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The Health & Sport Committee

By email

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**HEALTH AND SPORT COMMITTEE: SCOTTISH PUBLIC SERVICES OMBUDSMAN (SPSO) (HEALTHCARE WHISTLEBLOWING) ORDER 2019 – PROPOSED REGULATIONS**

I am writing to provide a Scottish Government response to the Health and Sport Committee's report: *Scottish Public Services Ombudsman (SPSO) (Healthcare Whistleblowing) Order 2019 – Proposed Regulations* that was published on 25 June 2019.

I am pleased that the Committee is supportive of the proposed regulations, and is satisfied that it is appropriate that the Independent National Whistleblowing Officer (INWO) function should be vested in the Scottish Public Services Ombudsman.

I note the following points are raised in your report and provide a response on behalf of the Scottish Government in respect of each below:

- That the definition of what constitutes whistleblowing should be included within the Order.
- That the Care Inspectorate should be included within the scope of the information sharing provisions set out in the Order.
- That the Committee would wish to see an early extension of the INWO's functions to include jurisdiction over social work whistleblowing complaints, subject to consultation with local authorities.
- That the final version of the Ombudsman's whistleblowing standards is available for scrutiny at the same time as the Order is laid in Parliament.

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## Definition of Whistleblowing

The Scottish Government accepts the view of the Committee that a definition of whistleblowing should be set out within the draft legislation. In advance of laying the draft Order in Parliament in the Autumn, my officials have therefore instructed that an appropriate definition is included within the relevant section(s) of the Order. This will in turn be mirrored within the SPSO's draft Whistleblowing Standards. It is anticipated that this will provide a measure of additional clarity and assurance in respect of the matters that can be raised with the INWO.

## Information Sharing Provisions

The Scottish Government notes the Committee's request that the Care Inspectorate is included in the list of bodies that the INWO will have power to share information with. This view was also reflected in some of the responses to the recent consultation on the draft legislation. My officials have sought further advice on this matter. By virtue of The Public Services Reform (Social Work Complaints Procedure) (Scotland) Order 2016/157, the Care Inspectorate is already listed within Schedule 5 of the Scottish Public Services Ombudsman Act 2002. This permits the SPSO to share information with the Care Inspectorate in certain circumstances, relating to the matters specified within Part 5 of the Public Services Reform (Scotland) Act 2010. Accordingly, it is the Scottish Government's view, having liaised with both the SPSO and the Care Inspectorate, that there is already provision in place to facilitate the sharing of information with the Care Inspectorate. Accordingly, no further change is needed to the provisions set out in the draft Order.

## Including Social Work Complaints within the INWO Jurisdiction

The Scottish Government is not opposed to any further or future expansion of the INWO, particularly in relation to enhancing employee experience and promoting greater cohesion across the health and social care landscape. It should be noted however that the INWO function, to work effectively, requires to be appropriately reflected within service providers' workforce policy architecture. In order to successfully expand the function therefore, appropriate time and resource would need to be given to exploring how and where local authorities' internal whistleblowing policies would need to be amended to reflect the INWO jurisdiction. As the Committee also notes, appropriate consultation with local authorities should also take place. The Scottish Government's concluded view therefore is that whilst access to the INWO is not required for individuals in this sector at this time, this will continue to be monitored as we take forward implementation of the INWO function.

## Scrutiny of the Order and Draft Whistleblowing Standards

The Scottish Government proposes that the Order will be laid in Parliament on 7 October 2019 however, the SPSO have advised that the draft Standards will not be available in full until 28 October 2019.

I note however that the first 20 days of the laying period are for Delegated Powers and Law Reform Committee (DPLRC) to consider the technical aspects of the Order, followed by 20 days for the Health and Sport Committee to consider the Order, and 14 days to allow for a plenary vote. Based on this, and taking into account recess dates, I understand that the Health and Sport Committee would not be considering the Order until 11 November 2019. Accordingly, I propose to maintain the planned laying date, noting that the Committee will be able to undertake contemporaneous scrutiny of the Order and draft Whistleblowing Standards.

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I hope this information is helpful in supporting the Committee's consideration of this important area of work.

*Kind regards*  
*Jeane*  
JEANE FREEMAN

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