



# Regulation of Care (Scotland) Act 2001

## 2001 asp 8

### PART 1

#### THE COMMISSION AND CARE SERVICES

##### *Constitution of Commission*

#### **1 Constitution of Scottish Commission for the Regulation of Care**

- (1) There shall be a body corporate, to be known as the Scottish Commission for the Regulation of Care (in this Act referred to as “the Commission”), which shall—
  - (a) exercise the functions conferred on it by this Act or any other enactment; and
  - (b) have the general duty of furthering improvement in the quality of care services provided in Scotland.
- (2) The Commission shall, in the exercise of its functions, act—
  - (a) in accordance with any directions in writing given to it by the Scottish Ministers;
  - (b) under the general guidance of the Scottish Ministers; and
  - (c) in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (3) Schedule 1 to this Act shall have effect with respect to the Commission.

##### *Care services*

#### **2 Care services**

- (1) A “care service” is any of the following—
  - (a) a support service;
  - (b) a care home service;
  - (c) a school care accommodation service;
  - (d) an independent health care service;
  - (e) a nurse agency;

---

*Status: This is the original version (as it was originally enacted).*

---

- (f) a child care agency;
  - (g) a secure accommodation service;
  - (h) an offender accommodation service;
  - (i) an adoption service;
  - (j) a fostering service;
  - (k) an adult placement service;
  - (l) child minding;
  - (m) day care of children; and
  - (n) a housing support service.
- (2) A “support service” is a service provided, by reason of a person’s vulnerability or need (other than vulnerability or need arising by reason only of that person being of a young age), to that person or to someone who cares for that person by—
- (a) a local authority;
  - (b) any person under arrangements made by a local authority;
  - (c) a health body; or
  - (d) any person if it includes personal care or personal support,
- but the expression does not include a care home service, an independent health care service, a service which provides overnight accommodation, an adoption service, a fostering service or a service excepted from this definition by regulations, paragraphs (c) and (d) above do not apply where the provider is a health body acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978 (c. 29) and paragraph (d) above does not apply if the provider is an individual who personally and solely gives the care or support in question.
- (3) A “care home service” is a service which provides accommodation, together with nursing, personal care or personal support, for persons by reason of their vulnerability or need; but the expression does not include—
- (a) a hospital;
  - (b) a public, independent or grant-aided school;
  - (c) an independent health care service; or
  - (d) a service excepted from this definition by regulations.
- (4) A “school care accommodation service” is a service which is provided to a pupil by an education authority or the managers of an independent or grant-aided school, or by any person under arrangements made by any such authority or managers—
- (a) for the purpose of the pupil being in attendance at a public, independent or grant-aided school; and
  - (b) which consists of the provision, in a place in or outwith the school, of residential accommodation,
- but a service may be excepted from this definition by regulations.
- (5) An “independent health care service” is any of the following—
- (a) an independent hospital;
  - (b) a private psychiatric hospital;
  - (c) an independent clinic; and
  - (d) an independent medical agency.

---

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

---

- (6) A “nurse agency” is a service which consists of or includes supplying, or introducing to persons who use the service, registered nurses, registered midwives or registered health visitors; but a service may be excepted from this definition by regulations.
- (7) A “child care agency” is a service which consists of or includes supplying, or introducing to persons who use the service, child carers; but the expression does not include a nurse agency and a service may be excepted from this definition by regulations.
- (8) In subsection (7) above, “child carer” means a person who—
- (a) whether or not for reward; and
  - (b) whether on a day-to-day or on an occasional basis,
- looks after a child wholly or mainly in the home of the child’s parents.
- (9) A “secure accommodation service” is a service which provides accommodation approved by the Scottish Ministers in accordance with regulations made under section 29(9)(a) of this Act.
- (10) An “offender accommodation service” is a service which consists of giving advice, guidance or assistance to persons who have been provided with accommodation under subsection (1)(b) or (c) of section 27 of the Social Work (Scotland) Act 1968 (c. 49) (supervision and care of persons put on probation or released from prison etc.); but the expression does not include a support service.
- (11) An “adoption service” is a service which is—
- (a) maintained by a local authority under section 1(1) of the Adoption (Scotland) Act 1978 (c. 28); or
  - (b) provided by a person other than a local authority and which consists of, or includes, the making of arrangements for or in connection with the adoption of children (whether the person functions generally or in relation to some service maintained, or to be maintained, as part of the Scottish Adoption Service).
- (12) For the purposes of subsection (11)(b) above, the making of arrangements for the adoption of a child where the proposed adopter is a relative of the child is not an adoption service.
- (13) In subsection (11)(b) above, “the Scottish Adoption Service” has the meaning given by section 1(4) of that Act of 1978.
- (14) A “fostering service” is a service which is provided by—
- (a) a local authority under paragraph (a) of section 26(1) of the Children (Scotland) Act 1995 (c. 36) (fostering of children looked after by a local authority);
  - (b) a person other than a local authority and which consists of, or includes, the making of arrangements for or in connection with the performance of functions assigned to a local authority—
    - (i) under that paragraph; or
    - (ii) by virtue of section 5(2) to (4) of the Social Work (Scotland) Act 1968 (c. 49) (regulations relating to performance of functions assigned to a local authority under that Act); or
  - (c) a local authority and which consists of, or includes, the functions assigned to the authority by sections 3 and 8 to 10 of the Foster Children (Scotland) Act 1984 (c. 56) (ensuring well-being etc. of certain privately fostered children).

---

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

---

- (15) The services mentioned in subsection (14)(a) and (b) above and registered under this Act may be collectively referred to as the “Scottish public fostering service”; and those mentioned in subsection (14)(c) above and so registered may be collectively referred to as the “Scottish private fostering service”.
- (16) An “adult placement service” is a service which consists of, or includes, arranging for the provision of accommodation for an adult (that is to say for a person who has attained the age of eighteen years), together with—
- (a) personal care;
  - (b) personal support; or
  - (c) counselling, or other help, provided other than as part of a planned programme of care,
- by reason of the person’s vulnerability or need, by placing the person with a family or individual; but a service may be excepted from this definition by regulations.
- (17) “Child minding” means, subject to subsections (18), (19) and (21)(a) below, looking after one or more children on domestic premises for reward and “act as a child minder” shall be construed accordingly; but a service may be excepted from those definitions by regulations.
- (18) For the purposes of subsection (17) above, a person who—
- (a) is the parent, or a relative, of a child;
  - (b) has parental responsibilities (within the meaning given by section 1(3) of the Children (Scotland) Act 1995 (c. 36)) relating to the child;
  - (c) is a foster parent with whom a child is placed by a local authority; or
  - (d) maintains a foster child (within the meaning of the Foster Children (Scotland) Act 1984 (c. 56)),
- does not act as a child minder when looking after that child.
- (19) For the purposes of subsection (17) above, where a person—
- (a) looks after a child for the parents of the child and the work consists of looking after the child wholly or mainly in the parents' home; or
  - (b) looks after a child for the parents of the child (the “first parents”) and another child for the different parents of that other child (the “second parents”) and the work consists of looking after the children wholly or mainly in the first parents' home or in the second parents' home, or in both those homes,
- that work is not child minding.
- (20) “Day care of children” means, subject to subsections (21)(b) to (25) below, a service which consists of any form of care (whether or not provided to any extent in the form of an educational activity), supervised by a responsible person and not excepted from this definition by regulations, provided for children, on premises other than domestic premises, during the day (whether or not it is provided on a regular basis or commences or ends during the hours of daylight).
- (21) For the purposes of—
- (a) subsection (17) above, a person does not act as a child minder;
  - (b) subsection (20) above, a person does not provide day care of children,
- unless the period, or the total of periods, during which the service is provided exceeds two hours in any day.

---

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

---

- (22) Where a person provides a service for children in particular premises on less than six days in any year, that provision is not day care of children for the purposes of subsection (20) above if the person has notified the Commission in writing, before the first occasion on which the service is so provided in that year, of the intention so to provide it.
- (23) In subsection (22) above, “year” means the year beginning with the day on which the service is (after the commencement of this section) first provided in the premises concerned; and thereafter any year beginning with the anniversary of that day.
- (24) For the purposes of subsection (20) above, a service which consists of looking after children who are patients in a hospital and is provided as part of the medical treatment which they are receiving there is not day care of children.
- (25) For the purposes of subsection (20) above, a person does not provide day care of children where—
- (a) the children are of school age;
  - (b) the service is provided—
    - (i) wholly or mainly in a public, independent or grant-aided school; and
    - (ii) as part of the school’s activities; and
  - (c) the person is—
    - (i) the education authority managing the school
    - (ii) the person carrying on the school; or
    - (iii) a person employed to work at the school and authorised to provide the service as part of the school’s activities.
- (26) Expressions used in subsection (3)(b), (4) or (25) above have the meanings given by section 135(1) of the Education (Scotland) Act 1980 (c. 44).
- (27) A “housing support service” is a service which provides support, assistance, advice or counselling to a person who has particular needs, with a view to enabling that person to occupy residential accommodation as a sole or main residence; but a service may be excepted from this definition by regulations and such residential accommodation does not include accommodation specified as excepted accommodation in regulations under section 91(9) of the Housing (Scotland) Act 2001 (asp 10).
- (28) In this Act, unless the context otherwise requires—
- “someone who cares for” (or “a person who cares for”) a person, means someone who, being an individual, provides on a regular basis a substantial amount of care for that person, not having contracted to do so and not doing so for payment or in the course of providing a care service;
- “vulnerability or need”, in relation to a person, means vulnerability or need arising by reason of that person—
- (a) being affected by infirmity or ageing;
  - (b) being, or having been, affected by disability, illness or mental disorder;
  - (c) being, or having been, dependent on alcohol or drugs; or
  - (d) being of a young age;
- “personal care” means care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash); and

---

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

---

“personal support” means counselling, or other help, provided as part of a planned programme of care.

### **3 Power to amend the definition of “care service”**

The Scottish Ministers, after consulting such persons, or groups of persons, as they consider appropriate, may by order amend the definition of “care service” in section 2(1) of this Act so as to add to the services which that definition comprehends such other service as they think fit.

### **4 Information and advice**

- (1) The Commission shall provide information to the public about the availability and quality of care services.
- (2) A person requesting from the Commission information provided under subsection (1) above is entitled to receive it in such form as that person may reasonably request.
- (3) The Commission—
  - (a) may at any time, and shall when asked to do so, provide advice to the Scottish Ministers; and
  - (b) shall when asked to do so provide advice to—
    - (i) persons who provide, seek to provide or may seek to provide care services;
    - (ii) persons, or groups of persons, representing those who use, or are eligible to use, care services;
    - (iii) persons, or groups of persons, representing those who care for those who use, or are eligible to use, care 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 the Commission.
- (4) The Commission may charge a reasonable fee determined by it for any advice, forms or documents provided for the assistance of any such person, authority or body as is mentioned in paragraph (b) of subsection (3) above.

### *National care standards*

### **5 National care standards**

- (1) The Scottish Ministers shall prepare and publish national care standards applicable to care services; and they shall keep the standards so published under review and shall publish amended such standards whenever they consider it appropriate to do so.
- (2) Before publishing under subsection (1) above any—
  - (a) standards; or
  - (b) amended standards which in the opinion of the Scottish Ministers are substantially different from the standards (or amended standards) last so published,
 they shall consult such persons, or groups of persons, as they consider appropriate.

- (3) In relation to a care service other than those mentioned in subsection (4) below, the national care standards 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 this Act) shall be taken into account—
  - (a) by the Commission in making any decision under this Part;
  - (b) in any proceedings for the making of an order under section 18 of this Act;
  - (c) in any proceedings on an appeal—
    - (i) under section 20(1) of this Act; or
    - (ii) against such an order; and
  - (d) in any proceedings for an offence in relation to registration under this Part.
- (4) In relation to an adoption service mentioned in subsection (11)(a) of section 2 of this Act, a fostering service mentioned in subsection (14)(a) or (c) of that section or any other care service registered under Part 2 of this Act, the national care standards and the codes of practice mentioned in subsection (3) above shall be taken into account—
  - (a) by the Commission in making any decision under this Part or Part 2 of this Act;
  - (b) in any proceedings on an appeal under section 39 of this Act; and
  - (c) in any proceedings for an offence in relation to registration under that Part.

### *Complaints*

## **6 Complaints about care services**

- (1) The Commission shall 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) above, the Commission shall consult all local authorities and health bodies and such other persons, or groups of persons, as it considers appropriate on its proposals for such a procedure and shall require to obtain the consent of the Scottish Ministers to those proposals.
- (4) The Commission shall keep the procedure under review and shall vary it whenever, after such consultation and with such consent, it considers it appropriate to do so.
- (5) The Commission shall give such publicity to the procedure (including the procedure as varied under subsection (4) above) as it considers appropriate and shall give a copy of the procedure to any person who requests it.

### *Registration*

## **7 Applications for registration under Part 1**

- (1) A person who seeks to provide a care service shall make an application to the Commission for registration of the service.

---

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

---

- (2) An application shall—
- (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 the Commission may reasonably require the applicant to give; and
  - (d) without prejudice to subsection (1)(b) of section 24 of this Act, be accompanied by the fee imposed under subsection (2)(a) of that section.
- (3) A person who provides, or seeks to provide, more than one care service must make a separate application in respect of each of them.
- (4) The provision, by two or more branches, of services which (but for this subsection) would be one care service, shall, for the purposes of this Act, instead be treated as the provision of two, or as the case may be a number of, separate care services, each by one of those branches.
- (5) In subsection (4) above, “branch” means an entity, of whatever description, which is separately carried on or managed; but a branch may provide a care service from two or more premises.
- (6) A person who provides an adoption service or a fostering service must be a voluntary organisation.
- (7) Subsections (1) to (6) above do not apply to a local authority—
- (a) seeking to provide—
    - (i) an adoption service mentioned in subsection (11)(a); or
    - (ii) a fostering service mentioned in subsection (14)(a) or (c),
 of section 2 of this Act; or
  - (b) seeking to provide a care service in respect of which they have made such determination as is mentioned in section 33(1)(c) of this Act.
- (8) Subsection (7)(b) above is subject to section 33(3) of this Act.

## 8 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 the Commission for registration of the service.
- (2) Subsection (2) of section 7 of this Act applies in relation to an application under subsection (1) above as it applies in relation to an application under subsection (1) of that section.
- (3) Sections 7(3) to (5), 9, 24 and 28 of this Act apply in relation to a service in respect of which an application is made under subsection (1) above as they apply in relation to a care service.
- (4) Sections 6, 10 to 20, 24 to 28, 29 (except subsections (4) and (6)) and 32 apply in relation to a service registered under section 9 of this Act by virtue of subsection (3) above (a service so registered being, in this Act, referred to as a limited registration service) as they apply in relation to a registered care service.



## **9 Grant or refusal of registration under Part 1**

- (1) An application under section 7 of this Act may be granted either unconditionally or subject to such conditions as the Commission thinks fit to impose.
- (2) If the Commission is satisfied, in relation to the application, that the requirements of—
  - (a) such regulations as are applicable under section 29 of this Act to the care service; and
  - (b) any other enactment which appears to the Commission to be relevant,will be complied with in relation to that service, it shall give notice under section 15(1)(a), or as the case may be 17(1), of this Act; otherwise it shall give notice under section 15(1)(b) of this Act.
- (3) On granting the application the Commission shall issue a certificate of registration to the applicant.
- (4) The person for the time being providing the service shall 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 those premises do not include the principal (or only) office of the service, then in that office also.

### *Improvement notices*

## **10 Improvement notices**

- (1) The Commission may at any time give notice (in this Act referred to as an “improvement notice”) to the person for the time being providing a service registered under this Act that, unless within such reasonable period as may be specified in the notice, there is a significant improvement, of such nature as may be so specified, in the provision of that service, it intends—
  - (a) in a case other than that mentioned in paragraph (b) below, to make a proposal under section 12 of this Act; or
  - (b) in the case of a local authority providing an adoption service mentioned in subsection (11)(a) of section 2 of this Act, a fostering service mentioned in subsection (14)(a) or (c) of that section or any other care service registered under Part 2 of this Act, to make a report to the Scottish Ministers under section 41 of this Act.
- (2) Where notice under subsection (1)(a) above is given to a person other than a local authority, the Commission shall send forthwith a copy of that notice to the local authority within whose area the service is provided.
- (3) This section is without prejudice to section 18 of this Act.

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

- (1) Where the Commission has given an improvement notice to a local authority in respect of a care service provided by them and registered under this Part and the authority determine that the service is one which they must provide in order to fulfil a statutory duty, they shall within fourteen days after receiving the notice notify that determination to the Commission; and the authority shall append to the notification a statement of their reasons for so determining.

---

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

---

- (2) On receiving notification under subsection (1) above, the Commission shall as soon as practicable send a copy of the improvement notice to the Scottish Ministers together with a copy of the notification, of the appended statement and of a note of any reason the Commission has for not agreeing with the authority's determination.
- (3) On receiving an improvement notice sent under subsection (2) above, the Scottish Ministers shall state whether or not, in their opinion, the determination of the authority is justified; and if their statement is that the determination is justified, the care service shall be deemed, for the purposes of any application of the provisions of this Act which follows on from the giving of an improvement notice, to be a care service duly registered not under Part 1 but under Part 2 of this Act (the improvement notice itself being deemed duly given under subsection (1)(b) of section 10 of this Act and not under subsection (1)(a) of that section).

*Proposals and applications in relation to registered care services*

## 12 Cancellation of registration

- (1) The Commission 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 Part, 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—
  - (a) paragraph (a) of subsection (1) above, the following are relevant offences—
    - (i) an offence under this Act;
    - (ii) an offence under regulations made under this Act; or
    - (iii) an offence which, in the opinion of the Commission, makes it appropriate that the registration should be cancelled; and
  - (b) paragraph (b) of that subsection, the following are relevant requirements—
    - (i) any requirements or conditions imposed by or under this Act; or
    - (ii) the requirements of regulations made under this Act.
- (3) This section is without prejudice to section 18 of this Act.

## 13 Condition notices

- (1) The Commission may at any time give notice (in this Act referred to as a “condition notice”) to the person for the time being providing a service registered under this Part 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.
- (2) This section is without prejudice to section 18 of this Act.

#### **14 Applications under Part 1 in respect of conditions**

- (1) A person providing a service registered under this Part may apply to the Commission—
  - (a) for the variation or removal of any condition for the time being in force in relation to the registration; or
  - (b) for cancellation of the registration,but no such application shall be competent in circumstances mentioned in subsection (2) below.
- (2) The circumstances are that the Commission has given the person notice—
  - (a) under section 15(2) of this Act of its proposal to cancel the registration (unless the Commission has decided not to take that step); or
  - (b) under section 17(3) of this Act of its decision to cancel the registration and the time within which an appeal may be brought has not expired or, if an appeal has been brought, that appeal has not been determined.
- (3) An application under subsection (1) above shall be made in such manner and state such particulars as may be prescribed; and, without prejudice to subsection (1)(b) of section 24 of this Act, shall be accompanied by the fee imposed under subsection (2) (a) or as the case may be (c) of that section.
- (4) If the Commission decides to grant an application under subsection (1)(a) above it shall give the applicant notice of its decision (stating, where applicable, the condition varied or removed) and issue a new certificate of registration.

#### **15 Further provision as respects notice of proposals**

- (1) If an application has been made under section 7 of this Act and the Commission proposes—
  - (a) to grant that application but to do so subject to a condition which has not been agreed in writing between it and the applicant, it shall give the applicant notice of the proposed condition;
  - (b) to refuse that application, it shall give such notice of the proposed refusal.
- (2) Except where it makes an application under section 18(1) of this Act, the Commission shall give any person who provides a service registered under this Part notice of a proposal to cancel the registration (other than in accordance with an application under subsection (1)(b) of section 14 of this Act).
- (3) The Commission shall give an applicant under subsection (1)(a) of section 14 of this Act notice of a proposal to refuse that application.
- (4) A notice under this section shall give the Commission's reasons for its proposal.

#### **16 Right to make representations to Commission as respects proposals under Part 1**

- (1) A condition notice or a notice under section 15 of this Act shall state that, within fourteen days after service of the notice, the person to whom it is given may make written representations to the Commission concerning any matter which that person wishes to dispute.

---

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

---

- (2) Where such a notice has been given, the Commission shall do the thing proposed only after (whichever first occurs)—
  - (a) the person to whom the notice was given makes such representations as are mentioned in subsection (1) above;
  - (b) that person notifies the Commission in writing that such representations will not be made; or
  - (c) the period of fourteen days so mentioned elapses.
- (3) Subsections (1) and (2) of this section do not apply as respects a condition notice given by virtue of section 35.

## **17 Notice of Commission’s decision under Part 1**

- (1) If the Commission decides to grant unconditionally an application made under section 7 of this Act or to grant such application subject only to a condition which has been agreed in writing between the Commission and the applicant, it shall give the applicant notice of its decision.
- (2) A notice under subsection (1) above shall state the agreed condition.
- (3) If the Commission decides to implement a proposal in relation to which it has given a person a condition notice or a notice under section 15 of this Act, it shall give that person notice of the decision.
- (4) A notice under subsection (3) above shall—
  - (a) explain the right of appeal conferred by section 20 of this Act; 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 subsection (1)(a) of section 15 of this Act, state the condition subject to which the application is granted.
- (5) Subject to subsection (6) below, a decision to implement a proposal in relation to which a condition notice has been given or of which notice has been given under subsection (1)(a) or (2) of the said section 15 shall not take effect—
  - (a) if no appeal is brought, until the period of fourteen days referred to in section 20(1) of this Act 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 subsection (1)(a) of section 15 of this Act and the applicant notifies the Commission in writing, before the period of fourteen days referred to in section 20(1) of this Act has elapsed, that there will be no appeal, the decision shall take effect on receipt of that notification.

## **18 Urgent procedures for cancellation of registration etc.**

- (1) The Commission may make summary application to the sheriff for an order—
  - (a) cancelling the registration under this Part of a care service;

---

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

---

- (b) varying or removing any condition for the time being in force in relation to the registration; or
  - (c) imposing an additional condition in relation to the registration,
- and if it appears to the sheriff that, unless the order is made, there will be a serious risk to some other person's life, health or well-being the application may be granted.
- (2) As soon as practicable after the Commission makes an application under subsection (1) above, it shall so notify the appropriate authorities.
  - (3) Where the order applied for is made, the Commission shall as soon as practicable thereafter give a copy of it to the person who provides the care service.
  - (4) 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 statutory authority not mentioned in paragraph (a) above whom the Commission thinks it appropriate to notify.
  - (5) In subsection (4)(b) above, “statutory authority” means a body established by or under an enactment.

## **19 Conditions as to numbers**

Without prejudice to the generality of section 9(1), 13(1) or 18(1)(c) of this Act, a condition imposed under any of those provisions in relation to a care service may limit—

- (a) in the case of—
  - (i) a care home service;
  - (ii) a school care accommodation service; or
  - (iii) a secure accommodation service,the number of persons for whom the service may provide accommodation;
- (b) in the case of an adult placement service, the number of persons whom the service may place;
- (c) in the case of—
  - (i) a support service; or
  - (ii) an independent health care service,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,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, the number of persons for whom the agency may supply registered nurses, registered midwives or registered health visitors.

## 20 Appeal against decision to implement proposal

- (1) A person given notice under section 17(3) of this Act of a decision to implement a proposal may, within fourteen days after that notice is given, appeal to the sheriff against the decision.
- (2) The sheriff may, on appeal under subsection (1) above, confirm the decision or direct that it shall not 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.

### *Offences*

## 21 Offences in relation to registration under Part 1

- (1) Any person who—
  - (a) provides a care service while it is not registered under this Part; or
  - (b) with intent to deceive, pretends that a care service is registered under this Part,
 shall be guilty of an offence and 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 9(4) of this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) Subsection (1)(a) above does not apply as respects acts which—
  - (a) constitute an offence under section 11 of the Adoption (Scotland) Act 1978 (c. 28); or
  - (b) fall within the exception provided for in subsection (1) of that section.

## 22 False statements in applications under Part 1

Any person who, in an application—

- (a) for registration under this Part; or
- (b) for variation or removal of a condition in force in relation to a registration under this Part,

knowingly makes a statement which is false or misleading in a material respect shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## 23 Offences by bodies corporate etc.

Where an offence under this Part, or under regulations made under this Part, 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;

---

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

---

- (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 attributable to any neglect on the part of, a person who—
    - (i) is concerned in the management or control of the association; or
    - (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) is guilty of the offence and is liable to be proceeded against and punished accordingly.

### *Fees*

## **24 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 the Commission under this section; and
  - (b) circumstances in which fees so imposed shall or shall not be payable.
- (2) Subject to the provisions of this section, the Commission shall impose fees in respect of—
  - (a) any application made for registration under this Part or Part 2 of this Act 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 Part or that Part by that person; or
    - (iii) by virtue of any new information provided by that person in pursuance of regulations under this Part or that Part.
- (3) Without prejudice to subsection (1) above—
  - (a) the Commission shall, in fixing fees under this section, have regard to its reasonable expenses in carrying out its functions under this Act; but
  - (b) where it appears to the Commission to be appropriate it may charge a nominal fee, or remit the fee altogether.

---

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

---

## *Inspections*

### **25 Inspections**

- (1) The Commission may at any time require a person providing a registered care 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 Act.
- (2) A person authorised by the Commission (in this section and in sections 26 and 27 of this Act referred to as an “authorised person”) may—
  - (a) inspect any care service; and
  - (b) 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 any such service.
- (3) The Commission shall secure, in relation to the services mentioned in subsection (4) below—
  - (a) that the powers conferred by subsection (2)(a) above are exercised—
    - (i) at least twice in the period of twelve months which immediately follows registration; and
    - (ii) at least twice in each subsequent period of twelve months; and
  - (b) that at least one such exercise in each of those periods is without any prior notification.
- (4) The services mentioned are—
  - (a) a care home service;
  - (b) a school care accommodation service;
  - (c) a secure accommodation service; and
  - (d) an independent health care service which provides overnight accommodation, whether registered under this Part or Part 2 of this Act.
- (5) The Commission shall secure, in relation to each service registered under this Part or Part 2 of this Act which is not a service mentioned in subsection (4) above—
  - (a) that the powers conferred by subsection (2)(a) above are exercised at least once in the period of twelve months which immediately follows registration; and
  - (b) that after an exercise of the powers so conferred no greater period than twelve months elapses before those powers are again exercised.
- (6) The authorised person may—
  - (a) make any examination into and conduct any interview as regards—
    - (i) the state and management of the service or of such premises; and
    - (ii) the treatment of persons cared for by the service or cared for or accommodated in such premises,which the authorised person thinks appropriate;
  - (b) inspect and take copies of any documents or records (other than medical records) which regulations under this Act, section 9 of the Adoption (Scotland) Act 1978 (c. 28) or section 1(3) of the Adoption (Intercountry Aspects) Act 1999 (c. 18) require to be kept;
  - (c) without prejudice to the generality of paragraph (a) above, interview in private—



---

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

---

- (i) the manager of the service or of such premises;
  - (ii) the person providing the service;
  - (iii) any person employed by the service or in such premises; or
  - (iv) any person who is cared for by the service or cared for or accommodated in such premises and who consents to be interviewed.
- (7) An interview is in private for the purposes of subsection (6)(c)(iv) above even if conducted in the presence of—
  - (a) a guardian, continuing attorney or welfare attorney of the person interviewed; or
  - (b) provided that the person interviewed so wishes and the authorised person does not object, some other person.
- (8) The powers conferred by subsection (6)(b) above include—
  - (a) power to require—
    - (i) the manager of the service or of such premises; or
    - (ii) the person providing the service,to produce any document or record, wherever kept, for inspection at an office of the service or on those premises; and
  - (b) in relation to records which are kept by electronic means, power to require a copy of the records to be produced in a form which is legible and can be taken away.
- (9) Where the authorised person—
  - (a) is a medical practitioner or a registered nurse; and
  - (b) has reasonable cause to believe that a person cared for by the service or accommodated in such premises is not receiving proper care,the authorised person may (either or both)—
  - (i) conduct in private an appropriate examination of, and with the consent of;
  - (ii) inspect any medical records relating to the treatment, by the service or in the premises, of,the person so cared for or accommodated.
- (10) Where the authorised person—
  - (a) is a registered dentist (as defined in section 53(1) of the Dentists Act 1984 (c. 24)); and
  - (b) has reasonable cause to believe that a person cared for by the service or accommodated in such premises is not receiving proper dental care,the authorised person may (either or both)—
  - (i) conduct in private a dental examination of, and with the consent of;
  - (ii) inspect any dental records relating to the treatment, by the service or in the premises, of,the person so cared for or accommodated.
- (11) An examination is in private for the purposes of subsection (9)(i) or (10)(i) above even if conducted in the presence of a third party provided that—
  - (a) the person examined so wishes and the authorised person does not object; or
  - (b) the authorised person so wishes and the person examined consents,to its being so conducted.

---

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

---

- (12) A person who proposes to exercise any power of entry or inspection conferred by this section shall, if so required, produce some duly authenticated document showing that the Commission has given the requisite authority.
- (13) Any person who—
- (a) obstructs, intentionally, the exercise of any power conferred by this section or by section 27 of this Act; or
  - (b) fails, without reasonable excuse, to comply with any requirement imposed under this or that section,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (14) In—
- (a) subsection (7)(a) above, “guardian”, “continuing attorney” and “welfare attorney” have the same meanings as in section 1(4)(c)(i) of the Adults with Incapacity (Scotland) Act 2000 ([asp 4](#));
  - (b) subsection (9)(i) above, “appropriate examination” means, where the authorised person is—
    - (i) a medical practitioner, a medical examination (whether or not including a physical examination); or
    - (ii) a registered nurse, a physical examination; and
  - (c) subsections (9), (10) and (11)(b) above, “consent” means consent in so far as the person examined is capable of giving consent.

## 26 Integrated inspections

- (1) The Commission and Her Majesty’s inspectors shall collaborate in matters relating to the regulation and inspection of such care services as are mentioned in paragraphs (a) to (c) of subsection (2) below.
- (2) The care services are—
- (a) a school care accommodation service;
  - (b) a secure accommodation service; and
  - (c) day care of children which is to any extent provided in the form of an educational activity.
- (3) In subsection (1) above, “Her Majesty’s inspectors” has the same meaning as in the Education (Scotland) Act 1980 ([c. 44](#)).

## 27 Further provision as regards inspections

- (1) An authorised person who has reasonable grounds to believe that a document or other material or thing found in premises which, under section 25 of this Act, that person is entitled to enter and inspect may be evidence of a failure to comply with any condition or requirement imposed by or under this Act, may seize and remove that document, material or thing.
- (2) An authorised person may—
- (a) require any other person to afford such facilities and assistance with respect to matters within that other person’s control as are necessary to enable the

---

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

---

- authorised person to exercise powers under the said section 25 or this section;  
and
- (b) take such measurements and photographs and make such recordings as the authorised person considers necessary for the exercise of those powers.
- (3) An authorised person is entitled to have access to, and to check the operation of, any computer and any associated apparatus which is or has been in use in connection with records which the authorised person is entitled to inspect.
- (4) The reference in section 25 of this Act to a person providing a care service includes, in the case of a service which is provided by a body corporate, a reference to a director, manager, secretary or other similar officer of the body.
- (5) Where a care service has been inspected under section 25(2) of this Act, the Commission—
- (a) shall prepare a report on the matters inspected; and
- (b) shall without delay send a copy of that report to the person providing that service.
- (6) Before finalising a report prepared under subsection (5) above, the Commission shall give the person providing the service inspected an opportunity of commenting on a draft of the report.
- (7) The Commission shall make copies of any report prepared under subsection (5) above available for inspection at its offices by any person at any reasonable time; and it shall take such other steps as it considers appropriate for publicising any such report.
- (8) A person who asks the Commission for a copy of any such report shall be entitled to have one on payment of a reasonable fee determined by the Commission; but nothing in this subsection prevents the Commission from providing a copy free of charge if it considers that to do so would be appropriate.
- (9) Copies of any report made available for inspection by a person at the Commission's offices under subsection (7) above, or provided to a person under subsection (8) above, shall be made available or provided in such a form as the person may reasonably request.

### *Regulations*

## **28 Regulations relating to the Commission, to registration and to registers**

- (1) Regulations may—
- (a) confer additional functions on the Commission;
- (b) make provision about the keeping of registers by the Commission;
- (c) make provision about registration under this Part or Part 2 of this Act and in particular about—
- (i) the making of applications for such registration;
- (ii) the content of certificates of registration; or
- (iii) categories of applicant who cannot competently make certain applications;
- (d) require the Commission to secure that, on such conditions, in such circumstances and, subject to subsection (2) below, on the payment of such fees as may be specified in the regulations, any person shall be afforded access

---

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

---

to, and provided with a copy of an entry in or with an extract from, a register kept by the Commission; or

- (e) except such part of a register as may be specified in the regulations from any requirement made by virtue of paragraph (d) above.
- (2) Regulations under paragraph (d) of subsection (1) above may specify circumstances in which the fees mentioned in that paragraph shall not be payable; and the fees shall in any event not be payable in any case where the Commission considers it appropriate to provide the copy or extract in question free of charge.
- (3) Before the Scottish Ministers make regulations under subsection (1) above, they shall consult such persons, or groups of persons, as they consider appropriate.

## **29 Regulations relating to care services**

- (1) Regulations may impose, in relation to care services, any requirements which the Scottish Ministers think fit for the purposes of this Act and may in particular make any provision such as is mentioned in subsection (2), (7) or (9) below.
- (2) Without prejudice to the generality of subsection (1) above, regulations may—
- (a) make provision as to the persons who are fit to provide, or act as manager in relation to, a care service;
  - (b) make provision as to the persons who are fit to be employed in the provision of a care service;
  - (c) make provision as to the fitness of premises to be used for the provision of a care service;
  - (d) in relation to child minding, require that no person lives, or is likely to live, at the domestic premises to be used for the provision of the service who is not fit to be in the proximity of children;
  - (e) make provision for securing the welfare of persons provided with a care service;
  - (f) make provision as to the management and control of operations carried out in the course of providing a care service;
  - (g) make provision as to the numbers of persons, or persons of any particular category, working at premises where a care service is provided or for the purposes of an agency providing such a service;
  - (h) make provision as to the management and training of such persons as are mentioned in paragraph (g) above;
  - (i) impose requirements as to the financial position of a provider of care services;
  - (j) require that a person acting as a medical practitioner, or in such other professional capacity as may be specified in the regulations, for persons provided with a care service shall not have a financial interest in that service;
  - (k) require the provider of a care service to appoint a manager in such circumstances as may be specified in the regulations; or
  - (l) require any person to whom subsection (3) below applies—
    - (i) to notify the Commission accordingly; and
    - (ii) to appoint a person to manage the care service in question.
- (3) This subsection applies to any person appointed as—
- (a) a receiver of the property of a company which is a person providing a service registered under this Part;

---

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

---

- (b) the liquidator or provisional liquidator of such a company;
  - (c) the supervisor of a voluntary arrangement of such a company under Part I of the Insolvency Act 1986 (c. 45) or the administrator of such a company appointed under Part II of that Act; or
  - (d) the permanent trustee or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) appointed in respect of a person providing a service registered under this Part.
- (4) Regulations under paragraph (a) of subsection (2) above may, in particular, make provision for prohibiting a person from acting as manager unless registered in, or in a particular part of, a register maintained by the Scottish Social Services Council.
- (5) Regulations under paragraph (b) of that subsection may, in particular, make provision for prohibiting a person from working, in the provision of a care service, in any such position as may be specified in the regulations unless registered as is mentioned in subsection (4) above.
- (6) Regulations under paragraph (e) of that subsection may, in particular, make provision—
- (a) as to—
    - (i) the promotion; and
    - (ii) the protection,  
of the health of the persons in question;
  - (b) for making available in premises where a care service is provided any service provided under or by virtue of the National Health Service (Scotland) Act 1978 (c. 29); and
  - (c) as to the control and restraint of such persons.
- (7) Regulations may make provision as to how the provision of care services is to be conducted, and such regulations may in particular—
- (a) make provision as to facilities and particular services to be provided;
  - (b) make provision as to the keeping of accounts;
  - (c) make provision as to the keeping of documents and records;
  - (d) require a person providing a care service to make returns to the Commission at such intervals as may be specified in the regulations;
  - (e) make provision as to the contents of a return made by virtue of paragraph (d) above and the period in respect of which and date by which the return is to be made;
  - (f) make provision as to the notification of any event—
    - (i) arising out of or in the course of; or
    - (ii) occurring in relation to,  
the provision of a care service;
  - (g) require the giving of notice by the person providing a care service of any period during which the manager of the service proposes to be absent;
  - (h) specify the information to be supplied in giving such notice as is mentioned in paragraph (g) above;
  - (i) provide for the making of adequate arrangements for the running of a care service during any period when the manager is absent;
  - (j) require the person providing a care service to give notice of any change in the identity of the manager;

---

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

---

- (k) without prejudice to paragraph (m) below, require—
    - (i) the person providing a care service to give notice of any intended change which will result in the service being provided, instead, by a different person; or
    - (ii) where an unforeseen change has had the result mentioned in subparagraph (i) above, the person who in consequence of that change is providing a care service to give notice accordingly;
  - (l) where an individual who has been providing a care service dies and no other person is providing the service, require the personal representatives of the individual to give notice of the death;
  - (m) require the person providing a care service, if that person is—
    - (i) a body corporate, to give notice of any change in the ownership of the body or of the identity of its officers; or
    - (ii) a firm, to give notice of any change in the identity of the persons who are its partners;
  - (n) require—
    - (i) arrangements to be made, by the person providing, or managing the provision of, a care service, for dealing with complaints made by or on behalf of those provided with, or seeking to be provided with, that service; and
    - (ii) that person to take steps to publicise such arrangements; or
  - (o) require a person who provides, or manages, an independent health care service, to make arrangements for securing that—
    - (i) any medical or psychiatric treatments; or
    - (ii) services such as are mentioned in subsection (8) below,

provided in or for the purposes of the hospital or clinic or (as the case may be) for the purposes of the agency, are of appropriate quality and meet appropriate standards.
- (8) For the purposes of subsection (7)(o)(ii) above, the services are—
- (a) medical treatment under—
    - (i) anaesthesia; or
    - (ii) sedation;
  - (b) dental treatment under—
    - (i) general anaesthesia; or
    - (ii) sedation;
  - (c) palliative care;
  - (d) obstetric services and, in connection with childbirth, medical services;
  - (e) termination of pregnancies;
  - (f) cosmetic surgery; and
  - (g) treatment using such—
    - (i) techniques; or
    - (ii) technology,

as may be specified in the regulations.
- (9) Regulations may make provision—

---

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

---

- (a) requiring the approval of the Scottish Ministers for the provision and use of accommodation for the purpose of restricting the liberty of children in residential premises where care services are provided; and
  - (b) imposing other requirements as to the placing of a child in accommodation provided for the purpose mentioned in paragraph (a) above, including a requirement to obtain the permission of any local authority who are looking after the child (“looking after” being construed in accordance with section 17(6) of the Children (Scotland) Act 1995 (c. 36)).
- (10) Regulations under any of subsections (1), (2), (7) and (9) above 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.
- (11) A person guilty of an offence under the regulations shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (12) Before the Scottish Ministers make regulations under any of subsections (1), (2), (7) and (9) above, they shall consult such persons, or groups of persons, as they consider appropriate.
- (13) Regulations under any of subsections (1), (2), (7) and (9) above may make different provision for different purposes.

#### *Transfer of staff*

### **30 Transfer of staff**

- (1) The Scottish Ministers shall by order make a scheme for the transfer to the Commission of persons who are employed, under a contract of employment with a local authority or Health Board, on work which would have continued but for the provisions of this Part.
- (2) Such a scheme may apply to all, or any description of, such employees or to any individual such employee.
- (3) Such a scheme may be made only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred under it.
- (4) The contract of employment of an employee transferred under such a scheme—
- (a) is not terminated by the transfer; and
  - (b) has effect from the date of transfer as if originally made between the employee and the Commission.
- (5) Without prejudice to the generality of subsection (4) above, where an employee is transferred under such a scheme—
- (a) all the rights, powers, duties and liabilities of the transferor under or in connection with the employee’s contract of employment are by virtue of this subsection transferred to the Commission on the date of transfer; and
  - (b) anything done before that date by, or in relation to, the transferor in respect of that contract or the employee is to be treated from that date as having been done by, or in relation to, the Commission.

---

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

---

- (6) Subsections (4) and (5) above do not transfer an employee’s contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if the employee objects to the transfer and so informs the transferor or the Commission.
- (7) Where an employee objects as mentioned in subsection (6) above, the contract of employment with the transferor is terminated immediately before the date of transfer; but the employee is not to be treated, for any purposes, as having been dismissed by the transferor.
- (8) This section does not prejudice any right of an employee to terminate the contract of employment if a substantial detrimental change in the employee’s working conditions is made; but no right to terminate that contract arises by reason only that, by virtue of this section, the identity of the employer changes unless it is shown that, in all the circumstances, the change is both—
- (a) significant; and
  - (b) detrimental,
- to the employee.
- (9) In this section—
- “date of transfer” means the date of transfer determined under the scheme in relation to the employee;
- “Health Board” means a Health Board constituted by order under section 2 of the National Health Service (Scotland) Act 1978 (c. 29); and
- “transferor” means the local authority, or as the case may be the Health Board, from whom the employee is or would be transferred under the scheme.

### *Miscellaneous*

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

Where, in the performance of their functions—

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

make arrangements with any person for that person to provide a care service, they shall ensure that the service, when provided, is registered under this Part.

## **32 Giving of notice**

- (1) In this Part and Part 2 of this Act, any reference to a notice being given to a person providing, or seeking to provide, a care service shall 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 shall be deemed not given until the third day after the day of posting.



---

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

---

- (2) For the purposes of subsection (1) above, 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.