

2005 No. 98

SOCIAL CARE

The Regulation of Care (Scotland) Act 2001 (Transitional Provisions) Order 2005

<i>Made</i> - - - -	<i>1st March 2005</i>
<i>Laid before the Scottish Parliament</i>	<i>2nd March 2005</i>
<i>Coming into force</i> - -	<i>1st April 2005</i>

The Scottish Ministers in exercise of the powers conferred on them by section 80(2) of the Regulation of Care (Scotland) Act 2001(a), after consulting with such persons or groups of persons as they consider appropriate in accordance with that section, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Regulation of Care (Scotland) Act 2001 (Transitional Provisions) Order 2005 and shall come into force on 1st April 2005.

(2) In this Order “the Act” means the Regulation of Care (Scotland) Act 2001.

Transitional provisions

2.—(1) Where immediately before 1st April 2005 a person was providing a school care accommodation service to which this article applies, and continues to provide that service on that date, the service shall be treated for all purposes as if it had been registered under Part 1 of the Act on that date.

(2) Subject to paragraph (3), the service ceases to be treated as registered by virtue of paragraph (1)–

- (a) where the person providing the service has before 31st December 2005 made an application for registration of the service under section 7(1) of the Act (application for registration), on 30th September 2006; or
- (b) in any other case, on 31st December 2005.

(3) The service ceases to be treated as registered by virtue of paragraph (1) before 30th September 2006 or 31st December 2005 as mentioned in paragraph 2(a) or (b) on whichever of following first occurs–

- (a) where the Commission decides to refuse the application and–
 - (i) no appeal is made under section 20(1) of the Act against the decision, the fifteenth day after the day on which notice of the decision is given under section 17(3) of the Act (notice of decision to implement a proposal in relation to which it has given a person a condition notice or a notice under section 15 of the Act);

(a) 2001 asp 8.

- (ii) such an appeal is made timeously and the sheriff confirms the decision, the day on which the sheriff does so; or
 - (iii) such an appeal is made timeously but is abandoned, the day on which abandonment of the appeal is intimated to the sheriff clerk, or if abandonment is not so intimated the day on which the sheriff deems the appeal to have been abandoned;
- (b) where the Commission decides (other than in accordance with an application under section 14(1)(b) of the Act (application for cancellation of the registration)) to cancel the registration of the service effected by virtue of paragraph (1) and—
- (i) no appeal is made under section 20(1) of the Act against the decision, the fifteenth day after the day on which notice of the decision is given under section 17(3) of the Act;
 - (ii) such an appeal is made timeously and the sheriff confirms the decision, the day on which the sheriff does so; or
 - (iii) such an appeal is made timeously but is abandoned, the day on which abandonment of the appeal is intimated to the sheriff clerk, or if abandonment is not so intimated the day on which the sheriff deems the appeal to have been abandoned;
- (c) where the sheriff grants an application by the Commission under section 18 of the Act (urgent procedures for cancellation of registration, etc.) for cancellation of the registration of the service effected by virtue of paragraph (1), the day on which the sheriff does so; or
- (d) on the day on which the person ceases to provide the service.
- (4) This article applies to a school care accommodation service which provides residential accommodation where it is—
- (a) provided by or under arrangements made by the managers of an independent school and does not provide personal care or support;
 - (b) provided by an education authority with respect to a special school within the meaning of the Education (Scotland) Act 1980(a); or
 - (c) a hostel provided by the local authority for the use of children to enable them to attend school.

RHONA BRANKIN
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
1st March 2005

(a) 1980 c.44. "Special school" is defined in section 135(1) of that Act which was relevantly amended by the Education (Scotland) Act 1981 (c.58), Schedule 2, Part I, paragraph 4.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitional provisions. Persons providing a school care accommodation service mentioned in article 2(3) on 1st April 2005 are deemed to have registered the service under Part 1 of the Regulation of Care (Scotland) Act 2001 (asp 8) (“the Act”).

Article 2(2) provides that deemed registration will cease in the following circumstances–

- where the person providing the service has applied before 31st December 2005 for registration under the Act, on 30th September 2006.
- where such an application for registration is made–
 - on the date that the Commission refuses an application where no appeal is made under section 20(1) of the Act;
 - on the date that the sheriff confirms the Commission’s decision after a timeous appeal has been made;
 - where an appeal is made but is later abandoned, the date on which that is intimated to the sheriff clerk or, where there is no intimation, the date on which it is deemed by the Sheriff to be abandoned.
- where the date the Commission decides (other than in the case of an application from the provider) to cancel the deemed registration–
 - where there is no appeal under section 17(3) of the Act from the provider against the Care Commission’s decision to cancel the registration, the fifteenth day after the day the Care Commission gave notice of that intention;
 - where there is such appeal and the sheriff decides to grant it, the day the sheriff decides to do so;
 - where an appeal is made and later abandoned, the date on which that is intimated to the sheriff clerk or, where there is no intimation, the date on which it is deemed by the court to be abandoned.
- on the day on which the sheriff grants an application by the Commission under section 18 of the Act for cancellation of registration;
- on the day the person ceases to provide the service; or
- in any other case, on 31st December 2005.

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