

Public Services Reform (Scotland) Act 2010

2010 asp 8

PART 8

SCRUTINY AND COMPLAINTS

User focus

112 Scrutiny: user focus

- (1) The persons, bodies and office-holders listed in schedule 19 (the “listed scrutiny authorities”) must make arrangements which—
 - (a) secure continuous improvement in user focus in the exercise of their scrutiny functions, and
 - (b) demonstrate that improvement.
- (2) 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.
- (3) Scrutinised services are services provided in pursuance of functions and activities which are—
 - (a) subject to scrutiny by a listed scrutiny authority, or
 - (b) provided by a person, body or office-holder which is subject to scrutiny by a listed scrutiny authority.
- (4) Users of a service include—
 - (a) persons who will or may use the service in the future,
 - (b) persons who act on behalf of others in respect of whom the service is provided, and
 - (c) other persons with a direct interest in, or directly affected by—
 - (i) the provision of the service, or
 - (ii) the scrutiny of the service or the person, body or office-holder providing it.

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- (5) The Scottish Ministers may by order modify the list in schedule 19 by—
 - (a) adding a person, body or office-holder which has scrutiny functions, or
 - (b) removing an entry.
- (6) Before making an order under subsection (5)(a), the Scottish Ministers must consult the person, body or office-holder in question and may consult any other person they think fit.
- (7) In this section references to the scrutiny functions of a person, body or office-holder are to such of the functions of the person, body or office-holder as relate to the regulation, audit or inspection of other persons, bodies or office-holders or their functions or activities.

113 User focus: guidance etc.

- (1) In fulfilling its duty under subsection (1) of section 112 a listed scrutiny authority must have regard—
 - (a) to any guidance in relation to the duty provided by the Scottish Ministers, and
 - (b) to what are regarded as proper arrangements for the purposes of that subsection (or purposes which include those purposes).
- (2) Guidance provided by the Scottish Ministers may in particular include guidance on—
 - (a) how to make, and what is to be included in, arrangements for the purposes of that subsection,
 - (b) how to demonstrate continuous improvement in user focus.
- (3) Arrangements may be regarded as proper arrangements for the purposes of that subsection by reference to a generally recognised published code or otherwise.
- (4) Before providing guidance under this section the Scottish Ministers must consult any person they think fit.
- (5) If there is a conflict between guidance provided under subsection (1)(a) and proper arrangements referred to in subsection (1)(b), the guidance prevails.
- (6) The Scottish Ministers may require a listed scrutiny authority which does not comply with any guidance provided under subsection (1)(a) to provide a written explanation of why it has not done so; and the authority must comply with the requirement.
- (7) The Scottish Ministers may publish an explanation provided under subsection (6).

Duty of co-operation

114 Scrutiny: duty of co-operation

- (1) The persons, bodies and office-holders listed in schedule 20 (the “scheduled scrutiny authorities”) must co-operate and co-ordinate activity with—
 - (a) each other, and
 - (b) where appropriate, the Scottish Ministers,
 with a view to achieving the purpose in subsection (2).
- (2) That purpose is improving the exercise of the scrutiny functions of the scheduled scrutiny authorities in relation to—

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- (a) local authorities,
 - (b) social services, and
 - (c) health services,having regard to efficiency, effectiveness and economy.
- (3) The Scottish Ministers may by order modify the list in schedule 20 by—
 - (a) adding a person, body or office-holder which has scrutiny functions in relation to—
 - (i) local authorities or public services provided by them or on their behalf,
 - (ii) social services, or
 - (iii) health services, or
 - (b) removing an entry.
- (4) Before making an order under subsection (3)(a) the Scottish Ministers must consult the person, body or office-holder in question and may consult any other person they think fit.
- (5) The duty in subsection (1) does not apply in so far as compliance with it would prevent or delay action by a scheduled scrutiny authority in the exercise of its scrutiny functions which the authority considers to be necessary as a matter of urgency.
- (6) In complying with the duty in subsection (1) the scheduled scrutiny authorities must—
 - (a) comply with any directions given by the Scottish Ministers, and
 - (b) have regard to any guidance provided by the Scottish Ministers.
- (7) Directions and guidance—
 - (a) may be of a general or a specific nature,
 - (b) may relate to all scheduled scrutiny authorities or to such authorities as are specified in the directions or guidance,
 - (c) may relate to all the scrutiny functions of the authorities in question or to such of those functions as are specified in the directions or guidance.
- (8) The Scottish Ministers may vary or revoke any direction.
- (9) Before providing guidance the Scottish Ministers must consult any person they think fit.
- (10) In this section—
 - (a) references to the scrutiny functions of a person, body or office-holder in relation to local authorities are to such of the functions of the person, body or office-holder as relate to the regulation, audit or inspection of—
 - (i) local authorities, or
 - (ii) public services provided by them or on their behalf,
 - (b) references to the scrutiny functions of a person, body or office-holder in relation to social services or health services are to such of the functions of the person, body or office-holder as relate to the regulation, audit or inspection of those services.
- (11) In this section—
 - “health services” means—

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- (a) the health service within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978 (c. 29), and
- (b) independent health care services within the meaning of section 10F of that Act;

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

“social services” has the same meaning as in section 46 of this Act.

Joint inspections

115 Joint inspections

- (1) Any two or more of the persons and bodies to which this section applies must, at the request of the Scottish Ministers, conduct an inspection (a “joint inspection”) in relation to the provision of—
 - (a) children’s services,
 - (b) such other services as the Scottish Ministers may specify in respect of which such persons or bodies have inspection functions, or
 - (c) both.
- (2) The Scottish Ministers may specify purposes for any joint inspection.
- (3) The Scottish Ministers may request under subsection (1) that there be conducted a joint inspection of—
 - (a) any services concerned in the relevant area,
 - (b) such of the services concerned provided in the relevant area as they may specify, or
 - (c) such of the services concerned provided to a particular child or other person or particular children or other persons as they may specify.
- (4) In paragraphs (a) and (b) of subsection (3), the “relevant area” is the whole of Scotland or such part of Scotland as the Scottish Ministers specify in their request.
- (5) A joint inspection is to be conducted in accordance with—
 - (a) a timetable approved by the Scottish Ministers,
 - (b) any directions given by the Scottish Ministers.
- (6) The persons and bodies to which this section applies are—
 - Healthcare Improvement Scotland,
 - Her Majesty’s Chief Inspector of Constabulary and Her Majesty’s Inspectors of Constabulary appointed under section 33 of the Police (Scotland) Act 1967 (c. 77),
 - Her Majesty’s Chief Inspector of Prisons for Scotland,
 - Her Majesty’s Chief Inspector of Prosecution in Scotland,
 - Her Majesty’s inspectors of schools (that is to say, the inspectors of schools appointed by Her Majesty under the Education (Scotland) Act 1980 (c. 44)),
 - Mental Welfare Commission for Scotland,
 - Social Care and Social Work Improvement Scotland,
 - any Special Health Board.

- (7) Where, in the opinion of any person or body to whom this section applies, a joint inspection would be appropriate, it must bring that to the attention of the Scottish Ministers.
- (8) Those persons or bodies conducting a joint inspection must—
- (a) report to the Scottish Ministers and make any recommendations to them which those conducting the inspection think appropriate,
 - (b) have regard to any code of practice or practice note issued by the Scottish Ministers for the purpose of—
 - (i) giving practical and general guidance on matters relating to such an inspection (including, without prejudice to that generality, such matters as access to confidential information and the holding, sharing and destruction of such information),
 - (ii) promoting what appear to them to be desirable practices with regard to such matters.
- (9) Subsection (6) may be amended by the Scottish Ministers by order so as to—
- (a) add an entry to it, or
 - (b) remove any entry from it.
- (10) The Scottish Ministers may vary or revoke any direction given under this section.
- (11) For the purposes of subsection (8) of this section and section 117(3), information is “confidential information” where—
- (a) the identity of an individual is ascertainable—
 - (i) from that information, or
 - (ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person holding that information, and
 - (b) the information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.
- (12) In this section, “children’s services” means services to which the provisions of section 15(1) of the [Local Government in Scotland Act 2003 \(asp 1\)](#) (community planning) apply which are provided predominantly to, or for the benefit of, children.

116 Participation in joint inspections

- (1) The Scottish Ministers may direct a person or body—
- (a) not listed in section 115(6), but
 - (b) which has inspection functions,
- to participate in the conduct of a joint inspection to the extent and for the purposes specified in the direction.
- (2) In directing under subsection (1) a person or body to participate in a joint inspection, the Scottish Ministers may also direct that the person, or any person authorised by the body, is not to be able to exercise any such power conferred by regulations under section 117 as is specified in the direction; or is to be able to exercise any such power but only to the extent or for the purposes there specified.

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117 Regulations relating to joint inspections

- (1) The Scottish Ministers may by regulations make further provision concerning joint inspections.
- (2) Regulations under subsection (1) may, in particular, make provision—
 - (a) as to seizure and removal of anything found during the course of a joint inspection,
 - (b) as to persons who may be authorised to carry out joint inspections,
 - (c) requiring or facilitating the sharing or production of information (including health records) for the purposes of a joint inspection,
 - (d) as to interviews and examinations (including physical and mental examinations) which may be carried out in connection with the inspections,
 - (e) requiring any person to provide to a person authorised to carry out a joint inspection an explanation of information produced to an authorised person,
 - (f) requiring information produced to a person authorised to carry out a joint inspection to be held in compliance with prescribed conditions and further disclosures to be made in compliance with such conditions,
 - (g) empowering a person authorised to carry out a joint inspection to enter any premises for the purposes of such an inspection,
 - (h) empowering a person authorised to carry out a joint inspection to disclose to a person prescribed for the purposes of this paragraph any information of a prescribed nature which the authorised person holds in consequence of such an inspection,
 - (i) as to reports in relation to a joint inspection,
 - (j) creating offences punishable on summary conviction by a fine not exceeding level 4 on the standard scale for the purpose of enforcing any provision of the regulations.
- (3) Where a person authorised to carry out a joint inspection is in possession of confidential information which has been obtained for the purposes of such an inspection, the person must not use or disclose that information other than—
 - (a) for the purposes of that inspection,
 - (b) so as to comply with an enactment or court order requiring disclosure,
 - (c) to the extent considered necessary by the person for the purpose of protecting the welfare of—
 - (i) any child,
 - (ii) any adult at risk (within the meaning of section 3 of the [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#)), or
 - (d) to the extent considered necessary by the person for the purpose of the prevention or detection of crime or the apprehension or prosecution of offenders.
- (4) In subsection (2), “health records” has the same meaning as in Part 5.
- (5) In subsection (2), “prescribed” means prescribed by regulations under subsection (1).

Public finance and accountability

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

- (1) The **Public Finance and Accountability (Scotland) Act 2000 (asp 1)** is amended in accordance with this section.
- (2) In section 10 (Audit Scotland), in subsection (2)(c), for the words “jointly by the Auditor General and the Chairman” substitute “by the Scottish Commission for Public Audit”.
- (3) In section 12(2)(a) (Scottish Commission for Public Audit), immediately before the word “Audit” insert “Public”.
- (4) In section 13 (Auditor General for Scotland)—
 - (a) after subsection (4) insert—

“(4A) A person appointed to be the Auditor General holds office for a period of 8 years.”,
 - (b) in subsection (5)—
 - (i) after paragraph (a) insert—

“(aa) vacates office on the expiry of the period of appointment.”,
 - (ii) at the beginning of paragraph (c) insert “in other respects.”,
 - (c) after that subsection insert—

“(5A) A person having held the office of the Auditor General is not eligible for reappointment.”.
- (5) In section 22 (audit of accounts: further provisions), in subsection (5), at the beginning of paragraph (b) insert “except where the account and the report are published by the body or office-holder in question.”.
- (6) In section 23 (economy, efficiency and effectiveness examinations), after subsection (10) add—

“(11) The Auditor General may publish the results of any examination carried out under this section.”.
- (7) After that section insert—

“23A Defamation

For the purposes of the law of defamation, the following are absolutely privileged—

- (a) reports sent to the Scottish Ministers under section 22(4),
 - (b) results of an examination carried out and reported to the Parliament under section 23.”.
- (8) In schedule 2 (Audit Scotland: further provisions)—
 - (a) in paragraph 2—
 - (i) the word “not” is inserted after the word “is” where it second appears,
 - (ii) the words from “but” to the end of the paragraph are repealed,
 - (b) after that paragraph insert—

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- “2A An appointment under section 10(2)(c) may be for a period not exceeding 3 years.
- 2B A person appointed under section 10(2)(c) is, on ceasing to be a member, eligible for reappointment for a single further period.”,
- (c) in paragraph 3—
 - (i) in sub-paragraph (a), for the words “Auditor General and the Chairman” substitute “Scottish Commission for Public Audit”,
 - (ii) in sub-paragraph (c), for the words “Auditor General and the Chairman” substitute “Scottish Commission for Public Audit”,
- (d) in paragraph 4, for the words “Auditor General and the Chairman, acting jointly,” substitute “Scottish Commission for Public Audit”,
- (e) in paragraph 7—
 - (i) in sub-paragraph (2), paragraph (b) is repealed,
 - (ii) after that sub-paragraph add—
 - “(3) The Scottish Commission for Public Audit must appoint one of the members of Audit Scotland appointed under section 10(2)(c) to preside at the meetings of Audit Scotland.
 - (4) Audit Scotland must appoint one of its other members appointed under section 10(2)(c) to preside at its meetings where the member mentioned in sub-paragraph (3) is not present.”.
- (9) In schedule 3 (Scottish Commission for Public Audit: further provisions)—
 - (a) in paragraph 1, immediately before the word “Audit”, where it occurs for the second time, insert “Public”,
 - (b) after paragraph 7 add—
 - “8 For the purposes of the law of defamation, the following are absolutely privileged—
 - (a) any statement made in proceedings of the Commission,
 - (b) the publication under the authority of the Commission of any statement, and
 - (c) any report to the Parliament under section 12(4).
 - 9 In paragraph 8, “statement” has the same meaning as in the Defamation Act 1996 (c. 31).”.

Complaints handling procedures

119 Complaints handling procedures

In the [Scottish Public Services Ombudsman Act 2002 \(asp 11\)](#), after section 16 insert—

“Listed authorities: complaints handling procedures

16A Statement of principles

- (1) The Ombudsman must publish a statement of principles (referred to in this Act as “the statement of principles”) concerning complaints handling procedures of listed authorities.
- (2) A listed authority must ensure—
 - (a) it has a complaints handling procedure in respect of action taken by the listed authority, and
 - (b) any such procedure complies with the statement of principles.
- (3) A listed authority which is responsible, by virtue of any enactment, for a complaints handling procedure—
 - (a) in relation to, or
 - (b) operated by,another listed authority, must ensure the procedure complies with the statement of principles.
- (4) The first statement of principles under subsection (1) is not to be published unless a draft of the statement has been laid before, and approved by a resolution of, the Parliament.
- (5) Where a draft is laid in accordance with subsection (4), the Parliament may approve the draft no later than 2 months after being laid.
- (6) In calculating any period of 2 months for the purposes of subsection (5), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
- (7) Before laying a draft statement of principles before the Parliament in accordance with subsection (4) the Ombudsman must consult—
 - (a) the Scottish Ministers, and
 - (b) such listed authorities and other persons as the Ombudsman thinks fit.
- (8) The Ombudsman must, in preparing the draft statement of principles to be laid before the Parliament in accordance with subsection (4), have regard to any representations made during the consultation mentioned in subsection (7).
- (9) The statement of principles comes into force when it is published by the Ombudsman.
- (10) The Ombudsman may from time to time revise and re-publish the statement of principles.
- (11) Where the Ombudsman considers that any revision of the statement of principles under subsection (10) is material, subsections (4) to (8) apply to that statement of principles as they do to the first statement of principles.
- (12) In this section and sections 16B to 16E, “complaints handling procedures” means procedures of listed authorities which examine complaints or review decisions in respect of action taken by a listed authority where the matter in

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question is one in respect of which a complaint to the Ombudsman can be made and investigated under this Act.

16B Model complaints handling procedures

- (1) The Ombudsman may publish model complaints handling procedures for listed authorities.
- (2) A model complaints handling procedure (referred to in this Act as a “model CHP”) must comply with the statement of principles.
- (3) The Ombudsman may publish different model CHPs for different purposes.
- (4) Before publishing a model CHP the Ombudsman must consult such listed authorities or groups of listed authorities as the Ombudsman thinks fit.
- (5) The Ombudsman may from time to time revise and re-publish any model CHP; and in doing so subsection (4) applies.
- (6) Where a model CHP is revised and re-published by virtue of subsection (5), section 16C has effect with the following modifications—
 - (a) any specification under subsection (1) of that section in relation to the model CHP continues in effect as a specification in relation to the revised and re-published model CHP,
 - (b) any other reference to a model CHP is to the model CHP as revised and re-published,
 - (c) subsection (3) of that section is omitted.
- (7) The Ombudsman may withdraw any model CHP at any time; and any specification under section 16C(1) in relation to the model CHP ceases to have effect.

16C Model complaints handling procedures: specification of listed authorities

- (1) The Ombudsman may specify any listed authority to which a model CHP is relevant; and must notify the authority accordingly.
- (2) Where a model CHP is relevant to a listed authority by virtue of a specification under subsection (1), the authority must ensure there is a complaints handling procedure which complies with the model CHP for the purposes of the specification.
- (3) Where subsection (2) applies the authority must submit a description of the complaints handling procedure, having taken account of the relevant model CHP, within 6 months of the specification mentioned in that subsection.
- (4) A listed authority may, with the consent of the Ombudsman, modify the application of the model CHP which is relevant to it but only to the extent that is necessary for the effective operation of the procedure by the authority.
- (5) The Ombudsman may revoke any specification under subsection (1) at any time.

16D Declarations of non-compliance

- (1) Where a model CHP is relevant to a listed authority by virtue of a specification under section 16C(1) the Ombudsman may declare that the complaints handling procedure of the authority, a description of which was submitted by the authority under section 16C(3) or otherwise, does not comply with the model CHP.
- (2) Where there is no specification under section 16C(1) in relation to a listed authority the Ombudsman may declare that the complaints handling procedure of the authority, a description of which was submitted by the authority under section 16E or otherwise, does not comply with the statement of principles.
- (3) Where a declaration is made under subsection (1) or (2) the Ombudsman—
 - (a) must give reasons in writing,
 - (b) may specify such modifications to the complaints handling procedure as would result in the declaration being withdrawn.
- (4) Where a declaration is made under subsection (1) or (2) the listed authority must submit a description of its complaints handling procedure, having taken account of the reasons given under subsection (3)(a) and any modifications specified in subsection (3)(b), within 2 months of the declaration.
- (5) The Ombudsman may withdraw a declaration of non-compliance made under subsection (1) or (2) at any time if the Ombudsman thinks fit.

16E Submission of description of complaints handling procedure: general

- (1) A listed authority must submit a description of its complaints handling procedure if the Ombudsman so directs; and must do so within 3 months of being so directed or such other period as the Ombudsman may direct.
- (2) Sections 16C(3) and 16D(4) are subject to any direction given under this section.
- (3) Where a listed authority has submitted a description of its complaints handling procedure to the Ombudsman under this Act or otherwise, the authority must provide such additional information in relation to that procedure as the Ombudsman may reasonably request; and must do so within such period as the Ombudsman directs.

16F Complaints handling procedures: application of other enactments

The duties in sections 16A(2) and (3) and 16C(2) do not apply to the extent that—

- (a) the listed authority lacks the necessary powers (other than by virtue of this Act) to ensure compliance with the duties, or
- (b) the duties are inconsistent with any other enactment.

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Complaints handling procedures: promotion of best practice etc.

16G Complaints handling procedures: promotion of best practice etc.

- (1) The Ombudsman must—
 - (a) monitor practice and identify any trends in practice as respects the way in which listed authorities handle complaints,
 - (b) promote best practice in relation to such complaints handling,
 - (c) encourage co-operation and the sharing of best practice among listed authorities in relation to complaints handling.
- (2) A listed authority must co-operate with the Ombudsman in the exercise of the function in subsection (1).
- (3) The duty in subsection (2) does not apply to the extent that—
 - (a) the listed authority lacks the necessary powers (other than by virtue of this Act) to ensure compliance with the duty, or
 - (b) the duty is inconsistent with any other enactment.”.