

REGULATION OF CARE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Commentary on sections

Part 1: the Commission and Care Services

Care Services

Section 2: Care services

21. **Section 2** sets out the range of “care services” which will be regulated by the Commission and defines each of the services for the purposes of the Act. This section also provides that certain services can be excepted from these definitions by regulation.
22. Subsection (2) defines a support service. This definition includes services traditionally referred to as “home-care” or “domiciliary care”; services provided to people in their own homes or in supported accommodation, sheltered housing or elsewhere. It also includes those services traditionally referred to as “day care” whether they are provided in the home, in a care setting or elsewhere. It covers services provided or purchased by a local authority, services provided by health bodies which are not part of core NHS functions and other services independently provided which include an element of personal care or personal support, except for services provided by an individual through direct arrangements with the recipient (e.g. an informal family carer, a paid personal assistant). It will not include field social work services carried out by social workers in connection with their functions of assessment, care management, child protection, supervision of offenders etc. Such services will be excluded by regulation as required.
23. Services are included if they are provided because of a person’s vulnerability or need, as defined in 2(28). Personal care is also defined for the purposes of the Act as being care related to day to day physical tasks and to mental processes connected with those tasks, for example eating and washing and remembering to eat and wash. It will not include domestic services which are not provided or purchased by a local authority or health body.
24. Subsection (3) defines a care home service. Such a service provides accommodation together with personal care, personal support or nursing for any person, including children, because of their vulnerability or need. Care homes provided by local authorities will be required to register, and section 72 allows them to employ nurses and to provide nursing care. The care and accommodation provided must be inextricably linked for a care service to be considered a care home. If this is not the case, the Commission will register and inspect the care being delivered as a support service under section 2(2). It will be for the Commission to interpret, on an individual basis, whether the care and accommodation provided by a service are inextricably linked and how that service should be registered. Scottish Ministers will issue guidance to assist the Commission with this.

*These notes relate to the Regulation of Care (Scotland) Act
2001 (asp 8) which received Royal Assent on 5 July 2001*

25. This provision brings together the previously separate definitions of residential care homes and nursing homes under the single definition of care home.
26. Subsection (4) defines school care accommodation. This involves residential accommodation provided to a school pupil by a local authority or an independent or grant-aided school. This covers services provided to children boarding at an independent school, those staying in a school hostel provided by a local authority and special schools.
27. Subsection (7) defines a child care agency. Such a service either supplies child carers or introduces them to people using the service. The definition is sufficiently broad to include a range of services providing childcare, including nanny agencies and sitter services.
28. Subsection (8) defines a “child carer” for the purposes of subsection (7) of the Act. The definition refers to looking after a child wholly or mainly in the home of a child’s parents. An agency providing child carers to others eg grandparents, guardians or foster carers will still be covered by regulation if some of their clients are parents.
29. Subsection (9) defines secure accommodation for children. This is residential accommodation approved by Scottish Ministers in accordance with regulations under section 29(9)(a) of the Act. These care services cater for some of the most vulnerable children and young people in Scotland. The Commission will regulate these services, but statutory approval of secure accommodation will remain with Scottish Ministers under section 29(9).
30. Subsection (10) defines an offender accommodation service. These services, traditionally referred to as residential accommodation for offenders, provide advice, guidance and assistance to people who are subject to specified supervision orders or have recently been released from prison or other detention. They are provided under Section 27 of the Social Work (Scotland) Act 1968.
31. Subsection (11) defines an adoption service. Such a service is provided by either a local authority (under section 1(1) of the Adoption (Scotland) Act 1978) or by other persons whether or not provided as part of the Scottish Adoption Service. Section 7(6) provides that a person (other than a local authority) who provides an adoption service must be a voluntary organisation. Subsection (12) provides that where the proposed adopter is a relative of the child this is not a matter for the Commission’s regulatory regime.
32. Subsection (14) defines a fostering service. By subsection (14)(a) a fostering service is either a public fostering service (that is to say, a fostering service provided by a local authority under paragraph (a) of section 26(1) of the Children (Scotland) Act 1995 or by a person on behalf of a local authority) or it is a private fostering service (that is to say, a fostering service provided by a local authority securing, under sections 3 and 8 to 10 of the Foster Children (Scotland) Act 1984, the welfare of privately fostered children).
33. Subsection (16) defines an adult placement service. This is a service which provides accommodation for adults, together with personal care and personal support, by reason of their vulnerability or need in the homes of specially recruited individuals to enable them to live in the community.
34. Subsections (17) and (21)(a) define child minding. This involves looking after one or more children on domestic premises for a minimum of two hours per day, for reward. Subsections (18) and (19) provide exceptions to this, for example for care provided by parents or relatives of children and care provided in the parent’s home.
35. Subsections (20) and (21)(b) define day care of children. Such a service provides care for children for more than two hours a day on premises other than domestic premises. Subsections (22)-(25) provide exceptions to this definition, for example medical treatment in hospitals (24) and care for children of school age provided in and managed by schools (25).

36. Subsection (27) defines a housing support service. This is a service that provides support, assistance, advice or counselling to people to help them live at home. It is provided that certain services relating to accommodation which is “excepted accommodation” for the purposes of the Housing Act 2001 are outwith the scope of this definition. These services will be provided under the Supporting People initiative and will be targeted on, for example, homeless or potentially homeless people, people fleeing domestic abuse and ex-offenders. The services will provide general support, for example assistance with life skills such as budgeting, minor repairs, security and the use of electrical appliances.

Section 3: Power to amend the definition of “care service”

37. This section enables Scottish Ministers, following consultation, to amend by order the definition of care service. This allows Scottish Ministers to respond to any future changes in the delivery or focus of care services by adding additional services to the regulatory remit of the Commission as and when appropriate. Amendments consequential on amending the definition would be made under Section 80(2).

Section 4: Information and advice

38. Subsection (1) provides that the Commission must make available to the public information on the availability and quality of care services. Subsection (2) provides that this information should be made available in any format that may reasonably be requested. Information provided might include details about the location and types of services available as well as the results of the Commission’s inspections of individual care services. This will help members of the public to decide which care services they wish to use.
39. Subsection (3)(a) allows the Commission to provide advice to Scottish Ministers at any time, and requires it to do so in response to a request by Scottish Ministers. Subsection (3)(b) requires the Commission to provide advice to service users and carers and their representatives, local authorities, health boards, care service providers or prospective providers, and any other bodies set out in regulations, about any aspect of its work. For example, the Commission might offer advice to service providers on how to meet the national care standards.
40. The Commission should also provide information to Scottish Ministers under this section about trends in care provision to fulfil the role recommended by the Royal Commission on Long Term Care. Subsection (4) allows the Commission to charge a reasonable fee for any advice, forms or documents it provides in connection with its obligations under subsection (3)(b).