

A REPORT BY THE AUDITOR GENERAL FOR SCOTLAND UNDER SECTION 22(3) OF THE PUBLIC FINANCE AND ACCOUNTABILITY (SCOTLAND) ACT 2000

**THE 2003/04 AUDIT OF THE SCOTTISH EXECUTIVE CONSOLIDATED RESOURCE ACCOUNTS**

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1. I have completed my audit of the Scottish Executive Consolidated Resource Accounts for the year ended 31 March 2004. I have given a clean audit certificate on the accounts but I have decided to issue this report to bring to the Parliament's attention matters arising in connection with expenditure on Supporting People grant.
2. I submit these accounts and my report in terms of sub-section 22(4) of the Public Finance and Accountability (Scotland) Act 2000, together with this report which I have prepared under sub-section 22(3) of the Act.

**Background**

3. Supporting People was introduced in Scotland under the Housing (Scotland) Act 2001 (the Housing Act) from April 2003 as an integrated policy and funding framework for housing support<sup>1</sup>. Previously, housing support services were funded from a number of sources, including Housing Benefit. Under the new arrangements, local authorities are responsible, together with their partners such as health agencies, for assessing the overall level of needs in their area. Local authorities may either provide housing support services themselves or commission them from contractors.

**Statutory position**

4. Under the Housing Act, the Scottish Ministers may pay grants to local authorities towards expenditure incurred by them in providing relevant housing support services to individuals to occupy residential accommodation. The Housing Act also enables Ministers to set terms and conditions under which local authorities may make payments out of grant provided to them.
5. Under the Regulation of Care (Scotland) Act 2001 (the Care Act), the Scottish Commission for the Regulation of Care (the Care Commission) is responsible for furthering improvement in the quality of care services, including housing support services, provided in Scotland. Under the Care Act, providers of care services must apply to the Care Commission for the registration of each service they provide.
6. Providers of those housing support services that were required under the Care Act to be registered had to apply to the Care Commission by 1 October 2003 for registration of their services. Services in operation at 1 April 2003 were deemed to be registered with the Care Commission until 31 March 2004, provided required applications to register were made before 1 October 2003. The Housing Act enabled local authorities to make payments to providers of housing support services between 1 April 2003 and 30 September 2003 where a contract with the local authority existed and where the service was deemed to be registered under the Care Act. Payments for contracted services between 1 October 2003 and 31 March 2004 could only be made if the service provider had made an application for registration to the Care Commission before 1 October.

**Registration of housing support services**

7. The Scottish Executive Development Department (SEDD) considers that there may have been about 100 persons or bodies, including local authorities, providing around 1,600 separately registrable housing support services on 1 April 2003.
8. In the absence of reliable detailed data about the sector and of any specific guidance, the Care Commission had a complex task in determining which branches of services were separately registrable under the Care Act. As a result, the Care Commission adopted a two stage approach to the registration process in order to save providers from submitting applications which may be

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<sup>1</sup> Housing support covers a variety of services including sheltered housing for older people, housing schemes for people with learning or physical disabilities or who have mental health problems, and refuges for homeless people or people escaping domestic violence.

unnecessary and expensive for them because each application had to be accompanied by the required fee. The first stage involved deciding whether the service was of a type which required to be registered and, if so, how many services were separately registrable. The Care Commission would then invite that service provider to submit the requisite number of applications. In the second stage, the Care Commission would determine the applications. By 1 October 2003, however, although some expressions of interest in registering housing support services had been received, the first stage discussions had not proceeded far enough to enable the Care Commission to determine the appropriate fee to invite service providers to submit applications.

### Regularity of expenditure

9. As disclosed on the SEDD outturn statement on page 21 of the financial statements, SEDD paid £406 million of Supporting People grant to local authorities during 2003/04, to fund expenditure on housing support services, both directly by local authorities themselves and by authorities making payments to other providers. The SEDD paid £203 million to local authorities in the period 1 October 2003 to 31 March 2004. This expenditure by SEDD was properly incurred in accordance with the Housing Act.
10. However, because no applications to register housing support services were received before 1 October 2003, expenditure by local authorities on registrable housing support services was not in accordance with the Ministerial terms and conditions set out under the Housing Act. Local authorities estimate that they incurred expenditure of £225 million on registrable housing support services between 1 October and 31 March 2004. As a result, 28 out of the 32 audit opinions on the 2003/04 accounts of local authorities draw attention to this failure to comply with statutory requirements.

### Action taken since 1 April 2004

11. Although Scottish Executive officials met with Care Commission staff on several occasions to discuss progress with determining the number of housing support services, the Scottish Executive was unaware that continuation of the deemed registration until 31 March 2004 had lapsed because valid applications to register had not been received by 1 October 2003.
12. In July 2004, by which time the Scottish Executive was aware of the difficulties with registration, the Scottish Executive Health Department, as sponsor department of the Care Commission, wrote to all known providers of housing support services in business before 1 April 2003, urging them to apply for registration by 29 September 2004. At the same time, the Lord Advocate confirmed that as long as providers of housing support services submitted an application for registration to the Care Commission by this date, they would not be liable for prosecution under the Care Act<sup>2</sup>.
13. In August 2004, the regulations made under the Housing Act were amended to remove, as a temporary measure, the requirement for providers to be registered before they can receive payment. The Scottish Executive intends to introduce primary legislation, as soon as practical, to rectify retrospectively the position with respect to both the operation of unregistered providers and the payments made to them by local authorities which were not in compliance with statutory requirements.
14. As at 3 December 2004, the Care Commission had registered 1,210 services out of the 1,284 valid applications received.

### Conclusions

15. Expenditure by SEDD in connection with Supporting People grant was regular, but the Scottish Executive recognises that lessons can be learned from the experience of registering providers of housing support services:
  - The regulation of housing support services was commenced without any reliable data on the size of the sector and the work involved in identifying the number of services requiring applications. In the circumstances, the Care Commission's decision to adopt a two stage

<sup>2</sup> Under the Care Act it is an offence to provide a care service while it is not registered..

process to registration was understandable, although it meant that it would take longer to generate formal applications.

- Despite meetings between Scottish Executive and Care Commission staff to discuss the progress of registration, it was into financial year 2004/05 before the Scottish Executive was aware that the deemed registration of providers had not continued beyond 30 September 2003 as originally intended. There is clearly a need for the Care Commission to submit regular progress reports on the registration of all new care services to the Scottish Executive.

16. I will monitor closely developments affecting this situation as part of my 2004/05 audit of the Scottish Executive.



**ROBERT W BLACK**  
Auditor General for Scotland  
15 December 2004