

**PUBLIC SERVICES REFORM (SCOTLAND)
ACT 2010: SECTION 114(6)**

**GUIDANCE ON DUTY OF
CO-OPERATION FOR
SCHEDULED SCRUTINY AUTHORITIES**

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1 - INTRODUCTION

1.1 Section 114 of the Public Services Reform (Scotland) Act 2010¹ (the Act) requires the scrutiny authorities listed in schedule 20 to co-operate and co-ordinate their activity with each other and, where appropriate, the Scottish Ministers. The purpose of the duty is to improve the exercise of their scrutiny functions in relation to local authorities, local authority services, social services and health services, having regard to efficiency, effectiveness and economy. *(NB Section 114(5) allows for the duty to be disapplied only in certain circumstances.)*

1.2 Scrutiny authorities must comply with any directions given by the Scottish Ministers in respect of this duty. Scrutiny authorities must also have regard to the following guidance provided by the Scottish Ministers and should take account of the principles of external scrutiny described in **Annex A**, namely: public focus; independence; proportionality; transparency; and accountability.

1.3 In this guidance scrutiny includes:

- “regulation”: meaning the provision of a permit to carry out regulated activity, enforcement of legislation and regulations, monitoring the quality of services provided and, if the context requires, may include elements of service inspection, and other activity designed to drive up quality and/or enforce standards; and related activity;
- “audit”: meaning external scrutiny of corporate governance and management; financial statements and underlying financial systems; and performance, performance management and reporting of public bodies; and related activity;
- “inspection”: meaning the targeted scrutiny of specific services, to check whether they are meeting national and local performance standards, legislative and professional requirements, and the needs of service users; and related activity.

2 - IMPROVING REGULATION, AUDIT AND INSPECTION THROUGH CO-OPERATION

2.1 Scrutiny authorities have a range of functions. Wherever possible and appropriate they should **work together** to improve the efficiency, effectiveness and economy of their overall regulation, audit and inspection of local authorities, local authority services, social services and health services through adopting, as appropriate, some or all of the following approaches:

¹ http://www.oqps.gov.uk/legislation/acts/acts2010/pdf/asp_20100008_en.pdf

Have a vision and strategy for co-operation

2.2 Scrutiny authorities should formalise at a strategic level, and adhere to, arrangements for co-operation and co-ordination. The arrangements should be articulated through joint codes of practice or memoranda of understanding (MOU) (as appropriate to the circumstances) which set out the necessary protocols for planning and working together effectively, pursuing shared outcomes for people and sharing information and other corporate resources. Strategic approaches to the duty of co-operation should also be reflected in the corporate or operational plans of individual scrutiny authorities.

2.3 Scrutiny authorities should consider opportunities for joint management and administrative arrangements, systems and processes where these represent the most efficient and effective way of doing things.

2.4 Scrutiny authorities should work together to ensure that scrutiny activity is appropriate and proportionate in the increasing number of circumstances where services and functions are being delivered through collaborative and multi-agency arrangements and where users engage with joined-up or connected services. Where there are differing views about what is proportionate or appropriate in these circumstances, clarification should be sought from the Scottish Ministers to ensure a consistent approach across all services.

2.5 Scrutiny authorities should ensure that there is clear communication with the bodies or services being scrutinised about the approaches being taken which result from scrutiny authorities co-operating and co-ordinating their activity. Scrutinised organisations should be given clear expectations of why and how the approach is being taken and the implications of the approach for sharing of data, reporting of findings etc. To assist in this, joint codes of practice and MOUs on co-operation should be made publicly available on relevant websites.

Co-ordinate planning, scheduling and delivery of scrutiny activity

2.6 Scrutiny authorities should increasingly work together to ensure that scrutiny activity is driven by evidence-based risk assessment so that the agreed scrutiny response is formulated in a way that is proportionate to the risks identified and provides an effective level of assurance.

2.7 Scrutiny authorities should jointly design, co-ordinate and schedule scrutiny activity to ensure there is no unnecessary duplication in the external scrutiny of service providers,

2.8 Scrutiny authorities should, where appropriate, agree on how to assess sector-specific self-evaluation methodologies to ensure that these are robust and that they are recognised by all scrutiny authorities as a key part of the scrutiny evidence base.

2.9 Scrutiny authorities should undertake scrutiny activity jointly, wherever practicable and appropriate, where there are services and stakeholders in common, whilst ensuring that the impact on scrutinised bodies is kept to a minimum.

2.10 Scrutiny authorities should advise the Scottish Ministers of circumstances when duplication or overlap of scrutiny functions or activity is unavoidable or where other legislation is constraining the ability of scrutiny authorities to co-operate and co-ordinate their work.

Share information

2.11 Within legislative and other necessary and agreed parameters, scrutiny authorities should share information and intelligence and rely on evidence from other scrutiny authorities to avoid duplication of effort on the part of both scrutinised services and scrutiny authorities.

2.12 Scrutiny authorities should ensure that staff develop a good understanding of the work undertaken by other scrutiny authorities and the evidence which they each use and produce, including the self-evaluation frameworks being used to provide evidence and assurance.

Harmonise scrutiny reporting

2.13 Scrutiny authorities should work towards a common language and common reporting methods for scrutiny findings in order to simplify the outputs of scrutiny for the public, for service users and for services. Where necessary differences must remain, authorities should make efforts to map out the linkages.

2.14 Scrutiny authorities should, where appropriate, ensure that approaches to scrutiny reports, recommendations and action plans are aligned with those of other scrutiny authorities.

3 - COMPLIANCE WITH THIS GUIDANCE

3.1 Scrutiny authorities will be expected to be able to demonstrate how they have co-operated with others in order to improve the efficiency, effectiveness and economy of their scrutiny activity. It will be important to reflect how the co-operative effort improves the impact which scrutiny has on the services being scrutinised and on the users of those services. Scrutiny authorities should work together to provide such evidence using methods such as publication of joint codes of practice and MOUs, sections on co-operative activity in organisational annual reports, joint activity reports and cross-linkages between websites.

3.2 As allowed for by section 114(5) of the PSR Act, where compliance with the duty of co-operation would prevent or delay action which a scrutiny authority considers to be necessary as a matter of urgency the duty would not apply

3.3 The Scottish Ministers may issue other general or specific direction or guidance from time to time about the duty imposed by section 114 of the Act and will also keep this guidance under review in the light of experience.

**Scottish Government
November 2010**

PRINCIPLES OF SCRUTINY

The duty of co-operation is in line with the five core principles of scrutiny:

Public focus	The needs and priorities of service users and the public must be the prime consideration in all external scrutiny. The public is the ultimate beneficiary of external scrutiny. As such, it is crucial that it is closely involved in both decisions about the use of scrutiny and any scrutiny activity.
Independence	External scrutiny must be independent and must not be constrained by any party in reaching its conclusions and publishing its findings. It must be free to make judgements about service delivery and report its findings into the public domain, and it must be able to decide how it discharges its responsibilities, once its focus has been agreed.
Proportionality	The use of external scrutiny within the wider public accountability system must be proportionate to the particular issue, policy context or environment. Proportionality must apply at two levels. Firstly, in deciding whether it is appropriate to use scrutiny, and secondly in deciding its nature, scope and duration.
Transparency	External scrutiny must be transparent in all its activities, its focus, decision making criteria, business processes, assessments and reporting. There should be a transparent decision framework for regulatory intervention. It is essential that the processes and mechanisms which support the use of external scrutiny are transparent, so that all parties understand the particular purpose for which it is being used at any given time. For external scrutiny to be credible, its reports must be clear, independent and consistent.
Accountability	External scrutiny must be accountable for its use of resources. It must demonstrate and report on the impact of its activities on services scrutinised, on the direct and indirect cost implications and it must demonstrate value for money. Its assessments and findings must be fair and capable of being defended.

Source - [Independent Review of Regulation, Audit, Inspection and Complaints handling of Public Services in Scotland](#)



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