

THE HIGHLAND COUNCIL
3 September, 2009

Agenda Item	
Report No	

Public Services Reform (Scotland) Bill

Report by Chief Executive

Summary

The purpose of this report is to provide Members with an outline of the Scottish Government's Public Services Reform (Scotland) Bill and provide a proposed response to the Scottish Parliament's Finance Committee call for written evidence on the Bill.

1. Introduction

- 1.1 The Public Services Reform (Scotland) Bill which was introduced in the Scottish Parliament on 28 May 2009 has the overall aim of seeking to help simplify and improve the landscape of Scottish public bodies and to deliver more effective, co-ordinated government that can better achieve its core functions.
- 1.2 The Parliament's Finance Committee has been designated as the lead committee on the Bill, and on 18 June, 2009 the Committee issued a call for written evidence on the general principles of the Bill, which will contribute to informing their report at stage 1 of the legislative process.

2. Outline of the Public Services Reform (Scotland) Bill

- 2.1 In reforming Scotland's public bodies, the Scottish Government is seeking to streamline decision making and improve transparency, to bring together bodies with similar skills, expertise and processes, to stop activity that no longer contributes to the public purpose and to apply tough tests to the creation of any new bodies

The main features of the Bill are summarised as follows:-

2.2 Simplification of Public Bodies

- Transfer to Scottish Natural Heritage the functions of the Deer Commission for Scotland
- Transfer to Scottish Natural Heritage the functions of the Advisory Committee on sites of Special Scientific Interest
- Dissolution of the Scottish Records Advisory Council
- Dissolution of the Scottish Industrial Development Advisory Board
- Dissolution of the Building Standards Advisory Committee
- Dissolution of the Historic Environment Advisory Council for Scotland
- Delegation of Ministerial functions under Section 7 of the Industrial Development Act 1982 and Section 5 of the Science and Technology Act 1965

2.3 Order Making Powers

- Power to enable Ministers to make orders to restructure, the discharge of public functions in Scotland
- Power to reduce or remove administrative burdens

2.4 Establishment of Creative Scotland

- Establishes Creative Scotland and gives it the functions of identifying, supporting and developing quality and excellence in the arts and culture. Promoting understanding, appreciation and enjoyment of art and improving access to and participation in the arts and culture
- Dissolution of the Scottish Arts Council (Scottish Screen to be dissolved by non legislative means)

2.5 Social Care and Social Work Improvement Scotland

- Establishes Social Care and Social Work Improvement Scotland (SCSWIS) with a remit to protect and promote the safety and wellbeing and independence of people who use social services and to promote diversity and good practice in relation to those services
- SCSWIS to have the power to undertake inspections of any social service and the organisation of any social service and make a report following the inspection
- SCSWIS to have the powers to undertake the registration of care services and to serve an improvement notice on a care service
- Establishes SCSWIS arrangements with Local authorities in respect of adoption and fostering services
- Dissolution of the Scottish Commission for the regulation of Care

2.6 Health Care: Scrutiny and Improvement

- Establishes Healthcare Improvement Scotland with a remit to promote improvements in healthcare through monitoring the quality of health care being provided by the NHS, (including inspections of health care services, quality assurance and accreditation) and promoting user involvement in the planning and development of health services.

2.7 Scrutiny

- Imposes a duty on scrutiny authorities to take account of the experiences of service users user focus in the exercise of their functions
- Imposes a duty on scrutiny authorities to co-operate and co-ordinate activity with each other, with a view to improving the exercise of their scrutiny functions in relation to local authorities, social services and health services
- Enables Ministers to request scrutiny bodies to undertake joint inspections of children's services or other services within the inspection remit of the scrutiny bodies tasked with undertaking a joint investigation

3. Explanation of provisions of the Bill in relation to Simplification of Public Bodies

- 3.1 Within this section, the Bill proposes the delegation of Ministerial functions under Section 7 of the Industrial Development Act 1982 and Section 5 of the Science and Technology Act 1965. This has the effect of consolidating the delivery of national business grants within Scottish Enterprise. These grants include Regional Selective Assistance, SMART grant scheme and the proposed new general research and development grant scheme. The Scottish Government has indicated in the policy memorandum accompanying the Bill that these national grants will be available on the same terms and conditions to businesses operating within the Highlands and Islands Enterprise area.

4. Explanation of provisions of the Bill in relation to Order Making Powers

- 4.1 In addition to proposing a number of specific changes to existing public sector bodies, the Bill also proposes to give Ministers powers to make orders to restructure the discharge of public functions in Scotland. The aim of this order making power is to allow Ministers, with approval from the Scottish Parliament, to make further changes to the landscape of public bodies and public functions. The power enables Ministers to transfer, modify, confer and abolish functions without transfer or replacement in relation to those organisations for which the Scottish Government has responsibility.

The overarching requirement for any change being made under these powers is for Ministers to demonstrate that it will improve the exercise of public functions having regard to the three “e’s “ - efficiency, effectiveness and economy.

In relation to this order making power, it is important to note that the power to transfer or delegate functions also allows functions, following consultation, to be transferred or delegated to local authorities as well as fire and police authorities. However the order making power does not allow ministers to transfer functions away from local authorities or to make any structural changes in relation to local government.

- 4.2 The Bill also proposes order making power to enable Ministers to reduce or remove administrative burdens which are holding back the economic, effective and efficient operation of the public, private or third sectors, economic recovery or the longer term sustainable growth of the Country.

This power largely mirrors the regime already set out in the Legislative and Regulatory Reform Act 2006 which covers England and Wales and reserved matters in Scotland. This Bill sets out a common regime for the removal or reduction of burdens across both devolved and reserved matters.

The types of burden that the power will remove or reduce include burdens that give rise to financial costs, such as fees, administrative inconvenience such as frequent licensing or re-licensing requirements, obstacles to efficiency, productivity and profitability or inappropriate sanctions that affect individuals or businesses. Examples could involve – rationalising licensing requirements of certain types of businesses, reducing frequency of inspections or removing the requirement on local authorities to seek ministerial approval before making certain grant payments.

Proposals would only be brought forward if the policy objective intended could not be secured by non legislative means; the effect of the proposal was proportionate and strikes a fair balance between public interest and the interest of any person who might be adversely affected; does not remove any necessary protection and does not prevent someone exercising any reasonable right or freedom.

5. Explanation of provisions of the Bill in relation to Creative Scotland

5.1 This part of the Bill relates to the establishment of Creative Scotland through the merger of the Scottish Arts Council and Scottish Screen, However the Scottish Government intends that Creative Scotland has new and wider functions than its predecessor bodies.

5.2 It is intended that Creative Scotland will have the following functions:

- To identify, support and develop quality and excellence in the arts and culture from those engaged in artistic and other creative endeavours;
- To promote understanding, appreciation and enjoyment of the arts and culture;
- To encourage as many people as possible to access and participate in the arts and culture;
- To realise, as far as reasonably practicable so to do, the value and benefits, (in particular, the national and international value and benefits) of the arts and culture;
- To encourage and support artistic and other creative endeavours which contribute to an understanding of Scotland's national culture;
- To promote and support industries and other commercial activity the primary focus of which is the application of creative skills

5.3 The Government has indicated that by making Creative Scotland's functions and remit wide-ranging, it will encourage Creative Scotland to work in partnership with local government and others. Creative Scotland will work with both local and central government to discuss and agree implementation and resource issues relating to this policy area. Ministers are looking to Creative Scotland to undertake a strategic role across the public sector which will include working with local government and community planning sectors to assist in the delivery of the national performance framework.

5.4 The Scottish Government has indicated in the policy memorandum accompanying the Bill that this change will not impose any new burden or responsibility on local government.

6. Explanation of provisions of the Bill in relation to Social Care and Social Work Improvement Scotland, Health Care: Scrutiny and Improvement and Scrutiny

6.1 Parts 4 and 5 of the Bill establish two new scrutiny bodies, one for social care and social work and another one for healthcare.

6.2 Social Care and Social Work Improvement Scotland (SCSWIS) will be established to take over the functions of the Social Work Inspection Agency, Care Commission and the inspection of child protection services as well as responsibility for integrated children's services from Her Majesty's Inspectorate of Education (HMIE).

- 6.3 The aim of SCSWIS will be to scrutinise the provision of social care and support services and the local authorities' delivery of social work functions. It will scrutinise the local authorities' strategic social work functions through service delivery to the outcomes actually achieved for individuals.
- 6.4 The Government considers that these changes are necessary to allow SCSWIS flexibility to plan a proportionate risk based programme of inspection with the potential to reduce the burden of scrutiny on those services and service providers who are assessed as providing consistently high quality services and therefore "low risk" This change will also enable SCSWIS at the request of Ministers, to carry out inspections of all social services (including social work services and related children's services). They will be able to inspect across a range of services or by theme to look at for example, services for older people or services for children with learning disabilities.
- 6.5 Health Improvement Scotland (HIS) will be established as a new health body for the improvement and scrutiny of the NHS in Scotland and all registered independent healthcare services. HIS will take over the functions of the existing NHS Quality Improvement Scotland and independent health care regulatory functions from the Care Commission. The role of HIS will be to improve the quality of healthcare by bringing together the provisions of advice and guidance, support for implementation and improvement as well as assessment, monitoring and reporting functions.
- 6.6 The aim of the establishment of these new improvement and scrutiny bodies is to provide greater consistency of scrutiny and to provide a stronger emphasis on achieving better outcomes for children, adults who need support as well as adults who need protection (including older people). It is expected that these new organisations will work together as well as with other improvement and scrutiny bodies such as HMIE and Audit Scotland.
- 6.7 The Scrutiny aspect of the Bill imposes a duty on scrutiny bodies to demonstrate continuous improvement in user focus in their work. This duty will ensure that the experience of service users is firmly rooted in the scrutiny process and is influential in shaping service development and in informing the improvement of service delivery
- 6.8 The Bill also imposes a duty on scrutiny bodies to co-operate and co-ordinate activity in relation to local authorities, social services and health services. This is designed to both reduce the burden of scrutiny and also to improve the effectiveness of such scrutiny.
- 6.9 Finally the Bill makes provisions for joint inspections which enables Ministers to request two or more scrutiny bodies to work together and with other scrutiny bodies on joint inspections of services for children and of other relevant services. It will enable these joint inspection teams to work in an integrated way, sharing information where it is necessary and appropriate for the conduct of such inspections

7 Timetable for consideration of Evidence

- 7.1 The Committee expects to consider written submissions and to take oral evidence during September and October 2009 and to report on the Bill's general principles around the end of November 2009.

8. Recommendation

Members are asked to note the summary of the Bill and approve the proposed submission (at appendix 1) to the Scottish Parliament's Finance Committee request for written evidence on the Public Services Reform Bill.

Signature:

Designation: Chief Executive

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Date: 20 August, 2009

The Highland Council

Response to the Scottish Parliament's Finance Committee call for evidence on the Public Services Reform (Scotland) Bill

Simplification of Public Bodies

In general terms the Highland Council welcomes the simplification of the public sector landscape from both the point of view of the public users of services and from point of view of maximising cost efficiency.

In relation to the specific proposals, the Council considers that it is sensible to transfer the functions of the Deer Commission to Scottish Natural Heritage (SNH) especially as the Deer Commission specific role is undertaken on the wider scale by SNH in relation to biodiversity, nature conservation and habitat management. SNH are already closely involved in deer management and bringing these organisations together would enable one organisation to address deer management impacts on access and rural land use.

With regard to the advisory bodies that are proposed for dissolution, the Council does not envisage any particular problems with the proposed alternative arrangements.

In relation to the proposal to delegate Ministerial functions under Section 7 of the Industrial Development Act 1982 and Section 5 of the Science and Technology Act 1965 which are designed to consolidate the delivery of national business grants within Scottish Enterprise the Highland Council would suggest that consideration should be given to Highlands and Islands Enterprise being given equal powers to that proposed for Scottish Enterprise in relation to the delivery and management of these grants.

Order Making Powers

In relation to the power to make orders to restructure the discharge of public functions in Scotland, the Council notes that this could potentially have a significant impact on how public services are organised and delivered. Consequently it is important that there is effective consultation over and scrutiny of any such proposals.

The Council welcomes the commitment by the Scottish Government that the order making power will not transfer functions away from local authorities or make any structural changes in relation to local government. The Council also welcomes the fact that the order making power also allows functions, following consultation to be transferred or delegated to local authorities as well as fire and police authorities. However any such transfer and/or delegation would have to be accompanied with an appropriate transfer of financial resources.

With regard to the order making power to enable Ministers to reduce or remove administrative burdens, the Council while welcoming the policy intention behind these proposals, would wish to ensure that local authorities are fully consulted on any proposed changes which relate to functions they discharge and for which they have responsibility.

For example changes to licensing and inspection arrangements could have significant consequences for local authorities which would have to be carefully considered.

Establishment of Creative Scotland

The Highland Council welcomes the creation of Creative Scotland and also welcomes the confirmation that Creative Scotland will be established at arm's length from Scottish Government and that Creative Scotland will be fully funded by the Scottish Government, separate from the core budgets of the merging organisations.

The Council note the intention that a new area of work for Creative Scotland will be to assist artists to achieve excellence and to promote Scottish art and artists in the international arena.

Whilst the Council is, in principle, supportive of this aspiration, it is conscious that this may have additional cost implications; consequently the Council would urge the Scottish Government to make new resources available for new areas of work and would not want the necessary resources to be diverted from current provision by Scottish Arts Council, particularly existing funding for grass roots participation and community based cultural organisations, such as Promoters Arts Network and Fèisean nan Gàidheal in the Highlands.

The Highland Council has always appreciated Scottish Arts Council's awareness of and consideration for the particular needs, challenges and opportunities in the Highlands, which are often different from those in more urban and / or central areas of Scotland. The Council hopes Creative Scotland will similarly be conscious of the need to adopt varying approaches and implement strategy flexibly to best serve the various, geographical and culturally distinct, areas of Scotland. Similarly, we would expect Creative Scotland to take an active role in supporting and promoting the Gaelic language and cultural traditions.

The Highland Council welcomes how, in the lead up to the creation of Creative Scotland, Scottish Government and the transition board have engaged with artists and the arts community and canvassed their views. It is essential that Creative Scotland continue to fully involve artists and the art sector in its establishment and development.

The Council has previously expressed reservations that the proposed size of Creative Scotland's Board might be too limited; that reservation would be somewhat assuaged if the Board's make up comprises a membership that ensures it has knowledge and experience which is broad and varied enough to represent the diversity and range of the cultural sector in Scotland.

Social Care and Social Work Improvement Scotland Health Improvement Scotland Scrutiny

The Highland Council notes the intentions of the Bill with regard to new scrutiny arrangements, to ensure more consistent and effective approaches in social care, social work, criminal justice social work, child protection and health care services, and across the public, private and voluntary sectors.

The Highland Council agrees that the current legislation no longer reflects best practice, including the level of joint working across agencies, or best practice in regulation and scrutiny. Accordingly, the new legislation is welcomed, as it seeks to base these activities around an integrated cycle of improvement, and that regulation is integrated, proportionate, and evidence-based.

The Bill presents some opportunities to strengthen and further develop working practices, to:

- have a more consistent approach to risk assessment and scrutiny of public services;
- enable improved sharing of information across inspectorates;
- use the duty of collaboration to replace some current ad-hoc and opportunistic joint working arrangements.

There is an ongoing debate about how far these objectives can be achieved through legislation, and how much should be addressed in guidance and protocols, between the regulators and with service providers. Certainly, the new proposed duties will require a change of culture amongst scrutiny bodies, which is more than can be achieved by legislation alone.

The Bill reduces the number of scrutiny bodies by replacing the Care Commission and SWIA with Social Care and Social Work Improvement Scotland (SCSWIS). However, it falls well short of the recommendations, widely supported by service providers, of the Crerar Review.

Crerar recognised that we operate in a world where health and social care and education are not discrete entities. Practice in community care and in children's services is increasingly integrated across professional disciplines and agency structures.

This Council believes that this legislation is a missed opportunity to combine the regulation of health, care and education into one organisation. It is concerned that while there has been some rationalisation of functions, and there is the proposed duty to collaborate, this may not be sufficient to ensure a seamless efficient approach for service users and providers. Indeed, the duty to collaborate is unlikely to resolve the duplication in inspection programmes, schedules and processes, for both service providers and service users.

Also, the achievement of improvement-based scrutiny will be challenging, and the Bill does present some risks:

- The necessary arrangements during the imminent process of transition may introduce significant additional work which could impact on our normal business of providing services - albeit the regulatory bodies will be required to fund the costs of establishment/transition, and identify efficiency savings in relation to scrutiny.
- Greater standardisation and consistency across regulators will be welcome, but we do not necessarily want a simplistic 'one size fits all' approach in return.
- There will be an increased requirement on the Council to undertake self-evaluation. It is possible that one form of regulatory bureaucracy is being replaced by another, and that the overall burden will not be reduced.
- There continue to be different processes for dealing with complaints about public services, as while the Crerar report included the case for a single complaints system across all public services, the Bill does not fulfil this.
- There may be a greater risk of scrutiny and regulation dominating the balance of our activities, causing us to be more inspection-led and less management-led.

Financial Implications of the Bill

From the Council's perspective, it is hoped that the Bill will result in reduced bureaucracy and duplication from external inspections. Where this is the case, the Council will wish to identify any time or cash savings that result, in order that these can improve efficiency within the Council and contribute to the Council's own efficiency targets.

In addition with the reduction in the number of scrutiny bodies and the level of scrutiny combined with a move towards self-evaluation it should be the case that the new scrutiny arrangements will cost less. It could be that the savings that are achieved could be invested in those agencies that will be required to carry out the self-evaluation; for example local authorities.

Conclusion

Overall the Highland Council is broadly supportive of the measures contained within this Bill, which will contribute to reducing duplication of both activity and inspection within the public sector landscape as well as contributing to the development of a proportionate and risk based scrutiny system in Scotland. The anticipated benefits from reduced and more consistent regulation are likely to outweigh the risks referred to above. However, the Council believes that still more can be achieved towards the achievement of the Crerar recommendations, and that the legislation could have gone further in this regard.