

PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 8 – Scrutiny and Complaints

User focus

Section 112 - Scrutiny: user focus

283. Subsection (1) imposes a duty on listed scrutiny authorities to secure continuous improvement in user focus in the exercise of their scrutiny functions and to demonstrate that improvement. Scrutiny functions of a person, body or office-holder are defined in subsection (7).
284. Subsection (2) provides that “user focus” is the involvement of users of scrutinised services in the design and delivery of scrutiny functions in relation to those services and the governance of the listed scrutiny authorities. Subsection (3) defines “scrutinised services” to mean services that are scrutinised and also persons, bodies or office-holders (providing services) that are scrutinised.
285. Subsection (4) provides that the phrase “users of a service” includes people who have not yet used the service but may use it in the future, people who act on behalf of others for whom the service is provided, and persons with a direct interest in, or directly affected by, the service. It also includes a person, such as a local authority, with a direct interest in, or directly affected by the scrutiny of a service (i.e. it includes the person providing the service, such as, the local authority) and it includes a person with a direct interest in, or directly affected by the scrutiny of a person, body or office-holder providing services.
286. Subsection (5) allows the Scottish Ministers to add, by order, a person, body or office-holder which has scrutiny functions to the list of authorities that are subject to the duty in schedule 19. Subsection (6) requires the Scottish Ministers to consult those in question, before making such an order.

Section 113 - User focus: guidance etc.

287. Subsection (1) requires listed scrutiny authorities to have regard to any guidance in relation to the duty provided by the Scottish Ministers, and to what are otherwise regarded as proper arrangements for securing and demonstrating continuous improvement in user focus.
288. Subsection (3) provides that arrangements may be regarded as proper arrangements by reference to generally recognised published codes or otherwise. Reference could therefore be made to professional codes of practice. Subsection (2)(a) provides that the guidance issued by Scottish Ministers may include guidance on how to make, and what is to be included in, such arrangements.

289. Subsection (5) provides that if there is a conflict between guidance provided by Scottish Ministers and these proper arrangements, then it is the guidance that must be followed. Subsections (6) and (7) enable the Scottish Ministers to require a listed scrutiny authority to explain why it has not complied with guidance provided by Scottish Ministers, and to publish that explanation.

Section 114 - Scrutiny: duty of co-operation

290. Subsection (1) imposes a duty on scheduled scrutiny authorities to co-operate and co-ordinate activity with each other and, where appropriate, the Scottish Ministers, with a view to improving the exercise of their scrutiny functions in relation to local authorities (including public services provided by them or on their behalf), social services and health services. This must be with regard to efficiency, effectiveness and economy. Scrutiny functions of a person, body or office-holder are defined in subsection (10). This duty requires, for example, SCSWIS and Her Majesty's Inspectors of Education to co-operate and carry out integrated inspections in relation to the inspection of school care accommodation services (as defined in schedule 12).
291. Subsection (3) allows the Scottish Ministers to add, by order, a person, body or office-holder to the list of authorities that are subject to the duty in schedule 20. An authority can only be added to the list if it has scrutiny functions in relation to local authorities or public services provided by them or on their behalf, social services or health services. Subsection (4) requires the Scottish Ministers to consult those in question, before making such an order.
292. Subsection (5) disapplies the duty to the extent that compliance with it would prevent or delay action that the scheduled scrutiny authority considers necessary as a matter of urgency. Subsection (6) requires scheduled scrutiny authorities to comply with any directions given by the Scottish Ministers and have regard to any guidance issued by Scottish Ministers. Subsection (7) provides that such directions and guidance may be of a general or a specific nature, and may apply to all or some scheduled scrutiny authorities and to all or some of their functions.

Joint inspections

Section 115 - Joint inspections

293. Subsection (1) requires any two or more of the persons or bodies specified in subsection (6), on being requested to do so by the Scottish Ministers, to conduct jointly an inspection of the provision of children's services, such other services within the inspection remit of the bodies involved as Scottish Ministers specify, or a combination of such services. The intention is that the Scottish Ministers would be able to require a joint inspection of, for example, child protection services, adult mental health services or services for people (that is adults and children) with learning disabilities.
294. Subsection (11) defines "children's services" to mean 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 apply. Section 15(1) of that Act makes provision regarding community planning by local authorities. The services to which the community planning process may apply are all public services provided in the area of the local authority. These public services may be provided by public bodies or community bodies as defined in section 15(4) of that Act.
295. Subsections (2) to (4) enable the Scottish Ministers to specify the purposes for any joint inspection and to specify that any or all of the services to be jointly inspected are inspected by reference to the area in which they are provided (which can be the whole of Scotland or any part of Scotland) or to the person or group of persons to whom they are provided.

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296. Subsection (5) requires a joint inspection to be carried out to a timetable approved by, and in accordance with any directions issued by, Scottish Ministers. Such directions might include which person or body is to co-ordinate the arrangements for the joint inspection and the arrangements for the publication of the report.
297. Subsection (6) lists the persons and bodies which may be required to conduct a joint inspection in terms of a request from the Scottish Ministers under subsection (1). Subsection (9) enables the Scottish Ministers, by order, to add other persons or bodies to or remove bodies from the list.
298. Subsection (7) allows any person or body listed in subsection (6) who considers a joint inspection would be appropriate to bring this to the attention of Scottish Ministers.
299. Subsection (8) enables the joint inspection team to submit their report and recommendations to Scottish Ministers following an inspection. It also requires persons or bodies participating in a joint inspection to have regard to any code of practice prepared by Scottish Ministers giving practical and general advice and promoting desirable practices. Matters such as access to and the use and destruction of confidential information are examples of the kind of matter which might be dealt with in such a code.
300. Subsection (11) defines confidential information for the purposes of this section and section 117(3).

Section 116 - Participation in joint inspections

301. Subsection (1) allows Scottish Ministers to direct persons or bodies not listed in section 115(6) but which have inspection functions to participate in a joint inspection. The direction to participate may specify that participation is only to a limited extent or for a limited purpose. This section would enable Scottish Ministers to include lay people or specific organisations with particular knowledge or expertise, for example, in any aspect of services for children; provided of course any person so included was given inspection functions as an authorised person of an inspection body.
302. Subsection (2) gives Scottish Ministers the power, when directing the participation in a joint inspection of a person or body in terms of subsection (1), to limit the exercise by that person or body of the powers conferred under regulations under section 117 in relation to the conduct of joint inspections. In some cases, it would not be appropriate for such a person or body to have access to, for example, sensitive and personal information.

Section 117 - Regulations relating to joint inspections

303. Subsection (1) provides for regulations relating to how inspections may be conducted, and subsection (2) provides a non-exhaustive list of what the regulations may provide for including provision as to entering premises, seizure of items, persons authorised to carry out inspections, the sharing of information, the handling of confidential information, interviews and examinations, reports and the creation of offences.

Public Finance and Accountability

Section 118 - Amendment of Public Finance and Accountability (Scotland) Act 2000

304. Subsection (2) transfers responsibility for appointing the three other members of Audit Scotland under section 10(2)(c) of the Public Finance and Accountability (Scotland) Act 2000 (the “2000 Act”) from the Auditor General for Scotland and the Chairman of the Accounts Commission (acting jointly) to the Scottish Commission for Public Audit (the “SCPA”).
305. Subsections (3) and (9)(a) update the 2000 Act to reflect the new name for the Public Audit Committee.

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306. Subsection (4) provides that a person appointed Auditor General for Scotland holds office for a period of 8 years, vacates office on the expiry of that period and is not eligible for reappointment.
307. Subsection (5) disapplies the duty on Scottish Ministers to publish accounts and reports under section 22(5)(b) of the 2000 Act where these are published by the body or office-holder in question.
308. Subsection (6) gives the Auditor General for Scotland a power to publish the results of any examination carried out under section 23 (economy, efficiency and effectiveness examinations) of the 2000 Act.
309. Subsection (7) provides that, for the purposes of the law of defamation, reports that are sent by the Auditor General to the Scottish Ministers under section 22(4) of the 2000 Act and the results of any examination that are carried out and reported by the Auditor General to the Parliament under section 23 of the 2000 Act are absolutely privileged. Absolute privilege is a complete defence against proceedings for defamation.
310. Subsections (8)(a) and (b) provide that members of the staff of Audit Scotland and members of the Accounts Commission are not eligible for appointment as a member of Audit Scotland under section 10(2)(c) of the 2000 Act, that such appointments must not exceed three years, and that appointees may only be reappointed for one further such period.
311. Subsection (8)(c) transfers responsibility for the terms and conditions of the three other members of Audit Scotland appointed under section 10(2)(c) of the 2000 Act from the Auditor General for Scotland and the Chairman of the Accounts Commission to the SCPA, and provides that the SCPA will receive any notices of resignation from these members, rather than the Auditor General and the Chairman. Subsection 8(d) provides that the SCPA, rather than the Auditor General and the Chairman, may remove these members if they consider that the member is for any reason unable or unfit to exercise the functions of a member.
312. Subsection (8)(e) provides that the SCPA must appoint one of the three other members of Audit Scotland appointed under section 10(2)(c) of the 2000 Act to preside at the meetings of Audit Scotland, except that Audit Scotland must do this if that member is not present.
313. Subsection (9)(b) provides that for the purposes of the law of defamation, statements made in the proceedings of the SCPA, the publication under the authority of the SCPA of any statement and any report to Parliament under section 12(4) of the 2000 Act are absolutely privileged.

Complaints handling procedures

Section 119 - Complaint handling procedures

314. This section amends the Scottish Public Services Ombudsman Act 2002 by inserting the following sections 16A to 16G into that Act.

Section 16A – Statement of principles

315. This section requires the Ombudsman to publish a statement of principles concerning complaints handling procedures of the “listed authorities” in schedule 2 to the Scottish Public Services Ombudsman Act 2002. The Ombudsman must consult on the first such statement and any material changes and must obtain Parliamentary approval before publishing these.
316. Subsection (12) defines “complaints handling procedures” to mean procedures of listed authorities which examine complaints or review decisions in respect of action taken by

a listed authority where the matter in question is one in respect of which a complaint to the Ombudsman can be made and investigated under that Act.

317. Subsection (2) requires every listed authority to have a complaints handling procedure (or procedures) in respect of action taken by that listed authority, and these procedures must comply with the published statement of principles. Subsection (3) also requires a listed authority which has statutory responsibility for a complaints handling procedure in relation to, or operated by, another listed authority, to ensure that these procedures comply with the statement of principles.

Section 16B - Model complaints handling procedures

318. This section enables the Ombudsman to publish model complaints handling procedures (“model CHPs”) for listed authorities. Model CHPs must also comply with the statement of principles published by the Ombudsman. Subsection (6) ensures that listed authorities specified under section 16C(1) must comply with any published changes to the relevant model CHP, but it is left to the Ombudsman to decide whether to direct the listed authority to resubmit a description if its complaints handling procedure under section 16E(1). If the Ombudsman withdraws a model CHP, any related specifications under section 16C(1) cease to have effect.

Section 16C - Model complaint handling procedures: power to specify

319. This section enables the Ombudsman to specify any listed authority to which a model CHP is relevant. A specified listed authority must have a complaints handling procedure that complies with the relevant model CHP. On being specified, a listed authority must submit a description of its complaints handling procedure which takes account of the model CHP within 6 months. The listed authority may, with the Ombudsman’s consent, disapply aspects of the model CHP if this is necessary for its effective operation. Specifications can be revoked at any time.

Section 16D - Declarations of non-compliance

320. This section enables the Ombudsman to declare that a complaints handling procedure of a specified listed authority does not comply with the relevant model CHP, and if not specified, that the procedure does not comply with the statement of principles. The Ombudsman must give reasons in writing and may also specify changes that would allow the declaration to be withdrawn. The listed authority must send a description of its complaints handling procedure to the Ombudsman within 2 months of the declaration, having taken account of the reasons for non-compliance and any changes specified by the Ombudsman.

Section 16E - Submission of description of complaints handling procedure

321. This section gives the Ombudsman a power to require a listed authority to submit a description of its complaints handling procedure within 3 months or such other period as the Ombudsman thinks fit. A shorter period has effect even if the period given in section 16C(3) or 16D(4) has not yet expired. A listed authority is also required to provide additional information on request. This enables the Ombudsman to get an adequate description of a listed authority’s complaints handling procedure.

Section 16F - Complaint handling procedures: application of other enactments

322. This section provides that the duties in sections 16A(2) and (3) and 16C(2) do not apply to the extent that the relevant listed authority lacks the necessary powers to ensure compliance with the duties, for example, where another body is responsible for determining or approving the procedures to be followed. In addition, the duties in sections 16A(2) and (3) and 16C(2) do not apply to the extent that they are inconsistent with any other enactment. The latter applies to the extent, for example, that another piece of legislation expressly provides on the face of that legislation that the relevant

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procedures of a listed authority must apply in a way, or contain provision, that is inconsistent with these duties.

Section 16G – Complaints handling procedure: promotion of best practice etc.

323. This section imposes duties on the Ombudsman in relation to complaints handling by listed authorities to (1) monitor practice, (2) promote best practice and (3) encourage co-operation and the sharing of best practice. Listed authorities must co-operate with the Ombudsman in the exercise of these duties except to the extent that they lack the necessary powers to ensure compliance with the duty, or the duty is inconsistent with any other enactment.