

PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 5 – Social Care and Social Work: Scrutiny and Improvement

Chapter 2 – Social Services Inspections

Inspections

Section 53 – Inspections

90. Subsection (1) provides that SCSWIS may inspect any social service and the organisation and coordination of any social service. Subsection (2) sets out possible purposes of an inspection of any social service, namely to review and evaluate their effectiveness, to investigate particular aspects of a service, to encourage improvement in the provision of those services and to make any recommendations necessary for their improvement in reports prepared under section 57 and in the case of care services, whether any improvement or condition notice necessary.
91. Subsection (2)(d) makes provisions that an investigation may be undertaken by SCSWIS into any incident, event or cause for concern. This is separate from the provisions for an inquiry to be undertaken which are set out in section 98.
92. Subsection (3) provides that an inspection may be of any social service or combination of such services or of the services provided to a child, adult or grouping of children or adults and may be undertaken in any part of, or the whole of Scotland.
93. Subsection (4) provides that an inspection is to be conducted in accordance with a plan prepared in accordance with section 54 and which is approved by the Scottish Ministers.
94. Subsection (5) allows an inspection to take any form SCSWIS considers appropriate.
95. Subsection (6) provides that SCSWIS may require a person who provides a social service registered under the Act to supply it with any information to enable SCSWIS to discharge its functions. This may include such aspects as self-evaluation returns or other information.

Section 54 - Inspections under section 53: best regulatory practice

96. Subsections (1), (2) and (3) require SCSWIS to develop a plan for carrying out inspections, including inspections of services which are subject to self assessment, in accordance with best regulatory practice, that is, in a way which is transparent, accountable, proportionate and consistent. Subsection (4) requires SCSWIS to have regard to any guidance issued by Scottish Ministers for the plan. Subsections (5) and (6) require SCSWIS to review the plan and obtain Scottish Ministers approval for any revision and to consult as appropriate when preparing or revising the plan.

Section 55 – Inspections at request of Scottish Ministers

97. Subsections (1) and (2) enable Scottish Ministers to request SCSWIS to carry out an inspection of any social service or the organisation or coordination of any social services, to specify the purpose of any such inspection and to approve the timetable for such work. This would, for example, allow Scottish Ministers to ask SCSWIS to carry out an inspection of social services for people with learning disabilities, including any services which the local authority has contracted with another person to provide. Subsection (3) provides that an inspection is to be conducted in accordance with a timetable approved by the Scottish Ministers. Subsections (4) and (5) enable Scottish Ministers to request an inspection of some or all social services in an area or across areas of Scotland and of services provided to a particular individual or group of individuals.

Section 56 – Inspections: authorised persons

98. Subsections (1) and (2) provide that any inspection must be carried out by a person authorised by SCSWIS – an “authorised person” and that such a person may carry out inspections into any or all social services.
99. Subsection (3) provides powers for an authorised person to enter and inspect any premises being used to provide a social service.
100. Subsection (4) provides that any confidential information that a person acquires during such an inspection is not used or disclosed by that person other than for the purposes of the inspection, or if required under law or a court order to disclose, or to the extent that is necessary for the purpose of protecting the welfare of a child or adult at risk, or the prevention or detection of crime or the prosecution of offenders. Confidential information for these purposes is defined in section 105(3) and is information from which a person’s identity can be discovered, either on its own or when combined with other information, and in respect of which a duty of confidentiality is owed to that person.

Section 57 – Inspections: reports

101. Subsection (1) requires SCSWIS to prepare a report after carrying out an inspection under this Part and to send a copy of the report to the person providing the service being inspected. Subsections (2) and (3) provide that SCSWIS should give that person an opportunity to comment on a draft of that report and that SCSWIS must make the report available to the public.
102. Subsection (4) provides that regulations may make further provision relating to the preparation, content and effect of the reports the circumstances in which SCSWIS inspections reports may be subject to restricted access or withheld, and in particular may require copies of the reports to be sent to Scottish Ministers or other persons specified in the regulations.

Regulations

Section 58 – Regulations: inspections

103. This section provides the power for Scottish Ministers to make regulations in relation to inspections of social services and in particular (but not exclusively), to make regulations in relation to the topics listed in section 58(2)(a) to (j) such as the types of inspection, their timing and frequency, who is authorised to carry out an inspection and requiring information produced to be held and further disclosed in accordance with prescribed conditions.