

REGULATION OF CARE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Commentary on sections

Part 1: the Commission and Care Services

Improvement Notices

55. There has been considerable concern that the present statutory arrangements for enforcement are inflexible and resource intensive and do not lend themselves to swift action to protect service users. The legislation therefore enables the Commission to take swift action when appropriate (particularly under section 18) whilst also ensuring that there are adequate safeguards for service providers.

Section 10: Improvement notices

56. This section gives the Commission the power to serve an improvement notice on a care service. Such a notice will specify the improvements required to bring a care service up to the standards required and the timescale for meeting these standards.
57. For services registered under Part 1, subsection (1)(a) provides for the Commission to warn that if the necessary improvements are not made within the time allowed the Commission intends to begin procedures under section 12 to cancel a service's registration. Subsection (1)(b) provides for the Commission to warn that if improvement notices served on local authority adoption and fostering services and other services registered under Part 2 are not complied with the Commission intends to make a report to Scottish Ministers under section 41.
58. There may be cases where a voluntary or private sector service commissioned by a local authority is essential to the fulfilment of a local authority duty. Local authorities ought to have warning of the possibility of the registration of such services being cancelled. Subsection (2) therefore provides that when an improvement notice is given to a non-local authority service, the local authority should be informed.
59. Improvement notices do not form part of the urgent cancellation procedure set out in section 18.

Section 11: Special provision for certain care services provided by local authorities

60. This section adds to the provisions on improvement notices for local authority services registered under Part 1 to cover cases where the local authority considers that withdrawal of registration would place it in breach of a statutory duty.
61. Subsection (1) requires such a local authority to inform the Commission of its view within 14 days of receiving an improvement notice, giving the reasons. Subsection (2) requires the Commission then to copy the improvement notice to Ministers with the local authority's argument and their views on it. Subsection (3) requires Ministers to

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

decide whether the local authority's view is justified. If it is, the care service is deemed to be registered under Part 2 and the provisions in that Part in relation to enforcement would apply. If it is not, the normal Part 1 arrangements would apply.