

**EAST AYRSHIRE COUNCIL**

**EDUCATION COMMITTEE – 13 NOVEMBER 2001**

**REGULATION OF CARE (SCOTLAND) ACT 2001- IMPLICATIONS  
FOR THE LOCAL AUTHORITY**

**Report by Director of Educational and Social Services.**

**1. PURPOSE OF REPORT**

- 1.1** To advise Members of the Education Committee of the implications of the Regulation of Care (Scotland) Act 2001 and in particular the transitional and residual issues arising for the Local Authority.

**2. BACKGROUND**

- 2.1** The Regulation of Care (Scotland) Act 2001 transfers responsibility for registration and inspection of social care and early education services from local authorities and health boards to a new national body, the Scottish Commission for the Regulation of Care (**SCRC**). A second body, the Scottish Social Services Council (**SSSC**) will regulate the social services and early education workforce.

- 2.2** The SCRC will register and inspect the following services against new national standards and regulations, which are still to be finalised.

- support services (ie home care and domicilliary services)
- care homes (ie residential and nursing establishments)
- school care accommodation (ie boarding schools)
- independent health care
- nurse agencies
- child care agencies
- secure accommodation
- offender accommodation
- adoption services
- fostering services
- childminding services
- day care of children
- housing support services

- 2.3** Those services currently registered and inspected and Local Authority services currently subject to inspection will be regulated under the new arrangements from April 2002 with immediate effect. Timescales for the regulation of other services are to be announced, for example local authority nurseries and home care.

**2.4** From October 2001 SSSC will publish codes of standards of conduct and practice for all social care staff and their employers, e.g. social workers, all staff in residential care for children, all staff in care homes for adults, and early education and childcare staff. These staff will be subject to registration with the SSSC.

### **2.5 Transitional Plan**

The Scottish Executive established a Regulation of Care Project Team to guide the implementation of the Regulation of Care Act. The Project Team published a draft Transitional Plan on Registration, Inspection, Complaints and Enforcement issues on 3 October 2001. Comments on this draft are in preparation and where appropriate the significant elements of this plan have been highlighted in this report.

### **2.6 Implications For Existing Council Employees**

All staff currently engaged in registration and inspection work in social work and early years will be eligible for transfer to the SCRC where 50% of their work is on these regulatory functions. These transfers will be regulated by a transfer order.

Staff not wishing to transfer have no automatic right under the Act to redeployment, however Local Authorities have been encouraged to treat requests for redeployment sensitively. It has been indicated that the Executive will meet the costs if staff opt for redundancy after April 2002.

The Executive wrote to all eligible staff in September 2001 seeking their provisional intentions. The terms and conditions for transferring staff is unlikely to be known until 1 December 2001.

The Director of Educational and Social Services has recognised that this is a critical time for the staff involved. Regular meetings have been held with staff and trade unions to ensure effective communication. The Society of Directors of Personnel are also working closely with the new Commission to ensure that staffing proposals are handled in accordance with employment legislation and in the best interests of employees and Councils.

## **3. ISSUES ARISING**

### **3.1 Complaints in respect of Local Authority Services**

The following will remain with the Local Authority in respect of complaints against Local Authority services:

- Investigating and responding to complaints
- Maintenance of complaints information/database and statistical returns

- Complaints training.
- Review/development of complaints procedures/system.
- Complaints Review Sub-Committee (Social Work Complaints).

The Local Authority will continue to have responsibility for the handling of complaints in respect of its own services, where these are directed by the complainant to the Local Authority. The SCRC will however, provide an additional route of complaint.

In the future the Local Authority may also require to submit information about complaints and the operation of its complaint procedures to the SCRC in respect of its own registered services.

### **3.2 Complaints in Respect of Third- Party Providers**

The SCRC will have a remit for complaint investigation in respect of all care providers. It is likely to require complaints to be handled initially by the services own complaints process. The Commission is likely to oversee these processes and may directly investigate serious or unresolved complaints or those raising problematic issues.

The Local Authority will have an interest in complaints about services with which it has contracts. National protocols will set out appropriate roles for the Local Authority and the Commission. The nature of some serious complaints may require joint investigation with either the provider or the Commission.

For services which are not contracted, the Local Authority will retain an interest due to the presence of the service in their area.

The draft Transitional Plan indicates that complaints of the type which will transfer to the Commission and which are active before April 2002 should if possible be resolved before the transfer. Complaints which cannot be resolved prior to this date will transfer and then be handled under the SCRC complaints processes.

### **3.3 Pre-Registration Work**

Developmental work is currently undertaken before formal registration processes are initiated. This assists providers to anticipate the demands of registration and provides advice to encourage the highest quality in new service proposals.

The SCRC will undertake pre-registration work with potential registration applicants but it is unclear if the SCRC will provide the same level of pre-registration work as currently offered by the Local Authority.

Local Authority staff involved in commissioning registered services currently advise providers about service quality issues and there should be no significant residual work arising on this issue.

However for non-commissioned services consideration will need to be given to the level of pre-registration support that the Local Authority may wish to provide. This will be influenced by the extent of pre-registration support offered by the SCRC.

### **3.4 Developmental Work with Local Authority and Other Providers (Post-Registration)**

At present Inspectors provide developmental support and advice to providers in between formal inspections. It is unclear if the SCRC will offer such developmental support or if it will restrict itself to simply inspecting then monitoring post-inspection compliance. ***If the SCRC does not offer such developmental support, then there will be significant gaps.***

In the early years sector this would impact on pre and post inspection support to childminders, out of school care and voluntary and private nurseries. Proposals in relation to this, where appropriate, will be the subject of a future report to Committee.

### **3.5 Current Registration Applications - Transitional Issues**

The draft Transitional Plan indicates that a cut off point will be established for existing and new applications for registration - probably early January 2002. Regulatory staff will be asked to judge if registration applications in-hand can be fully processed by April 2002. Where this is possible the Local Authority regulatory staff will continue to process the application. Where applications are thought unlikely to be completed before 1 April 2002 the applicant will be advised that their application will be handled to the Commission from January 2002.

***The Transitional Plan proposes that some regulatory staff will transfer to the Commission prior to April 2002 in order to process such registrations.***

### **3.6 Registration of Local Authority Services**

***Local Authority services will for the first time require to be formally registered from April 2002.*** Registration involves checks of buildings and environment, on documented policies and procedures and checks on the organisation and staff (fit person checks). ***The final programme for registration of all Local Authority services has not yet been announced.*** The SCRC has yet to publish final registration standards and procedures and must train its own staff in these prior to implementation. The timescale for

registration will therefore be tight if Local Authority services are to be registered on or near April 2002.

Registration will require Local Authority staff to:

- Identify services eligible for registration
- Collate and complete required documentation (may include building plans, staffing lists, rotas, various policy documents, brochures etc.)
- Local Authority staff will need to monitor the Local Authority services to ensure that these are meeting the Commissions standards

A wider range of services will be subject to regulation by the SCRC. Home Care and local authority nurseries for example have not previously been subject to inspection but will be both registered and inspected by the SCRC. This will place additional demands on staff across a range of departmental services.

The draft Transitional Plan indicates that Local Authority services "which have been or should have been inspected under existing arrangements....will be treated as if registered with the Commission on 1 April 2002."

### **3.7 Local Authority Services - Registered Person(S) and Fit Persons**

Under existing legislation the operators of establishments (for the purposes of the Social Work Scotland Act and Children Act 1989) are "registered" persons and they, together with the day to day managers of the establishment are subject to "fit person" requirements. In general for private and voluntary sector organisations it is the Directors who are the "registered persons".

***The Regulation of Care(Scotland) Act will for the first time bring Local Authority services under these requirements.*** The draft Transitional Plan highlights that Local Authorities will be required to identify the "registered person(s)" for their services.

***The "registered person" has legal responsibilities for registered services.*** In particular, notices of registration conditions, Improvement notices and criminal prosecutions due to failure to meet the requirements of registration are directed to the "registered person". Further guidance is being sought on this from the SCRC and Project Team, and will be subject to a future Committee report in consultation with Head of Legal and Administration. It is anticipated, however, that the SCRC will expect 'registered persons' for Local Authority establishments to be placed at a sufficiently senior level within each Authority, probably at Head of Service or even Directorate level.

### **3.8 Liaison between SCRC and the Local Authority**

Liaison with the SCRC will include managing inspection and regulatory information about both the Council's own services and those of other providers. This task will link closely both with contract compliance and direct management functions. However it is likely that these liaison and information management tasks can be delivered using existing structures.

These tasks can be summarised as follows:

- Establishing and maintaining liaison with SCRC
- Co-operating with SCRC to facilitate registration of services
- Planning for the rolling programme of inspection
- Preparing Council staff for the new experience of inspection under the new regulations
- Co-operating with the SCRC to facilitate inspection

### **3.9 Liaison between Scottish Social Services Council (SSSC) and the Local Authority**

Liaison with the SSSC will include managing the flow of information about the registration and "fitness" status of defined groups of staff. This will include checks that defined groups of staff are appropriately registered with the SSSC before appointment and providing information to the SSSC about serious disciplinary/ misconduct issues which may have implications for the registration of staff. These liaison requirements and management of information tasks will be new and will require to be appropriately located within the operational management and personnel functions of the Department. The Department may also need to prepare staff for the new experience of registration with the SSSC

### **3.10 Inspection Programme - Transitional Issues**

The draft Transitional Plan indicates that existing regulatory bodies should if possible complete their inspection schedules early to provide space for dealing with transitional issues in the final months before April 2002. Regulatory staff in both Early Years and Social Work are working towards early completion of their inspection schedules.

### **3.11 Enforcement - Transitional Issues**

The draft Transitional Plan advises that formal enforcement processes initiated by the Local Authority will remain with the Local Authority if not completed by 1 April 2002. It is accepted that this is an appropriate arrangement. The Local Authority is asked to nominate a lead person to "manage" and have oversight of such ongoing formal enforcement situations. Formal enforcement measures are infrequently used however.

### 3.12 Social Work Inspection Advisory Committee

The functions of the Social Work Advisory Committee will also transfer to the SCRC on 1 April 2002. The Scottish Commission for the Regulation of Care will establish a national Advisory Forum to assist consultation on standards for the regulatory process.

## 4. FINANCIAL IMPLICATIONS

### 4.1 Financial Transfers

The Council has received notification that the transfer from East Ayrshire will be £138,000.

### 4.2 Registration Fees

From April 2002 the Local Authority will require to register its own services with the SCRC and will be required to pay annual registration fees at the same level as private and voluntary service providers. ***This will be a new financial burden on Local Authorities.*** The level of fees has yet to be determined. In addition staff who require to register with SCCC will need to pay a fee.

Local Authority services will be formally registered for the first time and there will be costs associated with bringing services to a registerable standard.

### 4.3 Residual Staffing Costs

It is likely that there will be costs to the local authority for early years in relation to childminders, early years voluntary groups and out of school care.

## 5. LEGAL IMPLICATIONS

5.1 The principle legal implications arise from the future registration of local authority services and the identification of registered person(s) as outlined earlier in this report.

## 6. POLICY IMPLICATIONS

6.1 The Local Authority will require to ensure that internal systems and cross-departmental arrangements are sufficiently robust to maintain services to the standards required following registration under the Regulation of Care Scotland Act 2001. The legal responsibility for this will be carried by the Registered person(s).

## **7. SUMMARY**

- 7.1** There are a number of legal, policy, financial and personnel implications which are not yet entirely clear. The critical issue for the local authority is the requirement for local authority services to be registered and to meet registration requirements.

## **8. RECOMMENDATIONS**

- 8.1** It is recommended that Members of the Education Committee;
- (i) ask the Director of Educational & Social Services to bring further reports to Committee on any appropriate financial; legal; policy or personnel implications; and
  - (v) otherwise note the contents of this report.

John Mulgrew  
Director of Educational and Social Services

16 October 2001  
BD/KG/SB

### **LIST OF BACKGROUND PAPERS**

1. Aiming for Excellence - Modernising Social Work Services ion Scotland (Cm 4288) March 1999
2. Regulation of Early Education and Childcare- The Way Ahead (May 200)
3. The Way Forward for Care - Policy position Paper (July 200)
4. Regulation of Care (Scotland) Act 2001
5. Draft Transitional Plan October 2001 Regulation of Care Project.

Members wishing further information should contact Bill Duncan, Head of IRC Unit, Tel: (01563) 555341 or Janie Allen, Principal Officer Pre 5 Services, Tel: (01563) 576185.

**IMPLEMENTATION OFFICERS:           STEPHEN MOORE           KAY GILMOUR**

**AGENDA**