

REGULATION OF CARE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Commentary on sections

Part 1: the Commission and Care Services

Constitution of Commission

Section 1: Constitution of Scottish Commission for the Regulation of Care

18. Subsection (1) establishes the Scottish Commission for the Regulation of Care. It will be a statutory body corporate which will exercise the functions given to it by or under the Act or other relevant legislation. Subsection (1)(b) provides that as part of its function, the Commission will be expected to promote improvements in care services in Scotland.
19. The Commission will be a non-departmental public body. It will be independent in its day to day running, but will be accountable to Scottish Ministers through its corporate plan and management statement.
20. Subsection (2) provides that the Commission must, act in accordance with directions given to it by, and under the general guidance of, Scottish Ministers and encourage equal opportunities in exercising its functions under the Act. Subsection (3) gives effect to Schedule 1 which sets out the constitutional arrangements and general provisions for the establishment and operation of the Commission.

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.

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

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.
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

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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).

National care standards

Section 5: National care standards

41. **Section 5** gives Scottish Ministers a duty to prepare and publish national care standards applicable to all care services. These will specify the standards applicable to care services. Subsection (3) and (4) provide that these standards and the Council's codes of practice must be taken into account by the Commission when making any decisions related to registration, inspection and enforcement in respect of care services, whether registered under Part 1 or Part 2 of the Act. This section also ensures that consultation must be undertaken prior to any amending of the care standards. The standards will be focussed on the needs of people using the services, and are being devised by working groups under the auspices of the National Care Standards Committee.

Complaints

Section 6: Complaints about care services

42. Subsection (1) requires the Commission to establish suitable procedures for dealing with any complaints made to it about regulated care services by users, their relatives or advocates or staff. Subsection (3) requires that, before establishing such procedures, the Commission will be required to consult local authorities, health bodies and such other persons or groups of persons it considers appropriate and that it should submit proposals to Scottish Ministers for approval.
43. While local resolution of complaints by the provider will be the norm there should be no requirement for a user of a service to go through the provider's own system before approaching the Commission. Any procedures developed must be kept under review by the Commission. The Commission must also ensure that the established procedure is given the appropriate publicity.

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.

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 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.

Proposals and applications in relation to registered care services

Section 12: Cancellation of registration

62. This section gives the Commission the power to cancel the registration of a care service registered under Part 1 that, having been issued with an improvement notice under section 10, is still not meeting the relevant requirements. This could be concern about how effectively the care standards are being taken into account or that a condition of registration has been breached or where a relevant offence has been committed. Further grounds for cancelling registration may be prescribed by order.
63. Subsection (2)(a) provides that relevant offences for the purpose of section 12 are:
- an offence under this Act – for example, providing a care service while not being registered (section 21(1)(a)), knowingly making a false or misleading statement when applying for registration or variation or removal of a condition (21(1)(b)), failing to display a current certificate of registration (21(2)) or obstructing an inspector (section 25(13));
 - an offence under regulations made under this Act (section 29(11)); or
 - any other offence which in the Commission's view makes it appropriate to cancel a registration.
64. Registration can be formally cancelled even if a provider closes a care service before the cancellation process is complete. This will ensure that the provider's record accurately reflects the situation and the Commission will be aware of previous history in dealing with any future applications. Again, the Commission must take the national care standards and the Council's codes of practice into account in coming to its decisions.

65. Cancellation of registration would not normally be the first step in a formal enforcement action. It is only likely to be used where the service has not met conditions of registration over time and has ignored the serving of an improvement notice. If a care service provider is convicted of a relevant offence, such as obstructing an inspection and fails to remedy matters at fault, the Commission will be able to cancel registration. These cancellation of registration procedures are not part of the urgent cancellation procedure set out in section 18.

Section 13: Condition notices

66. This section empowers the Commission to impose a “condition notice” on a care service. This notice indicates an intention to vary or remove a condition of registration or impose an additional condition. Condition notices do not form part of the urgent cancellation procedure set out in section 18.

Section 14: Applications under Part 1 in respect of conditions

67. Subsection (1) enables a provider of a care service to apply for a change to their conditions of registration, for example to change the maximum number of people accommodated in a care home, or to apply voluntarily for the cancellation of registration, for example, if they plan to close or sell the business. Subsection (2) prevents a person voluntarily cancelling their registration if the Commission has given notice of intention to, or decided to, cancel registration. Subsection (3) provides that an application shall be accompanied by the fee and that regulations shall say how the application is to be made and what particulars are to be stated in it. Subsection (4) provides that if the Commission grants an application for a change of conditions it must give notice in writing and issue a new certificate of registration.

Section 15: Further provision as respects notice of proposals

68. Subsection (1) provides for the Commission to give notice of decisions it intends to take, in respect of applications for registration made under section 7, if it intends to grant an application subject to conditions or refuse it. For example, in the case of a person applying for registration for the first time, the notice of proposal will state the conditions subject to which the Commission proposes to grant the application.
69. Subsection (2) requires the Commission to give notice if it intends to cancel a registration other than under the emergency procedures set out in section 18(1). Subsection (3) requires the Commission to give notice if it decides to refuse an application for a variation of conditions made under section 14. Such notice must set out the reasons (subsection (4)). Section 15 does not apply where the Commission decides to grant an application for registration unconditionally, or subject to agreed conditions.

Section 16: Right to make representations to Commission as respects proposals under Part 1

70. This section states that a notice given under section 15 must indicate that the person can, if they so wish, make written representations to the Commission within a time limit of 14 days (subsection (1)). This ensures that the applicant has the opportunity to make their point of view known. Subsection (2) provides that the Commission may not implement the terms of the notice until the 14 day period has ended unless they receive representations during the 14 day period or the person notifies the Commission that they will not be making representations. Subsection (3) provides that this section does not apply in respect of condition notices given under section 35.

Section 17: Notice of Commission’s decision under Part 1

71. Subsection (1) provides that the Commission should give notice when granting an application for registration unconditionally or subject to a condition that has been agreed in writing between the Commission and the applicant.

72. Subsections (3)-(6) deal with situations where the representations stage has been completed, requiring the Commission to serve a notice in writing of their decision on the applicant. The notice must explain the right of appeal conferred by section 20 and in the case of a decision to grant an application subject to conditions or to vary conditions, set out those conditions. A decision to cancel registration, to grant an application subject to conditions which are not agreed, or to change conditions will take effect only after the outcome of any appeal has been determined, or after 14 days if no appeal is brought. In the case of a decision to grant an application subject to conditions which are not agreed, if the applicant decides not to pursue an appeal the decision will take effect immediately.

Section 18: Urgent procedures for cancellation of registration etc.

73. This section provides that the Commission may apply to a sheriff for the immediate cancellation of registration or change in the conditions of registration of a care service. The sheriff may only make the order where it appears that unless the order is made there is a serious risk to a person's life, health or well-being. The conditions might include that no new clients are taken on by the service, or that the manager or a particular member of staff is replaced.
74. Subsection (2) requires the Commission to notify the local authority and health board as well as any other statutory authority it considers appropriate, of the making of an urgent application. This is necessary so that the local authority can comply with their statutory duties as required, for example to provide or arrange alternative care for the service users in accordance with their duties under section 12A of the Social Work (Scotland) Act 1968, and that the health board may consider whether to make provision for NHS services.
75. The Commission will be expected to inform such bodies as soon as possible in order that necessary arrangements can be made. The Commission will be expected to have agreed protocols with the Convention of Scottish Local Authorities (COSLA) and the NHS to deal with such situations should they arise. Subsection (5) defines a statutory authority for this purpose.

Section 19: Conditions as to numbers

76. This section provides that the Commission can limit the number of people using certain services or to whom certain services are provided either on initial registration, through a subsequent condition notice or in association with an improvement notice. For example it may be appropriate for a new provider to be restricted on numbers until they get fully established, or where a care provider is causing concern the power could be used as an alternative to enforcement action (i.e. withdrawing registration).
77. The services covered by this section are care homes, school care accommodation, secure accommodation, adult placement services, support services, independent health care, child minding, day care for children and nurse agencies
78. It is not appropriate to apply this condition where there is a statutory duty on the local authority to provide the service. This is why adoption and fostering services are not covered by this provision. Offender accommodation services and housing support services are also not covered by the provision. These are examples of where imposing a limit on numbers would mean there had to be a parallel limit on the local authorities' duty to provide such services.

Section 20: Appeal against decision to implement proposal

79. This section provides for an appeal against a decision on registration made by the Commission under section 17. The appeal must be made to a sheriff within 14 days of the notice of decision. Subsection (2) provides for the sheriff's powers on considering an appeal.

Offences

Section 21: Offences in relation to registration under Part 1

80. This section sets out offences under Part 1 of the Act. Subsection (1) makes it an offence for a person to describe any service as a care service for the purposes of this Act when it is not registered as such. This would catch, for example, an unscrupulous hotel owner who tried to pretend their hotel was a care home. If convicted of an offence under this subsection, the person would be liable to a fine not exceeding level 5 on the standard scale (£5000 at present) or up to three months imprisonment, or both.
81. Subsection (2) makes it an offence not to display a certificate of registration in a prominent place. The penalty on summary conviction is a fine not exceeding level 2 on the standard scale (£500 at present).
82. Subsection (3) provides that an individual or body, other than an adoption agency, making arrangements for the adoption of a child would be prosecuted under the Adoption (Scotland) Act 1978 rather than this Act. This will ensure that there is not duplication of powers under this Act and the Adoption Act.

Section 22: False statements in applications under Part 1

83. This section makes it an offence to knowingly give information which is false or misleading in a material respect when making an application for registration, or for variation or removal of a condition. The penalty is a fine not exceeding level 4 on the standard scale (£2500 at present).

Section 23: Offences by bodies corporate etc.

84. This section provides that if an offence under Part 1 is committed with the consent or connivance of an officer of a body corporate, a local authority, a partnership, or an unincorporated association, or if that officer has turned a blind eye or been negligent, then the officer as well as the organisation are guilty of the offence. Individual officers of a body corporate, partners of a partnership, or persons managing or controlling an unincorporated association who are complicit in an offence under the Part will not be able to escape prosecution simply because the organisation is liable: both they and it may be liable to prosecution.

Fees

Section 24: Registration fees

85. This section sets out the fees which are payable to the Commission. Subsection (1) gives Scottish Ministers power to prescribe maximum levels of fees which may be imposed (following consultation with those who will or may be affected by the fees or their potential effect) and to determine whether or not a fee is payable by order. Subsection (2) sets out the activities for which the Commission is able to impose fees.
86. Subsection (3) gives power to the Commission to have regard to its own expenses in setting particular fees within the maxima set by Scottish Ministers. This subsection also allows the Commission to waive fees, for example in the situation described under section 7 where a person operates more than one care service. Detailed guidance will be issued to the Commission on the circumstances when it may be appropriate to reduce or waive fees.

Inspections

Section 25: Inspections

87. Subsection (1) provides that the Commission may require a person who provides a care service registered under the Act to supply it with any information to enable the Commission to discharge its functions. This may include such aspects as pre-inspection questionnaires or other information.
88. Subsection (2) enables inspection at any time of a care service and in particular allows an inspector authorised by the Commission to enter and inspect premises at any time if they are used or are believed to be used in connection with a care service. These powers are necessary to ensure compliance with the regulatory framework. However, inspectors are not authorised to enter the home of a person receiving a support service in their own home.
89. Subsections (3) and (4) provide that all care services offering 24 hour care away from home should be subject to a minimum of two inspections per year, and that one (or both) of these inspections should be unannounced. Unannounced inspections are an important part of the current regulatory system. The services subject to two inspections per year are care homes, school care accommodation, secure accommodation and those independent health care services which offer 24 hour care.
90. Subsection (5) requires the Commission to ensure that all other care services are subject to a minimum of one inspection every twelve months. It is likely that the Commission will inspect new services and services about which there are concerns more frequently. Inspections by the Commission can be planned in advance with the provider or carried out unannounced at any time.
91. Subsections (6), (7) and (8) provide that inspectors may also require relevant records or other documents to be produced for inspection on the premises wherever they may be kept. Where they are stored on computer they should be produced in a legible, not encrypted, form. Inspectors will be able to conduct any interviews about the running of a service or the treatment of service users as they consider appropriate. They will also be able to copy or remove relevant records (other than medical records), and will be able to interview, in private, the manager, employees, or any persons accommodated or cared for by the service who consent to be interviewed, including with family, carers or other representative where appropriate.
92. Subsection (9) allows an inspector who is a medical practitioner or registered nurse to examine in private, with their consent, a patient or resident, or their medical records, where they believe that the person may not be receiving proper care. Subsection (10) makes the same provision in respect of dentists. When any other inspector has such concerns, they would arrange for a medical practitioner, nurse or dentist to examine the individual as appropriate. The person may choose to be examined in the presence of, say, a friend or member of their family where appropriate. Subsection (11) defines an appropriate examination and consent for the purposes of these sections.
93. Subsection (13) makes it an offence for a person to intentionally obstruct an inspection under this section or section 27. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale (£2500 at present).

Section 26: Integrated inspections

94. This section requires the Commission and Her Majesty's Inspectorate of Schools to collaborate in the regulation and inspection of care services which include an educational element. The care services in question are set out in subsection (2). They are school care accommodation; secure accommodation and day care of children. Scottish Ministers will back up these provisions with detailed directions about integrated inspections.

Section 27: Further provision as regards inspections

95. This section allows an inspector (authorised to enter and inspect premises by virtue of section 25) to remove any material which could be used as evidence of possible non-compliance with requirements. Subsection (2) imposes a requirement on owners, managers and employees to assist the inspector and permits the inspector to take such measurements and photographs and make such recordings as considered necessary to enable him or her to exercise powers under this section.
96. Subsection (5) requires the Commission to prepare a report after carrying out an inspection under section 25 and send a copy of the report to the registered person, and subsection (6) provides that the Commission should give that person an opportunity to comment on a draft of that report. Subsection (7) provides that the Commission must make the report available to the public. Subsection (9) requires the Commission to make these reports available in any form (for example Braille) that may reasonably be requested.

Regulations

Section 28: Regulations relating to the Commission, to registration and to registers

97. Subsection (1)(a) gives Scottish Ministers the power to make regulations conferring additional functions on the Commission. Providing for Scottish Ministers to give the Commission further functions through regulations will give it the necessary flexibility to react to future needs of service users and developments in care service provision without the need for primary legislation.
98. Subsection (1)(b) provides for Scottish Ministers to make regulations about how the Commission should maintain registers. Subsection (1)(c) allows regulations to be made about the information that should be provided in an application under Part 1 and Part 2 and what certificates of registration should include, for example the conditions of registration of a care service. Subsection (1)(c)(iii) provides for regulations specifying types of applicants who cannot make certain kinds of applications.
99. Subsections (1)(d) and (e) allow regulations to be made that define the circumstances and conditions, including the payment of a fee, under which the Commission should provide access to its registers. Subsection (2) allows for regulations to be made setting out when fees should not be payable and provides that the Commission can give access free of charge. These regulations would be, for example, to prevent unrestricted access to the names and addresses of services, such as children's services, where there might be a consequent risk to children. The regulations could contain a requirement for someone to show they had a legitimate interest before they could be granted access to certain registers.

Section 29: Regulations relating to care services

100. This section provides regulation-making powers which will cover the management, staff, premises and conduct of care services. It also provides for regulations to be made regarding the health and welfare of service users.
101. Subsection (1) provides a general power to make regulations imposing any requirements the Scottish Ministers see fit. Subsection (2) allows regulations to be made to ensure that care services are suitably managed, staffed and equipped and that premises are fit for their purpose.
102. Subsections (2)(e) and (6) provide powers to make regulations regarding the welfare of persons provided with care services. Subsection (6) allows for regulations under subsection (2)(e) to specifically make provision about promoting and protecting people's health and about the control and restraint of service users where necessary.

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103. Subsection (2)(j) provides that people acting as a GP, or another professional capacity to be specified by regulation, for persons at a care service should not have a financial interest in that service.
104. Subsection (3) in conjunction with 29(2)(1)(i) provides that Scottish Ministers may make regulations requiring any receiver or liquidator of a company, a trustee of an individual registered as an owner of a care service or a supervisor/administrator of a company appointed under the Insolvency Act 1986 to notify the Commission of their appointment. 29(2)(1)(ii) provides for regulations to be made requiring that such a person appoint a person to manage the care service in question. The Commission will need to know if another individual has taken over managing of a care service because of financial difficulty. The replacement manager will have to meet the registration requirements set out in regulations.
105. Subsections (4) and (5) provide that regulations may be made prohibiting a person's appointment as manager of, or employment in, a care service unless they are on a register of social care workers, maintained by the Scottish Social Services Council.
106. Subsection (7) gives the Scottish Ministers power to regulate how the provision of a care service should be conducted, including the provision of facilities and services, record keeping, notification of events, arrangements for dealing with complaints and in relation to independent hospitals and clinics, the arrangements to be made to secure that any medical or psychiatric treatment or listed services meet appropriate standards.
107. Subsection (7)(d) gives the power to make regulations that a person providing a care service must produce reports to the Commission, while (e) sets out what should be in reports and the timing of their submission. Subsection (7)(f) provides for regulations to require care service providers to notify the Commission of events arising in relation to care services. It will be necessary to inform the Commission of events such as accidents, fires or death.
108. Subsection (7)(m) deals with notice of changes in the ownership or the officers of a company which was registered in respect of a service. Subsection (7)(k) sets out when notice is required, while (l) sets out arrangements for when the provider of a care service dies.
109. Subsection (7)(o) allows Scottish Ministers, through regulations, to require owners or managers of independent health care services to put in place policies and procedures to secure that the quality and standards of healthcare are appropriate. Subsection (7)(o)(i) requires that these are in place for medical or psychiatric treatments. Subsections (7)(o)(ii) and (8) allow regulations to specify other types of treatment or technology that should also be covered.
110. The regulations might specify what policies and procedures are required and, where necessary, how they should be managed and recorded. The regulations might say, for example, how a critical incident should be dealt with, what must be recorded and what needs to be reported and to whom. By setting these requirements out in secondary legislation, policies and procedures can be modified to respond to changes in safety procedures and other aspects of healthcare delivery, without having to amend primary legislation.
111. Subsection (9) concerns regulations made in respect of secure accommodation for children, which may cover both its provision and its use.
112. Subsection (10) provides that regulations made under subsections (1), (2), (7) or (9) may make it an offence to fail to comply with specific provisions within the regulations, or with a condition of registration. Subsection (11) provides that a person guilty of such an offence would be liable to a fine not exceeding level 5 on the standard scale (£5000 at present).

113. Subsection (12) requires the Scottish Ministers to consult such persons as they consider appropriate before making regulations under the powers in subsections (1) (2) and (7) and (9) of this section. Subsection (13) provides that any such regulations may make different provision for different purposes. This will enable certain regulatory requirements to be imposed on a limited number of services, for example regulations may be very different in relation to a childminder as to a large care provider. Regulations under 29(2)(i) may not, for example, require the Commission to look at the financial position of childminders, but they would require it to assess this in respect of those providing care home services.

Transfer of staff

Section 30: Transfer of staff

114. This section provides that schemes must be made for the transfer of staff to the Commission bodies, provided that prescribed requirements for consultation have been met in respect of every individual to be transferred.
115. All transfers made under the Act will reflect the [Transfer of Undertakings \(Protection of Employment\) Regulations 1981 \(SI 1981 No 1794\)](#) (TUPE) principle that staff transferred will do so on their existing terms and conditions. In addition, the new bodies may make provision for occupational pensions and compensation for loss of employment.
116. Subsection (4) provides that under a scheme an employee's existing contract of employment would not be terminated, but would transfer to the new employer and be treated as having effect from the date it was originally made.
117. Subsections (6) and (7) provide that an employee may object to transferring to a new employer, and that their contract of employment can be terminated before the date of transfer. This would not be treated as a dismissal.
118. Subsection (8) provides that these arrangements will not affect the right of an employee to terminate his or her contract if their working conditions were to suffer a significant change which was to their detriment.

Miscellaneous

Section 31: Arrangements entered into by local authority or health body: services to be registered

119. This section makes it clear that, although a service commissioned by the body in question need not exist as a registered care service at the time the contract is entered into, the service must be a registered one by the time it is actually provided.

Section 32: Giving of notice

120. This section deals with the serving of notice on a care service provider or a person seeking to be a care service provider, and sets out when notice is deemed to have been delivered.