

REGULATION OF CARE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Commentary on sections

Part 1: the Commission and Care Services

Registration

Section 7: Applications for registration under Part 1

44. This section sets out the framework for applications for registration. Subsection (1) requires that the application for registration must be made to the Commission. Subsection (2) sets out what an application must include. For the purposes of the Act “person” does not only mean an individual but includes, for example, a company or firm.
45. Subsection (3) requires a person providing more than one care service to apply for registration for both services. This would mean, for example, that someone who provides a care home and a separate home care service would have to make a separate application for each. But someone who provides a care home which includes some day care provision might only need to apply once. Scottish Ministers will issue detailed guidance to the Commission on how to register different branches of care services, but it will be for the Commission to decide on receipt of applications whether services could be registered as one or not.
46. Subsections (4) and (5) require that where a person is providing a care service from two or more settings, each setting must be registered as a separate service ie a provider who has more than one care home has to register each. This is to cover situations whereby an organisation or business operates a number of care services but effectively manages them each individually on a day to day basis.
47. Subsection (7) provides that section 7 does not apply to local authority adoption and fostering services and any other care services registered under Part 2 of the Act.

Section 8: Limited registration

48. Subsection (1) provides for the Commission to register on a limited basis residential accommodation which does not require to be registered as a care service, for the sole purpose of permitting the manager to apply to manage the finances of an adult with incapacity under the provisions of the Adults with Incapacity (Scotland) Act 2000. Applications so granted will be considered limited registrations.
49. Subsection (2) provides that the information to be supplied with such an application should be the same as for a care service seeking registration under Part 1. Subsections (3) and (4) provide that various registration, inspection and enforcement provisions which apply to care services should also apply to those granted limited registration.

Section 9: Grant or refusal of registration under Part 1

50. Registration will only be granted if the Commission is satisfied that the applicant has demonstrated that they have complied with or will comply with the relevant standards and other relevant requirements. The burden of proof is with the applicant rather than the Commission.
51. Subsection (1) provides that an application under section 7 can be granted either unconditionally or subject to any conditions the Commission sees fit to impose. Specific conditions may be required to take account of the circumstances in an individual service, for example, a condition that a particular door is kept locked to prevent children from wandering directly onto a busy road, or that a particular ratio or skill mix of staff is needed.
52. Subsection (2) provides that if the Commission is satisfied that the applicant is complying with, or will comply with, all relevant requirements set out in the care standards and in regulations under section 29, and the requirements of any other legislation that it considers relevant, it should give the applicant notice of its decision to grant registration either unconditionally under section 17(1) or subject to conditions under section 15(1)(a). Otherwise, it will give notice of its refusal of registration under section 15(1)(b).
53. If the Commission grants the application, it must issue a certificate of registration (subsection (3)), which the service provider must display in a prominent position (subsection (4)), either in the premises where the care service is operated from, and if there is a separate management office, in that office too.
54. In making a decision under this section, the Commission must take the national care standards and the Council's codes of practice into account.