

Consultation on Draft Order to revise the procedures for complaints about social work

September 2015

CONSULTATION ON DRAFT ORDER TO AMEND THE SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002

1. This consultation seeks your views on the draft Order to amend the Scottish Public Services Ombudsman Act 2002 to allow the Scottish Public Services Ombudsman (“the SPSO”) to investigate complaints in relation to the substance of social work decisions. The draft Order also amends the Public Services Reform (Scotland) Act 2010 in relation to the sharing of information by the Care Inspectorate with the SPSO; and amends the Social Work (Scotland) Act 1968 to abolish the existing system of local authority social work complaints and allow a model complaints handling procedure prepared by the SPSO to be introduced.

BACKGROUND

2. The introduction of formalised social work complaints procedures in the early 1990s was set against the backdrop of improving public services for citizens (Citizen's Charter) and introducing systems to aid 'quality assurance'. Complaints were seen as a key tool in assessing the effectiveness of a service and at the time it was recognised that local authority complaint procedures, with one or two notable exceptions, were relatively undeveloped.
3. The framework for local authority social work complaints and representation procedures is set out in section 5B of the Social Work (Scotland) Act 1968. This provision gives Ministers powers to require local authorities to establish procedures for considering complaints with regard to the discharge of listed social work functions (including those related to children). The Social Work (Representations Procedure) (Scotland) Order 1990 (S.I. 1990/2519) requires local authorities to establish such procedures. The detail of the procedures adopted by local authorities must comply with Directions issued by Ministers.
4. Section 5B provides for complaints to be made by or on behalf of:
 - a person for whom the local authority provides a service either directly or indirectly;
 - a person whose request for such a service has been refused by the local authority;
 - other persons whose need or possible need for a service, which the local authority has a power or a duty to provide, has come to the authority's attention.
5. The entitlement of persons to complain or make other representations on behalf of others is intended to cover, inter alia, the position of private (e.g. unpaid) carers providing care to persons for whom authorities have a power or duty to provide social work services. An entitlement to complain on behalf of children in care, under supervision, in receipt of some other social work service or in possible need of such a service from the local authority, is expressly given to the child's parents and other persons mentioned in section 5B(4).

6. Currently complaints on social work services progress through a four-stage process:
 - Informal problem-solving stage
 - Investigation by specially-designated staff
 - Referral to Complaints Review Committee
 - SPSO consideration (currently limited to consideration of whether there has been maladministration rather than any consideration of the merits of the decision).
7. Complaints Review Committees (CRCs) are a requirement laid out in Directions and Guidance issued by Ministers in 1996, and they are required to have Chairs which are independent of local authorities (working with Elected Members). CRCs are able to take some time for their investigations as set out in the 1996 Guidance. On occasion this can mean that there may be more than 100 days from the cases being referred to the CRC to the complainant receiving notification of any decisions.

Scrutiny of existing system

8. The [Crerar Review](#) (Report of the Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland, published September 2007) looked into regulation, audit, inspection and complaints handling of public services in Scotland. A key finding was that complaints processes are not always accessible or easy to use, are often complex and far too variable in their content. In short they are not fit for purpose.
9. In response to the Crerar Review, Scottish Ministers established a number of groups to consider the recommendations in more detail, including the Fit for Purpose Complaints System Action Group (FCSAG). The report of this group, known as the [Sinclair Report](#), was published in July 2008 providing Ministers with proposals for simplifying public service complaints handling procedures, including recommendations that are specific or relevant to social work complaints.
10. The particular recommendation in the Sinclair Report for social work complaints was that the role currently performed by local authority Complaints Review Committees (CRCs) for social work should be transferred to the SPSO to provide a standardised system to increase consistency across the country and address the potential imbalance between the experience of complainants in larger and smaller authorities.
11. The Sinclair Report also recommended that legislation should be introduced to allow changes to the complaints landscape and to allow better information sharing (e.g. to allow the SPSO and complaints handling bodies to share headline information on cases under consideration).
12. CRCs in particular have been criticised by complainants and user organisations. Issues raised include:

- **Independence** - The Directions set out requirements on the appointment of "independent persons" to CRCs aimed to encourage confidence in the impartiality of CRC proceedings. The role of the CRC is to objectively and independently examine the facts of a complaint. However, although the CRC can express disagreement with policies, priorities, resources and professional judgment it only has the power to make a recommendation to the appropriate local authority committee. It is the local authority committee which effectively takes the final decision on the complaint.
- **Time** - A CRC has to make recommendations within 56 days from the date the complainant requested it, and the local authority then has a further 42 days from the date of the CRC decision to agree actions and notify the complainant in writing of the decision. This can substantially lengthen the complaints process for the complainant, especially when also taking into account the 28 days given to the local authority to initially investigate the complaint. It is recognised that the time involved to provide a response to an individual with a complaint about social work can conflict with the principle of keeping the journey of a complaint as short as possible.
- **Membership** - Some local authorities have expressed concerns about problems in maintaining membership for CRCs, which can lead to difficulties and delays in convening the committees when they are requested. The resources required to manage the CRC process, specifically the level of administration associated with convening CRCs, have also been highlighted.

13. The principles which the Sinclair Report identifies as key to improving the complaints handling procedures are:

- Making complaining more straightforward;
- Reducing the time taken to deal with complaints and reducing the number of standalone complaints handling bodies;
- Allow providers to deal with complaints more locally;
- Standardising how complaints outcomes are reported.

14. In response to the Sinclair report, the Public Services Reform (Scotland) Act 2010 gave the SPSO the authority to lead the development of simplified and standardised Complaints Handling Procedures (CHPs) across the public sector. Following consultation, a Statement of Complaints Handling Principles and Guidance on Model Complaints Handling Procedures were developed by the SPSO and published at the beginning of 2011. They can be accessed at: <http://www.spsso.org.uk/media-centre/news-releases/model-complaints-handling-guidance-published>

15. In line with the recommendations of the Sinclair Report the SPSO's Complaints Standards Authority have since worked with service providers in the local authority and other sectors to develop and implement a standardised model complaints handling procedure. This is now in operation across all local authority services (with the exception of social work) and most other public sector bodies.

16. The SPSO has set up an internal unit, the Complaints Standards Authority (CSA), which is working in partnership with individual public sector areas to oversee the process of developing model CHPs for each sector in line with the framework of the Principles and the Guidance.

17. The SPSO guidance sets out the process to be followed in a model CHP and who should be accountable at each stage. The aim of the model CHP is to provide a quick, simple and streamlined process with a strong focus on local, early resolution by empowered and well trained staff. The SPSO's recommended model is outlined below. This model, based on that recommended by the Sinclair Report, provides organisations with two opportunities to deal with complaints internally: frontline resolution and investigation.

Model Complaints Handling Procedure

FRONTLINE RESOLUTION	INVESTIGATION	INDEPENDENT EXTERNAL REVIEW (SPSO or other)
<p>For issues that are straightforward and easily resolved, requiring little or no investigation. 'On-the-spot' apology, explanation, or other action to resolve the complaint quickly, in five working days or less, unless there are exceptional circumstances.</p> <p>Complaints addressed by any member of staff, or alternatively referred to the appropriate point for frontline resolution.</p> <p>Complaint details, outcome and action taken recorded and used for service improvement.</p>	<p>For issues that have not been resolved at the frontline or that are complex, serious or 'high risk'. A definitive response provided within 20 working days following a thorough investigation of the points raised. Sensitive complaints that meet set criteria may have the opportunity for additional internal review.</p> <p>Responses signed off by senior management. Senior management have an active interest in complaints and use information gathered to improve services.</p>	<p>For issues that have not been resolved by the service provider.</p> <p>Complaints progressing to the SPSO will have been thoroughly investigated by the service provider. The SPSO will assess whether there is evidence of service failure or maladministration not identified by the service.</p>

18. This is the SPSO's standard model for complaints handling procedures, however for functions in relation to health, and the proposals in this draft Order for social work, the independent external review stage also allows SPSO to consider the merits of decisions taken in the exercise of clinical and professional judgment.

2011 Consultation and Working Group

19. The Scottish Government consulted on proposals to revise the system between December 2011 and March 2012. The consultation report was published in August 2012 (<http://www.gov.scot/Publications/2012/08/9288>), and showed clear support for the reform of the system, but no outright preferred mechanism for complaints handling.

20. In February 2013, a working group was established by the Scottish Government, under the independent chairmanship of the Very Revd Dr Graham Forbes CBE. The group included representation from COSLA, ADSW (now Social Work Scotland), SPSO, SSSC, the Care Inspectorate, and Capability Scotland.

21. The group agreed the following recommendations to Ministers:

“Internal review by Local Authorities – first and second stages of procedure

- a. The model Complaints Handling Procedure (CHP) which is currently in use in local government for all other complaints would be adopted for social work complaints. This would bring social work complaints procedures broadly into line with other local authority complaints, and NHS complaints procedures.
- b. In acknowledgement of the fact that social work complaints are more complicated than other local authority service complaints, it was agreed to recommend to Ministers that the model CHP would be adopted with local authorities having the possibility of extending the timescales at the first (Frontline Resolution) stage from 5 to 15 working days at the discretion of local managers. It was agreed that this should be monitored to ensure that there were genuine reasons for any extensions. We would initially expect that Directors of Social Work should monitor this, and SPSO will take an interest in the timescales of cases which have been referred to them.
- c. Until legislation is enacted, it remains a legal requirement that local authorities must continue to utilise CRCs, but local authorities should follow the principles of the model CHP for the first and second stages of complaints, with the possibility of extending timescales as above.
- d. SPSO and ADSW¹ would draw up, in consultation with SG and COSLA, guidance on the criteria for extensions to the Frontline Resolution stage timescales.

¹ Now Social Work Scotland.

- e. The second (Investigation) stage of the model CHP would apply as it does in other LA and Health complaints – a definitive response to be provided within 20 working days of escalation to the second stage, with responses signed off by senior management.

External review – third stage of procedure

- f. The group recommended that the SPSO take on a role similar to that currently undertaken by the CRCs. This recommendation is in line with that proposed by the Sinclair Report. This would involve the SPSO's remit being extended to cover social work complaints.

CRCs currently consider complaints made by or on behalf of users or carers about the provision or non-provision of services, the quality and extent of services, the operation of services and allied issues. CRCs do not consider grievance procedures, which concern staff issues, i.e. conditions of service, management and support or disciplinary procedures which apply to the actions of staff in relation to failure to comply with codes of conduct, practice, instructions or other relevant professional or administrative guidance.

Issues concerning the malpractice of a social services worker or social worker are considered by the SSSC (Scottish Social Services Council) as the regulatory body for the social services workforce. Issues around the allocation of resources are for the individual local authority, and it is not proposed that SPSO have a power to force local authorities to amend decisions based on their agreed eligibility criteria.”

Current barriers

- 22. Currently the SPSO is unable to consider decisions made by local authorities in the exercise of their social work functions under the 1968 Act, except those where there is a complaint about the process involved in reaching the decision (maladministration). The 2002 Act (7 (1)) states that the Ombudsman is not entitled to question the merits of a decision taken without maladministration by or on behalf of a listed authority in the exercise of a discretion vested in that authority.
- 23. The above subsection of the 2002 Act does not apply to the merits of a decision taken by or on behalf of a health service body, a family health provider or an independent provider to the extent that the decision was taken in consequence of the exercise of clinical judgment.
- 24. Our policy intent is that the exemption to (7 (1)) should be replicated to allow for the SPSO to consider the merits of decisions taken under the professional judgment of local authority staff exercising their functions under the 1968 Act and other listed social work legislation. This may require SPSO to consult with and seek expert guidance from those with social work expertise.

25. It is not our intention that the SPSO should be responsible for the professional conduct of social work staff – that will rightly remain with the SSSC (Scottish Social Services Council) as the regulatory body for staff in the social care sector.
26. The SSSC considers suitability for initial and ongoing suitability registration with reference to the good character, competence and conduct test set out in section 46 of the Regulation of Care (Scotland) Act 2001. At the point of application the SSSC is considers this test to decide on entry to the Register. It is anticipated that the SPSO and SSSC will ensure that their Memorandum of Understanding is updated to avoid, where possible, and manage any overlap in scrutiny of the professional judgment of social work professionals.

Appeals against resource allocation decisions

27. It is not intended that the SPSO will take on any responsibility for hearing appeals against, or overturning decisions made by local authorities in resource allocation. The SPSO will be able to make recommendations to local authorities, and will continue to hold its power to lay special reports in Parliament, but it will not become an appeals body for resource allocation decisions.
28. During the deliberations of the Working Group, the issue of appeals against decisions was a significant discussion point. User groups felt that the SPSO would not have sufficient power to overturn decisions made by social work staff, and that the SPSO would not constitute access to a free and impartial tribunal.
29. The current arrangements of CRCs have the power to make recommendations to the local authority on the decisions made by social work staff, including on resource allocation for individual users. When SPSO takes on the 3rd stage of the complaints procedure, it will have the same powers to recommend to Local Authorities that decisions should be reconsidered. Should a Local Authority not comply with the recommendation of the SPSO, the Ombudsman may lay in Parliament a special report on that case. To date, this has not been necessary as there has been full compliance with the recommendations made by the Ombudsman.
30. It is not, however, intended that the Ombudsman should have additional powers in relation to social work allowing them to reverse decisions made by the Local Authority on the basis of the effective and efficient use of resources. In practice, this will mean that the SPSO may consider the merits of decisions made by staff of Local Authorities, and make recommendations to Local Authorities if they consider that the decisions should have been made differently, but will not have the power to overturn those decisions.
31. The new section 7(2A) to the SPSO Act as drafted in the Order will allow the SPSO to consider the merits of decisions taken in consequence of the exercise of professional judgment when investigating complaints. The reference to professional judgment is intended to reflect the reference to 'clinical judgment' in the context of health decisions, and to prevent the SPSO from considering the merits of wholly political decisions. We recognise that some high level political decisions in relation to strategic or resourcing issues may be taken in reliance on

professional advice from within the local authority: for example, a decision to close a day care centre or to choose a certain method of meeting an identified social care need over a different, more expensive method. We consider that the draft Order would allow the SPSO to consider the merits of such decisions, but only insofar as they were taken in the exercise of professional judgment. The SPSO could consider whether professional advice within the local authority was correct in the way it analysed the evidence in making the decisions. However, if that advice was correct, the SPSO could not go on to consider whether elected members of the Local Authority had made the correct decision when weighing that advice against other factors.

32. We do not intend that these changes should interfere with the ability of Local Authorities to set high level budgets for social work. The changes being made will not constitute an appeals process against decisions made by local authorities in their resource allocation at a strategic level.

Integration of Health and Social Care – complaints procedures

33. Our starting point for making changes to the NHS complaints system and the social work complaints system, and, indeed, for the provision of guidance as set out below, is to ensure that complaints, whether in relation to health or social work services, are handled in an effective, timely and person centred way. Complaints must be listened to, appropriate action should be taken in response, and learning should be shared and fed back to improve services and service delivery.
34. Under integration, each Health Board and Local Authority chooses one of two organisational models to adopt – “lead agency” or “body corporate”. One Local Authority area – Highland – is using the lead agency model. The other 31 Local Authority areas have agreed, with their Health Board partners, to adopt the body corporate model.
35. Every Health Board and Local Authority must agree an Integration Scheme – a scheme of establishment – setting out the local arrangements for integration, regardless of which model of integration is used. Requirements for the content of the Integration Scheme are set out in Regulations.
36. In Highland, the Health Board delivers adult health and social care, and is responsible for all complaints relating to those services. The Local Authority delivers children’s community health services and children’s social care services, and is responsible for all complaints relating to those services.
37. In all other areas, all of which are using the body corporate model, the Health Board and Local Authority create a partnership in the form of an Integrated Joint Board (IJB), which plans and commissions services that are then delivered by the Health Board and Local Authority in accordance with any directions issued by the

IJB. This means that the Health Board and Local Authority remain responsible for the delivery of health and social care services, and any complaints about service delivery will be dealt with through the existing health and social work complaints procedures.

38. We recognise the importance of ensuring that complaints are joined up from the perspective of the complainant. Health Boards and Local Authorities must agree and set out within their Integration Schemes their arrangements for managing complaints that relate to the delivery of services that are within the scope of integration. The Integration Scheme must also set out the process by which a service user, and anyone else complaining on behalf of a service user, may make a complaint. The arrangements set out in the Integration Scheme do not alter the underlying position, described above, that complaints are to be dealt with under existing health and social work complaints procedures.
39. The Health Board and Local Authority must ensure that the arrangements that they have jointly agreed are:
- Clearly explained;
 - Well-publicised;
 - Accessible; and
 - Allow for timely recourse.
40. They must also ensure that complainants are signposted to independent advocacy services.

Information sharing

41. During the discussions of the Working Group, the SPSO raised the difficulties that they encounter in sharing information with the Care Inspectorate and SSSC. The 2002 Act restricts the Ombudsman in relation to the information which it can disclose to other organisations and the purposes for which it can do so.
42. This restricts the SPSO from making either SSSC or the Care Inspectorate aware of any issues that have come to light as a result of its investigation into a complaint. It is intended that the SPSO will be able to highlight concerns or failings in care services or professionals to the appropriate body, if it discovers these in the light of its investigation into a complaint.
43. The draft Order makes a provision for SPSO to be able to share information with SSSC and the Care Inspectorate where it considers that the information relates to those bodies' regulatory functions.
44. Section 19 of the SPSO Act allows SPSO to share information with other bodies such as the Care Inspectorate and SSSC but only if it is specifically for the purpose of the SPSO undertaking its own investigation, or if the information indicates that a person constitutes a threat to the health and safety of others.

45. There are other scenarios when the SPSO may wish to share information but at present are unable to, even if a request has been made by the other organisation. For example:-

- when there is no clear and justifiable reason, for the purposes of undertaking the SPSO's investigations, for SPSO to need to share any information with the other body in order to obtain further information from them;
- when SPSO has completed its investigation and issued a final decision;
- when SPSO wants to share details of all of the live cases about a particular organisation in order to inform an inspection;
- where the information relates to an area that SPSO does not have jurisdiction to investigate (e.g. a case about NHS or Local Authority functions which also references complaints about care provision in a home – a Care Inspectorate responsibility).

46. Section 20 to the 2002 Act authorises the SPSO to disclose any information obtained by or supplied to it to the persons specified in schedule 5 if the information appears to the SPSO to relate to a matter specified in that schedule in relation to that person. In order to deal with the scenarios listed above, the draft Order adds new entries to schedule 5. These will allow the SPSO to disclose to the SSSC information relating to its professional regulatory functions; and disclose to the Care Inspectorate information relating to its inspection and registration functions.

47. The draft Order also amends section 56 of the Public Services Reform (Scotland) Act 2010, which deals with confidential information obtained by Care Inspectorate inspectors in the course of their inspections. The amendment would authorise the disclosure of information to the SPSO where that would assist the SPSO in carrying out its investigatory functions under the 2002 Act.

48. The SPSO, Care Inspectorate and SSSC will remain subject to Data Protection legislation, and will treat any information shared between them in accordance with the Data Protection Act 1998, only processing sensitive data when required so that there are provisions in place to allow for the protection of data.

Funding of SPSO to undertake the additional functions

49. The Scottish Government has made a commitment to the SPCB that the SPSO will be fully resourced for the changes made by the draft Order. The Scottish Government will continue to work with SPCB and the SPSO on the resource implications arising from these changes.

Costs on other bodies and individuals

50. The draft Order will not generate any additional costs on bodies or individuals other than the SPSO. It is anticipated that Local Authorities will benefit from the changes as an administrative burden (in the form of CRCs) will be removed from them.

Review of effectiveness of the changes

51. The Scottish Government will, in collaboration with SPSO and stakeholders, after the first full year of operation of the revised complaints system, conduct a light-touch review of how the new system is performing against the principles of the recommendations of the Sinclair and Crerar reports to ensure that the system is supporting service users.

DRAFT ORDER

52. The draft Order contained in Annex A makes the legislative changes necessary to allow the SPSO to take on the role currently undertaken by local authorities' Complaints Review Committees. It also repeals the provisions which create the framework for the existing complaints procedures.

53. Until the Order is enacted, it will remain a requirement for local authorities to continue to hold Complaints Review Committees. The savings provisions mean that the existing local authority complaints procedures (including Complaints Review Committees) will continue to apply to any complaints which have been made before the changes come into force.

54. The draft Order contains provisions for:

- Extending the remit of the SPSO to enable them to consider complaints made about social work which are not solely about maladministration, but enable the SPSO to consider the professional judgment of social work staff.
- Repealing the existing requirements on local authorities to create a social work complaints procedure. One effect of this repeal is that the SPSO will be able to use its existing functions to create a model complaints handling procedure for social work complaints, and that local authorities will be obliged to adopt a procedure which complies with that model. This brings SPSO functions in relation to social work into line for those for health, where the SPSO sets out its model complaints handling procedures which it expects local authorities to follow.
- Allowing the sharing of information between SPSO, Care Inspectorate and the Scottish Social Service Council (SSSC) where relevant to their regulatory functions.

55. The draft Order, if approved, is expected to come into force on 1st October 2016, to allow time for the preparations for the change to be undertaken.

56. The explanatory note to the draft Order should be read in conjunction with the draft Order in responding to this consultation.

CONSULTATION QUESTIONS

1. Do you agree that the Local Authority Complaints Review Committees should be replaced?
2. Do you agree with the proposal to extend the functions of the Scottish Public Services Ombudsman (SPSO) to allow the SPSO to investigate stage 3 of complaints for social work?
3. Do you agree with the proposal to extend the role of the SPSO in relation to social work complaints to allow them to consider in their investigations matters of professional judgment of social work staff?
4. Do you agree that the SPSO should be able to share information with the Care Inspectorate (Social Care and Social Work Improvement Scotland) and the Scottish Social Services Council in relation to social work?
5. Do you have any other comments on the proposals?

Proposed draft Order laid before the Scottish Parliament under section 26(2)(a) of the Public Services Reform (Scotland) Act 2010 for the purposes of consultation required by section 26(1) of that Act.

Draft Order laid before the Scottish Parliament under section 25(2)(b) of the Public Services Reform (Scotland) Act 2010, for approval by resolution of the Scottish Parliament.

D R A F T S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2016 No.

REGULATORY REFORM

SOCIAL CARE

**The Public Services Reform (Social Work Complaints Procedure)
(Scotland) Order 2016**

Made - - - -

Coming into force - - *1st October 2016*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 14(1) and (7) and 17(1) and (9) of the Public Services Reform (Scotland) Act 2010⁽²⁾ (“the Act”) and all other powers enabling them to do so.

The Scottish Ministers consider that the conditions in section 16(2) and 18(2) of the Act are satisfied.

The Scottish Ministers have consulted in accordance with section 26 of the Act.

In accordance with section 19(2) of the Act, the Scottish Parliamentary Corporate Body has consented to the laying of a draft of this Order.

The Scottish Ministers have laid a draft of this Order and an explanatory document before the Scottish Parliament in accordance with section 25(2)(b) of the Act.

In accordance with section 25(2)(c) of the Act, the draft of this Order has been approved by resolution of the Scottish Parliament.

(2) 2010 asp 8. The effect of sections 14 to 30 and schedule 5 and 6 of the Act has been extended by virtue of section 134(4) and S.S.I. 2015/234.

Citation and commencement

1. This Order may be cited as the Public Services Reform (Social Work Complaints Procedure) (Scotland) Order 2016 and comes into force on 1st October 2016.

Amendment of the Scottish Public Services Ombudsman Act 2002

2. The Scottish Public Services Ombudsman Act 2002⁽³⁾ is amended in accordance with articles 3 and 4.

3. In section 7 (matters which may be investigated: restrictions), after subsection (2) insert—

“(2A) Subsection (1) does not apply to the merits of a decision taken by or on behalf of a person mentioned in subsection (2B) in pursuance of a social work function to the extent that the decision was taken in consequence of the exercise of the professional judgment of the social worker or other person discharging the function.

(2B) The persons are—

- (a) a local authority, or
- (b) the holder of an office established by or under any enactment to which appointments are made by a local authority.

(2C) In subsection (2A), “social work function” means a function conferred by or under—

- (a) the Social Work (Scotland) Act 1968⁽⁴⁾,
- (b) an enactment mentioned in section 5(1B) of that Act, or
- (c) an enactment listed in the schedule to the Public Bodies (Joint Working) (Scotland) Act 2014⁽⁵⁾.”.

4. At the end of schedule 5 (disclosure of information by the Ombudsman) insert—

“The Scottish Social Services Council	A matter in respect of which the Scottish Social Services Council could exercise any power conferred by— <ul style="list-style-type: none">(a) section 46 (grant or refusal of registration),(b) section 47 (variation etc. of conditions in relation to registration),(c) section 49 (removal etc. from the register), of the Regulation of Care (Scotland) Act 2001 ⁽⁶⁾
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⁽³⁾ 2002 asp 11.

⁽⁴⁾ 1968 c. 49. Section 5(1B) was inserted by the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 76(3)(b) and amended by the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 15(4)(b); the Criminal Proceedings (Consequential Provisions) (Scotland) Act 1995 (c. 40), Schedule 4, paragraph 6(2); the Regulation of Care (Scotland) Act 2001 (asp 8), schedule 4, paragraph 1; the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), schedule 4, paragraph 1(3); the Adoption and Children (Scotland) Act 2007 (asp 4), schedule 2 paragraph 2(2)(a) and schedule 3, paragraph 1; the Social Care (Self-directed Support) (Scotland) Act 2013 (asp 1), section 21(b); the Children and Young People (Scotland) Act 2014 (asp 8), schedule 5, paragraph 1(b) and S.S.I. 2013/211.

⁽⁵⁾ 2014 asp 9.

⁽⁶⁾ 2001 asp 8.

Social Care and Social Work Improvement Scotland	<p>A matter in respect of which Social Care and Social Work Improvement Scotland could exercise any power conferred by—</p> <p>(a) chapter 2 (social services: inspections),</p> <p>(b) chapter 3 (care services; registration etc.),</p> <p>(c) chapter 4 (local authority adoption and fostering services etc.),</p> <p>of Part 5 of the Public Services Reform (Scotland) Act 2010⁽⁷⁾”.</p>
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Amendment of the Public Services Reform (Scotland) Act 2010

5. In section 56 of the Public Services Reform (Scotland) Act 2010 (inspections: authorised persons), in subsection (4)—

- (a) omit “or” immediately following paragraph (c);
- (b) after “offenders” in paragraph (d) insert—
 - “, or
 - (e) to the extent considered necessary by the authorised person for the purpose of assisting the Scottish Public Services Ombudsman in connection with the Ombudsman’s investigatory functions under the Scottish Public Services Ombudsman Act 2002”.

Amendment of the Social Work (Scotland) Act 1968

6. Omit section 5B of the Social Work (Scotland) Act 1968⁽⁸⁾ (complaints procedure).

Saving provision

7.—(1) Where paragraph (2) applies, section 5B of the Social Work (Scotland) Act 1968 continues to have effect on and after 1st October 2016 as it had effect immediately before that date.

(2) This paragraph applies in the case of any representations (including complaints) made before 1st October 2016 through a procedure established in accordance with the Social Work (Representations Procedure) (Scotland) Order 1990⁽⁹⁾.

Name

Authorised to sign by the Scottish Ministers

St Andrew’s House,

Edinburgh

Date

⁽⁷⁾ 2010 asp 8.

⁽⁸⁾ Section 5B was inserted by the National Health Service and Community Care Act 1990 (c.19), s. 52, and amended by the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 76(5) and the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 15(5)(a) and Schedule 5, paragraph 1.

⁽⁹⁾ S.I. 1990/2519.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Scottish Public Services Ombudsman Act 2002 (“the 2002 Act”) in order to allow the Ombudsman to consider the merits of certain social work decisions taken in the exercise of professional judgment in the course of its investigations under section 2 of the 2002 Act. Section 7(1) of the 2002 Act generally precludes the Ombudsman from questioning the merits of discretionary decisions when carrying out investigations. New section 7(2A) of the 2002 Act, introduced by article 3 of the Order, creates an exception to this rule. The exception applies to decisions taken in pursuance of functions conferred by the enactments referred to in new section 23(1A) of the 2002 Act, to the extent that those decisions are taken in consequence of the exercise of professional judgment. The functions in question may be conferred on the local authority itself or on particular office holders appointed by the local authority. The latter group would cover, in particular, chief social work officers, mental health officers and council officers acting under the Adult Support and Protection (Scotland) Act 2007.

Article 4 of the Order amends schedule 5 to the 2002 Act. Schedule 5 sets out the bodies with whom, and the matters relating to which, the Ombudsman is permitted under section 20 of the 2002 Act to disclose certain information. The amendment permits the Ombudsman to disclose to the Scottish Social Services Council information which appears to it to relate to the Council’s professional regulatory functions. It also permits the Ombudsman to disclose to Social Care and Social Work Improvement Scotland (commonly known as the Care Inspectorate) information which appears to it to relate to the Care Inspectorate’s inspection and registration functions.

Article 5 of the Order amends section 56 of the Public Services Reform (Scotland) Act 2010. The effect of this amendment is to authorise a Care Inspectorate inspector to disclose confidential information obtained in the course of an inspection to the Ombudsman where the inspector considers this necessary to assist the Ombudsman in connection with its investigatory functions.

Article 6 of the Order repeals section 5B of the Social Work (Scotland) Act 1968 (“the 1968 Act”). That section confers a power on the Scottish Ministers to make an Order to require local authorities to establish a procedure to consider representations (including complaints) in relation to the exercise of certain social work functions. That power has been exercised through the Social Work (Representations Procedure) (Scotland) Order 1990 (“the 1990 Order”)

Article 7 of the Order is a saving provision. It provides that section 5B of the 1968 Act continues to have effect in relation to any representations (including complaints) made under the 1990 Order before 1st October 2016.



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