
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 169

**SOCIAL CARE
PUBLIC HEALTH**

**The Public Services Reform (Scotland) Act
2010 (Health and Social Care) Savings and
Transitional Provisions (No. 2) Order 2011**

Made - - - - 28th February 2011
*Laid before the Scottish
Parliament* - - - - 1st March 2011
Coming into force - - 1st April 2011

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 132 and 133(1)(c) of the Public Services Reform (Scotland) Act 2010(1) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Public Services Reform (Scotland) Act 2010 (Health and Social Care) Savings and Transitional Provisions (No. 2) Order 2011 and comes into force on 1st April 2011.

(2) In this Order—

“the 2001 Act” means the Regulation of Care (Scotland) Act 2001(2);

“the 2010 Act” means the Public Services Reform (Scotland) Act 2010;

“the NHS Act” means the National Health Service (Scotland) Act 1978(3);

“care service” has the meaning given by section 47(1) of the 2010 Act;

“independent health care service” has the meaning given by section 10F of the NHS Act(4).

Appeal proceeds – savings provision

2.—(1) Where—

(1) 2010 asp 8.

(2) 2001 asp 8.

(3) 1978 c. 29.

(4) Section 10F of the NHS Act was inserted by the 2010 Act, section 108.

- (a) a person has been given notice by the Commission under section 17(3) of the 2001 Act of the Commission's decision to implement a proposal in relation to a condition notice⁽⁵⁾ or a notice under section 15 of that Act in respect of a care service or independent health care service;
- (b) that person has raised an appeal in respect of that decision under section 20 of the 2001 Act; and
- (c) that appeal has not been finally determined before 1st April 2011,

Part 1 of the 2001 Act will continue to apply for the purposes of the care service or independent health care service which is the subject of those appeal proceedings until the final determination of those proceedings.

(2) Article 2(1) of the first Savings and Transitional Order does not apply to any care service to which paragraph (1) applies.

(3) Article 10(1) of the first Savings and Transitional Order does not apply to any independent health care service to which paragraph (1) applies.

(4) For the purposes of this article—

“the Commission” means the Scottish Commission for the Regulation of Care⁽⁶⁾;

“the first Savings and Transitional Order” means the Public Services Reform (Scotland) Act 2010 (Health and Social Care) Savings and Transitional Provisions Order 2011⁽⁷⁾.

Deemed registration of service – transitional provision

3. Where the final determination of an appeal under section 20 of the 2001 Act is that the registration of a care service or an independent health care service is not cancelled, then either—

- (a) where the service is a care service, it is to be treated for all purposes as if it had been registered under Part 5 of the 2010 Act; or
- (b) where the service is an independent health care service, it is to be treated for all purposes as if it had been registered under section 10P of the NHS Act.

St Andrew's House,
Edinburgh
28th February 2011

S ROBISON
Authorised to sign by the Scottish Ministers

(5) Section 13 of the 2001 Act gives a definition of “condition notice”.

(6) The Scottish Commission for the Regulation of Care was established by section 1 of the [Regulation of Care \(Scotland\) Act 2001 \(asp 8\)](#).

(7) [S.S.I. 2011/121](#).

EXPLANATORY NOTE

(This note is not part of the Order)

[S.S.I. 2011/121](#) already made various savings and transitional provisions in light of Public Services Reform (Scotland) Act 2010 relating to Social Care and Social Work Improvement Scotland (“SCSWIS”) and Healthcare Improvement Scotland (“HIS”).

This Order makes further provisions for SCSWIS and HIS and provides that where an appeal in respect of a care service or independent health care service is ongoing on the 1st April 2011, Part 1 of the Regulation of Care (Scotland) Act 2001 shall continue in force for the purposes of the service which is the subject of the appeal. If following the conclusion of such an appeal the registration of a care service or independent health care service is not cancelled that service is deemed to be registered with SCSWIS or HIS.