

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

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a part of a section does not seem to require any explanation or comment, none is given.

THE ACT – AN OVERVIEW

3. [Part 1](#) of the Act provides Scottish Ministers with powers to require two or more specified persons or bodies jointly to inspect the provision of children’s services and sets out the framework and purposes for such joint inspections. It requires those conducting such inspections to have regard to any code of practice issued by the Scottish Ministers giving guidance on desirable practice and matters such as access to and use and disposal of confidential information. It also provides the Scottish Ministers with regulation making powers to enable persons or bodies participating in such inspections to access and share information for the purpose of the joint inspection.
4. [Part 2](#) of the Act provides for the appointment of social work inspectors with the functions of inspecting the provision of social work services and encouraging the improvement in provision of those services. The Scottish Ministers are given regulation making powers which will enable powers to be given to these social work inspectors for the purpose of carrying out their functions. The Act also repeals existing powers of inspection of specific social work services, as set out in section 6 of the Social Work (Scotland) Act 1968.

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*

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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;

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- (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.

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.

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

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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.

PARLIAMENTARY HISTORY

25. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, the references to the Official Report of those proceedings, the dates on which Committee Reports and other papers relating to the Bill were published, and references to those Reports and other papers.

<i>Proceedings and Reports</i>	<i>Reference</i>
Introduction	
28 October 2005	Bill introduced (SP Bill 49)
Stage 1	
<i>(a) Education Committee</i>	
19th Meeting, 9 November 2005	cols 2727-2728
20th Meeting, 16 November 2005	cols 2755-2788
21st Meeting, 23 November 2005	cols 2792-2846
10th Report, 2005 (Session 2), 30 November 2005	Stage 1 Report on the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill (SP paper 458)
<i>(b) Finance Committee</i>	
25th Meeting, 8 November 2005	cols 3083-3084
<i>(c) Subordinate Legislation Committee</i>	
30th Meeting, 8 November 2005	cols 1323-1326
31st Meeting, 15 November 2005	cols 1336-1341
<i>(d) Consideration by the Parliament</i>	
Stage 1 Debate, 7 December 2005	cols 21459-21482
Stage 2	
<i>(a) Education Committee</i>	
25th Meeting, 21 December 2005	cols 2925-2958
<i>(b) Subordinate Legislation Committee</i>	
2nd Meeting, 17 January 2006	cols 1502-1503

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

<i>Proceedings and Reports</i>	<i>Reference</i>
2nd Report, 2006 (Session 2), 19 January 2006	Report (SP paper 489)
Bill as amended at Stage 2	Bill as amended (SP Bill 49A)
Stage 3	
Consideration by the Parliament	
Stage 3 Debate, 19 January 2006	cols 22598-22623
Bill passed, 19 January 2006	Act as printed
Royal Assent – 22 February 2006	SP Business Bulletin No 30/2006