

2002 No. 113

SOCIAL CARE

The Regulation of Care (Applications and Provision of Advice) (Scotland) Order 2002

Made 8th March 2002

Laid before the Scottish Parliament 8th March 2002

Coming into force 1st April 2002

The Scottish Ministers, in exercise of the powers conferred by sections 4(3), 7(2)(a), 14(3) and 33(2) of the Regulation of Care (Scotland) Act 2001(a) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Regulation of Care (Applications and Provision of Advice) (Scotland) Order 2002 and shall come into force on 1st April 2002.

(2) In this Order—

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

“the applicant” means the person making an application for registration of a care service under the Act;

“public body” means a body established by or under any enactment; and

“relative” in relation to an applicant means a spouse, parent, grandparent, brother, sister, child, grandchild, uncle, aunt, nephew or niece of the applicant, a person who is living with the applicant as if that person were the applicant’s husband or wife, or a person of the same sex as the applicant who is living with the applicant in a relationship which has the characteristics (other than that the persons are of the opposite sex) of husband and wife.

(3) In this Order, references to employing a person include employing a person whether or not for payment and whether under a contract of service, a contract for services or otherwise than under a contract, and allowing a person to work as a volunteer; and references to employment, to an employee or to a person being employed shall be construed accordingly.

Applications for registration under Part 1 of the Act

2. An application for registration under section 7(1) of the Act shall provide the information specified in relation to the particular application in the Schedule.

Local authority applications under Part 2 of the Act

3. An application by a local authority for registration under section 33(1)(c) of the Act shall provide—

(a) the information set out in the Schedule;

(b) a statement that the local authority have determined that they must provide the service in order to fulfil a statutory duty; and

(a) 2001 asp 8. See section 77 for the definition of “prescribed”.

- (c) a statement of the reasons for that determination (including identification of the statutory provisions which in the opinion of the local authority give rise to that duty).

Variation or removal of conditions

4.—(1) An application under section 14(1)(a) of the Act for variation or removal of a condition relating to registration of a care service shall specify—

- (a) the date on which it is proposed that the variation or removal is to take effect;
- (b) the reason or reasons for making the application; and
- (c) any changes which the person providing the service proposes to make in relation to the care service as a consequence of the proposed variation or removal.

(2) Except where the Commission has agreed in writing that an earlier date may be specified, the date referred to in paragraph (1)(a) shall be not less than three months after the date on which the application is made.

Cancellation of registration

5.—(1) An application under section 14(1)(b) of the Act for cancellation of the registration of a care service shall specify—

- (a) the date on which it is proposed that the cancellation is to take effect;
- (b) the reason or reasons for making the application;
- (c) any arrangements made by the provider with the aim of ensuring that persons using the service will continue to receive a similar service (including, where appropriate, accommodation) from the provider or another person;
- (d) whether notice of the application has been given to any of the persons to whom paragraph (2) applies and the form and terms of any such notice; and
- (e) where notice has not been given to any of the persons to whom paragraph (2) applies, whether there were any circumstances which made it impracticable for the person providing the service to give such notice.

(2) The persons to whom this paragraph applies are—

- (a) any person using the service when the application is made;
- (b) any person appearing to be a representative or relative of the person using the service; and
- (c) any local authority or health body.

(3) Except where the Commission has agreed in writing that an earlier date may be specified, the date referred to in paragraph (1)(a) shall be not less than three months after the date on which the application is made.

Provision of advice

6. The Mental Welfare Commission for Scotland which is continued in being by section 2 of the Mental Health (Scotland) Act 1984(a) is prescribed for the purposes of section 4(3)(b)(vi) of the Act (persons prescribed by the Scottish Ministers to be provided by the Commission with advice).

MALCOLM CHISHOLM
A member of the Scottish Executive

St Andrew's House,
Edinburgh
8th March 2002

(a) 1984 c.36.

SCHEDULE

1. The full name, and the address and telephone number and any facsimile number and electronic mail address, of the applicant.
2. If the applicant is not an individual—
 - (a) its name;
 - (b) the address, telephone number, and any facsimile number of the applicant's principal office and (where it has one) registered office;
 - (c) the full name, and the address and telephone number and any facsimile number and electronic mail address, of any person to whom the applicant wishes enquiries concerning the care service to be addressed; and
 - (d) the full name, date of birth, address and telephone number of every person who is or purports to act in the capacity of a person who is—
 - (i) where the applicant is a body corporate other than a local authority, a director, manager or secretary of the body corporate;
 - (ii) where the applicant is a firm, a partner in the firm; or
 - (iii) where the applicant is an unincorporated association other than a firm, concerned in the management or control of the association, and in each case whether registration of any care service provided by such a person, or in respect of an activity specified in paragraph 20(a) in which the person has engaged, has ever been cancelled other than at that person's request.
3. Where the applicant is not the person who is to manage the care service, the full name, address and telephone number, and any facsimile number and electronic mail address, of the person who is to manage the service
4. The name of the care service and address of any premises from which the care service is to be provided.
5. The times at and periods during which it is proposed to provide the care service.
6. The date on which the care service was, or is proposed to be, commenced.
7. Specification of the type of care service, in terms of section 2(1) of the Act, which is to be provided.
8. A statement of the aims and objectives of the care service.
9. Where the care service is a care home service or is to be provided either wholly or in part to children, the following information about the persons to whom the care service is to be provided:—
 - (a) their age range;
 - (b) their sex;
 - (c) the maximum number of such persons; and
 - (d) if those persons are to be selected by reference to criteria other than age or sex, those criteria.
10. A statement of the way in which, having regard to the needs of persons using the care service, sufficient suitably qualified and competent employees are to be obtained.
11. Details of the persons proposed to be employed in the care service, specifying the total number and in each case including—
 - (a) job title;
 - (b) duties and responsibilities;
 - (c) age and sex;
 - (d) whether employed on a full-time or part-time basis, and, if part-time, the number of hours;
 - (e) qualifications, skills and experience; and
 - (f) details of any registration which the person is required by any enactment to hold in order to perform the duties for which the person is to be employed in the care service.

- 12.** Proposed ratios of employees to service users during the day and at night.
- 13.** Details of any policy which the applicant has on recruitment, interviewing, selection and checking of references and other documentation for all persons to be employed in the provision of the care service.
- 14.** Details of any proposed programme for induction, development, and continuing training of employees.
- 15.** Except where the applicant is a local authority or proposes to provide only child minding–
- (a) a business plan and details as to cash flow covering all care services provided by the applicant which are of the type in respect of which the application is made; and
 - (b) where available, annual accounts for any part of the three year period preceding the date of application during which the care service was in operation.
- 16.** Where the applicant is an individual–
- (a) a copy of the applicant’s birth certificate, and
 - (b) each address occupied by the applicant in the ten year period preceding the application and the length of time at each such address.
- 17.** A statement that the applicant is (or as the case may be is not) the owner of the care service.
- 18.** Where the applicant is an individual, details of professional or technical qualifications held by the applicant.
- 19.** Where the applicant is an individual who has previously been in employment other than as a volunteer at any time in the previous five years, details of employment history, including the name and address of each employer for that period.
- 20.** A statement whether at any time the applicant–
- (a) is a person who has–
 - (i) provided a care service;
 - (ii) carried on a nursing home within the meaning of the Nursing Homes Registration (Scotland) Act 1938(a);
 - (iii) carried on an agency for the supply of nurses within the meaning of the Nurses (Scotland) Act 1951(b);
 - (iv) carried on an establishment within the meaning of the Social Work (Scotland) Act 1968(c);
 - (v) acted as a child minder or provided day care for children within the meaning of section 71 of the Children Act 1989(d); or
 - (vi) been granted approval under section 3 of the Adoption (Scotland) Act 1978(e), or has engaged in a similar activity under legislation of similar effect in force in England, Wales or Northern Ireland;
 - (b) has been employed by any person specified in sub-paragraph (a); or
 - (c) has, or has had, any interest in any activity which is specified in that sub-paragraph.
- 21.** A statement whether any registration relating–
- (a) to a care service provided by the applicant; or
 - (b) to the applicant in respect of an activity specified in paragraph 20(a), has been cancelled and, if it has, of the reason or reasons for that cancellation.
- 22.** Where the applicant is an individual, the name and address of two persons who are able to provide a reference as to the applicant’s good character and competence to provide a care service of the kind which the applicant proposes to provide–
- (a) neither of whom shall be a relative of the applicant;
 - (b) where the applicant has been employed by any person for any period greater than three months in the five years preceding the date of the application, one of whom shall be such a person; and

(a) 1938 c.73.
 (b) 1951 c.55.
 (c) 1968 c.49.
 (d) 1989 c.41.
 (e) 1978 c.28.

- (c) at least one of whom shall be a person who is in a class which is specified by the Adults with Incapacity (Countersignatories of Applications for Authority to Intromit) (Scotland) Regulations 2001(a).

23. Where the applicant is an individual and is the person who is to manage the care service, a declaration of opinion by the applicant that the applicant is physically and mentally fit to manage the service.

24. A statement as to whether the applicant is a person whose estate has been sequestrated in Scotland or who has been adjudged bankrupt elsewhere than in Scotland or in relation to whose estate a judicial factor has been appointed or who has granted a trust deed for the benefit of the person's creditors.

25. Except where the applicant is a local authority, a statement from a bank as to the applicant's financial standing.

26. In respect of the manager of the care service, the information specified in paragraphs 18 to 23, read in each case as though references to the applicant were references to the person who is to manage the care service.

27. Except where the applicant is a public body a certificate of insurance in respect of liability which may be incurred in relation to the care service in respect of death, injury, public liability, damage or other loss.

28. A description of any premises, facilities and services to be used for the provision of the care service.

29. A statement as to whether any premises to be used for the provision of the care service are or will be capable of being used for the purposes of achieving the aims and objectives of the care service without the need for planning permission, building works or conversion of the premises and, if the premises are not capable of such use at the date the application is made, details of the permission, works or conversion needed.

30. A list of persons who will be residing on a regular basis in any premises from which the care service is provided other than the applicant or any employee or user of the service.

31. Where the care service is a care home service or an independent health care service, details of arrangements for control of infection.

32. Where the care service is an independent health care service—

- (a) a description of the equipment and facilities to be provided;
- (b) details of any arrangements for any supply of blood and blood products;
- (c) details of any arrangements for any provision of pathology and radiology services;
- (d) details of any services which are to be provided to children; and
- (e) where the independent health care service is an independent hospital, details of any arrangements for the attendance at all times of a registered medical practitioner.

33. Where the care service is provided by the managers of an independent school within the meaning of the Education (Scotland) Act 1980(b), confirmation that the school has been registered with the Registrar of Independent Schools in terms of section 98 or that an application for such registration has been lodged.

(a) S.S.I. 2001/78.
(b) 1980 c.44.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies the information which is to be provided by a person who makes an application for registration of a care service under the Registration of Care (Scotland) Act 2001. Where the application is made under Part 1 of the Act the information is specified by article 2 and the Schedule. Where the application is made under Part 2 of the Act the information is specified by article 3 and the Schedule.

The Order also specifies the information which is to be provided by a person who makes an application for variation or removal of a condition of registration relating to registration of a care service (article 4) or for cancellation of the registration of a care service (article 5).

The Order also prescribes the Mental Welfare Commission as a body to which the Scottish Commission for the Regulation of Care is under section 4(3)(b) of the Act to provide advice when asked to do so.

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