

JOINT INSPECTION OF CHILDREN’S SERVICES AND INSPECTION OF SOCIAL WORK SERVICES (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Children’s Services

Section 1: Joint inspection of children’s services

5. *Subsection (1) requires two or more of the persons or bodies specified in subsection (7), on being requested to do so by the Scottish Ministers, to conduct jointly an inspection of the provision of children’s services. “Child” is defined in section 7 to mean a person under the age of 18. “Children’s services” are also defined in section 7 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 \(asp 1\)](#) 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.*
6. *Subsections (2) and (3) enable the Scottish Ministers to specify the children’s services to be jointly inspected by reference to the type of services, to the area in which they are provided (which can be the whole of Scotland or any part of Scotland) or to the child or children to whom they are provided.*
7. *Subsection (4) sets out the purposes of the joint inspection of children’s services, namely to review and evaluate their effectiveness and to enable the joint inspection team to submit their report and recommendations to Scottish Ministers following an inspection.*
8. *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.*
9. *Subsection (6) 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.*
10. *Subsection (7) lists the persons and bodies which may be required to conduct a joint inspection in terms of a request from the Scottish Ministers under [section 1\(1\)](#). Subsection (7)(g) empowers Scottish Ministers by order to add other persons or bodies to the list.*

Section 2: Participation in inspections

11. *Subsection (1) allows Scottish Ministers to direct persons or bodies not listed in [section 1\(7\)](#) to participate in a joint inspection. This enables Scottish Ministers to include lay people or specific organisations with particular knowledge or expertise in any aspect of services for children. The direction to participate may specify that participation is only to a limited extent or for a limited purpose.*
12. *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 [section 3](#) 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 3: Conduct of inspections

13. Subsection (1) provides for regulations to make provision as to the following:
 - (a) the production and sharing of information for the purposes of the joint inspection, including medical records (defined in section 7 to mean records relating to the physical or mental health of an individual);
 - (b) the giving to an authorised person (defined in subsection (3)) participating in a joint inspection of an explanation of the information produced;
 - (c) requiring that information, including personal information, which has been produced to an authorised person participating in a joint inspection, be shared and handled in accordance with prescribed conditions;
 - (d) empowering authorised persons participating in a joint inspection to enter premises for the purposes of the inspection;
 - (e) empowering authorised persons participating in a joint inspection holding specified types of information obtained in the course of the inspection to share that information with other prescribed persons; and
 - (f) creating criminal offences for failure to comply with the regulations, such offences being punishable on summary conviction by a fine not exceeding level 4 on the standard scale (currently £2,500).
14. Subsection (2) makes further provision regarding the use of confidential information which an authorised person participating in a joint inspection has obtained for the purposes of that inspection. Such information can not be used or disclosed other than for the purposes of the inspection unless disclosure is required to comply with an enactment or court order, to protect the welfare of a child or to prevent or detect crime.
15. *Subsection (3) provides as to who is an “authorised person” for the purpose of [section 3](#) and therefore empowered to act in accordance with regulations made under subsection (1). “Authorised person” means an individual responsible for conducting an inspection under [section 1](#) of the Act or, where a body has been required to conduct the inspection, an individual authorised by that body. It also includes an individual directed to participate in an inspection under [section 2\(1\)](#) of the Act or again where the direction was to a body, an individual authorised by that body.*

Part 2 - Social Work Services

Section 4: Appointment of social work inspectors

16. [Section 4](#) places the Scottish Ministers under a duty to appoint social work inspectors (“SWIs”). The section also places SWIs under a duty to carry out the functions conferred on them by the Act or any other enactment.

These notes relate to the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006 (asp 3) which received Royal Assent on 22 February 2006

Section 5: Functions of Inspectors

17. **Section 5** sets out the functions of SWIs under the Act.
18. Subsection (1) places SWIs under a duty to conduct inspections of and investigations into the provision of social work services and to encourage improvement in the provision of these services. "Social work services" are those services provided or secured by a local authority under the list of enactments specified in section 7(2) of the Act¹. The Scottish Ministers have power to amend that list by regulations.
19. Subsection (2) provides that an inspection or investigation is to be conducted in accordance with a timetable approved by the Scottish Ministers and any directions issued by them.

Part 3 - General

Section 6: Regulations and orders

20. This section makes provision concerning the making of regulations and orders under the Act. Subsection (3) provides that a statutory instrument making an order shall, unless otherwise provided, be subject to the negative procedure in the Scottish Parliament. Subsection (4) provides that a statutory instrument making regulations or an order under section 9 amending an enactment shall be subject to the affirmative procedure.

Section 7: Interpretation

21. This section defines certain terms used in the Act.

Section 8: Consequential amendment and repeals

22. This section makes amendments and repeals in consequence of the Act.

Section 9: Ancillary provision

23. This section allows Scottish Ministers by order to make any supplementary, incidental or consequential provision which they consider necessary or expedient. Such provision must be for the purposes of, in consequence of or for giving full effect to the Act. Provision which amends or repeals an enactment can be made under this section.

Section 10: Short title and commencement

24. This section provides that the Act comes into force on the day after Royal Assent.

¹ See the definitions of "social work service" and "social work services functions" in section 7(1) of the Act.