



# Public Services Reform (Scotland) Act 2010 2010 asp 8

## PART 5

### SOCIAL CARE AND SOCIAL WORK: SCRUTINY AND IMPROVEMENT

#### CHAPTER 1

##### SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND

###### *Social Care and Social Work Improvement Scotland*

#### **44 Social Care and Social Work Improvement Scotland**

- (1) There is established a body to be known as Social Care and Social Work Improvement Scotland (in this Part referred to as “SCSWIS”), which—
  - (a) is to exercise the functions conferred on it by this Act or any other enactment, and
  - (b) has the general duty of furthering improvement in the quality of social services.
- (2) SCSWIS must, in the exercise of its functions, act—
  - (a) in accordance with any directions given to it by the Scottish Ministers, and
  - (b) under the general guidance of the Scottish Ministers.
- (3) The Scottish Ministers may vary or revoke any direction given under subsection (2)(a).
- (4) Schedule 11 (which makes further provision about the status, constitution, proceedings etc. of Social Care and Social Work Improvement Scotland) has effect.

#### **45 General principles**

- (1) SCSWIS must exercise its functions in accordance with the principles set out in the following subsections.

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- (2) The safety and wellbeing of all persons who use, or are eligible to use, any social service are to be protected and enhanced.
- (3) The independence of those persons is to be promoted.
- (4) Diversity in the provision of social services is to be promoted with a view to those persons being afforded choice.
- (5) Good practice in the provision of social services is to be identified, promulgated and promoted.

### *Key definitions*

#### **46 Social services**

- (1) In this Part, “social services” means—
  - (a) care services, and
  - (b) social work services.
- (2) Any reference to a “social service” in this Part means any care service or social work service.

#### **47 Care services**

- (1) In this Part, a “care service” is any of the following—
  - (a) a support service,
  - (b) a care home service,
  - (c) a school care accommodation service,
  - (d) a nurse agency,
  - (e) a child care agency,
  - (f) a secure accommodation service,
  - (g) an offender accommodation service,
  - (h) an adoption service,
  - (i) a fostering service,
  - (j) an adult placement service,
  - (k) child minding,
  - (l) day care of children,
  - (m) a housing support service.
- (2) Schedule 12 (which provides definitions for the purposes of subsection (1)) has effect.

#### **48 Social work services**

In this Part—

“social work services” means—

- (a) services which are provided by a local authority in the exercise of any of its social work services functions, or
- (b) services which are provided by another person pursuant to arrangements made by a local authority in the exercise of its social work services functions;

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“social work services functions” means functions under the enactments specified in schedule 13.

#### **49 Power to modify key definitions**

The Scottish Ministers, after consulting such persons (or groups of persons) as they consider appropriate, may by order—

- (a) modify—
  - (i) section 47(1),
  - (ii) schedule 12,
- (b) modify—
  - (i) the definition of social work services in section 48,
  - (ii) the definition of social work services functions by adding an entry to or removing any entry from schedule 13.

#### *Miscellaneous*

#### **50 Standards and outcomes**

- (1) The Scottish Ministers must prepare and publish standards and outcomes applicable to—
  - (a) care services,
  - (b) social work services.
- (2) The Scottish Ministers must keep any standards and outcomes so published under review and may under subsection (1) publish amended standards and outcomes whenever they consider it appropriate to do so.
- (3) Before publishing under subsection (1) any—
  - (a) standards and outcomes,
  - (b) amended standards and outcomes which in the opinion of the Scottish Ministers are substantially different from the standards and outcomes (or amended standards and outcomes) last so published,the Scottish Ministers must consult such persons, or groups of persons, as they consider appropriate.
- (4) In relation to a care service other than one mentioned in subsection (5), any applicable standards and outcomes published under subsection (1) and the Scottish Social Services Council’s codes of practice (that is to say, the codes of practice published by the Council under section 53 of [Regulation of Care \(Scotland\) Act 2001 \(asp 8\)](#)) must be taken into account—
  - (a) by SCSWIS in making any decision under this Chapter or Chapter 2 or 3,
  - (b) in any proceedings on an appeal under section 75(1), and
  - (c) in any proceedings for an offence in relation to registration under Chapter 3.
- (5) In relation to an adoption service mentioned in paragraph 8(1)(a) of schedule 12, a fostering service mentioned in paragraph 9(a) or (c) of that schedule or any other care service registered under Chapter 4, any applicable standards and outcomes published under subsection (1) and the codes of practice mentioned in subsection (4) must be taken into account—
  - (a) by SCSWIS in making any decision under this Chapter or Chapter 2, 3 or 4,

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- (b) in any proceedings on an appeal under section 89,
  - (c) in any proceedings for an offence in relation to registration under Chapter 4.
- (6) In relation to a social work service, any applicable standards and outcomes published under subsection (1) and the codes of practice mentioned in subsection (4) must be taken into account by SCSWIS in making any decision under this Chapter or Chapter 2.
- (7) The Scottish Ministers may make different provision for different services under subsection (1).
- (8) The Scottish Ministers may delegate their functions under subsections (1) to (3) to SCSWIS or such other persons as they consider appropriate.

## **51 Information and advice**

- (1) SCSWIS must provide information to the public about the availability and quality of social services.
- (2) A person requesting from SCSWIS information to be provided under subsection (1) is entitled to receive it in such form as that person may reasonably request.
- (3) SCSWIS—
- (a) may at any time, and must when asked to do so, provide advice to the Scottish Ministers,
  - (b) must when asked to do so provide advice to—
    - (i) persons who provide, seek to provide or may seek to provide social services,
    - (ii) persons, or groups of persons, representing those who use, or are eligible to use, social services,
    - (iii) persons, or groups of persons, representing those who care for those who use, or are eligible to use, social services,
    - (iv) local authorities,
    - (v) health bodies, and
    - (vi) such other persons, or groups of persons, as may be prescribed,
 about any matter relevant to the functions of SCSWIS,
  - (c) may disseminate such information as it considers relevant of general or specific application arising out of or in connection with the discharge of its functions.
- (4) SCSWIS may charge a reasonable fee determined by it for any advice, forms or documents provided for the assistance of any person, authority or body mentioned in subsection (3)(b).

## **52 Dissolution of Scottish Commission for the Regulation of Care**

The Scottish Commission for the Regulation of Care is dissolved.

## CHAPTER 2

### SOCIAL SERVICES: INSPECTIONS

#### *Inspections*

#### **53 Inspections**

- (1) SCSWIS may inspect—
  - (a) any social service,
  - (b) the organisation or co-ordination of any social services.
- (2) The purposes of an inspection under this section may include—
  - (a) reviewing and evaluating the effectiveness of the provision of the services which are the subject of the inspection,
  - (b) encouraging improvement in the provision of those services,
  - (c) enabling consideration as to the need for any recommendations to be prepared as to any such improvement to be included in the report prepared under section 57,
  - (d) investigating any incident, event or cause for concern,
  - (e) in the case of care services, enabling consideration as to the need for—
    - (i) an improvement notice under section 62,
    - (ii) a condition notice under section 66 or a local authority condition notice under section 85.
- (3) An inspection under this section may be in relation to—
  - (a) any social service or combination of social services,
  - (b) such of the services concerned provided to a particular child or other person or particular children or other persons,
  - (c) the whole or any part of Scotland.
- (4) An inspection under this section must be conducted in accordance with a plan—
  - (a) prepared in accordance with section 54, and
  - (b) approved by the Scottish Ministers.
- (5) An inspection under this section may, subject to any regulations made under section 58, take such form as SCSWIS considers appropriate.
- (6) SCSWIS may at any time require a person providing any social service to supply it with any information relating to the service which it considers necessary or expedient to have for the purposes of its functions under this Part.

#### **54 Inspections under section 53: best regulatory practice**

- (1) SCSWIS must prepare a plan for carrying out inspections in accordance with best regulatory practice.
- (2) The plan—
  - (a) must set out arrangements for inspections to be so carried out (including inspections of those services subject to self evaluation),
  - (b) may make different provision for different purposes.

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- (3) For the purposes of subsection (1), “best regulatory practice” means practice under which (in particular) inspections should be carried out in a way that is transparent, accountable, proportionate and consistent.
- (4) In preparing a plan under subsection (1), SCSWIS must have regard to any guidance issued by the Scottish Ministers about those matters.
- (5) SCSWIS—
  - (a) must keep the plan under review, and
  - (b) may from time to time revise, with the approval of the Scottish Ministers, the plan.
- (6) SCSWIS must, in preparing a plan (or any revision), consult such persons as it considers appropriate.

## **55 Inspections at request of Scottish Ministers**

- (1) SCSWIS must, at the request of the Scottish Ministers inspect—
  - (a) any social service that they may specify,
  - (b) the organisation or co-ordination of any social services that they may specify.
- (2) The Scottish Ministers may specify purposes for any inspection under this section.
- (3) An inspection under this section must be conducted in accordance with a timetable approved by the Scottish Ministers.
- (4) The Scottish Ministers may request under subsection (1) that there be conducted an inspection of—
  - (a) any services concerned in the relevant area,
  - (b) such of the services concerned provided in the relevant area as they may specify, or
  - (c) such of the services concerned provided to a particular child or other person or particular children or other persons as they may specify.
- (5) In paragraphs (a) and (b) of subsection (4), the “relevant area” is the whole of Scotland or such part of Scotland as the Scottish Ministers specify in their request.

## **56 Inspections: authorised persons**

- (1) Any inspection under this Part must be carried out by a person authorised by SCSWIS (an “authorised person”).
- (2) A person may be authorised by SCSWIS to carry out inspections in relation to any social service or all of them.
- (3) An authorised person may at any time enter and inspect premises which are used, or which the person has reasonable cause to believe are used, for the purpose of providing the social service which is subject to inspection.
- (4) Where an authorised person is in possession of confidential information which has been obtained for the purposes of an inspection under this Part, the authorised person must not use or disclose that information other than—
  - (a) for the purposes of that inspection,
  - (b) so as to comply with an enactment or court order requiring disclosure,

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- (c) to the extent considered necessary by the authorised person for the purpose of protecting the welfare of—
  - (i) any child,
  - (ii) any adult at risk (within the meaning of section 3 of the [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#)), or
- (d) to the extent considered necessary by the authorised person for the purpose of the prevention or detection of crime or the apprehension or prosecution of offenders.

## **57 Inspections: reports**

- (1) Where an inspection under this Part has been completed, SCSWIS—
  - (a) must prepare a report on the matters inspected, and
  - (b) must without delay send a copy of that report to the person providing the service which has been inspected.
- (2) Before finalising the report, SCSWIS must give the person providing the service an opportunity of commenting on a draft of the report.
- (3) SCSWIS must make copies of the report available for inspection at its offices by any person at any reasonable time; and it must take such other steps as it considers appropriate for publicising the report.
- (4) Regulations may make further provision about the preparation, content and effect of reports under this section and in particular may make—
  - (a) provision (including provision modifying any duties under this section) specifying circumstances in which—
    - (i) any right to receive,
    - (ii) access to,
    - (iii) availability of,copies of reports (or of parts of such reports) may be restricted, refused or withheld,
  - (b) provision requiring copies of reports to be sent to the Scottish Ministers (or such other persons as may be specified in regulations) in such circumstances as may be so specified.

### *Regulations*

## **58 Regulations: inspections**

- (1) Regulations may make further provision concerning inspections under this Part.
- (2) Regulations under subsection (1) may, in particular, make provision—
  - (a) as to types of inspection which may be conducted,
  - (b) as to timing and frequency of inspections,
  - (c) as to seizure and removal of anything found during the course of an inspection,
  - (d) as to persons who may be authorised to carry out inspections,
  - (e) requiring or facilitating the sharing or production of information (including health records) for the purposes of an inspection under this Part,

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- (f) as to interviews and examinations (including physical and mental examinations) which may be carried out in connection with the inspections,
- (g) requiring any person to provide to an authorised person an explanation of information produced to an authorised person,
- (h) requiring information produced to an authorised person to be held in compliance with prescribed conditions and further disclosures to be made in compliance with such conditions,
- (i) empowering an authorised person to disclose to a person prescribed for the purposes of this paragraph any information of a prescribed nature which the authorised person holds in consequence of such an inspection,
- (j) creating offences punishable on summary conviction by a fine not exceeding level 4 on the standard scale for the purpose of enforcing any provision of the regulations.

(3) In subsection (2), “prescribed” means prescribed by regulations under subsection (1).

### CHAPTER 3

#### CARE SERVICES

##### *Registration of care services*

#### **59 Registration of care services**

- (1) A person who seeks to provide a care service must apply to SCSWIS for registration of the service.
- (2) An application must—
  - (a) give such information as may be prescribed about prescribed matters,
  - (b) identify an individual (who may be the applicant) who is to manage the service,
  - (c) give any other information which SCSWIS may reasonably require the applicant to give,
  - (d) without prejudice to subsection (1)(b) of section 76, be accompanied by the fee imposed under subsection (2)(a) of that section.
- (3) A person who provides an adoption service or a fostering service must be a voluntary organisation.
- (4) Subsections (1) to (3) do not apply to a local authority—
  - (a) seeking to provide—
    - (i) an adoption service mentioned in paragraph 8(1)(a) of schedule 12, or
    - (ii) a fostering service mentioned in paragraph 9(a) or (c) of that schedule,
 or
  - (b) seeking to provide a care service in respect of which it has made such determination as is mentioned in section 83(1)(c).
- (5) Subsection (4)(b) is subject to section 83(3).



## **60 Grant or refusal of registration**

- (1) SCSWIS may grant or refuse registration of a care service under section 59.
- (2) A grant of registration may be subject to such conditions as SCSWIS thinks fit.
- (3) If SCSWIS is satisfied, in relation to an application, that the requirements of—
  - (a) such regulations as are applicable under section 78 to the care service, and
  - (b) any other enactment which appears to SCSWIS to be relevant,will be complied with in relation to that service, it must give notice under section 71(1), or as the case may be section 73(1); otherwise it must give notice under section 71(2).
- (4) On granting a registration, SCSWIS must issue a certificate of registration to the applicant.
- (5) The person for the time being providing the service 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 that service is provided and, if different, the principal (or only) office of the service.

## **61 Limited registration**

- (1) For the purposes of Part 4 of the [Adults with Incapacity \(Scotland\) Act 2000 \(asp 4\)](#) (management of resident’s finances), a person who provides, or seeks to provide, a service which provides accommodation but is not a care service may make an application to SCSWIS for registration of the service.
- (2) Subsection (2) of section 59 applies in relation to an application under subsection (1) as it applies in relation to an application under subsection (1) of that section.
- (3) Sections 60, 76 and 77 apply in relation to a service in respect of which an application is made under subsection (1) as they apply in relation to a care service.
- (4) Sections 53 to 58, 62 to 79 and 101 apply in relation to a service registered under section 60 by virtue of subsection (3) as they apply in relation to a registered care service.
- (5) A service so registered is, in this Part, referred to as a limited registration service.

### *Improvement notices*

## **62 Improvement notices: care services**

- (1) SCSWIS may at any time give a notice (in this Part referred to as an “improvement notice”) to the person for the time being providing a care service registered under this Part that, unless within such reasonable period as may be specified in the notice, there is a significant improvement, of such a nature as may be so specified, in the provision of that service, SCSWIS intends—
  - (a) in the case other than that mentioned in paragraph (b), to make a proposal under section 64 to cancel the registration, or
  - (b) in the case of a local authority providing an adoption service mentioned in paragraph 8(1)(a) of schedule 12, a fostering service mentioned in paragraph 9(a) or (c) of that schedule or any other care service registered under Chapter 4, to make a report to the Scottish Ministers under section 91.

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- (2) Where a notice under subsection (1)(a) is given to a person other than a local authority, SCSWIS must send without delay a copy of that notice to the local authority within whose area the service is provided.

### **63 Special provision for certain care services provided by local authorities**

- (1) Where—
- (a) SCSWIS has given an improvement notice to a local authority in respect of a care service provided by it and registered under this Chapter, and
  - (b) the authority determines that the service is one which it must provide in order to fulfil a statutory duty,
- the authority must within 14 days after receiving the notice notify that determination to SCSWIS together with a statement of its reasons.
- (2) On receiving notification under subsection (1), SCSWIS must as soon as practicable send a copy of the improvement notice to the Scottish Ministers together with a copy of the notification, of the statement of reasons and of a note of any reason SCSWIS has for not agreeing with the authority's determination.
- (3) On receiving an improvement notice sent under subsection (2) the Scottish Ministers must state whether or not, in their opinion, the determination of the authority is justified.
- (4) If their statement is that the determination is justified—
- (a) the improvement notice is to be taken as duly given under subsection (1)(b) (and not subsection (1)(a)) of section 62, and
  - (b) the care service is to be taken, for the purposes of any application of the provisions of this Part which follows on from the giving of an improvement notice, to be a care service duly registered under Chapter 4 (and not Chapter 3).

*Proposals and applications in relation to registered care services*

### **64 Cancellation of registration**

- (1) SCSWIS may, at any time after the expiry of the period specified in an improvement notice given in respect of a care service, propose to cancel the registration, under this Chapter, of a care service—
- (a) on the ground that any person has been convicted of a relevant offence in relation to the service,
  - (b) on the ground that the service is being, or has at any time been, carried on other than in accordance with the relevant requirements, or
  - (c) on any other ground which may be prescribed.
- (2) For the purposes of subsection (1)(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 the registration should be cancelled.
- (3) For the purposes of subsection (1)(b), the following are relevant requirements—
- (a) any requirements or conditions imposed by or under this Part, or

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(b) the requirements of regulations made under this Part.

(4) Where a person providing a registered care service ceases to provide the service, SCSWIS may cancel the registration of the service.

## **65 Emergency cancellation of registration**

(1) SCSWIS may apply to the sheriff for an order cancelling the registration, under this Chapter, of a care service.

(2) The application may be granted if it appears to the sheriff that, unless the order is made, there will be a serious risk to the life, health or wellbeing of persons.

(3) The sheriff may make such interim order as the sheriff thinks fit.

(4) As soon as practicable after SCSWIS has applied for an order under subsection (1), it must notify the appropriate authorities.

(5) Where the order applied for is made (or an interim order is made), SCSWIS must as soon as reasonably practicable give a copy of it to the person who provides the care service.

(6) The sheriff may determine an application under this section in the absence of the person providing the care service to which the application relates.

(7) An order under this section has effect—

(a) from the time at which it is made, or

(b) from such other time as the sheriff considers appropriate.

(8) Within 14 days of the day on which an order under this section is made, an appeal may be made to the sheriff principal against the making of the order.

(9) On an appeal under subsection (8), the sheriff principal may—

(a) confirm the order,

(b) revoke the order,

(c) modify the order,

(d) make such other order as the sheriff principal thinks fit.

(10) The decision of the sheriff principal on an appeal under subsection (8) is final.

(11) An order under this section has effect notwithstanding the making of an appeal in relation to the order.

(12) For the purposes of this section, the appropriate authorities are—

(a) each—

(i) local authority, and

(ii) health board,

within whose area the care service is provided, and

(b) any other body established by or under an enactment whom SCSWIS thinks it appropriate to notify.

## **66 Condition notices**

SCSWIS may at any time give notice (in this Part referred to as a “condition notice”) to the person for the time being providing a 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.

## **67 Emergency condition notices**

- (1) Subsection (2) applies where—
  - (a) a person is providing a care service registered under this Chapter, and
  - (b) SCSWIS believes that the absence of a condition in relation to the registration of that service poses a serious risk to the life, health or wellbeing of persons.
- (2) SCSWIS may at any time give notice (an “emergency condition notice”) to the person providing the service specifying a condition, in relation to registration, in respect of that risk.
- (3) The condition so specified takes effect immediately on receipt of the emergency condition notice.
- (4) An emergency condition notice must—
  - (a) state that, within 14 days after service of the notice, the person to whom it is given may make written representations to SCSWIS concerning any matter which that person wishes to dispute, and
  - (b) explain the right of appeal conferred by section 69(1).
- (5) SCSWIS must consider any representations made under subsection (4)(a) and, following such consideration, must—
  - (a) give the person providing the service a condition notice stating that SCSWIS proposes to vary or remove the condition specified in the emergency condition notice, or
  - (b) notify the person that it does not intend to give such a condition notice.
- (6) When notifying a person under subsection (5)(b), SCSWIS must explain the right of appeal conferred by section 69(1).
- (7) Where a condition notice has been given by virtue of subsection (5)(a) containing a proposal to remove the condition, SCSWIS must implement the proposal unless it appears to it that it would be inappropriate to do so.

## **68 Application of Part to condition notices following emergency condition notices**

- (1) Section 72 does not apply to a condition notice given by virtue of section 67(5)(a).
- (2) The reference in section 73(5) to a proposal in relation to which a condition notice has been given does not include a reference to a proposal contained in a condition notice given by virtue of section 67(5)(a) to remove the condition mentioned in that provision.

- (3) The reference to a proposal in section 75(1) does not include a reference to a proposal contained in a condition notice given by virtue of section 67(5)(a) to remove the condition mentioned in that provision.

## **69 Emergency condition notices: appeals**

- (1) A person—
- (a) who is given an emergency condition notice, and
  - (b) who—
    - (i) makes no written representations in accordance with section 67(4)(a), or
    - (ii) makes such representations but is notified as mentioned in section 67(5)(b),
- may, within 14 days after the relevant date, appeal to the sheriff against the imposition of the condition.
- (2) In subsection (1), “relevant date” means—
- (a) where sub-paragraph (i) of subsection (1)(b) applies, the date of service of the emergency condition notice,
  - (b) where sub-paragraph (ii) of that subsection applies, the date notification mentioned in that sub-paragraph is given.
- (3) The sheriff may, on an appeal under subsection (1)—
- (a) direct that the condition specified in the emergency condition notice is to continue to have effect,
  - (b) direct that the condition is to cease to have effect,
  - (c) direct that the condition be varied as specified in the direction,
  - (d) impose an additional condition in relation to the registration.

## **70 Applications under Chapter 3 in respect of conditions**

- (1) A person providing a service registered under this Chapter may apply to SCSWIS—
- (a) for the variation or removal of any condition for the time being in force, or for the addition of a condition, in relation to the registration, or
  - (b) for cancellation of the registration.
- (2) But no such application is competent where—
- (a) SCSWIS has given the person notice under section 71(3) of its proposal to cancel the registration (unless SCSWIS has decided not to take that step), or
  - (b) SCSWIS has given the person notice under section 73(3) of its decision to cancel the registration and—
    - (i) the time within which an appeal may be brought has not expired, or
    - (ii) if an appeal has been brought, that appeal has not been determined.
- (3) An application under subsection (1) must be made in such manner and state such particulars 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) or as the case may be (c) of that section.

- (4) If SCSWIS decides to grant an application under subsection (1)(a) it must give the applicant notice of its decision (stating, where applicable, the condition varied, removed or added) and issue a new certificate of registration.

**71 Further provision as respects notice of proposals**

- (1) If SCSWIS proposes to grant an application made under section 59 but to do so subject to a condition which has not been agreed in writing between it and the applicant, it must give the applicant notice of the proposed condition.
- (2) If SCSWIS proposes to refuse an application made under section 59, it must give the applicant notice of the proposed refusal.
- (3) SCSWIS must give any person who provides a service registered under this Chapter notice of a proposal to cancel the registration (other than in accordance with an application under subsection (1)(b) of section 70).
- (4) SCSWIS must give an applicant under subsection (1)(a) of section 70 notice of a proposal to refuse that application.
- (5) A notice under this section must give SCSWIS's reasons for its proposal.

**72 Right to make representations to SCSWIS as respects proposals under Chapter 3**

- (1) A condition notice or a notice under section 71 must state that, within 14 days after service of the notice, the person to whom it is given may make written representations to SCSWIS concerning any matter which that person wishes to dispute.
- (2) Where such a notice has been given SCSWIS may decide to implement the proposal only after (whichever first occurs)—
- (a) if the person to whom the notice was given makes representations under subsection (1), it has considered those representations,
  - (b) that person notifies SCSWIS in writing that such representations will not be made, or
  - (c) the period of 14 days mentioned in that subsection elapses without such representations being made and without SCSWIS receiving such notification.
- (3) In the circumstances mentioned in subsection (2)(b) or (c), SCSWIS must implement the proposal unless it appears to it that it would be inappropriate to do so.

**73 Notice of SCSWIS's decision under Chapter 3**

- (1) If SCSWIS decides to grant unconditionally an application made under section 59 or to grant such application subject only to a condition which has been agreed in writing between SCSWIS and the applicant, it must give the applicant notice of its decision.
- (2) A notice under subsection (1) must state the agreed condition.
- (3) If SCSWIS decides to implement a proposal in relation to which it has given a person a condition notice or a notice under section 71, it must give that person notice of the decision.
- (4) A notice under subsection (3) must—

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- (a) explain the right of appeal conferred by section 75, and
  - (b) in the case of a decision to implement a proposal—
    - (i) in relation to which a condition notice has been given, state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed, or
    - (ii) of which notice has been given under section 71(1), state the condition subject to which the application is granted.
- (5) Subject to subsection (6), a decision to implement a proposal in relation to which a condition notice has been given or of which notice has been given under section 71(1) or (3) does not take effect—
- (a) if no appeal is brought, until the period of 14 days referred to in section 75(1) has elapsed, and
  - (b) if an appeal is brought, until that appeal is finally determined or is abandoned.
- (6) Where the decision is to implement a proposal of which notice has been given under section 71(1) and the applicant notifies SCSWIS in writing, before the period of 14 days referred to in section 75(1) has elapsed, that there will be no appeal, the decision takes effect on receipt of that notification.

#### **74 Conditions as to numbers**

Without prejudice to the generality of section 60(2) or 66, a condition imposed under any of those provisions in relation to a care service may—

- (a) in the case of—
  - (i) a care home service,
  - (ii) a school care accommodation service, or
  - (iii) a secure accommodation service,limit the number of persons for whom the service may provide accommodation,
- (b) in the case of an adult placement service, limit the number of persons whom the service may place,
- (c) in the case of support service, limit the number of persons to whom the service may be provided,
- (d) in the case of—
  - (i) child minding, or
  - (ii) day care of children,limit the number of children for whom a person may act as a child minder or for whom day care may be provided, and
- (e) in the case of a nurse agency, limit the number of persons for whom the agency may supply registered nurses, registered midwives or registered health visitors.

#### **75 Appeal against decision to implement proposal**

- (1) A person given notice under section 73(3) of a decision to implement a proposal 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)—

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- (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.

### *Fees*

## **76 Registration fees**

- (1) The Scottish Ministers, after consulting such persons, or groups of persons, as they consider appropriate on the potential effect of so prescribing on the services which the persons, or persons they represent, provide, may prescribe—
  - (a) maximum fees which may be imposed by SCSWIS under this section,
  - (b) circumstances in which fees so imposed are or are not to be payable.
- (2) Subject to the provisions of this section, SCSWIS must impose fees in respect of—
  - (a) any application made for registration under this Chapter or Chapter 4 or for cancellation of any such registration,
  - (b) the annual continuation of any such registration,
  - (c) any application made for the variation or removal of a condition for the time being in force in relation to any such registration,
  - (d) issuing to a person a new certificate of registration—
    - (i) at the instance of that person,
    - (ii) by virtue of any application under this Chapter or Chapter 4 by that person, or
    - (iii) by virtue of any new information provided by that person in pursuance of regulations under this Chapter or Chapter 4.
- (3) Without prejudice to subsection (1)—
  - (a) SCSWIS must, in fixing fees under this section, have regard to its reasonable expenses in carrying out its functions under this Chapter, but
  - (b) where it appears to SCSWIS to be appropriate it may charge a nominal fee, or remit the fee altogether.

### *Regulations*

## **77 Regulations: registers and registration**

- (1) Regulations may—
  - (a) make provision about the keeping of registers by SCSWIS,
  - (b) make provision about registration under this Chapter or Chapter 4 and in particular about—
    - (i) the making of applications for such registration,
    - (ii) the content of certificates of registration,
    - (iii) categories of applicant who cannot competently make certain applications,
  - (c) require SCSWIS to secure that, on such conditions, in such circumstances and, subject to subsection (2), on payment of such fees as may be specified in regulations, any person is to be afforded access to, and provided with a copy of an entry in or with an extract from, a register kept by SCSWIS,



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- (d) except such part of a register as may be specified in the regulations from any requirement made by virtue of paragraph (c),
  - (e) confer additional functions on SCSWIS in relation to registration under this Part.
- (2) Regulations under paragraph (c) of subsection (1) may specify circumstances in which the fees mentioned in that paragraph are not to be payable; and no fees are in any event payable in any case where SCSWIS consider it appropriate to provide the copy or extract in question free of charge.

## **78 Regulations: care services**

- (1) Regulations may confer, in relation to care services, additional functions on SCSWIS.
- (2) Regulations may impose, in relation to care services, any requirements which the Scottish Ministers consider appropriate for the purposes of this Part.
- (3) Without prejudice to the generality of subsection (2), regulations may make it an offence to contravene or fail to comply with—
  - (a) any specified provision of the regulations, or
  - (b) a condition of registration for the time being in force.
- (4) A person who commits an offence under the regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) Before the Scottish Ministers make regulations containing provision as mentioned in subsection (1) or (3), they must consult such persons, or groups of persons, as they consider appropriate.

### *Complaints*

## **79 Complaints about care services**

- (1) SCSWIS must establish a procedure by which a person, or someone acting on a person's behalf, may make complaints (or other representations) in relation to the provision to the person of a care service or about the provision of a care service generally.
- (2) The procedure must provide for it to be available whether or not procedures established by the provider of the service for making complaints (or other representations) about that service have been or are being pursued.
- (3) Before establishing a procedure under subsection (1), SCSWIS must consult the Scottish Public Services Ombudsman, all local authorities and such other persons, or groups of persons, as it considers appropriate on its proposals for such a procedure.
- (4) SCSWIS must keep the procedure under review and must vary it whenever, after such consultation, it considers it appropriate to do so.
- (5) SCSWIS must give such publicity to the procedure (including the procedure as varied under subsection (4)) as it considers appropriate and must give a copy of the procedure to any person who requests it.

## *Offences*

### **80 Offences in relation to registration under Chapter 3**

- (1) Any person who—
- (a) provides a care service while not registered under this Chapter, or
  - (b) with intent to deceive, pretends that a care service is registered under this Chapter,
- commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.
- (2) Any person who fails to comply with section 60(5) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) Subsection (1)(a) does not apply as respect actings which—
- (a) constitute an offence under section 75 of the [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#), or
  - (b) fall within the exception provided for in subsection (1) of that section.

### **81 False statements in application under Chapter 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.

### **82 Offences by bodies corporate etc.**

Where an offence under this Chapter, or under regulations made under this Chapter, committed by—

- (a) a body corporate other than a local authority, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
  - (i) is a director, manager or secretary of the body corporate, or
  - (ii) purports to act in any such capacity,
- (b) a local authority, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
  - (i) is an officer or member of the authority, or
  - (ii) purports to act in any such capacity,
- (c) a firm, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
  - (i) is a partner in the firm, or
  - (ii) purports to act in that capacity,
- (d) an unincorporated association other than a firm, is committed with the consent or connivance of, or is attributed to any neglect on the part of, a person who—
  - (i) is concerned in the management or control of the association, or

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(ii) purports to act in the capacity of a person so concerned, the person (as well as the body corporate or as the case may be the local authority, firm or association) commits the offence and is liable to be proceeded against and punished accordingly.

## 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.

#### **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.

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## **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.
- (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.

## **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
  - (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—

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- (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.

## CHAPTER 5

### MISCELLANEOUS

#### 93 Grants to SCSWIS

- (1) The Scottish Ministers may make grants to SCSWIS towards expenses incurred, or to be incurred, by it in connection with—
- (a) the initial establishment of SCSWIS, and
  - (b) the discharge by SCSWIS of its functions.
- (2) Any grant made under subsection (1) may be made on such terms and subject to such conditions (including conditions as to repayment) as the Scottish Ministers think fit; and the Scottish Ministers may from time to time after the grant is made vary such terms and conditions.

#### 94 Guarantees

- (1) The Scottish Ministers may guarantee, in such manner and on such conditions as they think fit, the discharge of any financial obligation in connection with any sum which SCSWIS borrows from any person.
- (2) Where the Scottish Ministers give a guarantee under this section they must without delay lay a statement of the guarantee before the Parliament.
- (3) Where any sum is paid out in fulfilment of a guarantee under this section, the Scottish Ministers must, as soon as reasonably practicable after the end of each financial year (beginning with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged), lay before the Parliament a statement relating to that sum.
- (4) Where any sum is paid out in fulfilment of a guarantee under this section, SCSWIS must make to the Scottish Ministers, at such times and in such manner as they may from time to time direct—
- (a) payments of such amounts as they may so direct in or towards repayment of the sum so paid out, and

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- (b) payment of interest, at such rate as they may so direct, on what is outstanding for the time being in respect of that sum.

**95 Duty of SCSWIS to consult Scottish Social Services Council**

SCSWIS must, in the exercise of its functions, consult the Scottish Social Services Council in every case in which it appears to SCSWIS appropriate that there should be such consultation.

**96 Duty of SCSWIS to consult the Mental Welfare Commission for Scotland**

SCSWIS must, in the exercise of its functions relating to the provision of guidance, advice or information, consult the Mental Welfare Commission for Scotland in every case in which it appears to SCSWIS appropriate having regard to the Commission's functions under sections 5(b) and 10 of the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#).

**97 Complaints procedure**

- (1) SCSWIS must establish a procedure by which a person, or someone acting on a person's behalf, may make complaints (or other representations) in relation to the exercise of, or failure by it to exercise, any of its functions under this Part in respect of the person.
- (2) Before establishing a procedure under subsection (1), SCSWIS must consult the Scottish Public Services Ombudsman on its proposals for such a procedure.
- (3) SCSWIS must keep the procedure so established by it under review and must vary that procedure whenever, after such consultation, it considers it appropriate to do so.
- (4) SCSWIS must give such publicity to that procedure (including that procedure as varied under subsection (3)) as it considers appropriate and must give a copy of the procedure to any person who requests it.

**98 Inquiries**

- (1) The Scottish Ministers may cause an inquiry to be held into any matter connected with —
  - (a) the exercise by SCSWIS of its functions, or
  - (b) the provision of a social service.
- (2) SCSWIS may cause an inquiry to be held into any matter connected with—
  - (a) the exercise of its functions, or
  - (b) the provision of a social service.
- (3) Before the commencement of—
  - (a) an inquiry under subsection (1), the Scottish Ministers, or
  - (b) an inquiry under subsection (2), SCSWIS,
 may direct that it be held in private; but where no such direction has been given the person holding the inquiry may if that person thinks fit hold it, or any part of it, in private.



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- (4) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (provisions relating to local inquiries) apply in relation to an inquiry under subsection (1) as they apply in relation to a local inquiry under that section.
- (5) Subsections (2) to (6) of that section apply in relation to an inquiry under subsection (2) as they apply in relation to such a local inquiry; except that, for the purposes of an inquiry under subsection (2) any reference in those subsections which, by virtue of the Scotland Act 1998 (c. 46), falls to be construed as a reference to—
  - (a) the Scottish Ministers, is to be construed as a reference to SCSWIS, and
  - (b) a member of the staff of the Scottish Ministers, is to be construed as a reference to a member of staff of SCSWIS.
- (6) The expenses incurred by SCSWIS in relation to an inquiry under subsection (2) (including such reasonable sum as SCSWIS may determine for the services of any of its staff engaged in the inquiry) must, unless SCSWIS is of the opinion that those expenses should be defrayed in whole or in part by it, be paid by such party to the inquiry as it may direct; and SCSWIS may certify the amount of the expenses so incurred.
- (7) Any sum certified under subsection (6) and to be defrayed in accordance with a direction under that subsection is a debt due by the party directed and recoverable accordingly.
- (8) In relation to an inquiry under subsection (2), SCSWIS may make an award as to the expenses of the parties and as to the parties by whom such expenses are to be paid.

**99 Arrangements entered into by local authority or health body: services to be registered**

Where, in the performance of its functions—

- (a) a local authority, or
- (b) a health body,

makes arrangements with any person to provide a care service, it must ensure that the service, when provided, is registered under Chapter 3.

**100 Local authorities and health bodies: awareness of SCSWIS reports etc.**

- (1) For the purposes of its functions as they relate to the provision of care services (including the making of arrangements with other persons to provide such services)—
  - (a) a local authority,
  - (b) a health body,must take into account the matters mentioned in subsection (3).
- (2) In carrying out its duty under subsection (1), a local authority or health body must have regard to any guidance issued by the Scottish Ministers in respect of that duty.
- (3) The matters are such—
  - (a) reports,
  - (b) information,
  - (c) notices,

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prepared, disseminated, given or otherwise produced by SCSWIS as are relevant to the provision of the services mentioned in subsection (1) or, as the case may be, to the organisation or co-ordination of those services.

#### **101 Giving of notice**

- (1) In Chapters 3 and 4, any reference to a notice being given to a person providing, or seeking to provide, a care service is to be construed as a reference to its being—
- (a) delivered, where the person is—
    - (i) an individual, to that individual,
    - (ii) a body corporate, to the secretary or clerk of that body, or
    - (iii) a firm, to a partner of that firm, or
  - (b) sent by post, properly addressed to the person, in a registered letter or by the recorded delivery service,
- but a notice sent by post is taken not to have been received until the third day after the day of posting.
- (2) For the purposes of subsection (1), a letter is properly addressed to—
- (a) a body corporate, if addressed to the body at its registered or principal office,
  - (b) a firm, if addressed to the firm at its principal office, or
  - (c) any other person, if addressed to the person at the address last known.

#### **102 Transfer of staff etc.**

- (1) With effect from the date on which section 44 comes into force—
- (a) any person employed by the Scottish Commission for the Regulation of Care immediately before that date is, subject to section 109, transferred into the employment of SCSWIS,
  - (b) all property (including rights) and liabilities of the Scottish Commission for the Regulation of Care subsisting immediately before that date are, subject to section 109, transferred to, and vest in, SCSWIS,
  - (c) subject to subsection (2), any person who is a member of staff of the Scottish Ministers employed in the Executive Agency of the Scottish Ministers known as the Social Work Inspection Agency immediately before that date is transferred into the employment of SCSWIS,
  - (d) any person to whom section 103 applies immediately before that date is transferred into the employment of SCSWIS.
- (2) Subsection (1)(c) does not apply to staff on secondment or loan to the Executive Agency of the Scottish Ministers known as the Social Work Inspection Agency from another part of the Scottish Administration.
- (3) The contract of employment of a person transferred by virtue of subsection (1)(a), (c) or (d)—
- (a) is not terminated by the transfer, and
  - (b) has effect from the date of transfer as if originally made between the person and SCSWIS.
- (4) Without prejudice to subsection (3), where a person is transferred by virtue of subsection (1)(a), (c) or (d)—

- (a) all the rights, powers, duties and liabilities of the Scottish Commission for the Regulation of Care or, as the case may be, the Scottish Ministers, under or in connection with the person's contract of employment are transferred to SCSWIS on the date of transfer, and
  - (b) anything done before that date by or in relation to the Scottish Commission for the Regulation of Care or, as the case may be, the Scottish Ministers, in respect of the person or the contract is to be treated from that date as having been done by or in relation to SCSWIS.
- (5) Subsections (1) to (4) do not affect any right of any person so transferred to terminate the person's contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but any such change is not to be taken to have occurred by reason only that the identity of the person's employer changes by virtue of those subsections.

### **103      Transfer of staff: further provision**

- (1) This section applies to such persons who are members of staff of the Scottish Ministers employed in the Executive Agency of the Scottish Ministers known as Her Majesty's Inspectorate of Education in Scotland as the Scottish Ministers may by order specify.
- (2) Such an order may specify any description of such employees or any individual such employee.
- (3) For the purposes of subsection (1), an order may not be made in relation to staff on secondment or loan to the Executive Agency of the Scottish Ministers known as Her Majesty's Inspectorate of Education in Scotland from another part of the Scottish Administration.
- (4) The power to make an order under subsection (1)—
  - (a) must be exercised by statutory instrument,
  - (b) may be exercised so as to make different provision for different purposes.
- (5) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Parliament.

### **104      Orders and regulations: procedure**

- (1) Any power conferred by this Part on the Scottish Ministers to make an order or regulations—
  - (a) must be exercised by statutory instrument,
  - (b) includes power to make such consequential, supplemental, incidental, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (c) may be exercised so as to make different provision for different purposes.
- (2) No order is, or regulations are, to be made under section 49, 58(1) or 78 or schedule 12 unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, the Parliament.
- (3) A statutory instrument containing an order or regulations under any other provision of this Part is subject to annulment in pursuance of a resolution of the Parliament.

## 105 Interpretation of Part 5

- (1) In this Part, unless the context otherwise requires—
- “act as a child minder” has the meaning given by paragraph 12(1) of schedule 12;
  - “adoption service” has the meaning given by paragraph 8 of that schedule;
  - “adult placement service” has the meaning given by paragraph 11 of that schedule;
  - “care home service” has the meaning given by paragraph 2 of that schedule;
  - “care service” has the meaning given by section 47(1);
  - “child”—
    - (a) in relation to an adoption service, means a person who is under the age of 18,
    - (b) in relation to a fostering service, means a person who is under the age of 18, and
    - (c) for the purposes of paragraph 6 of schedule 12, has the meaning given in section 93(2)(b) of the Children (Scotland) Act 1995 (c. 36),
 but otherwise means a person under the age of 16;
  - “child care agency” has the meaning given by paragraph 5 of schedule 12;
  - “child minding” has the meaning given by paragraph 12 of that schedule;
  - “condition notice” has the meaning given by section 66;
  - “day care of children” has the meaning given by paragraph 13 of schedule 12;
  - “domestic premises” means any premises which are wholly or mainly used as a private dwelling;
  - “fostering service” has the meaning given by paragraph 9 of schedule 12;
  - “health body” means a Health Board or Special Health Board constituted by order under section 2 of the National Health Service (Scotland) Act 1978 (c. 29);
  - “health records” means records relating to the physical or mental health of an individual (including dental records and medical records);
  - “hospital” has the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978;
  - “housing support service” has the meaning given by paragraph 19 of schedule 12;
  - “improvement notice” has the meaning given by section 62;
  - “limited registration service” has the meaning given by section 61(5);
  - “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
  - “local authority condition notice” has the meaning given by section 85;
  - “medical records” means records relating to the physical or mental health of an individual which have been prepared by a registered medical practitioner who is, or has been, responsible for the clinical care of the individual;
  - “mental disorder” has the same meaning as in section 328 of the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#);
  - “notice” means notice in writing;
  - “nurse agency” has the meaning given by paragraph 4 of schedule 12;
  - “offender accommodation service” has the meaning given by paragraph 7 of that schedule;
  - “personal care” has the meaning given by paragraph 20 of that schedule;
  - “personal support” has the meaning given by that paragraph;
  - “premises” includes any vehicle;

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

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“prescribed” means prescribed by order made by the Scottish Ministers;  
“provide”, in relation to a care service, means to carry on or manage such a service; and includes, in the case of a care service which is provided by a body corporate, a reference to a director, manager, secretary to other similar officer of the body;  
“regulations” means regulations made by the Scottish Ministers;  
“relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by affinity) or step-parent;  
“school care accommodation service” has the meaning given by paragraph 3 of schedule 12;  
“secure accommodation service” has the meaning given by paragraph 6 of that schedule;  
“social services” and “social service” have the meanings given by section 46;  
“social work services” has the meaning given by section 48;  
“someone who cares for” (or “a person who cares for”) a person has the meaning given by paragraph 20 of schedule 12;  
“SCSWIS” means Social Care and Social Work Improvement Scotland (which is constituted under section 44);  
“support service” (except in the expression “housing support service”) has the meaning given by paragraph 1 of schedule 12;  
“voluntary organisation” means a body, other than a public or local authority, the activities of which are not carried on for profit; and  
“vulnerability or need”, in relation to a person, has the meaning given by paragraph 20 of schedule 12.

- (2) In this Part, a person who uses, or is eligible to use, a social service includes any person to whom that service is, or may be, provided.
- (3) For the purposes of this Part, information is “confidential information” where—
- (a) the identity of an individual is ascertainable—
    - (i) from that information, or
    - (ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person holding that information, and
  - (b) the information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.

#### **106 Minor and consequential amendments and repeals: SCSWIS**

Schedule 14 (which makes minor modifications of enactments and modifications consequential on the provisions of this Part) has effect.

#### **107 Minor modifications: Scottish Social Services Council**

Schedule 15 (which makes minor modifications of Part 3 of the [Regulation of Care \(Scotland\) Act 2001 \(asp 8\)](#)) has effect.