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January 2012

HEALTH & SPORT COMMITTEE 3RD REPORT 2011 - REPORT ON INQUIRY INTO THE REGULATION OF CARE FOR OLDER PEOPLE

Please find attached the Scottish Government's response to the Health and Sport Committee 3rd Report 2011: Report on Inquiry into the Regulation of Care for Older People.

I welcome this Report, in which the Committee has concluded, following detailed consideration of a significant volume of written and oral evidence that the current regulatory system is sufficiently rigorous to identify care services for older people which are failing to deliver high quality care. It is also noted that the Report endorses a number of key areas of the Care Inspectorate's work, in particular around risk-based approach to inspections and the steps taken to engage care service users and their carers in inspection via the lay assessors system.

As I indicated in the evidence session before the Health and Sport Committee for the Inquiry Into the Care for the Elderly on 4th October 2011, I believe that, in general, care services in Scotland are of good quality and respond well to the needs of older people and of the people who care for them. I also believe that the regulation and inspection system is fundamentally robust.

However, I also take note of the Committee's view that of course this finding does not mean that there are no weaknesses or areas for improvement evident within the current system; and I have read the Report with interest in that regard. This is something that I have also recognised and, in response to the problems with certain care homes earlier in the year, I have already taken a number of initial steps to strengthen the regulatory regime, and said I would keep under review the arrangements for regulation and inspection.

This response now comments on the Committee's comments and requests, which for ease are set out in **Annex A**. Those which the Committee have directed for consideration by the Scottish Government, the majority of which are accepted, are highlighted in bold in the response. Where the Committee has made recommendations to other bodies we have noted the recommendations and offered such additional information that we may have.

Although I endorse the broad thrust of the Report, there are a number of actions identified by the Committee which Scottish Government, after careful consideration, will not take forward, these are as follows:

- The extension of the chronic medication service to care home residents (para ref. 52);
- The enhancement of the Care Inspectorate's role in the commissioning process (para ref. 57); and
- The monitoring of service providers' annual accounts by the Care Inspectorate (para ref. 59).

More information on the rationale that has informed my approach to the above issues can be found at **Annex A**.

As regards the issues I have agreed to pursue, I will keep the Committee informed of progress on action where identified.

NICOLA STURGEON

**HEALTH & SPORT COMMITTEE
3RD REPORT 2011
REPORT ON INQUIRY INTO THE REGULATION OF CARE FOR OLDER PEOPLE**

Response to Comments

PARA REF	CONCLUSION RECOMMENDATION AND SCOTTISH GOVERNMENT RESPONSE
21.	<p><u>Risk Based Approach to Inspections</u></p> <p>The self-assessment system is a key component of the Regulatory Support Assessment (RSA) tool used by the Care Inspectorate. The Committee recognises the importance of ensuring that the model of proportionate and risk-based assessment is robust. The Committee therefore recommends that independent research and evaluation of the RSA tool, including the self-assessment system, should be conducted.</p>
22.	<p>The Committee believes that corroboration of the content of self-assessments should be sought from service users. The Committee therefore recommends that the Care Inspectorate should ensure that all self-assessment information is sent to health professionals, service users, friends and relatives to invite comment.</p> <p>SG Response:</p> <p>The Scottish Government notes the Committee's views on the Care Inspectorate's risk assessment processes.</p> <p><i>Provision of self assessment information</i></p> <p>The Care Inspectorate has confirmed that it will include an external appraisal system as part of its development work on a new risk assessment tool.</p> <p>The risk assessment tool currently being used by the Care Inspectorate was also subject to external validation by Glasgow Caledonian University. More information on the external validation process and progress being made in this area can be obtained from the Care Inspectorate.</p> <p><i>Independent research on assessment tool</i></p> <p>The Care Inspectorate have recently held a series of scrutiny, intelligence and risk events to give staff the opportunity to feed into the organisation's developing risk strategy. Its risk framework will establish key principles across the organisation, set a common language, and identify a range of methodologies and tools to be used in assessing and managing risk.</p> <p>During an initial development and testing phase (September – January 2012), Care Inspectorate staff will critically appraise the effectiveness of current risk assessment tools, identify improvements, and assess the feasibility of what can be achieved in the first year of the Care Inspectorate.</p>

	<p>As a result of this work, the Care Inspectorate has put in place a new risk assessment tool ahead of the commencement of the next inspection year 2012-2013.</p> <p>The Care Inspectorate has a timetable for implementing a questionnaire for all health and social care professionals (it anticipates piloting the questionnaire by 31 March 2012 with full implementation thereafter).</p> <p>As the Care Inspectorate develops and refines its self- evaluation model it will strengthen how it involves people who use care services and their carers in verifying information.</p> <p>The Care Inspectorate will also be working with other scrutiny partners in developing validated self-evaluation models that involve a number of disciplines including health colleagues. A new model of self-evaluation will contribute to the shared risk assessment process and reduce duplication across scrutiny bodies in future.</p>
<p>23.</p> <p>24.</p> <p>25. 26.</p>	<p><u>Complaints</u></p> <p>The Committee considers that comments and complaints from service users, their relatives and carers can help to drive improvements in a care service. The Committee believes that all service providers should actively encourage feedback in order to support a culture of improvement and development within their organisations. The Committee considers that this would be assisted if service providers routinely published information about their own feedback and complaints systems. In order to promote accessibility, such information should be made available in alternative formats, such as large print and audio, on request.</p> <p>The Committee was concerned by evidence which suggested that, in some cases, residents of care homes and other service users do not feel confident about making a complaint to a service provider directly. The Committee was also concerned that the National Care Standard for Care Homes for Older People does not include any guidance on the feedback and complaints system which should be implemented by service providers. The Committee recommends that the Care Inspectorate should review in early course the guidance currently available to all care service providers and bring forward additional guidance as necessary.</p> <p>The Committee considers that the complaints process is a positive and important element of the risk-based approach to inspections used by the Care Inspectorate, as it can alert the Care Inspectorate to potential problems with a care service to which it can then respond. It is vital, therefore, that service users, carers and staff who witness poor care, but are unable or unwilling to raise concerns with a service provider directly, are aware of the Care Inspectorate's complaints procedure. The Committee acknowledges the Care Inspectorate's intention to address this issue and welcomes the commitment made by the Cabinet Secretary to support the Care Inspectorate in raising the profile of the complaints process. The</p>

Committee looks forward to receiving additional information about this new approach in due course.

27. The Committee also believes that improved public awareness of the complaints procedure needs to be coupled with enhanced confidence in its effectiveness. Complaints must be considered, investigated and resolved as quickly as possible for the benefit of service users and providers alike. The Committee, therefore, recommends that the Care Inspectorate should review the manner in which it handles complaints in order to reduce the time taken to reach a determination, and to introduce an appeals process.

28. In relation to whistleblowing, the Committee recommends that the Care Inspectorate publish guidance for care staff who wish to raise concerns about a care service on a confidential basis.

29. The Committee notes the comments made by the Scottish Public Services Ombudsman that improvements could be made to dealing with complaints about integrated services. The Committee recommends that **the Scottish Government should consider the establishment of a single point of entry for complaints about integrated services, with a view to greater integration in the future.**

SG Response:

SG support to the CI in raising the profile of the complaints process

The Scottish Government is pleased to note the Committee's welcome for the commitment made by the Cabinet Secretary to support the Care Inspectorate in raising the profile of the complaints process. The Scottish Government will, as requested, provide the Committee with additional information about this new approach in due course.

The Care Inspectorate established a National Enquiry Line on 1 April 2011 which provides a fully-staffed central point to deal with complaints, general enquiries or concerns. The National Enquiry Line deals with over 2000 calls per month on quality of care issues. It also signposts members of the public to other relevant bodies to raise concerns such as Scottish Social Services Council (SSSC), Healthcare Improvement Scotland (HIS) or Scottish Public Services Ombudsman (SPSO).

Review by CI of its complaints handling guidance

There is an onus on care providers to ensure that they have a robust complaints system, and the Care Inspectorate encourages people who use care services and their carers to try to resolve issues directly with a service initially. This is also stressed in the National Care Standards and looked at by the Care Inspectorate as part of an inspection.

The Care Inspectorate is strengthening the range of ways in which it receives and acts on information on services and is encouraging everyone to play their part in providing information on the quality of all types of services for older people. The Care Inspectorate recognises that health and social work / care professionals have an important professional advocacy and awareness

raising role in supporting people who use services to raise concerns about the quality of care.

The creation by the Care Inspectorate of its dedicated National Complaints Team now makes it easier for providers to seek advice on their own complaints procedures and, in response to this recommendation by the Committee, the Care Inspectorate will look at how it can better support providers in dealing with complaints while retaining its independent regulatory role.

In addition, a review of future arrangements for complaints handling is underway by the Care Inspectorate, with a consultation running from 7 October to 30 December 2011 and the Care Inspectorate plans to begin to implement new procedures from April 2012.

The Committee may wish to note that questions contained in the consultation include:

- whether the timescale for formal investigation can be reduced to 20 working days in line with other public bodies
- whether the stages of the complaints procedure can be reduced to three.

As provided for in the Scottish Public Services Ombudsman Act 2002 (as amended by the Public Services Reform (Scotland) Act 2010), and as highlighted in the Care Inspectorate's Interim Complaints Procedure 2011, if someone is not satisfied with the outcome of a complaint investigation by the Care Inspectorate then they have the right to ask the Scottish Public Services Ombudsman to review the complaint.

Single point of entry for complaints about integrated services

The Scottish Government accepts the Committee's recommendation on the need to establish a single point of entry for complaints about integrated services. This is an area that will be explored further in the context of future development work towards greater integration.

As indicated earlier, the Care Inspectorate has already established a successful National Enquiry Line which acts as a central point to support members of the public with issues or complaints and signposts to other relevant agencies where appropriate.

The Patient Rights (Scotland) Act 2011 makes provision for NHS Bodies to encourage patients to give feedback, comments, raise concerns or make complaints about healthcare. It also places responsibility on NHS Bodies to consider that feedback etc with a view to improving service provision. A consultation on the secondary legislation to support this has recently been completed and a review of the current NHS Complaints Procedure good practice guidance is currently being undertaken.

The Scottish Government is also currently giving consideration to how social work complaints procedures could be improved so that they meet the needs of the service users and are compliant with the principles underpinning the

	<p>reform of public service complaints. A consultation paper was launched by the Scottish Government on 21 December 2011 and can be accessed at the following: http://www.scotland.gov.uk/Publications/2011/12/21143818. When the consultation closes on 18 March 2012, a working group which the Care Inspectorate will be involved in will be set up to develop the revised social work complaints procedures and will take account of health and social care integration in that work. The Scottish Public Services Ombudsman is fully engaged in this work.</p> <p>As part of this work on reviewing social work complaints, the Scottish Government will work closely with the Care Inspectorate to explore whether the development of the recommended single entry point for complaints about integrated services is appropriate and could be made viable in practice.</p> <p><i>Whistleblowing</i></p> <p>The Scottish Government notes the Committee's recommendation to the Care Inspectorate that it publish guidance for care staff who wish to raise concerns about a care service on a confidential basis. The Care Inspectorate itself recognises that "whistleblowing" by care service staff is crucial to alerting the Care Inspectorate to when the quality of care in a service has deteriorated. The Care Inspectorate has recently undertaken a joint campaign with the SSSC to promote guidance contained within the SSSC codes of practice relating to whistle-blowing for all staff across the health and social care workforce. The Care Inspectorate will continue to promote the SSSC codes of practice within the workforce as part of its inspection process.</p>
<p>30.</p> <p>31.</p>	<p><u>Frequency and types of inspections</u></p> <p>The Committee notes the changes introduced by the Public Services Reform (Scotland) Act 2010 removed the statutory minimum frequency for inspections by the Care Inspectorate. Recent events in the care sector have highlighted a potential weakness in the new approach, which had not yet been implemented, and the Committee therefore welcomes the Cabinet Secretary's announcement of an increase in the frequency of inspections for care homes and personal care and support services. The Committee is pleased that the Cabinet Secretary has recognised that the previously planned rate of inspections was not sufficiently frequent to provide reassurance that standards of service were being maintained and improved. The Committee believes that the increase in frequency will enhance the Care Inspectorate's ability to identify services that may have experienced a sudden and dramatic decline in the standards of care they provide.</p> <p>The Committee is keen for the increase in inspection frequency to commence before the expected statutory commencement date of 1 April 2012. The Committee considers that, until the increased frequency is implemented, a potential weakness in the regulatory system remains. Care services experiencing a dramatic decline in their care provision could still go unidentified for an extended period. The Committee therefore urges the Care Inspectorate to implement this new regime as soon as reasonably</p>

practicable.

SG Response:

Increase in inspection frequency before 1st April 2012

The Scottish Government notes that the Committee welcomes the Cabinet Secretary's announcement of an increase in the minimum annual inspection frequency for care homes, care at home and housing support services, and its view that the new regime should commence before statutory commencement date expected by the Committee of 1 April 2012.

The Scottish Government has said it will shortly bring forward regulations on the increased inspection frequency for certain older people's services which will come into force by the beginning of February and recruitment of appropriately qualified staff has commenced in anticipation of this.

In the statements made to Parliament by the Cabinet Secretary in connection with the Care Homes Debate and the Inquiry into the Care of Older People which were held respectively on 15 September and 4 October 2011, Ms Sturgeon announced that the revised inspection regime for care homes would be introduced with a minimum annual frequency of inspection of these services on an unannounced basis and that this minimum frequency would be placed on a statutory footing.

On 21 November 2011, responding to a parliamentary question, Ms Sturgeon announced that she would shortly bring forward regulations on the increased inspection frequency for certain older people's services, to come into force by the beginning of February.

To honour that commitment, regulations were laid in the Scottish Parliament on 13 December 2011. The regulations amend the Public Services Reform (Social Service Inspections) (Scotland) Regulations 2011 by making provision for all care homes services, including care homes for the elderly, care at home and secure accommodation services to be inspected at least once in every 12 month period and for these inspections to be carried out on an unannounced basis.

This will be the minimum inspection frequency for these types of services. The Care Inspectorate will continue to be required to inspect in accordance with the inspection plan agreed with Ministers under the 2010 Act and will retain the powers to inspect more often as a result of Ministerial direction or intelligence triggers from a range of sources including local authorities, police, other regulators, notifications from providers as well as complaints. Further, the Care Inspectorate will continue to undertake random sampling of better performing care services over the course of the year. These arrangements will assess the ability of services to sustain performance between inspections.

Subject to passing through the appropriate Parliamentary procedures, it is expected that the Regulations will come into force in early February. This will not affect the inspection timetable but accelerate the Care Inspectorate's

	plans to complete these inspections by end of January 2013.
32.	<p><u>Thematic Inspections</u></p> <p>The Committee notes that the system of inspections, established under the Care Commission and continued following the establishment of SCSWIS, grades services according to themes and statements linked to the National Care Standards. The Committee further notes the commitment made by the Care Inspectorate that, alongside a revised minimum frequency of inspections, it will conduct inspections against a minimum of two quality themes, increasing to four for any poorer-performing service.</p>
33.	<p>The Committee supports the use of a risk based approach to determine the appropriate frequency and intensity of inspections for a particular care service. The Committee recognises that, following a thorough risk based assessment, it may be considered necessary for an inspection to consider more than two quality themes.</p> <p>SG Response:</p> <p>The Scottish Government notes the Committee’s support of a risk based approach to determine the appropriate frequency and intensity of inspections for a particular care service, and that it endorses a number of key areas of the Care Inspectorate’s work, including support for the risk-based approach in determining appropriate frequency and intensity of inspections. The Care Inspectorate is currently assessing where efficiency savings can be made and resources can be re-directed into inspecting across all four quality themes for all care home, care at home and secure care services to strengthen assurance and protection for people using services.</p>
34.	<p><u>Engagement with Healthcare Professionals</u></p> <p>The Committee notes that healthcare professionals have a duty of care to report all concerns, not just those related to health care, but those that apply to social care as well. The Committee therefore welcomes the call from the Cabinet Secretary for healthcare professionals to raise any concerns they may have with the Care Inspectorate. The Committee believes that the Cabinet Secretary should discuss with the General Medical Council and the Nursing and Midwifery Council ways of ensuring that these responsibilities are emphasised during healthcare professionals’ training.</p>
35.	<p>The Committee believes that healthcare professionals who are directly involved in the provision of care for residents of care homes have a unique insight into the quality of care being delivered. The Committee was, therefore, concerned by the evidence it received which indicated that healthcare professionals are not routinely invited to contribute to the inspection process. The Committee considers that information obtained from these professionals could significantly enhance the Care Inspectorate’s risk assessment process. The Committee welcomes the Care Inspectorate’s</p>

development of a questionnaire for all health and social care professionals involved in care services and seeks further information from the Care Inspectorate regarding the timetable for implementation of this system.

SG Response:

SG discussions with GMC & NMC re reporting concerns during training

The Scottish Government agrees the Committee's call for the Cabinet Secretary to discuss with the General Medical Council and the Nursing and Midwifery Council ways of ensuring that these responsibilities are emphasised during healthcare professionals' training.

The Scottish Government will facilitate discussions on the issues raised with the relevant regulatory bodies. Aspects relating to professional obligations around 'duty of care' requirements are already covered within the training curricula for Doctors, and explicitly emphasised by the GMC in its guidance for all doctors. The GMC has a quality assurance and monitoring process in place, which provides the opportunity to review extant practice, and to emphasise where improvements in medical training are required. In this way, the Scottish Government would expect the issues highlighted in the report can be emphasised to the local educational supervisors and trainees through the Training Programme Director network. The Scottish Government is also mindful of the important role of post-qualification Doctors, who have a professional obligation to identify any Continuous Professional Development needs. Awareness of these issues might usefully be highlighted through protected learning events, perhaps via the Community Health Care Partnership. As many care homes now have an individual practice who look after the care of all residents, this may present an opportunity to target these practices to ensure a higher level of awareness of issues highlighted in the report.

Similarly under the SSSC codes of practice for social service workers and employers, social work and social care professionals a responsibility to raise concerns when issues are identified.

The Care Inspectorate is finalising information sharing protocols with the NMC and MWC to share concerns so that issues are brought to the attention of each party. This is already proving effective in addressing workforce registration issues in care homes.

Care Inspectorate's development of a questionnaire for all health and social care professionals involved in care services

The Scottish Government notes the Committee's welcome of the Care Inspectorate's development of a questionnaire for all health and social care professionals involved in care services, and that the Committee seeks further information from the Care Inspectorate regarding the timetable for implementation of this system.

The Care Inspectorate has confirmed that it is piloting the questionnaire by 31 March 2012 with full implementation thereafter.

<p>36.</p>	<p><u>Inspectors and grading of inspections</u></p> <p>The Committee welcomes the Care Inspectorate's programme of training for its inspectors and its development of forums for feedback with providers on the grading process. The Committee encourages the Care Inspectorate to continue to engage with service providers in order to improve the consistency of inspection gradings.</p> <p>SG Response:</p> <p>The Scottish Government notes the Committee's welcome of the Care Inspectorate's programme of training for its inspectors and its development of forums for service provider feedback.</p> <p>The Care Inspectorate has indicated that it will continue to develop its quality assurance (QA) processes as part of its focus on its own continuous improvement. The Care Inspectorate has confirmed its intention to continue the approach taken by the Care Commission in hosting external stakeholder and quality and consistency forums to enable providers, local authorities and umbrella bodies to participate in emerging developments in scrutiny and assurance practices as well as acting as a forum in which to raise general issues.</p> <p>The Care Inspectorate has a robust internal quality assurance process that monitors consistency of grading across service types, teams, geographic areas and provider. The Care Inspectorate provides significant and regular learning and development opportunities for all inspection staff in inspection and grading processes. Inspectors also receive regular support and supervision and performance management on a one-to-one basis.</p>
<p>37.</p> <p>38.</p>	<p><u>Involving service users, friends and relatives</u></p> <p>The Committee believes that engaging service users, carers and relatives in the inspection regime is vital. Their engagement helps to ensure that the Care Inspectorate is focusing not just on the inputs into the care service but its outcomes for the service users. The Committee welcomes the steps taken by the Care Inspectorate to engage them in the inspection process.</p> <p>The Committee recommends that the Care Inspectorate consider whether there are other areas of the risk assessment process where service user engagement could be encouraged and enhanced particularly the use of independent advocacy.</p> <p>SG Response:</p> <p><i>Engaging service users, cares and relatives in inspections</i></p> <p>The Scottish Government notes the Committee's welcome of the steps taken by the Care Inspectorate to engage service users in the inspection process, but that it also nevertheless recommends that the Care Inspectorate consider</p>

whether there are other areas of the risk assessment process where service user engagement could be encouraged and enhanced particularly the use of independent advocacy.

It may be noted that the Public Services Reform (Scotland) Act 2010 introduced a duty of user focus on the Care Inspectorate, requiring it to make arrangements to secure and demonstrate continuous improvement in user focus in its work. The duty will ensure that users of care services are better involved in the design and delivery of the work and governance of bodies that scrutinise those services. User focus is recognised as a means to help deliver better and more responsive services. The 2010 Act places the Care Inspectorate under a duty to make arrangements which will secure continuous improvement in user focus and which demonstrate that improvement.

The Care Commission, SWIA and HMIE child protection all had a strong commitment to involving people who use care services and their carers in the inspection process. This is something that the Care Inspectorate has already started to build on. The Care Inspectorate has recently completed a review of involvement activities – involving people who use care services and their carers, providers, staff and other key stakeholders. The results of the review will inform the involvement team structure and development of a Care Inspectorate Involvement Strategy in early 2012.

Work on developing new methodologies for alerting people using care services and reducing time taken between inspection and publication is also well underway by the Care Inspectorate. This recommendation by the Committee to the Care Inspectorate will now inform that work and determine the time taken from inspection visits being completed to publication of the inspection report although there are a number of steps which must be gone through to ensure the accuracy and validity of the reports.

In addition, the Care Inspectorate held a series of focus groups during Summer 2011, involving stakeholders including people who use services, their carers, Care Inspectorate staff and service providers, to explore changes to the inspection report format and content. Small changes have already been made by the Care Inspectorate following this feedback and it has identified that further work is now required to underpin reporting of new scrutiny model findings.

The Care Inspectorate is also pursuing the issue of the way it shares its findings. A full Public Reporting Strategy is under preparation. However, work is in progress to create a new, proactive approach to highlighting highly performing and poorly performing services through the media and on the website.

Enhanced user engagement with risk assessment process through independent advocacy

The Scottish Government notes the Committee's recommendation that the Care Inspectorate consider whether there are other areas of the risk assessment process where service user engagement could be encouraged

	<p>and enhanced particularly the use of independent advocacy.</p> <p>The Care Inspectorate has undertaken an evaluation of its risk tools. In that regard, the Care Inspectorate has recently held a series of scrutiny, intelligence and risk events to give staff the opportunity to feed into a new risk framework – these will be concluded in early 2012. A new risk assessment tool is now ready for implementation in 2012-2013.</p> <p>The tool establishes key principles across the organisation, sets a common language, and identifies a range of methodologies to be used in assessing and managing risk.</p> <p>The Care Inspectorate is currently developing its Involvement and Intelligence strategies. A crucial part of these strategies is developing processes that will enable people who use services to share information on the quality of care so it can be analysed and acted upon as part of any future scrutiny activity.</p>
39.	<p><u>Lay inspectors</u></p> <p>The Committee believes, on balance, that lay inspectors can add value to inspections. The Committee welcomes the Care Inspectorate’s use of lay inspectors as part of the inspection process.</p> <p>SG Response:</p> <p>The Scottish Government welcomes the Committee’s view that lay inspectors can add value to inspections of care services.</p> <p>As noted above, the Care Commission, SWIA and HMIE child protection all had a strong commitment to involving people who use care services and their carers in the inspection process. This is something that the Care Inspectorate is building on. The Care Inspectorate has recently completed a review of involvement activities – involving people who use care services and their carers, providers, staff and other key stakeholders. The results of the review have indicated the need for a unified team and recruitment of more lay inspectors. This will be encompassed in the development of the involvement team structure and Involvement Strategy. As a result the Care Inspectorate is currently addressing where it can make efficiency savings for re-investment in this crucial area.</p>
40.	<p><u>Publication and dissemination of inspection reports</u></p> <p>The Committee believes that the Care Inspectorate needs to improve its present system for alerting service users (both existing and potential), relatives and others to the quality of a particular service through the publication of inspection reports. The Committee calls upon the Care Inspectorate to take active steps to reduce the time taken between inspection and publication of an inspection report. The Committee also believes that the Care Inspectorate should take steps to improve the accessibility of a report’s content, including providing a summary of the report’s recommendations at the beginning and to do more to disseminate</p>

report findings to interested parties via its website and other means.

SG Response:

The Scottish Government notes the Committee's concern about the time taken between inspection and publication of an inspection report by the Care Inspectorate and that steps should be taken to improve the accessibility of the findings of reports.

This is something that the Care Inspectorate has itself already recognised and been taking steps to address. Indeed, work on developing new methodologies and strengthening public reporting on scrutiny findings is well underway by the Care Inspectorate. This recommendation by the Committee will however now inform that work and determine the time taken from inspection visits being completed to publication of the inspection report although there are a number of steps which must be gone through to ensure the accuracy and validity of the reports. The Care Inspectorate has already made significant improvements in the time taken to produce inspection reports in comparison to predecessor bodies (e.g. 96% of Care Commission's reports were published within the timescale set by the KPI between Apr – Sept 2011 in contrast to 76% for the same period in 2010/11). The Care Inspectorate has also confirmed it will seek to make public reporting of its inspection and complaints findings more efficient.

In addition, as noted above, a series of focus groups involving stakeholders including people who use services, their carers, Care Inspectorate staff and service providers was held during Summer 2011 exploring changes to the inspection report format and content. Small changes have already been made by the Care Inspectorate following this feedback and further work is now required to underpin reporting of new scrutiny model findings.

The Care Inspectorate is also pursuing the issue of the way it shares its findings and, in that regard, a full Public Reporting Strategy is under preparation. However, work is already underway by the Care Inspectorate to create a new, proactive approach to highlighting highly performing and poorly performing services through the media and on the website.

Registration

41.

The Committee supports the call from the Care Inspectorate for it to be granted powers to refuse further registration of care services from a provider which has other poorly performing services. The Committee recommends that the Scottish Government explore how the Care Inspectorate's suggested legislative changes in this area could be taken forward.

SG Response:

The Scottish Government acknowledges the Committee's support of the call by the Care Inspectorate for it to be granted statutory powers to refuse further registration of care services from a provider which has other poorly performing services, and will explore with the Care Inspectorate how this might be properly effected.

The Scottish Government notes that in its oral evidence to the Committee, the Care Inspectorate was asked whether it would be possible to block an applicant's registration if they had other poor performing homes. In response, the Care Inspectorate's Chief Executive indicated to the Committee that "It would be quite difficult, legally to block a registration unless there was very strong evidence that they were not able to commit to delivering a good-quality service".

Further, in supplementary written evidence the Care Inspectorate stated that existing legislation did not explicitly provide that poorly performing providers of care services may be refused further registrations, explaining that what this meant in practice was that: "If the Care Inspectorate was not satisfied, based on the applicant provider's performance while providing another registered care service that the requirements of regulations would be complied with, that **may** be a basis for refusal of registration. It is anticipated, however, based on the experience of the Care Commission, that lengthy argument and frequent appeal against refusal of registration could result, based on the assertion that whatever the deficiencies in the existing registered care service, the question for the Care Inspectorate is whether adequate measures are in place in relation to the proposed new registration, to ensure that they would not be repeated."

The Scottish Government further notes that the Care Inspectorate made two proposals to overcome this problem:

- that "specific provision could be made in legislation to the effect that in considering whether a proposed care service will comply with the regulations / other relevant enactments, the Care Inspectorate shall have regard to the extent to which other care services provided by the applicant (or, in the case of a company, an associated company) are compliant with obligations placed on them by regulations / other enactments in the jurisdiction in which they operate, as demonstrated by the grades (or equivalent) they have achieved and by any enforcement action taken against them by the Care Inspectorate or other regulators of care quality. This is entirely consistent with the Care Inspectorate's intelligence-led approach to regulation."; and
- to ensure that new companies cannot be incorporated with the purpose of defeating such a provision, that "associated company" should be broadly defined to include wholly-owned subsidiaries, "parent" companies, companies which have the same "parent" company, and companies which have one or more directors in common.

The Scottish Government confirms that it will consider along with the Care Inspectorate how the statutory arrangements around registration of provider with other poorly performing services work at present, and consequently what changes if any should be made.

<p>42.</p> <p>43.</p>	<p><u>Enforcement powers</u></p> <p>The Committee notes the comments made by organisations including COSLA and the City of Edinburgh Council that the current enforcement system available to the Care Inspectorate may not be responsive enough to bring about changes quickly.</p> <p>The Committee is keen to ensure that the enforcement system does not rely too heavily on pre-emptive action being taken by local authorities having to decide to remove clients from a care home or change care at home service providers. The Committee therefore invites the Scottish Government to consider whether changes should be made to the current enforcement and appeals process.</p> <p>SG Response:</p> <p>The Scottish Government confirms that it will consider, along with the Care Inspectorate, how the current statutory arrangements around enforcement and appeals process are working, and consequently what changes if any should be made.</p>
<p>44.</p>	<p><u>Regulation of the workforce</u></p> <p>The Committee recognises that Scotland is the only part of the UK that has decided to regulate the whole of the social care workforce. The Committee believes that the registration of the entire workforce is vital to ensure that the highest standards of care are delivered by staff. The Committee welcomes the commitment given by the Cabinet Secretary that she will discuss the timetabling of the registration of the workforce with the Scottish Social Services Council (SSSC) and the Care Inspectorate. Whilst the Committee recognises that additional resources will be required, it recommends that the Scottish Government should consider accelerating the current timetable for registration of care workers.</p> <p>SG Response:</p> <p>The Scottish Government notes the Committee’s support for registration of the workforce as a key means of driving up standards of care. The Government too is strongly committed to this approach.</p> <p>However we have consistently recognised that this activity needs to be undertaken in a proportionate and phased manner, to ensure both that qualification-levels are appropriate and that timescales are realistic in order to allow time for employers to support, and workers to undertake, the training and development required. The Scottish Government notes the Committee’s views and will consider the issues around the recommendation to accelerate the current timetable for registration of care workers. In undertaking the exercise we will consider a range of issues including: the impact on employers in relation to training plans, availability of training courses and impact on service delivery; and the cost to public finances which might occur including additional resources required by the Scottish Social Services Council.</p>

	<p>It might also be useful to set out for the Committee at this point the detail of the stage at which the scope of registration policy currently sits. Whilst the Scottish Government does have a significantly more inclusive policy on registration of social services workers than other parts of the UK, the whole of the social services workforce is not within the current scope of registration. Scottish Ministers announced in July 2000 the groups that would be included in the scope of registration – taking into account the responses to the consultation on the introduction of registration. Since that announcement only one group of workers has been added to scope (workers in 'Care at Home' services). The groups of workers currently within the scope of registration (active or planned), therefore, represents 70% of the social services workforce.</p> <p>It is important to note that the SSSC and Care Inspectorate work together proactively to ensure appropriate registration of the workforce. For example the SSSC advises the Care Inspectorate of forthcoming registration dates for types of workers. This is taken into account as part of the inspection process and where the Care Inspectorate finds that workers are not appropriately registered it will not hesitate in making requirements or taking formal legal action against providers.</p> <p>The SSSC and Care Inspectorate recently agreed a new partnership approach that sets out new and dynamic ways of joint working to strengthen assurance and protection for vulnerable people.</p>
<p>45.</p> <p>46.</p> <p>47.</p>	<p><u>Support and investment in workforce</u></p> <p>The Committee considers that for many years the social care workforce has been undervalued – as reflected in wage levels, terms and conditions and limited investment in training and development. Looking to the future, the Committee believes that in order to ensure that care services are of the highest quality, the sector must be seen as an attractive occupation for people with a range of skills. Current fiscal austerity measures should not be seen as an excuse to drive down wage levels. The Committee considers that employers in the social care sector should aim to pay all staff at least the “Living Wage”.</p> <p>The requirement in Scotland for all social care staff to complete appropriate vocational training prior to registration with the SSSC should act as a catalyst for increasing staff confidence and morale, leading to improved standards of care. The Committee encourages employers to consider the funding available from ILA Scotland as one way of supporting training for staff.</p> <p>The Committee was concerned by evidence it received that, against a backdrop of increasing numbers of older people with complex care needs such as dementia, the proportion of qualified nursing staff employed in certain care settings had declined. The Committee, therefore, welcomes the fact that the Care Inspectorate has commissioned research into the appropriate staffing mix for care homes and other services for older people. It looks forward to receiving a copy of this research in due course.</p>

SG Response:

Supporting staff training

The Scottish Government notes the Committee's views on support and investment in the social care workforce and is encouraged by the value which the Committee places on this workforce, whilst also recognising that employers in the sector are a mixture of private, voluntary and public and the different parameters within which they work will have an influence on their approaches.

It is really important that all social services workers have the skills and knowledge to carry out their roles and the workforce development activity being undertaken by the Scottish Social Services Council supports this. Additionally the Government's programme of work (Changing Lives) which was undertaken over the last few years in response to the 21st Century Social Work Review was very much focussed on strengthening this workforce – ensuring that it is not only competent and confident but also valued by both service users and the wider public.

As the Committee clearly recognises, it is for employers to ensure that they support training and development opportunities for their staff and encourage uptake. The work of the Government's NDPB – the Scottish Social Services Council provides a range of support for this. The Code of Practice for Social Service Employers clearly sets out employers' responsibilities in this area and adherence to the Code is considered as part of the evidence during inspections by bodies such as the Care Inspectorate. The corresponding Code for Social Service Workers also places a responsibility on all workers to maintain and improve their knowledge and skills.

The Committee particularly wishes to encourage employers to make use of the funding available from ILA Scotland to support the training of their staff. The SSSC produces a 'Funding for Training' guide which includes information on sources of funding support available for training include detail about ILAS. The SSSC also supports employers through the 'Workforce Solutions' portal which supports employers in undertaking workforce planning and development. SSSC has also developed new and innovative ways of delivering training more cost effectively which is now being taken forward by employers in the sector. In its role as the Sector Skills Council for the social services workforce in Scotland, the SSSC will continue to work with employers on the development of qualifications and products that support and delivers a competent, confident and qualified workforce.

(To note - the Committee's understanding of the position on registration as expressed in this recommendation is not quite accurate. For those parts of the workforce which are required to register with the SSSC, with the exception of social workers, workers must actually be employed in the sector before they can apply for registration with the SSSC. If they do not already have the relevant qualifications then they will be registered with a "condition" that they achieve the qualifications within a specified time period – usually 3 years.)

Paying a living wage

The Scottish Government also notes the Committee's view that employers in the social care sector should aim to pay all staff at least the "Living Wage". Clearly the Government supports the principle – the requirement to pay a Scottish Living Wage was introduced in the Scottish Government 2011-12 Public Sector Pay Policy round and has assisted around 6,000 staff. However, it may be noted that the Scottish Government has control over pay only in central government, government agencies, NDPBs, and the NHS - not in the wider public sector or in the private or voluntary sectors.

The current Government Guidance on the Procurement of Care and Support Services clearly indicates that those responsible for procurement of care and support services should take account of the importance of a skilled and competent workforce in delivering positive outcomes for service users and should take account of the costs associated with good employment practice and a competent and qualified workforce when analysing the costs involved in operating different kinds of care and support services;

In this context the Government will of course be looking with interest at the outcome of the Local Government and Regeneration Committee's current inquiry into a living wage in Scotland. This inquiry is looking at issues such as the introduction of a living wage by local authorities and the extent to which procurement can include criteria linked to the payment of a living wage.

CI research into appropriate staffing mix for care homes and other services for older people

The Scottish Government also notes the Committee's concern that the proportion of qualified nursing staff employed in certain care settings has declined, and its consequent welcome of the Care Inspectorate's initiative to commission research into the appropriate staffing mix for care homes and other services for older people.

The Care Inspectorate has indicated in that regard that it will make the Scottish Parliament aware of the research findings, due for publication in 2012.

Care at home

48.

The Committee notes the comments made in evidence regarding concerns about the regulatory framework for the move to self-directed support. **The Committee believes that these concerns will need to be addressed by the Scottish Government in the forthcoming self-directed support Bill.**

SG Response:

The Scottish Government notes the Committee's views. The self-directed support Bill will place duties on local authorities to give people who are eligible for support choice in how that support is delivered. These duties aim

to ensure flexible support that meets individual needs whilst ensuring that people at risk have appropriate protection. Skilled professionals in social work will continue to have a central role in working with citizens to identify the best approaches to meeting desired outcomes.

The Bill underpins the implementation of the national strategy for SDS, which includes the current development of an action plan for workforce development. This addresses the needs of all relevant workforce, both regulated and unregulated and focuses on increasing knowledge, awareness of and access to skills development opportunities. The action plan will highlight good employment practice and statutory duties for PA employers, emphasising the relevance of PVG scheme membership and setting out the benefits and risks of employing staff with appropriate skills and experience.

A strategy implementation sub group is working on the development of independent support and advice for people who wish to direct their support. The Scottish Government is investing £1 million this year to build the capacity of organisations that support people in understanding and managing SDS - that includes specialist advice and support for potential PA employers.

The Care Inspectorate, Healthcare Improvement Scotland and Mental Welfare Commission will play a key role in working with Scottish Government in relation to SDS to ensure appropriate levels of support, assurance and protection for vulnerable people.

49.	<p><u>Integration of regulation of health and social care - inspectorates</u></p> <p>The Committee believes that assessment of care pathways may represent a useful tool which can enhance the existing approach to regulation of care services. The Committee welcomes the Care Inspectorate's move to closer engagement with local authorities and Healthcare Improvement Scotland (HIS) as the regulatory system increasingly needs to take account of the continuum of care experienced by older people.</p> <p>SG Response:</p> <p>The Scottish Government notes the Committee's view that assessment of care pathways may represent a useful tool which can enhance the existing approach to regulation of care services.</p> <p>Integrated working between the health and social care scrutiny bodies is important in ensuring the quality and consistency of care for older people. This joined-up working will continue to be important as we move towards the integration of health and social care.</p> <p>The Public Services Reform (Scotland) Act 2010 provides for a range of powers to enable multi-agency and joint inspections to take place and the Care Inspectorate, HIS and other bodies scrutiny have a duty to co-operate and co-ordinate their activity to improve the scrutiny of health and social care services.</p> <p>As an example, the Care Inspectorate, with input from HIS is developing, integrated children's services inspections for piloting in April 2012. This will feed into the development of an inspection framework for integrated adult services in 2012–13 that will bring together multi-agency approaches to regulation and inspection, focusing on adults in greatest need of support and protection. Within the context of the overall inspection framework there will be a focus on strategic commissioning and as part of this process care planning, care pathways and care management.</p>
50.	<p><u>Integration of regulation of health and social care - data collection</u></p> <p>The Committee believes that if emergency admissions to hospitals from care homes are high, the Care Inspectorate should not be reliant solely on notifications from staff to identify this potential problem. The Committee recommends that the Care Inspectorate explores with HIS the possibility of systemically gathering and analysing the SPARRA data. The Committee also invites the Care Inspectorate to consider whether emergency admissions to hospital from a care setting should result in a mandatory report to the Care Inspectorate in order to inform the risk assessment process.</p> <p>SG Response:</p> <p>The Scottish Government notes the Committee's concerns around high rates of emergency admissions from care homes, and the proposal to routinely</p>

incorporate this data within the integrated approach to regulation of health and social care.

It would clearly be beneficial for the Care Inspectorate and HIS to be made aware where rates of emergency admissions from care homes to hospital are high and for this data to inform the risk profile which will inform their Inspections. However the emergency admissions data would require further analysis to take account of the variation in the complexity and acuity of needs of people living in different care homes. Given the nature and frailty of people living in care homes, it is also important to note that there may occasions when emergency admission to hospital is entirely appropriate. Any data would also require to be triangulated with knowledge of other factors which may influence the rate of emergency admissions such as provision of specialist in-reach healthcare and the out of hours service response for the locality and from the local partnership.

However, Scottish Government will work with relevant partners to consider the following possible developments in relation to the committee's suggestions:

- SPARRA is a risk prediction tool that can be used to identify people in care homes who are at risk of emergency admission and data on these individuals is already routinely shared with CHPs. This data could be shared with the Care Inspectorate and HIS, subject to agreement by Caldicott Guardians.
- A requirement on care homes to provide information on attendance at A&E and emergency admissions to hospital to be included in the new national care home contract currently being developed
- Local quality monitoring of relevant Enhanced Services (e.g. GP alignment to care homes or Anticipatory Care Planning) could include a focus on numbers and rates of attendance at A&E and emergency admission from care homes.

Integration of regulation of health and social care - assessment of healthcare needs

51. The Committee was concerned by the evidence it received regarding the widespread prescription of psychoactive medications to residents of care homes. In order to address its concerns, the Committee supports the call from the Mental Welfare Commission for Scotland for greater clinical pharmacy involvement in care homes, improved training for staff and better adherence to good prescribing practice. The Committee, therefore, recommends that the Care Inspectorate should engage with the Mental Welfare Commission for Scotland and other interested parties in order to produce guidance and information to service providers on the use of psychoactive medications. This issue should be considered as part of a review of National Care Standards.

52. The Committee **recommends that the Scottish Government should consider allowing care home residents to register with the chronic**

medication service.

SG Response:

CI engagement with MWC to produce better clinical guidance

The Scottish Government notes this recommendation. The Committee may be aware that through implementation of the National Dementia Strategy, The Scottish Government is working with partners including the Care Inspectorate and The Mental Welfare Commission to address the overuse of psychoactive medications and to ensure that care and support in all settings is always appropriate. This includes facilitating an integrated approach so that the dementia standards are used in tandem with the National Care Standards; and so that the review of care home contract is properly informed by the dementia standards.

The dementia standards state that NHS Boards must ensure that systems are in place to ensure that capacity to consent to treatment (including the prescribing of psychoactive medication) is considered and that appropriate documentation is in place, in line with Part 5 of The Adults With Incapacity (Scotland) Act 2000. The Act says that if the person cannot give valid consent then the view of any proxy decision maker (a welfare power of attorney or welfare guardian) should be sought. A certificate of incapacity must be completed under section 47 of the AWI when someone lacks capacity to consent – this certificate authorised treatment and ensure treatment is given lawfully.

They also state that services must demonstrate knowledge of whether the person with dementia has appointed someone as their welfare power of attorney or if there is a welfare guardian; and that any challenging behaviour must always be addressed by means of an integrated assessment to establish the cause and put a care plan in place to manage it, in line with the relevant SIGN clinical guidelines.

We have a specific commitment in the dementia strategy to reduce the inappropriate prescribing of psychoactive medication, in recognition of the fact that this will be a key driver in helping the reconfiguration of service provision and the range of response in this key area – and ensuring that care is at all times safe, appropriate and person-centred. We will complete a baseline assessment on current prescribing levels in January 2012 ahead of an initial commitment on reducing such prescribing.

Clinical decision-making in individual cases is taken by the relevant professional, and of course there are cases when the prescribing of psychoactive medication is appropriate and the best treatment option at that particular time, particularly when psychotic symptoms manifest themselves in behaviour which cannot be managed without medication. For example such drugs may be helpful for some in relieving symptoms such as agitation, delusions or hallucinations, and, although there are risks, where the prescribing of psychoactive medication is appropriate, clinical decision-making will always need to weigh any risk against the risks around not prescribing.

It may also be noted that the Care Inspectorate's predecessor the Care Commission has of course previously worked and jointly reported with the Mental Welfare Commission, for example culminating in their important joint Report "Remember, I'm Still Me" on the quality of care for people for people with dementia living in care homes. The Public Services Reform (Scotland) Act 2010 also of course introduced new provisions to consolidate on and ensure joined up working between the Care Inspectorate, the Mental Welfare Commission and Health Improvement Scotland.

In light of this, the Care Inspectorate has confirmed that it will have discussions with the MWC on creating new guidance and how it can improve awareness concerning this important area of psychoactive medication.

Registration of care home residents with chronic medication service

The Scottish Government notes the Committee's recommendation. The Chronic Medication Service (CMS) has been designed specifically to improve the patient's concordance with their medicine, primarily through self administration, for treating their long term condition. This is not an issue for most patients in care homes as they have their medicines administered to them by care home staff.

People resident in care homes are often very elderly and have complex needs requiring a level of pharmaceutical care similar to that provided by clinical pharmacists in the hospital sector who work in partnership with medical and nursing staff. The professional body for pharmacists, the Royal Pharmaceutical Society (RPS), is about to publish a report on the pharmaceutical care of patients in care homes which will help to inform the changes required to the provision of pharmaceutical services to this group of patients.

In addition to the RPS report, a Review of NHS Pharmaceutical Care of Patients in the Community, announced on 17th October 2011, is now underway. An important part of the review will be to consider evidence on the specific pharmaceutical care service needs of residents in care homes and how best these should be met - with a particular emphasis on the clinical role of pharmacists in achieving service delivery. The review is expected to report in Autumn 2012.

The Care Inspectorate has welcomed the opportunity to participate fully in the review.

Integration of regulation of health and social care - healthcare regulation in the community

53.

The Committee calls upon the Care Inspectorate, HIS and other interested parties to work together in order to ensure that there is proper clinical and social care input into care home, community and acute hospital inspections. The Committee believes this may be facilitated by a review of the National Care Standards.

	<p>SG Response:</p> <p>The Scottish Government notes the Committee’s concerns and will take them into account when considering a review of the National Care Standards (see SG Response to the recommendations at paras. 54-55).</p> <p>The Care Inspectorate fully supports the concept in “Better Health, Better Care” that clinical services in care homes are owned and managed by the NHS and care home providers to ensure joined up provision and good outcomes for people using the service.</p>
<p>54.</p> <p>55.</p>	<p><u>National Care Standards</u></p> <p>It is ten years since the National Care Standards were originally drafted. In this time the delivery of care for older people has changed and there has been a move towards greater integration of health and social care. The Committee believes that these changes need to be reflected in the National Care Standards to ensure that they remain a current, relevant and credible basis for the regulation of care. The Committee also believes that there is scope for integration with other care standards, particularly the national standards for dementia care. The National Care Standards should provide a key mechanism for ensuring that equality and human rights issues are embedded in the framework for the delivery of care services for older people.</p> <p>The Committee, therefore, recommends that the Scottish Government should conduct a review of the National Care Standards. The Committee also believes that it is vital that HIS and the Care Inspectorate work together on the revision of the Standards so that they reflect the direction of travel towards the further integration of health and social care.</p> <p>SG Response:</p> <p>The Scottish Government accepts the Committee’s recommendation that the Scottish Government should conduct a review of the National Care Standards. As indicated recently by the Cabinet Secretary in answer to Jackie Baillie’s PQ S4W-03673, the Scottish Government has not yet announced a review of the National Care Standards. We are giving consideration to such a review in the context of work on the integration of health and social care services, new models of care and the implementation of the dementia standards and the Cabinet Secretary has undertaken to keep the Parliament informed in that regard.</p> <p>The Care Inspectorate will support the Scottish Government in reviewing and updating the National Care Standards, ensuring people who use care services and their carers remain at the heart of these standards. The National Care Standards review should ensure that they meet the changing context of older people's care and are outcome focused and are adaptable to any change in the definition of a particular service type.</p>
<p>56.</p>	<p><u>Commissioning and procurement</u></p> <p>The Committee believes that good commissioning and procurement practices are important determinants of quality care. The Committee therefore welcomes the approach recently adopted by the City of Edinburgh</p>

<p>57.</p>	<p>Council to use the findings of Care Inspectorate reports to directly inform the commissioning of new services. The Committee considers that this will have a positive impact on care quality. The Committee recommends that the Care Inspectorate should encourage all local authorities to adopt a similar approach in order to improve outcomes.</p> <p>The Committee notes the comments made by the Cabinet Secretary that there may be questions about the Care Inspectorate not having enforcement powers in relation to commissioning and procurement. The Care Inspectorate currently has “far fewer teeth” to challenge commissioning practice compared with its powers of intervention in service delivery. The Committee believes that extending the Care Inspectorate’s powers will further strengthen the regulatory system. The Committee, therefore, recommends that the Scottish Government should explore further the merit in extending the Care Inspectorate's powers.</p> <p>SG Response:</p> <p><i>Extending CI powers regulating commissioning and procurement powers</i></p> <p>The Scottish Government notes the Committee’s recommendation that it should explore further the merit in extending the Care Inspectorate's powers in relation to commissioning and procurement.</p> <p>Under the new scrutiny arrangements introduced by the Public Services Reform (Scotland) Act 2010, the Care Inspectorate plays an important role in ensuring that qualitative aspects are considered by councils when commissioning services and decisions are not purely based on cost. The Care Inspectorate has confirmed that commissioning will be an integral part of the inspection process in the 2012 – 2013.</p> <p>As highlighted by the Committee at paragraphs 303 and 304 of its Report, new duties were introduced on local authorities via the 2010 Act (section 100) to take into account matters such as Care Inspectorate reports when they commission care services. Further, as noted by the Committee, the Care Inspectorate has the power to look at the commissioning and procurement practices of the local authority in relation to services. That is indeed the case, and the powers that Care Inspectorate can use in that regard are their inspection powers over the provision of social work services and the organisation and co-ordination of those services.</p> <p>The Scottish Government also notes that the Committee recorded at paragraph 310 of its Report the concerns of CCPS (Coalition of Care and Support Providers) that: the Care Inspectorate had “far fewer teeth” in respect of challenging commissioning practice compared with its powers of intervention in service delivery; and that the Care Inspectorate had no power to investigate complaints about any of the relevant processes of an authority (assessment, care management, commissioning) that impact on quality of care, or any power to issue improvement notices or take enforcement measures where it identified poor practice. The Scottish Government would wish to clarify to the Committee that this is not in fact the case: rather, the Care Inspectorate has power to inspect as set out above and such an</p>
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investigation can be triggered by a complaint in the same way as any care service inspection can. This is very clearly stated in the legislation and we do not believe that any further legislation in that regard would make it any clearer nor be appropriate. It is correct to say however that enforcement action cannot be taken.

As indicated recently by the Cabinet Secretary in answer to Jackie Baillie's PQ S4W-03696, the Care Inspectorate has a responsibility to scrutinise local authorities to provide an objective, evidence-based assessment of how well people are being served by their social work services; make a constructive contribution towards the further improvement of these services; help safeguard the interests of people who use services and carers, and help local authorities to develop their own approach to improving services. The Care Inspectorate will publish the findings and recommendations for each local authority, and as above, through the 2010 Act, local authorities are required to take account of inspection reports and recommendations in respect of the commissioning of care services.

Local authorities are also under a duty under the separate Local Government in Scotland Act 2003 to demonstrate best value which requires them to make arrangements to secure continuous improvement in performance and in doing so to have regard to economy, efficiency, effectiveness, equal opportunities requirements and to the achievement of sustainable development.

The Care Inspectorate reports publicly on its findings regarding local authority performance assessment and individual care services. Public reporting of inspection findings highlights issues in relation to commissioning which impact on outcomes for people using services and this in itself drives up improvements.

We believe this current balance of duties and responsibilities adequately covers the current landscape for delivery of social care services to older people. As indicated recently by the Cabinet Secretary, as we move towards greater integration of health and social care this balance may of course need to be revisited.

Nonetheless, in view of the Committee's recommendation that the Scottish Government should explore further the merit in extending the Care Inspectorate's powers, the Scottish Government confirms that it will give further consideration to how the current statutory arrangements around commissioning and procurement are working, and consequently what changes if any should be made. In that context, the Scottish Government will also take into account the findings of the forthcoming Audit Scotland's Report on the commissioning of social care services.

Use of findings of CI reports to directly inform the commissioning of new services

The Scottish Government notes the Committee's welcome of the approach recently adopted by the City of Edinburgh Council to use the findings of Care

	<p>Inspectorate reports to directly inform the commissioning of new services, and notes its recommendation that the Care Inspectorate should encourage all local authorities to adopt a similar approach in order to improve outcomes. As indicated above, section 100 of the Public Services Reform (Scotland) Act 2010 introduced new duties on local authorities to take into account matters such as Care Inspectorate reports when they commission care services, and local authorities such as the City of Edinburgh Council will be complying with that new duty in commissioning care services. Local authorities are of course also bound by European procurement law, which requires a level playing field for all operators whether or not based in or yet operating in Scotland.</p> <p>The Care Inspectorate has indicated that it will undertake discussions with COSLA and other local authorities about supporting local authorities to comply with their section 100 duty under the 2010 Act in order to improve outcomes. The Care Inspectorate has also indicated that it will also build in commissioning as a thematic area to future scrutiny models taking account of resource implications.</p>
<p>58.</p> <p>59.</p> <p>60.</p> <p>61.</p>	<p><u>Monitoring financial viability</u></p> <p>The Committee is keen to ensure that the sudden collapse of a care service provider like Southern Cross does not happen again. The Committee notes the comments made by the Cabinet Secretary that the Care Inspectorate may not be the appropriate body to be given responsibility for monitoring the financial viability of care services. The Committee recognises that the current focus of the Care Inspectorate is on care provision not financial scrutiny.</p> <p>The Committee, however, believes that there is scope for the Care Inspectorate to build into its risk assessment process a greater degree of ongoing financial scrutiny. The Committee recommends that the Care Inspectorate should require registered service providers to submit copies of their annual accounts. This is information currently gathered from providers as part of the registration process and is, therefore, data the Inspectorate is already experienced in analysing.</p> <p>The Committee welcomes the Cabinet Secretary's announcement that she will work with the Care Inspectorate, COSLA and other interested parties to bring forward recommendations on how financial robustness in the sector can be assured. The Committee also welcomes the liaison between the Scottish Government and UK Government on the issue and recommends that both Governments maintain regular contact so that interactions between reserved and devolved responsibilities within these areas are considered fully.</p> <p>The Committee welcomes the steps taken by the Scottish Government, COSLA and the Care Inspectorate to put in place contingency arrangements following the collapse of Southern Cross. The Committee considers that these organisations should continue this joint working in order to ensure that a plan is in place should another care provider fall into financial difficulty in</p>

future.

SG Response:

The Scottish Government notes the Committee's view around responsibility for monitoring the financial viability of care services and the role of the Care Inspectorate in that regard, and the Committee's welcome of the Cabinet Secretary's announcement that she will work with the Care Inspectorate, COSLA and other interested parties to bring forward recommendations on how greater financial robustness in the sector can be assured.

Working with COSLA and others

We will continue to work with these organisations to ensure that a plan is in place should another care provider fall into financial difficulty in future.

The Scottish Government, COSLA and other relevant parties will develop these recommendations on assuring financial robustness in the sector. We will also seek to share early notification with other regulatory bodies such as The Office of the Scottish Charity Regulator (OSCR).

Submission of annual accounts to CI

As the Committee report states, the current focus of the Care Inspectorate is on care provision, not financial scrutiny.

Guidance has now been produced for Care Inspectorate staff on financial viability. At present, all service providers except childminders must notify us of breaches of banking covenants and annual accounts not being prepared on a 'going concern' basis. Inspectors receiving such notifications or annual return disclosure should alert the Professional Adviser (Finance), who will assess the risk and give advice on responding.

Staff are advised to assess financial viability risks within the current inspection methodology, and update the risk assessment accordingly.

Other indications of financial viability risk that inspectors should note on the risk assessment and which should trigger a response can include:

- occupancy rates reducing significantly
- staffing levels or other resources being reduced significantly
- premises not being maintained
- wages or bills not being paid
- complaints about amounts or quality of food.

We are in dialogue with the Care Inspectorate about how "continued financial viability" of social care providers can be assured and what the role of the Care Inspectorate in this regard should be.

While some of the actions identified by the Committee may assist in earlier identification of care services or providers which are experiencing financial

	<p>difficulty, their effectiveness in identifying all such services or providers and in preventing or addressing financial difficulties is limited. As regards the proposal that the Care Inspectorate should analyse providers' annual accounts, the Care Inspectorate already takes annual accounts into consideration at the time of registration. However, the monitoring of annual accounts submitted by providers would be a resource intensive exercise that would be based on out-of-date information given the historical basis annual accounts are produced on. This measure would not therefore provide an up-to-date picture of the organisation's financial position.</p> <p><i>Liaison between SG and UK Government</i></p> <p>The Scottish Government also confirms in response to the Committee's recommendation that the Scottish Government and UK Government continue to liaise on the issue of how financial robustness in the sector can be assured, that we will continue to maintain regular contact with the UK Government in that regard.</p>
<p>62.</p> <p>63.</p> <p>64.</p>	<p><u>Resourcing the Care Inspectorate</u></p> <p>The Committee considers it essential that the Care Inspectorate has sufficient resources in order to carry out its regulatory role effectively. The Committee notes that the voluntary redundancy scheme, introduced as part of the merger process which established SCSWIS, was predicated on a planned reduction in frequency of inspections. As a consequence, the Care Inspectorate now has insufficient numbers of inspectors to allow it to fulfil the increased frequency of inspections required from 2012 onwards. The Committee welcomes the assurance given by the Care Inspectorate that it will be able to find £400,000 of efficiencies which can be reinvested to supplement the current complement of inspection staff in order to meet the increased demands required of it.</p> <p>The Committee has recommended in this report that the Care Inspectorate should address a number of important issues through a combination of reviews, revised procedures, enhanced joint working and research. The Committee acknowledges the additional demands that this will place on the Care Inspectorate and calls upon the Scottish Government to ensure that it has the necessary support to fulfil these requirements.</p> <p>The Committee notes that the Scottish Government is planning to carry out a review of the Care Inspectorate's fee regime. Care Inspectorate witnesses suggested that there was scope to increase fees charged to service providers for registration and annual continuation if such a policy decision was taken. The Committee invites the Scottish Government to clarify, in Fits response to this report, its intentions regarding fees charged by the Care Inspectorate.</p> <p>SG Response:</p> <p><i>Clarification of CI fees</i></p> <p>The Scottish Government accepts the Committee's request that it clarify its</p>

intentions regarding fees charged by the Care Inspectorate, and advises that it intends to review by means of a consultation the Care Inspectorate's fees regime in 2012, with the intention that a new fee system be in place for 2013/2014. It may be noted that at present very few of the fees are set at full cost recovery rate, with the exception of the care home sector, and an element of grant subsidy is applied to almost all the Care Inspectorate fees. Any new feeing structure will ultimately require new regulations to be made by Scottish Ministers.

Resourcing otherwise of the CI

The Scottish Government notes the Committee's concern otherwise about resourcing of the Care Inspectorate, to enable it to carry out its statutory role effectively and in particular to address the issues recommended in the Committee's Report. As the Cabinet Secretary has recently announced, she is taking a number of steps to strengthen the inspection and regulatory regime. However, it is also right that as part of the reorganisation of the inspection regime and the establishment of the Care Inspectorate that we seek, along with the Care Inspectorate, to achieve efficiencies and deliver savings for reinvestment in front-line scrutiny activities to strengthen public assurance and protection.