, complaints about children’s care services are dealt with under the more wide ranging post of a children’s commissioner.⁴⁵ This post was initially provided for in the Care Standards Act 2000 and its powers made more wide ranging through the Children’s Commissioner for Wales Bill. Taking the UN Convention on the Rights of the Child as a framework, the Commissioner acts as an advocate and promoter of children’s rights. Peter Clarke has been appointed as the Children’s Commissioner for Wales and young people were directly involved in his selection. There is a campaign for a Children’s Rights Commissioner in Scotland, and the Parliament’s Education Culture and Sport committee have been asked to consider the matter by the Scottish Executive.

[Section V of the Care Standards Act \(2000\)](#) provides for the post of a children’s commissioner for Wales. In addition to dealing with complaints, the Commissioner also has a role in promoting the rights and welfare of children. Under the Care Standards Act, this role applies only to looked after children. However the recently introduced Children’s Commissioner for Wales bill extends the powers of the commissioner.

The key difference from the regulatory system advocated in the Scottish bill is that there is a post provided for in statute specifically focused on children, and which includes an advocacy role.

[The Children’s Commissioner for Wales Bill](#) was introduced to the Westminster Parliament on 11 December. The Commissioner’s functions under the Act extend to all services for children to be regulated by the Act ; children’s homes, residential family centres, local authority fostering and adoption services, fostering agencies, voluntary adoption agencies, domiciliary care, private and voluntary hospitals/clinics, the welfare aspects of daycare and childminding services for all children under the age of eight; and the welfare of children living away from home in boarding schools.

The Commissioner’s functions include the reviewing and monitoring of arrangements by service providers for:

⁴⁵ For a discussion of the arguments for and against children’s commissioners see SPICe Research Note [A Children’s Rights Commissioner](#).

- dealing with complaints, for ensuring that proper action is taken in response to information regarding possible unlawful or dangerous activities, or their concealment ("whistleblowing"), and for making persons available to represent children's views and provide them with advice and support ("advocacy")
- the provision of advice and information
- the examination, where the Commissioner considers appropriate, of the cases of particular children who are receiving or have been in receipt of such services
- the provision of assistance, including financial assistance, and representation, in respect of proceedings or disputes or in relation to the operation of procedures and arrangements monitored by the Commissioner; and
- making reports, including an annual report on the exercise of his or her functions to the Assembly

The Bill extends the scope of the Commissioner's role to bodies and persons operating in Wales which have statutory functions or provide statutory services in devolved areas. However, the functions of whistleblowing and advocacy relate only to those services covered in the Care Standards Act 2000 and to the Welsh Assembly.

The Commissioner will also be able to review the effect on children of

- any existing or proposed legislation of the Assembly
- any policy, practice, or service provided by the Assembly or any body or person listed in the Bill

Childcare Regulation in England – the Children's Rights Director

In England the post of Children's Rights Director is provided for by the Care Standards Act 2000. The Department of Health will be issuing guidelines early in 2001 on the role and function of this new post.⁴⁶

The provisions in the Act itself are brief. Schedule 1, paragraph 10 simply says that:

(1) The Commission shall appoint a children's rights director who is to be a member of the staff of the Commission.

(2) The children's rights director shall have such functions as may be prescribed.

⁴⁶ Community Care 4-10 January 2001 p.18 *The Year of the Child*

Lord Hunt's introduction to the then Care Standards Bill referred to the Children's Rights director in the following terms:

In recognition of its role in safeguarding children, the national care standards commission will appoint a children's rights director whose job it will be to ensure that children's rights and welfare are at the heart of all its responsibilities for regulating children's services.

The regulation of children's services must not be swamped by the much larger volume of adult services that the commission will deal with.⁴⁷

There has been dissatisfaction in England, that the proposals for a Children's Rights Director do not go far enough. For example, Carolyne Willow in *Community Care* comments that :

There are growing fears that the post of children's rights director will have little power, serving the bureaucratic needs of the new National Care Standards Commission rather than championing the rights of England's most vulnerable children and young people.⁴⁸

⁴⁷ HL Debate 13 December 1999 col 13

⁴⁸ Community Care, 4-10 January 2001, p.18-19 *The Year of the Child*.

SECTION SIX: REGISTRATION OF SERVICES

Current System under the Children Act 1989

The current system for registration requires the person in charge of providing care to register with the local authority. Where care is provided by an organisation, company or partnership it is the organisation which registers.

Information required about the person in charge in the current system covers:

- Qualifications
- Relevant experience
- Two referees
- GP details in order to obtain information on applicants health.
- Details of any criminal convictions

Proposed System

Under section 7 of the Bill, care services must register with the Scottish Commission For The Regulation Of Care. The Commission can specify what information is required from the manager of that service.⁴⁹ Regulations will be made by the Commission covering matters such as capacity, staff numbers and adult to child ratios (section 24). Minimum ratios will be set by Ministers but the Commission can impose tighter ratios where necessary.

The Commission, as local authorities can at present, will be able to refuse registration to childminders if anyone is living or likely to be living on the premises is not fit to be in proximity to children under eight (section 24 (2 d)).

The Commission will be required to meet targets on the time taken to process registration. Targets will be set by the minister.⁵⁰

Timing

Early education and childcare services will be regulated by the Commission from the start of its operation in April 2002.

It was initially suggested that different types of care services would come within the remit of the Commission in three stages:

- Care homes and day care for adults, followed by
- Day care for children and home care, followed by
- Adoption, fostering and accommodation for offenders

In the consultation responses however, there was particular concern that leaving responsibility for regulating early education and childcare with local authorities for a period would be impractical.⁵¹

⁴⁹ Regulation of Care (Scotland) Bill s7

⁵⁰ Scottish Executive (2000), *The Way Forward for Care* p.25

In *The Way Forward For Care*, the proposal was changed to allow all types of care services currently regulated by local authorities and health boards to be regulated by the Commission from April 2002.⁵²

Registration Fees

Registration of a service will, as now, be for a fee. Current fees are however heavily subsidised, at around £10 - £20⁵³ and £85 for daycare⁵⁴. The level of fee will increase, but will still be subsidised. The Commission will have the ability to either waive or reduce the fee according to circumstance. (Section 20 (3) b) Subsidised fees will continue at a maximum of £250 for daycare and £50 for childminding services.⁵⁵ The increase will be staggered between 2001 and 2004/05. The Scottish Executive will consult soon on increasing registration fees in 2001-02 for services including day care and childminding.

The intention in *Aiming for Excellence* and *The Way Forward in Care* was for the Commission to be self-financing through registration fees by 2004-05.

The Executive estimated that this cost would have represented an increase from £85 at present to between £425 and £850 for daycare and from £10 to between £250 and £500 for childminding. Respondents to the consultation on *Regulating Care and Social Services Workforce* felt that the requirement to be self financing through fees would put a considerable burden on childcare and early education providers.⁵⁶ The Scottish Council of Voluntary Organisations (SCVO), in their response to *The Way Forward For Care* felt that if the registration fees remain at current heavily subsidised levels such as £10 - £20 it was unlikely to have a significant effect on provision. In the Financial Memorandum to the Bill the Executive recognise that

‘Significantly increased fees would adversely affect the objective of further expansion of the childcare market. Expansion of childcare is a key Scottish Executive objective and is linked to employment objectives. The Scottish Executive will therefore provide continued subsidy for childcare regulation to help meet these policy objectives. The amount of subsidy will depend on what fee levels are affordable and what the full cost of regulating early education and childcare will be, but the intention is that it will be sufficient for fees to be held to a maximum of £250 for day care providers and £50 for childminders.’

⁵¹ For example, Early Years National Training Organisation, Scottish Independent Nurseries Association, Angus Childcare Partnership and Association of Directors of Social Work

⁵² Scottish Executive (2000), *The Way Forward for Care*, p20

⁵³ SCVO (1999) response to *Regulation of Early Education and Childcare: The Way Ahead*.

⁵⁴ Financial Memorandum para 167

⁵⁵ Financial Memorandum, para 161-169

⁵⁶ Including Early Years National Training Organisation, Renfrewshire Early Years Forum, Renfrewshire Childcare Partnership Forum and Angus childcare Partnership.

SECTION SEVEN: INSPECTION - THE COMMISSION AND HMI

Care Services will be inspected annually by the Commission (section 21 (3)). Section 21 (2) provides for unannounced inspections.

Structure of the Commission

The Way Forward For Care proposed five regional offices, including headquarters.⁵⁷ Some respondents to the consultation *Regulating Care and Social Services Workforce* had concerns regarding the number of regional offices the Commission would have. Renfrewshire Early Years Forum and Renfrewshire Childcare Partnership felt that a reduction in the number of local offices would lead to a loss of local knowledge. ADSW were concerned that as

'Workers currently operate from approximately 100 bases across Scotland, centralising staff in a handful of Commission offices would impact significantly upon their capacity to respond.'⁵⁸

The Executive considered that too many regional or local bases would detract from the purpose of creating a nationally consistent system.

Relationship between HMI and the Commission

HMI currently inspect nurseries run by local authority education departments. Other daycare and childminding providers who provide early education are inspected by HMI in regard to their education provision and also inspected under the Children Act 1989 in regard to the care aspect of their provision.

The Commission will inspect all registered day care and childminding providers. HMI will continue to inspect centres which are commissioned to provide pre-school education on a cycle of inspection 'at least as frequent as that for primary school education.' At present HMI inspect providers of early education on a 5-7 year cycle.

All care services will be subject to at least one inspection per year. However, the commission will not generally inspect a service in a year that HMI carry out an inspection. The commission will inspect new services and services about which there are concerns more frequently and may inspect in the same year as HMI if that is considered appropriate.⁵⁹

The intention is to avoid unnecessary burden of inspections by:

- Using care standards in the Commission's inspections that are developed from performance indicators used by HMI.
- Not requiring that a centre is inspected by both institutions in one year (section 21 (3) b ii).

⁵⁷ Scottish Executive (2000) *The Way Forward For Care*, p. 52

⁵⁸ ADSW (2000) Response to consultation on *Regulating Care and Social Services Workforce*

⁵⁹ Policy Memorandum para 69

The alternative possibility of integrating HMI with the Commission for this purpose was ruled out:

'The Executive considers that this would not promote continuity and progression in children's learning and smooth transition from the pre-school to the primary sector. Nor would it provide such a transparent check on the quality of publicly funded pre-school education.'⁶⁰

CoSLA have welcomed the national framework to be provided through the Commission but felt that HMI should be incorporated:

'..if the intention in the consultation paper to harmonise is to be given real effect, we see it as vital that the HMI component of pre-school inspection is incorporated within the proposed Scottish Commission for the Regulation of Care. Such an outcome would also ensure consistency with the inspection of primary education provision in a school building where both primary and early years education are provided.'⁶¹

Children in Scotland supported the continued use of HMI to inspect but recognised the need for it to be carefully co-ordinated with the Commission:

'There is evidence that HMI inspection is valued and adds status to provision and we consider that HMI should continue to play a role in maintaining standards. However, the relationship between HMI inspection and Children Act inspections and the proposed new Commission requires careful consideration to achieve a coherent and unified mechanism.'⁶²

Regulation by OFSTED in England

The Care Standards Act 2000 provided for regulation of daycare and early education to be undertaken by a new arm of OFSTED – the Early Years Directorate. In 1998, the English 'Better Regulation Taskforce'⁶³ published a report on early education and childcare. This was strongly opposed to using OFSTED to inspect all early education and childminding. It suggested that if a single regulatory body needed to be created, it should be based on local authorities or the proposed new local or regional care regulators, rather than OFSTED.⁶⁴ A comparison in *Nursery World*, favoured the arrangements in Scotland:

Drew McCanney, senior inspector for under-eights at Fife Council, believes Scotland will achieve the right balance between care and education under the new system. 'I think the Scottish system will be stronger than the English because of the fact that we are trying to co-ordinate HMI and care and that it's not HMI-driven. The regulatory system has been built around care, with education seen as part of it. The impression I have got is that nobody down south wanted Ofsted to have it. The Better Regulation Task Force did a report on early education in which they recommended that care and education should be integrated but Ofsted should not be the lead body.'⁶⁵

⁶⁰ Policy Memorandum para 44

⁶¹ CoSLA (1999) response to 'Regulation of Early Education and Childcare'

⁶² Children in Scotland, response to 'Regulation of Early Education and Childcare', 29th June 1999

⁶³ The Better Regulation Task Force was established as an independent advisory body in September 1997 to advise Government on regulatory issues. It is supported by the Cabinet Office [Regulatory Impact Unit](#) (formerly the Better Regulation Unit).

⁶⁴ Better Regulation Task Force, (1998) *Early Education and Day Care*. Quoted in House of Commons Library (2000) *The Care Standards Bill* p.82

⁶⁵ *Nursery World*, 13th October 2000

SECTION EIGHT: REGISTRATION OF THE SOCIAL SERVICES WORKFORCE

The Scottish Social Service Council

The Council will register all social service workers (sections 29 – 33). Early education and childcare workers will be included in the second phase of registration. Registration was extended to these workers following comments from consultation.⁶⁶ Full registration of all staff groups is unlikely to be achieved before March 2006.

The Council requires that all social service workers:

- Satisfy the Council's rules
- Are of good character
- Either have a relevant qualification or satisfy the Council's rules

The expansion of the childcare workforce will have to be achieved within this context of increased requirement for training and the need for registration – including the payment of an annual registration fee. The Executive intend an annual fee of £20 for social service workers.⁶⁷

Dual Registration

Many consultation respondents favoured dual registration. In childcare, this affects mainly teachers. The Way Forward For Care announced the intention to explore this in detail. Teachers will retain their own registration system.

Codes of Practice

Section 36 of the Bill requires the Council to produce Codes of Practice for workers and employers. Codes shall be kept under review, and the consent of Scottish Ministers is required before publication. It is intended to keep the Codes of Practice very similar in all four parts of the UK in order to avoid loopholes.⁶⁸

There is no existing national code of practice. Currently the Scottish Independent Nurseries Association and Scottish Pre-school Play Association produce their own voluntary codes of practice.

Safety

The registration system will enable tracking of individual workers' employment records. Other related policies to safeguard children's safety are the enhanced criminal record checks and proposed Consultancy Index of adults unsuitable to work with children.

⁶⁶ Scottish Executive (2000) *The Way Forward for Care* p.42

⁶⁷ Financial Memorandum p.32

⁶⁸ Scottish Executive (2000) *The Way Forward for Care* p.47

SECTION NINE: TRAINING AND QUALIFICATIONS

The Scottish Social Services Council shall promote education and training and approve courses for social service workers (section 37). It can also make grants, for purposes specified by Scottish Ministers, to both students and course providers (section 38). Much of the detail is to be specified in rules and regulation which the Council is empowered to make. Scottish Ministers have powers to specify which courses to fund and maximum amounts of grants (sections 37 to 40).

The intention is to ensure consistency and quality of the education provided and to secure or provide appropriate training when this is not, in the opinion of the council, already being made available.⁶⁹ The priority for improvements in qualifications and training is workers in the area of residential care. Childcare and early education workers will be considered in a second tranche.⁷⁰

The aim is to move to a position where all staff either;

- hold an appropriate qualification or
- are working towards one, or
- in the case of childminders have pursued appropriate training or
- are seeking accreditation of skills and experience or
- are pursuing on the job training⁷¹

Action Plan for Training

The Executive recognise that there is a need for training in the childcare sector and set out their intentions in [Childcare the Training Challenge: An Action Plan For The Training And Development Of Workers In Early Education, Childcare And Playwork](#). They are committed to training 5000 new childcare workers by 2002 and have funded the expansion of training as follows:⁷²

Local authorities:	2000/01	£2 million
	2001/02	£1.6million

National Training Organisations: £100,000

Umbrella Bodies: £50,000

In order to register with the Council (and therefore work in the childcare sector) staff will, in due course, be required to possess a nationally recognised qualification or be working towards one. The Executive recognises that this will take some time to implement.⁷³ Until new Regulation of Care (Scotland) Bill

⁶⁹ Policy Memorandum para 112

⁷⁰ Scottish Executive (2000) *Regulation of Early Education and Childcare: The Way Ahead*, p. 14

⁷¹ Scottish Executive (2000) *Regulation of Early Education and Childcare: The Way Ahead*, p. 19

⁷² Scottish Executive (2000) *Childcare: The Training Challenge*

⁷³ Scottish Executive (2000), *The Way Forward For Care, A Policy Position Paper*.

arrangements come in, half the relevant staff will be required to hold a qualification.⁷⁴

There are a large variety of qualifications available to potential childcare workers. These include:

- SVQ in Early Years Care
- SVQ in Playwork
- HNC in Childcare and Education
- SVQ Level 4 in early years care and education to start soon.

Other types of qualification held by childcare workers include SNNB (Scottish Nursery Nurse Board), PGCE (Post Graduate Certificate of Education), B.Ed (Bachelor of Education), Dip C.E (Diploma in Child Education) and NNEB, (Nursery Nurse Education Board).⁷⁵ In 1998/99 1,161 HNCs in Childcare and Education were awarded and 174 SVQ level 3 awards in Early Years Care and Education.

Requirement for Qualified Teachers

Currently teachers are required in local authority nurseries and classes but not in other provision. The Executive intend to recommend teacher involvement in pre-school education for all centres (local authority and the private and voluntary sectors), and will consult on guidance to be developed on this.

The relevant regulations of the Schools Code (regulations 5(2), 15(1) and 23(3) will eventually be repealed.⁷⁶ These are not however repealed by the Regulation of Care (Scotland) Bill. The move to guidance is intended to offer a high degree of flexibility and accountability, and enable flexible commissioning of places by local authorities.

A [consultation](#) on this and other changes to the Schools Scotland Code 1956 ran from April to June 2000. While consultees felt that teachers bring skills in curriculum planning, child observation and assessment of pupil progress, many observed that the presence of a qualified teacher is not a pre-requisite for quality, and the focus should be on staff teams with an appropriate mix of skills.⁷⁷

The Executive has acknowledged the need for a broad based initial training that combines classroom assistants with playworkers and other childcare and early education workers.⁷⁸

⁷⁴ Scottish Executive (2000) *Regulation of Early Education and Childcare: The Way Ahead*. p.13

⁷⁵ HMI (2000) [The Quality Of Pre-school Education In Registration Inspections in Scotland 1998-99](#)

⁷⁶ Scottish Executive (2000) *Regulation of Early Education and Childcare: The Way Ahead*. p.19

⁷⁷ Scottish Executive (2000) *Regulation of Early Education and Childcare: The Way Ahead*. p.14

⁷⁸ Scottish Executive, (2000) *Childcare the Training Challenge*.

A survey⁷⁹ in 1999 of childcare workers in the voluntary and private day care and out of school care sectors found that many workers have little training and most felt training was improving at too slow a rate.

The survey found difficulties in recruitment and in the nature of some training:

The main recruitment problems identified by interviews were candidates' lack of experience, lack of qualifications and lack of commitment. A survey by GMB and Daycare Trust found that at least 70% of existing classroom assistants and 40% of staff in out of school care clubs had no training.

[...]

There are concerns that New Deal training is too short to produce qualified and vetted workers.

The research recommended:

Increased access to long term integrated training beyond entry level training, for workers and employers/management committees.'

Research Notes are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

⁷⁹ G Scott, U Brown, J Campbell,(2000) 'Childcare: Invisible Workers, Scottish Poverty Information Unit, Glasgow

ANNEX 1

CURRENT REGULATORY FRAMEWORK

At present, provision which is primarily a 'care ' service is regulated under Part X of the Children Act 1989, and local authority pre-school education is governed by mainly by the Schools Code 1956.

Scope of current regulation

At present the following forms of provision are subject to some form of regulation:

- local authority schools (including nursery schools and classes);
- independent schools;
- public, private and voluntary provision such as playgroups, nurseries, crèches, nursery schools (where not within local authority or independent schools), play-schemes, after school clubs and childminders.

At present the following types of provision are not subject to any form of regulation:

- informal care provided by relatives and unpaid care provided by friends
- care provided in particular premises for fewer than 6 days in any year or for fewer than 2 hours (not necessarily consecutively) in a day
- care in the child's home provided by nannies (except insofar as nanny agencies are regulated by the Department of Trade and Industry as employment agencies) or by other persons employed by parents where the person providing the care does so for no more than 2 families
- care provided in the family home by au pairs

Current Relevant Legislation

The *Schools Scotland Code 1956* governs the delivery of pre-school education in local authority nursery schools and nursery classes in primary schools. It covers teacher involvement in local authority nursery schools, adult to child ratios, and staff qualifications for local authority nurseries.

The *Schools Premises (General Requirements and Standards) (Scotland) Regulations 1967* governs space and other standards for local authority nurseries.

The *Social Work Act 1968* Care providers who are registerable under this act are governed by the regulation system in the Children Act 1989.

The *Education (Scotland) Act 1980* Local authorities are given a power to open nurseries. The Act includes local authority nursery classes in its definition of

education. Section 98 requires independent nurseries to register with the Secretary of State for Scotland. (Now Scottish Ministers).

The *Children Act 1989 Part X* regulates childminding and daycare for children under eight years. The Act defines childminding and daycare, requires local authorities to hold separate registers of childminders and daycare. It specifies inspection in terms of adult to child ratios, safety of premises and equipment, payment of fees.

The *Children (Scotland) Act 1995* (section 27) requires Local Authorities to provide daycare for children in need.

The *Education (Scotland) Act 1996* empowered the payment of a specific grant to education authorities for pre-school education (£1200 for each pre-school child in session 2000/01). Although designed for the voucher system, the 1996 Act enables payment of pre-school education grant by education authorities on behalf of the secretary of state to providers in the private and voluntary sectors with whom authorities have set up partnership agreements. Although The Scottish Office recommended that partner centres should receive a minimum of £900 per place, there remain wide variations in the price paid for these commissioned places in different authorities.⁸⁰

Part V of the Police Act 1997 expands the requirements for criminal record checks for those working with children. (Not yet in force).

The **Standards in Scotland's Schools Act 2000** gives local authorities a duty to provide pre-school education.

⁸⁰ Greens (2000) *Scottish Education Manual* 1:2.11.2

ANNEX 2

RELEVANT PUBLICATIONS

Below are web links to relevant consultation documents, some related consultations, research and legislation.

[Modernising Social Work Services – A Consultation Paper on Workforce Regulation and Education](#) November 1998

[Aiming For Excellence – Modernising Social Work Services in Scotland](#) March 1999

[Regulation of Early Education and Childcare](#) March 1999

[Regulating Care And The Social Services Workforce: A Consultation Paper](#) December 1999

[Regulation of Early Education and Childcare: The Way Ahead](#) March 2000

[The Way Forward for Care – A Policy Position Paper](#) July 2000

[The Quality Of Pre-school Education In Registration Inspections in Scotland 1998-99](#) HMI (2000)

[A Childrens Rights Commissioner](#), SPICe Research Note (2000)

[Access to Criminal Record Information Under Part V of the Police Act 1997](#). SPICEe Research Note RN 00/20

[Good Practice In The Care Of Very Young Children](#). Scottish Executive (1999)

[Protecting Children, Securing Their Safety](#) Scottish Executive (2000)

Improving Our Schools: [Consultation on the Schools Scotland Code \(1956\)](#) Scottish Executive (2000)

DfEE (1999) [Need A Nanny? A Guide For Parents](#)

[The Children Act 1989](#)

[The Care Standards Act 2000](#)

[The Children's Commissioner for Wales Bill](#)