



Public Services Reform (Scotland) Act 2010

2010 asp 8

PART 5

SOCIAL CARE AND SOCIAL WORK: SCRUTINY AND IMPROVEMENT

CHAPTER 4

LOCAL AUTHORITY ADOPTION AND FOSTERING SERVICES ETC.

83 Local authority applications for registration under Chapter 4

- (1) A local authority which seeks to provide—
 - (a) an adoption service mentioned in paragraph 8(1)(a) of schedule 12,
 - (b) a fostering service mentioned in paragraph 9(a) or (c) of that schedule, or
 - (c) any other care service if it is a service which the authority determines it must provide in order to fulfil a statutory duty,must make an application to SCSWIS for registration of the service.
- (2) An application must be made in such manner and give such information as may be prescribed and, without prejudice to subsection (1)(b) of section 76, must be accompanied by the fee imposed under subsection (2)(a) of that section.
- (3) Where in relation to an application under subsection (1)(c) SCSWIS does not agree with the determination made by the authority, it must so notify the authority and the Scottish Ministers, giving its reason for not so agreeing.
- (4) On receiving notification under subsection (3), the Scottish Ministers must state whether or not, in their opinion, the determination of the authority is justified.
- (5) If their statement is that the determination is not justified, the application is to be taken to have been duly made not under this section but under section 59 and is to be dealt with accordingly.

Status: This is the original version (as it was originally enacted).

84 Grant of local authority application under Chapter 4

- (1) Subject to subsections (4) and (5) of section 83, SCSWIS must—
 - (a) grant an application made under subsection (1) of that section unconditionally or subject to such conditions as SCSWIS thinks fit to impose and give the authority notice of its decision, or
 - (b) propose to grant it subject to such conditions as SCSWIS thinks fit to impose and give the authority notice of those conditions.
- (2) On granting the application, SCSWIS must issue a certificate of registration to the authority.
- (3) The authority must ensure that the certificate (or a copy of it) is, while the certificate is current, kept affixed in a conspicuous place in each of the premises in or from which the service is provided and, if different, the principal office of the authority.

85 Condition notices: services registered under Chapter 4

SCSWIS may at any time give notice (in this Part referred to as a “local authority condition notice”) to a local authority providing a care service registered under this Chapter that it proposes to—

- (a) vary or remove a condition for the time being in force, or
- (b) impose an additional condition,

in relation to the registration.

86 Applications under Chapter 4 in respect of conditions

- (1) A local authority providing a care service registered under this Chapter may apply to SCSWIS for the variation or removal of any condition for the time being in force in relation to the registration.
- (2) An application must be made in such manner and give such information as may be prescribed and, without prejudice to subsection (1)(b) of section 76, must be accompanied by the fee imposed under subsection (2)(a) of that section.
- (3) If SCSWIS decides to grant an application under subsection (1), it must give the authority notice of its decision, stating the condition varied or removed, and issue a new certificate of registration.
- (4) If SCSWIS proposes to refuse such an application, it must give the authority notice of, and a statement of the reasons for, that proposal.

87 Right to make representations to SCSWIS under Chapter 4 as respects conditions

- (1) This section applies to—
 - (a) a notice under section 84(1)(b),
 - (b) a local authority condition notice, and
 - (c) a notice under section 86(4).
- (2) The notice must state that, within 14 days after service of the notice, the local authority to which it is given may make written representations to SCSWIS about any matter which the authority wishes to dispute.

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- (3) Where the notice has been given, SCSWIS may do the thing proposed only after (whichever first occurs)—
 - (a) if the authority makes representations under subsection (2), it has considered those representations,
 - (b) the authority notifies SCSWIS in writing that such representations will not be made, or
 - (c) the period of 14 days so mentioned elapses without such representations being made and without SCSWIS receiving such notification.
- (4) In the circumstances mentioned in subsection (3)(b) or (c), SCSWIS must do the thing proposed unless it appears to it that it would be inappropriate to do so.

88 Notice of SCSWIS's decision under Chapter 4

- (1) If SCSWIS decides to implement a notice to which section 87 applies, it must give the local authority to which that notice was given notice of its decision.
- (2) A notice under subsection (1) must—
 - (a) explain the right of appeal conferred by section 89, and
 - (b) in the case of a decision—
 - (i) to grant an application in respect of which there has been a proposal under section 84(1), or
 - (ii) to vary or remove a condition or to impose an additional condition, state the condition or additional condition imposed, or the condition varied or removed, as the case may be.
- (3) Subject to subsection (4), a decision to implement a notice to which section 87 applies does not take effect—
 - (a) if no appeal is brought, until the period of 14 days referred to in section 89(1) has elapsed, and
 - (b) if an appeal is brought, until that appeal is finally determined or abandoned.
- (4) Where the authority notifies SCSWIS in writing, before the period of 14 days referred to in section 89(1) has elapsed, that there will be no appeal against a notice under section 84(1)(b), that notice takes effect on receipt by SCSWIS of that notification.

89 Appeal against decision under Chapter 4

- (1) A local authority given notice of a decision under section 88(1) may, within 14 days after that notice is given, appeal to the sheriff against the decision.
- (2) The sheriff may, on appeal under subsection (1), confirm the decision or direct that it is not to have effect; and where the registration is not to be cancelled may (either or both)—
 - (a) vary or remove any condition for the time being in force in relation to the registration,
 - (b) impose an additional condition in relation to the registration.

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90 Offences under Chapter 4

- (1) Sections 80(1) and (3) and 82 apply in relation to a care service registered under this Chapter as they apply in relation to such a service registered under Chapter 3.
- (2) Any person who fails to comply with section 84(3) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) Any person who, in an application—
 - (a) for registration under this Chapter, or
 - (b) for variation or removal of a condition in force in relation to a registration under this Chapter,
 knowingly makes a statement which is false or misleading in a material respect commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

91 Report to Scottish Ministers

- (1) Where SCSWIS has given an improvement notice to a local authority in respect of a care service provided by it and registered under this Chapter, SCSWIS must without delay—
 - (a) report that fact, and
 - (b) give a copy of the improvement notice,
 to the Scottish Ministers.
- (2) Within 14 days after the expiry of the period specified in the improvement notice, SCSWIS must report to the Scottish Ministers—
 - (a) where the improvement notice has been complied with, that it has been, or
 - (b) where the improvement notice has not been complied with, the respect in which it has not been,
 and must give to the Scottish Ministers such other information as they may reasonably require in relation to the compliance or failure to comply, as the case may be.
- (3) Where—
 - (a) any person has been convicted of a relevant offence in relation to the service provided by the authority, or
 - (b) it appears to SCSWIS that that service is being, or has at any time been, carried on other than in accordance with the relevant requirements,
 SCSWIS must report that matter to the Scottish Ministers and give them such other information as they may reasonably require in relation to the matter.
- (4) For the purposes of subsection (3)(a), the following are relevant offences—
 - (a) an offence under this Part,
 - (b) an offence under regulations made under this Part, or
 - (c) an offence which, in the opinion of SCSWIS makes it appropriate that there should be a report to the Scottish Ministers under that subsection.
- (5) For the purposes of subsection (3)(b) and section 92, the following are relevant requirements—
 - (a) any requirements (or conditions) imposed by or under this Part,
 - (b) the requirements of regulations made under this Part, or

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- (c) any requirements (or conditions) imposed by, under or by virtue of such other Act as may be prescribed.
- (6) SCSWIS must report and provide information to the Scottish Ministers on such other matters in relation to a care service registered under this Chapter as may be prescribed.

92 Default powers of Scottish Ministers

- (1) If the Scottish Ministers (having received a report under section 91 or otherwise) are satisfied that a local authority providing a care service registered under this Chapter is, without reasonable excuse—
 - (a) failing to comply with an improvement notice, or
 - (b) carrying on the service other than in accordance with the relevant requirements,they may take the action mentioned in subsection (2) in respect of the matter.
- (2) The action is—
 - (a) to declare the authority to be in default, and
 - (b) to direct the authority to take such steps to remedy the matter as may be specified in the direction within such reasonable period as may be so specified.
- (3) If the authority fails to comply with a direction under subsection (2)—
 - (a) the Scottish Ministers may—
 - (i) take the steps specified in the direction themselves, or
 - (ii) make arrangements for any other person to take those steps on their behalf, or
 - (b) the Court of Session may, on the application of the Scottish Ministers, order specific performance of those steps.
- (4) All expenses of the Scottish Ministers under subsection (3) are recoverable as a debt due by the authority to them.