Regulation of Care (Scotland) Act 2001

2001 asp 8

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 31st May 2001 and received Royal Assent on 5th July 2001

An Act of the Scottish Parliament to establish the Scottish Commission for the Regulation of Care and the Scottish Social Services Council; to make provision for the registration and regulation of care services and for the registration, regulation and training of social service workers; to enable local authorities to make grants in respect of activities relating to child care and family support and to make direct payments to children in respect of certain care services; to enable the Scottish Ministers to delegate a power to make certain grants and loans for social work; to make further provision as respects payments by local authorities towards maintenance of certain children residing with and being cared for by persons other than their parents; to enable local authorities to provide and maintain residential accommodation in which nursing is provided; to make further provision as respects persons who have been looked after by local authorities; to amend the definition of “place of safety" in the Children (Scotland) Act 1995; to make further provision as respects the appointment for children of curators ad litem, reporting officers and safeguarders; and for connected purposes.

Modifications etc. (not altering text)

C1 Act modified (27.3.2002) by S.S.I. 2002/162, **art. 7(1)**

PART 1

THE COMMISSION AND CARE SERVICES

Modifications etc. (not altering text)

C2 Pt. 1 modified (1.4.2002) by S.S.I. 2002/162, **arts. 3**, 6

C3 Pt. 1 modified (22.12.2003) by The Regulation of Care (Scotland) Act 2001 (Transitional Provisions and Revocation) Order 2003 (S.S.I. 2003/587), arts. 1, 2 (as amended (21.6.2004) by The Regulation of Care (Scotland) Act 2001 (Transitional Provisions) Amendment Order 2004 (S.S.I. 2004/293), arts. 1, **2**)

C4 Pt. 1 modified (1.4.2005) by The Regulation of Care (Scotland) Act 2001 (Transitional Provisions) Order 2005 (S.S.I. 2005/98), arts. 1(1), **2**

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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;
- (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

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(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.

[[F1](4) A school care accommodation service is a service which—

(a) consists of the provision of residential accommodation to a pupil in a place in or outwith a public, independent or grant-aided school;

(b) is provided (whether or not during term-time) for the purpose of or in connection with the pupil's attendance at the school (whether current or otherwise); and

(c) is provided to the pupil by—

(i) an education authority or the managers of an independent or grant-aided school; or

(ii) any person under arrangements made between that person and any such authority or managers.

(4A) For the purposes of subsection (4)(c)(i) above, a service which—

(a) falls within the description given by subsection (4)(a), (b) and (c)(ii) above; and

(b) is provided to the pupil in domestic premises,

is to be regarded as being provided by that authority or (as the case may be) those managers.

(4B) A service may be excepted from the definition in subsection (4) above 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 **[**[F2],

but a service may be excepted from this definition by regulations**]**

(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

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(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).

(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

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(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.

(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.

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(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

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

Textual Amendments

F1 S. 2(4)-(4B) substituted for s. 2(4) (1.9.2007) by Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14), **ss. 82(1)**, 101(2) (with ss. 90, 99); S.S.I. 2007/385, art. 2, sch.

F2 Words in s. 2(5) inserted (17.10.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 29**, 43(3); S.S.I. 2005/492, art. 3(a), sch. 1

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Modifications etc. (not altering text)

C5 S. 2(2) restricted (1.4.2002) by S.S.I. 2002/120, **reg. 2**
C6 S. 2(4) restricted (1.4.2002) by S.S.I. 2002/120, **reg. 3**
C7 S. 2(6) restricted (1.4.2002) by S.S.I. 2002/120, **reg. 4**
C8 S. 2(20) restricted (1.4.2002) by S.S.I. 2002/120, **reg. 5**

Commencement Information

I1 S. 2(1)(a)-(h)(l)(m)(2)-(4)(5)(a)(b)(6)(9)(17)-(26)(28) in force at 1.4.2002 and s. 2(5)(c)(7)(10) in force for certain purposes at 1.4.2002 by S.S.I. 2002/162, **art. 2(a)-(d)** (subject to arts. 3-13)
I2 S. 2(1)(i)(j) (11)-(15) in force at 1.4.2004 by S.S.I. 2004/100, **art. 2(a)** (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)
I3 S. 2(1)(k)(16) in force at 20.6.2006 by S.S.I. 2006/275, **art. 2** (with art. 3) (as amended (18.3.2007) by S.S.I. 2007/67, art. 2)
I4 S. 2(1)(n)(8)(27) in force at 1.4.2003 by S.S.I. 2003/205, **art. 2(a)** (with art. 3)
I5 S. 2(7) in force at 1.4.2003 in so far as not already in force by S.S.I. 2003/205, **art. 2(a)** (with art. 3)
I6 S. 2(10) in force at 1.4.2004 in so far as not already in force by S.S.I. 2004/100, **art. 2(a)** (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

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.

Commencement Information

I7 S. 3 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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,

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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.

Commencement Information

I8 S. 5 partly in force; s. 5 not in force at Royal Assent see s. 81(2); s. 5(1)(2) in force at 1.10.2001 by S.S.I. 2001/304, **art. 2(1)(a)**; s. 5(3) in force at 1.4.2002 by S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

I9 S. 5(4) in force at 1.4.2004 by S.S.I. 2004/100, **art. 2(b)** (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

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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.

(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.

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(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.

Commencement Information

I10 S. 7 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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.

Commencement Information

I11 S. 8 in force at 1.4.2003 by S.S.I. 2003/205, **art. 2(b)** (with art. 3)

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,

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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.

Commencement Information
I12 S. 9 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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.

Commencement Information
I13 S. 10 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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).

Commencement Information

I14 S. 11 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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.

Commencement Information

I15 S. 12 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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.

Commencement Information

I16 S. 13 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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.

Commencement Information

I17 S. 14 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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—

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Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

Commencement Information

I18 S. 15 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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.

[[F3](2) Where such a notice has been given—

(a) the Commission may not decide to implement the proposal until (whichever first occurs)—

(i) where the person to whom the notice was given makes such representations as are mentioned in subsection (1) above, it has considered those representations;

(ii) that person notifies the Commission in writing that such representations will not be made;

(iii) the period of fourteen days mentioned in that subsection elapses without such representations being made and without the Commission receiving such notification; and

(b) where the circumstances are as mentioned in paragraph (a)(ii) or (iii) above, the Commission shall implement the proposal unless it appears to it that it would be inappropriate to do so.**]**

(3) Subsections (1) and (2) of this section do not apply as respects a condition notice given by virtue of section 35.

Textual Amendments

F3 S. 16(2) substituted (17.10.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 30(2)**, 43(3); S.S.I. 2005/492, art. 3(a), sch. 1

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I19 S. 16 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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.

Commencement Information

I20 S. 17 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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;

(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,

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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.

Commencement Information

I21 S. 18 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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.

Status: *Point in time view as at 03/12/2007.*
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Commencement Information

I22 S. 19 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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.

Commencement Information

I23 S. 20 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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 actings 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.

Commencement Information

I24 S. 21 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

22 False statements in applications under Part 1

Any person who, in an application—

(a) for registration under this Part; or

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(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.

Commencement Information

I25 S. 22 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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;

(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.

Commencement Information

I26 S. 23 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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

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(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.

Commencement Information

I27 S. 24 wholly in force at 1.4.2002; s. 24 not in force at Royal Assent see s. 81(2); s. 24(1) in force at 1.10.2001 by S.S.I. 2001/304, **art. 2(1)(a)**; s. 24(2)(3) in force at 1.4.2002 by S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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

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(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

[[F4](i) if the service is a housing support service provided by a registered social landlord (being a body registered in the register maintained under section 57 of the Housing (Scotland) Act 2001), 36 months,

(ii) if the service is day care of children and is provided for children aged 3 years or over only, is a child care agency or is a nurse agency, 24 months, or

(iii) in the case of any other service, 12 months,**]**

which immediately follows registration; and

(b) that after an exercise of the powers so conferred no greater period than

[[F5](i) if the service is a housing support service provided by a registered social landlord (being a body registered in the register maintained under section 57 of the Housing (Scotland) Act 2001), 36 months,

(ii) if the service is day care of children and is provided for children aged 3 years or over only, is a child care agency or is a nurse agency, 24 months, or

(iii) in the case of any other service, 12 months,**]**

elapses before those powers are again exercised.

[[F6](5A) The Scottish Ministers may, after consulting the Commission and thereafter such other persons (or groups of persons) as they consider appropriate, by order amend—

(a) subsection (3)(a) above by substituting for "twelve months" in either or both sub-paragraphs (i) and (ii) a different period (being a period which is not less than twelve months);

(b) subsection (5) above by substituting for "twelve months" in either or both paragraphs (a) and (b) a different period (being a period which is not less than twelve months).

(5B) An order under subsection (5A) above may make different provision for different purposes.**]**

(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;

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(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—

(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.

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(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.

(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.

Textual Amendments

F4 Words in s. 25(5)(a) substituted (1.4.2007) by The Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2007 (S.S.I. 2007/231), arts. 1, **2**

F5 Words in s. 25(5)(b) substituted (1.4.2007) by The Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2007 (S.S.I. 2007/231), arts. 1, **2**

F6 S. 25(5A)(5B) inserted (17.10.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 31(2)**, 43(3); S.S.I. 2005/492, art. 3(a), sch. 1

Commencement Information

I28 S. 25 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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;

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(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).

Commencement Information

I29 S. 26 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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 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.

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

Commencement Information
I30 S. 27 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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 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;

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(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;

(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;

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(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;

(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 sub-paragraph (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

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(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—

(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.

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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.

(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.

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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.

Commencement Information

I31 S. 31 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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.

(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.

Commencement Information

I32 S. 32 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

PART 2

LOCAL AUTHORITY ADOPTION AND FOSTERING SERVICES ETC.

33 Local authority applications for registration under Part 2

(1) A local authority who seek to provide—

(a) an adoption service mentioned in subsection (11)(a) of section 2 of this Act;

(b) a fostering service mentioned in subsection (14)(a) or (c) of that section; or

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(c) any other care service if it is a service which the authority determine they must provide in order to fulfil a statutory duty,

shall make an application to the Commission for registration of the service.

(2) An application shall be made in such manner and give such information 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) of that section.

(3) Where in relation to an application under subsection (1)(c) above the Commission does not agree with the determination made by the authority, it shall so notify the authority and the Scottish Ministers, giving its reason for not so agreeing.

(4) On receiving notification under subsection (3) 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 not justified, the application shall be taken to have been duly made not under this section but under section 7 of this Act and shall be dealt with accordingly.

Commencement Information

I33 S. 33(1)(c)(2)(3)(4) in force at 1.4.2002 by S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

I34 S. 33(1)(a)(b) in force at 1.4.2004 by S.S.I. 2004/100, **art. 2(c)** (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

34 Grant of local authority application under Part 2

(1) Subject to subsection (4) of section 33 of this Act, the Commission—

(a) shall grant an application made under subsection (1) of that section unconditionally or subject to such conditions as the Commission thinks fit to impose; or

(b) shall propose to grant it subject to such conditions as the Commission thinks fit to impose,

and shall give the authority notice—

(i) that it has been granted; or

(ii) as the case may be, of the conditions subject to which it is proposed (under paragraph (b) above) that it should be granted.

(2) On granting the application, the Commission shall issue a certificate of registration to the authority.

(3) Subsection (4) of section 9 of this Act shall have effect in relation to a certificate issued under subsection (2) above as it has in relation to a certificate issued under subsection (3) of that section.

Commencement Information

I35 S. 34 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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35 Condition notices: services registered under Part 2

Section 13(1) of this Act shall apply to a local authority providing a care service registered under this Part as that section applies to a person providing a care service registered under Part 1 of this Act.

Commencement Information

I36 S. 35 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

36 Applications under Part 2 in respect of conditions

(1) A local authority providing a care service registered under this Part may apply to the Commission for the variation or removal of any condition for the time being in force in relation to the registration.

(2) Subsection (2) of section 33 of this Act shall apply to an application under subsection (1) above as it applies in relation to an application under subsection (1) of that section.

(3) If the Commission—

(a) decides to grant an application under subsection (1) above, it shall give the authority notice of its decision, stating the condition varied or removed, and issue a new certificate of registration; or

(b) proposes to refuse such an application, it shall give the authority notice of, and a statement of the reasons for, that proposal.

Commencement Information

I37 S. 36 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

37 Right to make representations to Commission under Part 2 as respects conditions

(1) A notice to which this section applies shall state that, within fourteen days after service of the notice, the local authority to whom it is given may make written representations to the Commission concerning any matter which they wish to dispute.

[F7(2) Where a notice to which this section applies has been given—

(a) the Commission may not decide to implement the proposal until (whichever first occurs)—

(i) where the local authority to whom the notice was given make such representations as are mentioned in subsection (1) above, it has considered those representations;

(ii) the local authority notify the Commission that such representations will not be made;

(iii) the period of fourteen days mentioned in that subsection elapses without such representations being made and without the Commission receiving such notification; and

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(b) where the circumstances are as mentioned in paragraph (a)(ii) or (iii) above, the Commission shall implement the proposal unless it appears to it that it would be inappropriate to do so.**]**

(3) This section applies to—

(a) a notice under section 34(1)(ii) of this Act;

(b) a condition notice under section 13(1) of this Act, as applied by section 35; and

(c) a notice under section 36(3)(b) of this Act.

Textual Amendments

F7 S. 37(2) substituted (17.10.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 30(3)**, 43(3); S.S.I. 2005/492, art. 3(a), sch. 1

Commencement Information

I38 S. 37 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

38 Notice of Commission's decision under Part 2

(1) If the Commission decides to implement a notice to which section 37 of this Act applies, it shall give the local authority to which that notice was given notice of its decision.

(2) A notice under subsection (1) above shall—

(a) explain the right of appeal conferred by section 39 of this Act; and

(b) in the case of a decision—

(i) to grant an application in respect of which there has been a proposal under section 34(1)(b); 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) below, a decision to implement a notice to which section 37 of this Act applies shall not take effect—

(a) if no appeal is brought, until the period of fourteen days referred to in section 39(1) of this Act has elapsed; and

(b) if an appeal is brought, until that appeal is finally determined or abandoned.

(4) Where the authority notify the Commission in writing, before the period of fourteen days referred to in section 39(1) of this Act has elapsed, that there will be no appeal against a notice under section 34(1)(ii), that notice shall take effect on receipt of such notification by the authority.

Commencement Information

I39 S. 38 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

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39 Appeal against decision under Part 2

(1) A local authority given notice of a decision under section 38(1) may, within fourteen days after that notice is given, appeal to the sheriff against the decision.

(2) Subsection (2) of section 20 of this Act shall apply to an appeal under subsection (1) above as it applies to an appeal under subsection (1) of that section.

Commencement Information

I40 S. 39 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

40 Offences under Part 2

(1) Sections 21(1) and (3) and 23 of this Act shall apply in relation to a care service registered under this Part as they apply in relation to such a service registered under Part 1 of this Act; and section 21(2) shall apply for the purposes of this Part as if the reference in that section to section 9(4) of this Act were a reference to section 9(4) as applied by section 34(3) of this Act.

(2) Section 22 of this Act shall apply to a person who makes—

(a) an application for registration under this Part; or

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

as it applies to a person who makes an application mentioned in paragraph (a) or (b) of that section.

Commencement Information

I41 S. 40 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

41 Report to Scottish Ministers

(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, the Commission shall forthwith—

(a) report that fact; and

(b) give a copy of the improvement notice,

to the Scottish Ministers.

(2) Within fourteen days after the expiry of the period specified in the improvement notice, the Commission shall 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 shall 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) Without prejudice to subsection (1) above, in a case where—

(a) any person has been convicted of a relevant offence in relation to the service provided by the authority; or

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(b) it appears to the Commission that that service is being, or has at any time been, carried on other than in accordance with the relevant requirements,

the Commission shall 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—

(a) paragraph (a) of subsection (3) 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 there should be a report to the Scottish Ministers under that subsection; and

(b) paragraph (b) of that subsection and section 42 of this Act, the following are relevant requirements—

(i) any requirements (or conditions) imposed by or under this Act;

(ii) the requirements of regulations made under this Act; or

(iii) any requirements (or conditions) imposed by, under or by virtue of such other Act as may be prescribed.

(5) The Commission shall report and provide information to the Scottish Ministers on such other matters in relation to a care service registered under this Part as may be prescribed.

Commencement Information

I42 S. 41 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

42 Default powers of Scottish Ministers

(1) If the Scottish Ministers (having received a report under section 41 of this Act or otherwise) are satisfied that a local authority providing a care service registered under this Part are, 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) below in respect of the matter.

(2) The action is—

(a) to make an order declaring the authority to be in default; and

(b) 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 fail to comply with a direction under subsection (2) above—

(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 Lord Advocate, order specific performance of those steps.

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) All expenses of the Scottish Ministers under subsection (3) above shall be recoverable as a debt due by the authority to them.

Commencement Information

I43 S. 42 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

PART 3

THE COUNCIL

Constitution

43 Constitution of Scottish Social Services Council

(1) There shall be a body corporate, to be known as the Scottish Social Services Council (in the following provisions of this Act referred to as "the Council"), which—

(a) shall exercise the functions conferred on it by this Act or any other enactment; and

(b) shall have the general duty of promoting high standards—

(i) of conduct and practice among social service workers; and

(ii) in their education and training.

(2) The Council 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 2 to this Act shall have effect with respect to the Council.

Registration

44 Register of social workers and of other social service workers

(1) The Council shall maintain a register of—

(a) social workers;

[F8(aa) visiting social workers from relevant European states;]

(b) social service workers of any other description prescribed; and

(c) persons—

(i) participating in a course, approved by it under section 54(1) of this Act, for those wishing to become; or

(ii) employed in positions probationary to their becoming,

social workers or social service workers of such other description.

[F9(2) There shall be a separate part of the register for—

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) social workers;
(b) visiting social workers from relevant European States;
(c) each description of social service workers prescribed by virtue of paragraph (b) of subsection (1) above; and
(d) such persons as are mentioned in paragraph (c) of that subsection.

(2A) The part of the register for visiting social workers from relevant European States is referred to in this Part of this Act as "the visiting European part" of the register.**]**

(3) It may be prescribed that as from a specified date a specified part of the register shall be closed, so that on and after that date no further persons shall be registered in that part.

(4) The Scottish Ministers shall consult the Council and such other persons, or groups of persons, as they consider appropriate before making, varying or revoking an order by virtue of this section.

Textual Amendments

F8 S. 44(1)(aa) inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **257(a)**

F9 S. 44(2)(2A) substituted for s. 44(2) (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **257(b)**

Commencement Information

I44 S. 44 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

45 Applications for registration under Part 3

(1) An application for registration under this Part **[**[F10], other than for registration in the visiting European part of the register,**]** shall be made to the Council in accordance with rules made by the Council.

[[F11](1A) An application is not required for registration in the visiting European part of the register.**]**

(2) An application under subsection (1) above shall specify—
(a) in relation to the register, each part of it in which registration is sought; and
(b) such other matters as may be required by the rules.

(3) Any person who, in an application under subsection (1) above, 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.

Textual Amendments

F10 Words in s. 45(1) inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **258(a)**

F11 S. 45(1A) inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **258(b)**

Commencement Information

I45 S. 45 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

46 Grant or refusal of registration under Part 3

(1) An application **[**[F12]under section 45(1) of this Act**]** for registration under this Part may be granted either unconditionally or subject to such conditions as the Council thinks fit to impose.

(2) If the Council is satisfied that the applicant—

(a) is of good character;

(b) satisfies such requirements as to competence or conduct as the Council may by rules impose; and

(c) except where **[**[F13]section 46B of this Act**]** applies, either—

(i) satisfies such requirements as to education as the Council may by rules impose and has successfully completed a course of training, approved by the Council, for persons wishing to become social workers or, as the case may be, for persons wishing to become social service workers of the description in relation to which registration is sought; or

(ii) in the case of an application for registration as a social service worker other than a social worker, satisfies such requirements as the Council may by rules impose in relation to social service workers of the description in relation to which registration is sought,

it shall grant the application unconditionally or give notice to the applicant that it proposes to grant the application subject to such conditions as it thinks fit; otherwise it shall give notice to the applicant that it proposes to refuse the application.

(3) A notice under subsection (2) above shall give the Council's reasons for the proposal.

[F14](4) . . . . . .

[F14](5) . . . . . .

[F14](6) . . . . . .

[F14](7) . . . . . .

Textual Amendments

F12 Words in s. 46(1) inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **259(a)**

F13 Words in s. 46(2)(c) substituted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **259(b)**

F14 S. 46(4)-(7) omitted (3.12.2007) by virtue of The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **259(c)**

Commencement Information

I46 S. 46 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

[[F15]46A. Visiting social workers from relevant European States

(1) This section applies to an exempt person ("V") who is lawfully established as a social worker in a relevant European State other than the United Kingdom.

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Subsection (3) applies if V has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by V of services as a social worker in the United Kingdom on a temporary or occasional basis (V having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by V of services as a social worker).

(3) V is entitled to be registered in the visiting European part of the register; and the Council shall give effect to the entitlement.

(4) If V is entitled under subsection (3) to be registered in the visiting European part of the register but is not registered in that part, V shall be treated as being registered in that part.

(5) V's entitlement under subsection (3) ceases if V ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by V of services as a social worker in the United Kingdom on a temporary and occasional basis.

(6) If—

(a) V's entitlement under subsection (3) ceases by reason of the operation of subsection (5); and

(b) V is registered in the visiting European part of the register,

the Council may remove V from that part.

(7) Subsections (1) to (6) are not to be taken to prejudice the application, in relation to persons registered in the visiting European part of the register maintained by the Council, of rules under section 49.

Textual Amendments

F15 Ss. 46A, 46B inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **260**

46B. Qualifications gained outside Scotland

This section applies where—

(a) in the case of an applicant for registration as a social worker, the applicant is an exempt person who by virtue of Part 3 of the General Systems Regulations is permitted to pursue the profession of social worker in the United Kingdom (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that the applicant may be required to undertake pursuant to that Part of those regulations); or

(b) the applicant has, outwith Scotland, undergone training which—

(i) is recognised by the Council as being to a standard sufficient for the applicant to be registered in the part of the register specified in the application; or

(ii) is not so recognised provided that the applicant has also undergone, in Scotland or elsewhere, such additional training as the Council may by rules require.**]**

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F15 Ss. 46A, 46B inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **260**

47 Variation etc. of conditions in relation to registration under Part 3

(1) The Council may at any time give notice to a person registered under this Part **[**[F16], other than in the visiting European part of the register,**]** 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) A notice under subsection (1) above shall give the Council's reasons for the proposal.

Textual Amendments

F16 Words in s. 47(1) inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **261**

Commencement Information

I47 S. 47 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

48 Right to make representations to Council as respects proposal

(1) A notice under section 46(2) or 47 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 Council concerning any matter which that person wishes to dispute.

[[F17](2) Where such a notice has been given—

(a) the Council may not decide to implement the proposal until (whichever first occurs)—

(i) where the person to whom the notice was given makes such representations as are mentioned in subsection (1) above, it has considered those representations;

(ii) that person notifies the Council in writing that such representations will not be made;

(iii) the period of fourteen days mentioned in that subsection elapses without such representations being made and without the Council receiving such notification; and

(b) where the circumstances are as mentioned in paragraph (a)(ii) or (iii) above, the Council shall implement the proposal unless it appears to it that it would be inappropriate to do so.**]**

Textual Amendments

F17 S. 48(2) substituted (17.10.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 30(4)**, 43(3); S.S.I. 2005/492, art. 3(a), sch. 1

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I48 S. 48 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

49 Removal etc. from the Council's register

(1) The Council shall, by rules made with the consent of the Scottish Ministers, determine circumstances in which, and the means by which—

(a) an entry relating to a person in the register maintained by the Council may be removed from a part in which it appears;

(b) an entry removed by virtue of paragraph (a) above may be restored to the part in question;

(c) a person's registration in a part of that register may be suspended (and that person treated as not being registered in that part notwithstanding that the relevant entry still appears in it) for such period as the Council may specify in the case in question;

(d) a suspension by virtue of paragraph (c) above may be terminated; and

(e) an entry in a part of that register may be altered (other than in implementation of a proposal of which notice is given under section 47(1) of this Act).

(2) Rules under subsection (1) above shall—

(a) make provision as to—

(i) the procedure to be followed;

(ii) the standard of proof; and

(iii) the rules of evidence to be observed,

in proceedings brought (whether before the Council or before any committee of the Council) for the purposes of the rules; and

(b) provide for such proceedings to be in public except in such cases (if any) as the rules may specify.

(3) The Council shall maintain a register of persons who have been registered in the register maintained under section 44(1) of this Act but who, by virtue of paragraph (a) of subsection (1) above, are for the time being not so registered; and where an entry relating to a person is, by virtue of paragraph (b) of that subsection, restored, the entry relating to that person in the register maintained under this subsection shall be removed.

Commencement Information

I49 S. 49 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

50 Notice of Council's decision

(1) If the Council decides to grant unconditionally an application **[**[F18]under section 45(1) of this Act**]** for registration under this Part, it shall give the applicant notice of its decision.

(2) If the Council decides—

(a) to implement a proposal in relation to which it has given a notice under section 46(2) or 47 of this Act; or

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) in accordance with rules made under subsection (1) of section 49 of this Act, to do any of the things mentioned in paragraphs (a) to (e) of that subsection,

it shall give the person affected notice of the decision.

(3) A notice under subsection (2) above shall—

(a) explain the right of appeal conferred by section 51 of this Act;

(b) in the case of a decision to implement a proposal in relation to which notice was given under—

(i) section 46(2), being a proposal to grant the application, state the condition subject to which the application is granted; or

(ii) section 47, state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed.

(4) A decision such as is mentioned in subsection (2) above, other than a decision under section 46(2) to refuse the application, shall not take effect—

(a) if no appeal is brought, until the period of fourteen days referred to in section 51(1) of this Act has elapsed; and

(b) if an appeal is brought, until that appeal is finally determined or is abandoned.

Textual Amendments

F18 Words in s. 50(1) inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **262**

Commencement Information

I50 S. 50 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

Appeal

51 Appeal against decision of Council

[[F19](1) A person who—

(a) has been given notice under subsection (2) of section 50 of this Act of a decision mentioned in that subsection; or

(b) has been given notice of a decision of the Council under Part 3 of the General Systems Regulations in respect of an aptitude test, or period of adaptation, in connection with the person's becoming permitted, by virtue of that Part of those Regulations, to have access to, and to pursue, the profession of social worker in the United Kingdom,

may, within fourteen days after that notice is given, appeal to the sheriff against the decision.**]**

(2) On such an appeal the sheriff may—

(a) confirm the decision; or

(b) direct that it shall not have effect.

(3) The sheriff shall also have power, on such an appeal—

(a) to vary any condition which, by virtue of section 46 of this Act, is in force in respect of the person;

(b) to direct that any such condition shall cease to have effect; or

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) to direct that a condition which the sheriff thinks fit to impose shall have effect in respect of the person.

Textual Amendments

F19 S. 51(1) substituted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **263**

Commencement Information

I51 S. 51 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

Offence

52 Use of title "social worker" etc.

(1) Any person who, with intent to deceive, while not registered in any relevant register as—

(a) a social worker, takes or uses the title of social worker, or purports in any other way to be a social worker; or

(b) a social service worker of such other description as may be prescribed, takes or uses the title of that description of social service worker, or purports in any other way to be a social service worker of that description,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) For the purposes of subsection (1) above, a register is a relevant register if it is—

(a) the register maintained by the Council under this Part; or

(b) such register as may be prescribed, being a register maintained under a provision of the law of England and Wales or of Northern Ireland which appears to the Scottish Ministers to correspond to section 44(1) of this Act.

Commencement Information

I52 S. 52(1)(a)(2) in force at 1.9.2005 by S.S.I. 2005/426, **art. 2**

Codes of practice

53 Codes of practice

(1) The Council shall prepare, and from time to time publish, codes of practice laying down standards of conduct and practice expected—

(a) of social service workers; or

(b) in relation to social service workers, of persons employing or seeking to employ such workers.

(2) Before publishing a code, the Council shall—

(a) obtain the consent of the Scottish Ministers to the provisions of that code; and

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) consult the Commission, any person, or group of persons, prescribed by the Scottish Ministers and any other person, or group of persons, the Council considers it appropriate to consult.

(3) The Council shall keep the codes under review and shall vary the provisions of a code whenever, after such consultation, it considers it appropriate to do so.

(4) The employer of a social service worker shall, in making any decision which relates to the conduct of that worker, take into account any code published under subsection (1) above by the Council.

(5) The Council shall give a copy of a code so published to any person who requests such copy.

Training

54 Approval of courses etc.

(1) The Council shall promote education and training for persons who are, or wish to become—

(a) social workers; or

(b) social service workers of any other description specified in the rules,

and in particular may, in accordance with rules made by it, approve courses for such persons.

(2) An approval given under subsection (1) above may be either unconditional or subject to such conditions as the Council thinks fit.

(3) If it appears to the Council that adequate provision is not being made for further education or training for persons registered in any part of the register maintained by it, the Council shall provide, or secure the provision of, courses for such further education or training.

(4) The Council may—

(a) conduct, or make arrangements for the conduct of, examinations or assessments in connection with such courses as are mentioned in this section; and

(b) carry out, or assist other persons in carrying out, research into matters relevant to such education or training (or further education or training) as is so mentioned.

55 Grants and allowances for social service workers' training

(1) Subject to subsections (2) to (4) below, the Council may, upon such terms and subject to such conditions as it considers appropriate—

(a) make grants; and

(b) pay travelling and other allowances,

to persons resident in Scotland, in order to secure their education or training in, or education for training in, the work of social service workers.

(2) The Council shall not make grants or pay allowances under subsection (1) above except for such purposes as the Scottish Ministers may direct.

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) The Scottish Ministers may by directions specify terms and conditions subject to which the Council is to make such grants or pay such allowances.

(4) Without prejudice to the generality of subsections (2) and (3) above, directions under those subsections may specify—
- (a) the courses for which, and the categories of students to whom, under subsection (1) above, grants may be made and allowances paid;
- (b) maximum amounts to be spent—
  - (i) on such grants and allowances; and
  - (ii) on such grants and allowances to any individual; and
- (c) the procedures for accounting for expenditure on such grants and allowances.

(5) The Council may make grants to organisations providing such courses as are approved by it under section 54(1) of this Act.

Regulations and rules

56 Regulations relating to the Council

(1) Regulations may—
- (a) confer additional functions on the Council in relation to—
  - (i) the regulation of persons employed in the provision of care services; or
  - (ii) the education or training of persons in respect of whom it maintains a register under section 44(1) of this Act; and
- (b) require the Council to secure that, on such conditions, in such circumstances and on the payment of such fees as may be specified in the regulations, any person shall be afforded access to, and provided with a copy of an entry in or with an extract from, a register kept by the Council.

(2) Before the Scottish Ministers make regulations under subsection (1) above, they shall consult such persons, or groups of persons, as they consider appropriate.

57 Power of Council to make rules

(1) With the consent of the Scottish Ministers, the Council may by rules make provision about the registration of persons under this Part and, in particular—
- (a) as to the keeping of the register maintained by it;
- (b) as to the documentary and other evidence to be produced by a person applying for—
  - (i) registration;
  - (ii) additional qualifications to be recorded; or
  - (iii) an entry in that register to be altered or restored; or
- (c) subject to any rules made under section 49 of this Act, for a person's registration to remain effective without limitation of time or—
  - (i) to lapse after such period, or in such a case; or
  - (ii) to be subject to renewal in such manner and at such time,

  as the rules may provide.

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) With the consent of the Scottish Ministers and subject to any regulations made under section 56(1)(b) of this Act, the Council may by rules make provision for the payment of reasonable fees to it in connection with the discharge of its functions; and without prejudice to that generality the rules may in particular make provision—

(a) for the payment of such fees in connection with—

(i) registration under this Part (including applications for registration or for amendment of the register maintained by it);

(ii) the approval by it, under this Part, of courses of education or training;

(iii) the provision of education or training; and

(iv) the provision of copies of codes published by it or copies of entries in, or of extracts from, that register; and

(b) requiring persons registered under this Part to pay a periodic fee to it of such amount, and at such time, as the rules may specify.

[[F20](2A) Rules made by the Council under subsection (2) may not make provision for the payment of fees in connection with registration in the visiting European part of the register.**]**

(3) With the consent of the Scottish Ministers, the Council may by rules require persons registered in any part of the register maintained by it to attend a course of education or undertake further training and may in particular make provision with respect to persons who fail to comply with any requirement of such rules, including provision for their registration to cease or be suspended.

(4) Before making, or varying, any rules by virtue of subsection (3) above, the Council shall take such steps as are reasonably practicable to consult the persons who are registered in the relevant part of the register and such other persons as the Council considers appropriate.

(5) With the consent of the Scottish Ministers, the Council may by rules make provision—

(a) about the content of, and methods of completing, courses approved by it under section 54(1) of this Act;

(b) as to the lapse, renewal and withdrawal of such approvals;

(c) as to the provision to the Council of information about such courses;

(d) as to the persons who may participate in such courses, or in such parts of those courses as are specified in the rules;

(e) as to the number of persons who may participate in such courses or parts of courses; and

(f) for the award by the Council of certificates of the successful completion of such courses.

(6) With the consent of the Scottish Ministers, the Council may by rules make provision for the visiting of places at which or institutions by which or under whose direction—

(a) any relevant course (or part of such course) is, or is proposed to be, given; or

(b) any examination is, or is proposed to be, held in connection with any such course.

(7) Without prejudice to the generality of subsection (6) above, rules under that subsection may make provision for—

(a) the appointment of visitors; and

(b) reports to be made by visitors on—

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) the nature and quality of the instruction given, or to be given; and
(ii) the facilities provided, or to be provided,

at the place, or by the institution, visited.

(8) In subsection (6)(a) above, "relevant course" means—
(a) any course for which approval by the Council has been given, or is being sought, under section 54(1) of this Act; or
(b) any course of education or further training provided for persons registered in any part of the register maintained by the Council.

(9) The power of the Council to make rules under this Part may be exercised—
(a) in relation to—
(i) all cases to which the power extends;
(ii) all except such cases as are specified in the rules; or
(iii) any specified cases or class of case; and
(b) so as to make, as respects the cases in relation to which it is exercised—
(i) the same provision for all;
(ii) different provision for different cases or classes of case; or
(iii) as respects the same case or class of case, different provision for different purposes.

(10) Before making, or varying, any rules by virtue of any of subsections (1), (2), (5) and (6) above, the Council shall consult such persons, or groups of persons, as it considers appropriate.

Textual Amendments

F20 S. 57(2A) inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **264**

[F21 Notification of dismissal etc. for misconduct and provision of other information to Council

Textual Amendments

F21 Ss. 57A, 57B and cross-heading inserted (17.10.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 32**, 43(3); S.S.I. 2005/492, art. 3(a), sch. 1

57A Notification of dismissal etc. to Council

The employer of a social service worker shall—
(a) on dismissing the social service worker on grounds of misconduct; or
(b) on the social service worker resigning or abandoning the worker's position in circumstances where, but for the resignation or abandonment—
(i) the worker would have been dismissed on grounds of misconduct; or
(ii) dismissal on such grounds would have been considered by the employer,

forthwith notify the Council of the dismissal, resignation or abandonment; and the employer shall in doing so provide the Council with an account of the circumstances

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which led to the dismissal or which were present when the resignation or abandonment took place.

57B Provision of other information to Council by employer

The employer of a social service worker shall, when requested to do so by the Council, provide it with such information as respects the worker as it may reasonably require in connection with the exercise of the functions assigned to it under this Act or any other enactment.**]**

Functions of the Scottish Ministers

58 Functions of the Scottish Ministers under this Part

(1) The Scottish Ministers shall have the functions of—
- (a) ascertaining what numbers of—
  - (i) social workers; and
  - (ii) social service workers of other descriptions,

  are required within Scotland;
- (b) ascertaining what education or training is required by persons who are, or wish to become, social service workers;
- (c) ascertaining what financial and other assistance is required for promoting such training;
- (d) encouraging the provision of such assistance; and
- (e) drawing up occupational standards for such workers.

(2) The Scottish Ministers shall encourage persons to take part—
- (a) in courses approved under section 54(1) of this Act by the Council; and
- (b) in other courses relevant to the education or training of persons who are, or wish to become, social service workers.

(3) The Scottish Ministers may, if it appears to them that adequate provision is not being made for the education or training of persons who are, or wish to become, social service workers, provide, or secure the provision of, courses for that purpose.

(4) Any function of the Scottish Ministers under this section—
- (a) may be delegated by them to the Council; or
- (b) may be exercised by any person, or by employees of any person, authorised to do so by the Scottish Ministers.

(5) For the purpose of determining—
- (a) the terms and effect of an authorisation under subsection (4)(b) above; and
- (b) the effect of so much of any contract made between the Scottish Ministers and the authorised person as relates to the exercise of the function,

Part II of the Deregulation and Contracting Out Act 1994 (c.40) shall have effect as if the authorisation were given by virtue of an order under section 69 of that Act.

(6) In subsection (4)(b) above, “employee” has the same meaning as in the said Part II.

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PART 4

GENERAL PRINCIPLES

59 General principles

(1) The Scottish Ministers, the Commission and the Council shall exercise their functions under this Act in accordance with the principles set out in the following subsections.

(2) The safety and welfare of all persons who use, or are eligible to use, care services are to be protected and enhanced.

(3) The independence of those persons is to be promoted.

(4) Diversity in the provision of care services is to be promoted with a view to those persons being afforded choice.

PART 5

PROVISIONS COMMON TO COMMISSION AND COUNCIL

Grants and guarantees

60 Grants

(1) The Scottish Ministers may make grants to the Commission or to the Council towards expenses incurred, or to be incurred, by it in connection with—
  (a) the initial establishment of the body in question; and
  (b) the discharge by that body of its functions.

(2) Any grant made under subsection (1) above 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.

61 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 the Commission or the Council borrows from any person.

(2) Where the Scottish Ministers give a guarantee under this section they shall forthwith 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 shall, 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, the Commission, or as the case may be the Council, shall make to the Scottish Ministers, at such times and in such manner as they may from time to time direct—

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(a) payments of such amounts as they may so direct in or towards repayment of the sum so paid out; and

(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.

Duty to consult

62 Duty of Commission and Council to consult each other

The Commission and the Council shall each, in the exercise of its functions, consult the other in every case in which it appears to the body exercising the function appropriate that there should be such consultation.

63 Guidance as to consultation

The Scottish Ministers shall issue guidelines to the Commission and to the Council as to the fulfilment, by the body in question, of any requirement under this Act to consult any person or group of persons.

Complaints, inquiries and maladministration

64 Complaints procedure

(1) The Commission and the Council shall each 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 by the body in question of, or failure by it to exercise, any of its functions under this Act in respect of the person.

(2) Before establishing a procedure under subsection (1) above, the body in question shall consult the Scottish Ministers on its proposals for such a procedure and shall require to obtain their consent to those proposals.

(3) The body in question shall keep the procedure so established by it under review and shall vary that procedure whenever, with such consent, it considers it appropriate to do so.

(4) The body in question shall give such publicity to that procedure (including that procedure as varied under subsection (3) above) as it considers appropriate and shall give a copy of the procedure to any person who requests it.

65 Inquiries

(1) The Scottish Ministers may cause an inquiry to be held into any matter connected with—

(a) the exercise by the Commission or by the Council of its functions; or

(b) the provision of a care service.

(2) The Commission may cause an inquiry to be held into any matter connected with—

(a) the exercise of its functions; or

(b) the provision of a care service.

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(3) The Council may cause an inquiry to be held into any matter connected with the exercise of its functions.

(4) Before there is commenced an inquiry—
- (a) under subsection (1) above, the Scottish Ministers;
- (b) under subsection (2) above, the Commission; or
- (c) under subsection (3) above, the Council,

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.

(5) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c.65) (provisions relating to local inquiries) shall apply in relation to an inquiry under subsection (1) above as they apply in relation to a local inquiry under that section.

(6) Subsections (2) to (6) of that section shall apply in relation to an inquiry under subsection (2) or (3) above as they apply in relation to such a local inquiry; except that, for the purposes of an inquiry under—
- (a) subsection (2) above, any reference in those subsections which, by virtue of the Scotland Act 1998 (c.46), falls to be construed as a reference to—
  - (i) the Scottish Ministers, shall be construed as a reference to the Commission; and
  - (ii) a member of the staff of the Scottish Ministers, as a reference to an officer of the Commission; or
- (b) subsection (3) above, any such reference in those subsections shall be construed as a reference to the Council or, as the case may be, to an officer of the Council.

(7) The expenses incurred by the Commission or by the Council in relation to an inquiry under subsection (2), or as the case may be (3), above (including such reasonable sum as the body in question may determine for the services of any of its officers engaged in the inquiry) shall, unless that body 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 the body may certify the amount of the expenses so incurred.

(8) Any sum certified under subsection (7) above and to be defrayed in accordance with a direction under that subsection shall be a debt due by the party directed and shall be recoverable accordingly.

(9) In relation to an inquiry under—
- (a) subsection (2) above, the Commission; or
- (b) subsection (3) above, the Council,

may make an award as to the expenses of the parties and as to the parties by whom such expenses shall be paid.

[F22]66 . . . . . .

Textual Amendments

F22 S. 66 repealed (23.10.2002) by 2002 asp 11, s. 25, **Sch. 6 para. 24**; S.S.I. 2002/467, **art. 2**

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PART 6

MISCELLANEOUS

Central Council for Education and Training in Social Work: cessation of Scottish functions

67 Cessation of exercise of certain functions by Central Council for Education and Training in Social Work

The Central Council for Education and Training in Social Work shall cease to exercise in relation to Scotland the functions conferred on it by or under section 10 of the Health and Social Services and Social Security Adjudications Act 1983 (c.41).

Grants, loans and other payments

68 Grants in respect of activities relating to child care and family support

(1) The Scottish Ministers may make grants to persons who—

(a) to any extent, undertake or engage in activities which relate to—

(i) the protection or care, under or by virtue of the Social Work (Scotland) Act 1968 (c.49) or the Children (Scotland) Act 1995 (c.36), of children; or

(ii) the provision of support, under or by virtue of either of those Acts, to families; or

(b) propose to undertake or engage in such activities to any extent.

(2) The Scottish Ministers may make the payment of a grant in pursuance of subsection (1) above subject to such conditions and requirements (including a requirement that the whole or any part of the grant be repaid) as they think fit.

69 Amendment of Social Work (Scotland) Act 1968: delegation of power to make grants and loans to certain voluntary organisations etc.

In section 10 of the Social Work (Scotland) Act 1968 (c.49) (financial and other assistance to voluntary organisations etc. for social work)—

(a) after subsection (1) there is inserted—

"(1A) The Scottish Ministers may make grants and loans of such amounts, and subject to such conditions, as they may determine to a voluntary organisation engaged as is mentioned in subsection (1) above to enable that organisation (in this section referred to as the "primary organisation") to make grants and loans (in this section referred to as "secondary grants and loans") to other voluntary organisations, or other persons, so engaged, in circumstances where it appears to the primary organisation that the secondary grants and loans should be made; and the Scottish Ministers may require that any secondary grant be subject to such conditions (including conditions for securing the repayment in whole or in part of that grant) as they may specify.";

and

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(b) in subsection (2), for the words “under the foregoing subsection" there is substituted “ by the Scottish Ministers under subsection (1) or (1A) above ”.

70 Amendment of Social Work (Scotland) Act 1968: direct payments to children for care services

In section 12B of the Social Work (Scotland) Act 1968 (c.49) (direct payments in respect of community care services)—

(a) in subsection (1)(a)—

(i) the words from “have decided" to “care service" become sub-paragraph (i); and

(ii) for the words “within the meaning of section 5A of this Act," there is substituted the word “ ; or ” and the following sub-paragraph—

“(ii) have a duty to provide a service to him under section 22(1) of the Children (Scotland) Act 1995 (c.36) (promotion of welfare of children in need) other than a service which comprises giving assistance in cash;”;

and

(b) at the end there is added—

“(7) The definition of “community care service" in section 5A of this Act shall, with the modification mentioned in subsection (8) below, apply for the purposes of this section as that definition applies for the purposes of that section.

(8) The modification is that the words “, other than services for children," in the definition shall be disregarded.”.

71 Amendment of Children Act 1975: maintenance payments to children

In section 50 of the Children Act 1975 (c.72) (which empowers a local authority to make payments for or towards the maintenance of a child under sixteen who is residing with and being cared for, other than as a foster child, by a person other than the parent of the child), for the word “sixteen" there is substituted “ eighteen ”.

Nursing in local authority residential accommodation

72 Provision by local authorities of residential accommodation in which nursing is provided

A local authority shall have power to provide and maintain such accommodation as is mentioned in subsection (1) of section 13A of the Social Work (Scotland) Act 1968 (c.49) (residential accommodation with nursing); and accordingly—

(a) in that subsection—

(i) after the word “shall" there is inserted the following paragraph—

“(a) provide and maintain;”;

(ii) after that paragraph there is inserted the word “ or ”; and

(iii) the existing words “make such arrangements as they consider appropriate and adequate for the provision of" become paragraph (b);

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(b) in subsection (2) of that section, the word "The", where it first occurs, is repealed; and

(c) in section 59(1) of that Act (provision of residential and other establishments by local authorities etc.), for the words "Subject to" there are substituted the words " Without prejudice to their duties under ".

Commencement Information

I53 S. 72 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(e)** (subject to arts. 3-13)

After-care

73 Amendment of Children (Scotland) Act 1995: after-care

(1) In section 29 of the Children (Scotland) Act 1995 (c.36) (after-care for persons who have been looked after by local authorities)—

(a) in subsection (3), at the beginning there is inserted " Subject to section 73(2) of the Regulation of Care (Scotland) Act 2001 (asp 8), ";

(b) after subsection (4) there is added—

"(5) It is the duty of each local authority, in relation to any person to whom they have a duty under subsection (1) above or who makes an application under subsection (2) above, to carry out an assessment of the person's needs.

(6) Each local authority shall establish a procedure for considering representations (including complaints) made to them by any person mentioned in subsection (1) or (2) above about the discharge of their functions under the provisions of subsections (1) to (5) above.

(7) In subsection (1) above, the reference to having been "looked after by a local authority" shall be construed as including having been looked after by a local authority in England and Wales; and subsection (4) of section 105 of the Children Act 1989 (c.41) (construction of references to a child looked after by a local authority) shall apply for the purposes of this subsection as it applies for the purposes of that Act ("local authority in England and Wales" being construed in accordance with subsection (1) of that section).".

(2) The Scottish Ministers may in regulations—

(a) specify, either generally or in relation to a category or description of persons mentioned in subsection (1) or (2) of section 29 of the Children (Scotland) Act 1995 (or treated, by virtue of paragraph (b)(i) below, as so mentioned), the manner in which assistance is to be provided or, as the case may be, may be provided under the subsection in question;

(b) prescribe a category or description of persons who—

(i) though not mentioned in subsection (1) or (2) of that section are, for the purposes of the subsection in question, to be treated as persons so mentioned; or

(ii) though so mentioned are, for the purposes of the subsection in question, not to be treated as so mentioned,

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but such category or description must for the purposes of sub-paragraph (i) above be of persons who are, or have been, "eligible children" within the meaning of paragraph 19B(1) of Schedule 2 to the Children Act 1989 (local authority support for children and families) or "relevant children" within the meaning of section 23A(1) of that Act (functions of responsible authority) and for the purposes of sub-paragraph (ii) above be of persons to whom the subsection in question applies by virtue of subsection (1) above;

(c) make provision as to assessments for the purposes of subsection (5) of section 29 of the Children (Scotland) Act 1995; or

(d) make provision as to procedures established under subsection (6) of that section.

(3) Regulations under subsection (2)(c) above may in particular make provision about—

(a) who is to be consulted in relation to an assessment;

(b) the way in which an assessment is to be carried out, by whom and when;

(c) the recording of the results of an assessment; or

(d) the considerations to which the local authority are to have regard in carrying out the assessment.

(4) Regulations under this section may make different provision for different areas.

Commencement Information

I54 S. 73(1)(a)(2)-(4) in force at 5.12.2003 by S.S.I. 2003/596, **art. 3(1)**

I55 S. 73(1)(b) in force at 1.4.2004 by S.S.I. 2003/596, **art. 3(2)**

Place of safety

74 Amendment of Children (Scotland) Act 1995: "place of safety"

In section 93(1) of the Children (Scotland) Act 1995 (c.36) (interpretation), in the definition of "place of safety", for paragraph (d) (and the word "or" which immediately precedes that paragraph) there is substituted—

"(d) a hospital, or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child;

(e) the dwelling-house of a suitable person who is so willing; or

(f) any other suitable place the occupier of which is so willing.".

Panels

75 Panels for curators ad litem, reporting officers and safeguarders

In section 101 of the Children (Scotland) Act 1995 (c.36) (establishment of a panel of persons from whom curators ad litem, reporting officers and safeguarders may be appointed)—

(a) for subsection (1) there is substituted—

"(1) The Scottish Ministers may by regulations make provision for the establishment of one or more of each of the following—

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(a) a panel of persons from which curators ad litem may be appointed under section 58 of the Adoption (Scotland) Act 1978 or under section 87(4) of this Act;

(b) a panel of persons from which reporting officers may be appointed under either of those sections; and

(c) a panel of persons from which appointments may be made under section 41(1) of this Act.";

(b) in subsection (2), in each of paragraphs (a) and (b), for the words "the panel" there is substituted " those panels "; and

(c) for subsection (3) there is substituted—

"(3) Regulations under subsection (1) above may provide—

(a) for the defrayment by local authorities of expenses incurred by members of any panel established by virtue of that subsection; and

(b) for the payment by local authorities of fees and allowances for such members.

(4) Paragraphs 9 and 10(b) of Schedule 1 to this Act shall apply in relation to any panel established by virtue of subsection (1)(c) above as they apply in relation to children's panels.".

76 Amendment of Children (Scotland) Act 1995: Children's Panel Advisory Committees

In Schedule 1 to the Children (Scotland) Act 1995 (c.36) (children's panels and Children's Panel Advisory Committees)—

(a) in paragraph 9, the words from "to recruit" to the end become sub-paragraph (a) and after that sub-paragraph there is added—

"; and

(b) to train members, or possible members, of the Children's Panel Advisory Committees (or of any sub-committees of any of those committees)."; and

(b) in paragraph 10(b), the words "panel members or potential panel members" become head (i) and after that head there is added—

"; and

(ii) members or potential members of Children's Panel Advisory Committees (or of any sub-committees of any of those committees).".

PART 7

GENERAL

77 Interpretation

(1) In this Act, unless the context otherwise requires—

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"act as a child minder" has the meaning given by subsection (17) of section 2 of this Act;

"adoption service" has the meaning given by subsection (11) of that section;

"adult placement service" has the meaning given by subsection (16) of that section;

"care home service" has the meaning given by subsection (3) of that section;

"care service" has the meaning given by subsection (1) of that section;

"child"—

(a) in relation to an adoption service, has the meaning given in section 65(1) of the Adoption (Scotland) Act 1978 (c.28);

(b) in relation to a fostering service mentioned—

(i) in subsection (14)(a) or (b) of section 2 of this Act, has the meaning given in section 93(2)(a) of the Children (Scotland) Act 1995 (c.36); and

(ii) in subsection (14)(c) of that section, has the meaning given in section 21(1) of the Foster Children (Scotland) Act 1984 (c.56); and

(c) for the purposes of section 29(9) of this Act, has the meaning given in section 93(2)(b) of the Children (Scotland) Act 1995;

but otherwise means a person under the age of sixteen years;

"child care agency" has the meaning given by subsection (7) of section 2 of this Act;

"child minding" has the meaning given by subsection (17) of that section;

"the Commission" means the Scottish Commission for the Regulation of Care (which is constituted under section 1 of this Act);

"condition notice" has the meaning given by section 13 of this Act (including that section as applied by section 35 of this Act);

"the Council" means the Scottish Social Services Council (which is constituted under section 43 of this Act);

"day care of children" has the meaning given by section 2(20) of this Act;

"domestic premises" means any premises which are wholly or mainly used as a private dwelling;

"enactment" has the meaning given by section 126(1) of the Scotland Act 1998 (c. 46);

"equal opportunities" and "equal opportunity requirements" have the same meanings as in Section L2 (equal opportunities) of Schedule 5 to the Scotland Act 1998;

[F23"exempt person" means—

(a) a national of a relevant European State other than the United Kingdom;

(b) a national of the United Kingdom who is seeking to engage in relevant social work by virtue of an enforceable community right; or

(c) a person who is not a national of a relevant European State, but who is by virtue of an enforceable community right, entitled to be treated, as regards the right to engage in relevant social work, no less favourably than a national of a relevant European State;

and in paragraphs (a) to (c), "national", in relation to a relevant European State, means the same as in the Community Treaties, but does not include a person who, by virtue of Article 2 of Protocol No.3 (Channel Islands and the Isle of

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Man) to the Treaty of Accession, is not to benefit from Community provisions relating to the free movement of persons and services;**]**

"fostering service" has the meaning given by section 2(14) of this Act;

[[F23]"the General Systems Regulations" means the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781);**]**

"health body" means a National Health Service Trust established by order under section 12A of the National Health Service (Scotland) Act 1978 (c.29) or a Health Board or Special Health Board constituted by order under section 2 of that Act;

"health service hospital" has the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978;

"hospital" has the meaning given by that section;

"housing support service" has the meaning given by section 2(27) of this Act;

"improvement notice" has the meaning given by section 10 of this Act;

"independent clinic" means a clinic which is not comprised in a hospital and in or from which services are provided, other than in pursuance of the National Health Service (Scotland) Act 1978, by a registered medical practitioner or registered dentist;

"independent health care service" has the meaning given by section 2(5) of this Act;

"independent hospital" means a hospital which is neither, subject to subsection (2) below, a health service hospital nor a private psychiatric hospital;

"independent medical agency" means an undertaking which is neither an independent clinic nor an undertaking comprised in a hospital and which consists of or includes the provision of services, other than in pursuance of the National Health Service (Scotland) Act 1978, by a registered medical practitioner;

"limited registration service" has the meaning given by section 8(4) of this Act;

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

"medical records" means records relating to the physical or mental health of an individual which have been prepared by a medical practitioner who is, or has been, responsible for the clinical care of the individual;

[[F24]"medical treatment" has the meaning given by section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);**]**

"mental disorder" has the same meaning as in the **[**[F25]Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)**]**;

"notice" means notice in writing;

"nurse agency" has the meaning given by subsection (6) of section 2 of this Act;

"offender accommodation service" has the meaning given by subsection (10) of that section;

"personal care" has the meaning given by subsection (28) of that section;

"personal support" has the meaning given by that subsection;

"prescribed" means prescribed by order made by the Scottish Ministers;

"premises" includes any vehicle;

[[F26]"private psychiatric hospital" means any premises used or intended to be used for the provision of medical treatment to one or more patients subject to an order or direction under the Mental Health (Care and Treatment) (Scotland) Act 2003

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(asp 13) or the Criminal Procedure (Scotland) Act 1995 (c. 46) (whether or not other persons are treated there), not being–

(a) any health service hospital (as defined in section 108(1) of the National Health Service (Scotland) Act 1978 (c. 29);

(b) any state hospital; or

(c) otherwise an independent health care service;**]**

"provide", in relation to a care service, means to carry on or manage such a service;

"regulations" means regulations made by the Scottish Ministers;

"registered dentist" has the meaning given by section 53(1) of the Dentists Act 1984 (c.24);

"registered medical practitioner" shall be construed in accordance with section 2 of the Medical Act 1983 (c.54);

"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;

[[F23]"relevant European State" means an EEA State or Switzerland;**]**

"school care accommodation service" **[**[F27] is to be construed in accordance with subsections (4) to (4B) of section 2 of**]** this Act;

"secure accommodation service" has the meaning given by subsection (9) of that section;

"social service worker" means a person, other than a person excepted from this definition by regulations, who—

(a) has an entitling professional qualification in social work (that is to say a qualification which, if the person holding it also satisfies the requirements of subsection (2)(a) and (b) of section 46 of this Act and, except where **[**[F28]section 46B of this Act**]** applies, the requirements as to education imposed as mentioned in subsection (2)(c)(i) of that section, entitles that person to be registered in the part for social workers of the register maintained under section 44(1) of this Act); or

(aa) **[**[F29]is a visiting social worker from a relevant European State; or**]**

(b) not being a person mentioned in paragraph (a) **[**[F30]or (aa)**]** above, is employed in the provision of (or in managing the provision of) a care service; or

(c) being an employee of the Commission, is an authorised person within the meaning of sections 25 and 27 of this Act;

"social worker" means a person described in paragraph (a) of the definition, above, of "social service worker";

"someone who cares for" (or "a person who cares for") a person has the meaning given by subsection (28) of section 2 of this Act;

"support service" (except in the expression "housing support service") has the meaning given by subsection (2) of that section;

[[F23]"visiting social worker from a relevant European state" means a person entitled under section 46A of this Act to be registered in the part of the register maintained under section 44(1) of this Act for visiting social workers from relevant European States;**]**

"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 section 2(28) of this Act.

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) A part of a health service hospital is an independent hospital if (not being a private psychiatric hospital)—
  (a) it is carried on as a separate unit;
  (b) it does not provide treatment or nursing in pursuance of the National Health Service (Scotland) Act 1978 (c.29); and
  (c) no part of it is contained within the same building as any such part which does provide treatment or nursing in pursuance of that Act.

Textual Amendments

F23 Words in s. 77(1) inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **265(a)**

F24 Words in s. 77(1) inserted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 1, **sch. 1 para. 30(2)(b)**

F25 Words in s. 77(1) substituted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(2), **sch. 4 para. 10(b)**; S.S.I. 2005/161, art. 3 (as substituted by S.S.I. 2005/375, art. 2 and as amended by S.S.I. 2005/459, art. 2)

F26 Words in s. 77(1) substituted (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 1, **sch. 1 para. 30(2)(a)**

F27 Words in s. 77(1) substituted (1.9.2007) by Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14), **ss. 82(2)**, 101(2) (with ss. 90, 99); S.S.I. 2007/385, art. 2, sch.

F28 Words in s. 77(1) substituted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **265(b)(i)**

F29 Words in s. 77(1) inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **265(b)(ii)**

F30 Words in s. 77(1) inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **265(b)(iii)**

78 Orders and regulations

(1) Any order or regulations made under this Act shall be made by statutory instrument; and, subject to subsection (2), a statutory instrument containing any such order, other than an order under section 81(2), or any such regulations shall be subject to annulment in pursuance of a resolution of the Parliament.

(2) A statutory instrument containing—
  (a) regulations under section 28(1)(a), 56(1)(a) or 73(2)(b);
  (b) an order under section 3 **[**[F31]or 25(5A)**]**; or
  (c) if it amends or repeals an enactment, an order under section 80(2),

of this Act shall not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

Textual Amendments

F31 Words in s. 78(2)(b) inserted (17.10.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 31(3)**, 43(3); S.S.I. 2005/492, art. 3(a), sch. 1

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

79 Minor and consequential amendments

Schedule 3 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, has effect.

Commencement Information

I56 S. 79 in force for specified purposes at 1.10.2001 by S.S.I. 2001/304, **art. 2(1)(b)**; s. 79 in force for specified purposes at 1.4.2002 by S.S.I. 2002/162, **art. 2(f)** (subject to arts. 3-13)

I57 S. 79 in force at 1.4.2004 for specified purposes by S.S.I. 2004/100, **art. 2(d)** (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

80 Repeals and transitional provisions etc.

(1) The enactments mentioned in schedule 4 to this Act are repealed to the extent mentioned in the second column of that schedule.

(2) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act.

(3) An order under subsection (2) above may amend or repeal any enactment (including any provision of this Act).

(4) Before making an order under subsection (2) above, the Scottish Ministers shall consult such persons, or groups of persons, as they consider appropriate.

Commencement Information

I58 S. 81(3)(4) in force at 1.10.2001 by S.S.I. 2001/304, **art. 2(1)(c)**; s. 80(1) in force for certain purposes at 1.4.2002 by S.S.I. 2002/162, **art. 2(g)** (subject to arts. 3-13)

I59 S. 80(1) in force at 1.4.2004 for specified purposes by S.S.I. 2004/100, **art. 2(f)** (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

81 Short title and commencement

(1) This Act may be cited as the Regulation of Care (Scotland) Act 2001.

(2) There shall come into force at the end of the period of fourteen days beginning with the day of Royal Assent sections 1, 4, 28, 43, 56 to 62, 66, 68 and 69, 74 to 78 and 80(2) of, and schedules 1 and 2 to, this Act; and the other provisions of this Act, except this section, shall come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(3) Different days may be so appointed for different provisions and for different purposes.

(4) An order under subsection (2) above may contain such transitional provisions and such savings as the Scottish Ministers think fit.

Subordinate Legislation Made

P1 S. 81(2)(3)(4) power partly exercised: 1.4.2002 appointed for specified provisions by S.S.I. 2002/162, **art. 2(a)-(d)**

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

P2 S. 81(2) power partly exercised: different dates appointed for specified provisions by S.S.I. 2001/304, **art. 2**

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULE 1

(introduced by section 1(3))

THE SCOTTISH COMMISSION FOR THE REGULATION OF CARE

Status

1 The Commission shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Commission's property shall not be regarded as property of, or property held on behalf of, the Crown.

Membership

2 The Commission shall consist of a convener and other members appointed by the Scottish Ministers on such terms and conditions as appear to the Scottish Ministers to be appropriate.

3 In making appointments under paragraph 2 above, the Scottish Ministers shall have regard to the desirability of encouraging equal opportunities.

4 In making appointments under paragraph 2 above, the Scottish Ministers shall ensure that there is a requisite number of appointees who are persons who either—

(a) use, or have used, care services or services which prospectively are to become care services; or

(b) care for such persons as are mentioned in head (a) above.

5 In paragraph 4 above, "requisite number" means at least two unless one sixth of the total number of members is (disregarding any fraction) a number greater than two, in which case it means at least that number greater than two.

General powers

6 Subject to any directions given by the Scottish Ministers, the Commission may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions; and without prejudice to that generality the Commission may in particular—

(a) co-operate with other persons in matters relevant to the exercise of its functions;

(b) acquire and dispose of land and other property;

(c) enter into contracts; and

(d) with the consent of the Scottish Ministers, borrow sums in sterling by way of overdraft for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.

Regulations as to appointments, procedure etc.

7 The Scottish Ministers, after consulting such persons, or groups of persons, as they consider appropriate, may by regulations make provision as to—

(a) the appointment of the convener (including any conditions to be fulfilled for appointment);

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the appointment of the other members (including, subject to paragraph 4 above, the number, or limits on the number, of those who may be appointed and any conditions to be fulfilled for appointment);

(c) the tenure of office of the convener and other members (including the circumstances in which they shall cease to hold office or may be removed or suspended from office);

(d) the appointment of, constitution of and exercise of functions by committees and sub-committees (including committees and sub-committees which consist of or include persons who are not members of the Commission);

(e) the procedure of the Commission and of any of its committees or sub-committees (including the validation of proceedings in the event of vacancies or of defects in appointment);

(f) the payment by the Commission to its convener and members (and to the members of its committees and sub-committees who are not members of the Commission) of such remuneration and allowances—

(i) on such terms; and

(ii) subject to such conditions,

as the Scottish Ministers think fit;

(g) the payment by the Commission to, or in respect of, persons who have been its convener or members (or such members of committees and sub-committees as are mentioned in head (f) above) of such pensions, allowances and gratuities—

(i) on such terms; and

(ii) subject to such conditions,

as the Scottish Ministers think fit;

(h) the payment by the Commission of compensation to any person who, other than on the expiry of a term of office, ceases to be its convener or to be a member of it; and

(i) the delegation by the Commission of any of its functions to any of its committees, sub-committees, members or employees.

Staff

8 (1) Subject to sub-paragraph (2) below, the Commission may appoint as employees such persons (other than its convener or members) as it considers appropriate.

(2) The Commission shall have, as a member of its staff, a chief officer who shall be responsible to the Commission for the general exercise of its functions; and the appointment of that officer shall be subject to the approval of the Scottish Ministers.

(3) The remuneration and conditions of service of a chief officer appointed under this paragraph shall be such as the Commission, with the consent of the Scottish Ministers, may determine.

(4) The Commission may—

(a) pay, or make arrangements for the payment of;

(b) make payments towards the provision of; and

(c) provide and maintain schemes (whether contributory or not) for the payment of,

pensions, allowances and gratuities to or in respect of such of its employees, or former employees, as it thinks fit.

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The reference in sub-paragraph (4) above to pensions, allowances and gratuities includes, subject to sub-paragraph (6) below, a reference to pensions, allowances and gratuities by way of compensation for loss of employment or reduction in remuneration.

(6) Anything done by virtue of sub-paragraph (5) above requires the approval of the Scottish Ministers.

Accounts

9 (1) The Commission shall—
(a) keep accounts; and
(b) prepare annual accounts in respect of each financial year,
in accordance with such directions as the Scottish Ministers may give it.

(2) The Commission shall send a copy of the annual accounts to the Auditor General for Scotland for auditing.

(3) The financial year of the Commission is—
(a) the period beginning with the date on which the Commission is established and ending with 31st March next following that date; and
(b) each successive period of twelve months ending with 31st March.

(4) If requested by any person, the Commission shall make available at any reasonable time, without charge, in printed or in electronic form, its audited accounts, so that they may be inspected by that person.

Reports

10 (1) As soon as possible after the end of each financial year of the Commission, it shall make a report to the Scottish Ministers on the exercise of its functions during that year; and they shall lay before the Parliament a copy of that report.

(2) The Commission shall provide the Scottish Ministers with such reports and information relating to the exercise of its functions as they may from time to time require.

SCHEDULE 2

(introduced by section 43(3))

THE SCOTTISH SOCIAL SERVICES COUNCIL

Status

1 The Council shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Council's property shall not be regarded as property of, or property held on behalf of, the Crown.

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Membership

2 The Council shall consist of a convener and other members appointed by the Scottish Ministers on such terms and conditions as appear to the Scottish Ministers to be appropriate.

3 In making appointments under paragraph 2 above, the Scottish Ministers shall have regard to the desirability of encouraging equal opportunities.

4 In making appointments under paragraph 2 above, the Scottish Ministers shall ensure that there is—

(a) a requisite number of appointees who are persons registered under Part 3 of this Act; and

(b) a requisite number of appointees who are persons who either—

(i) use, or have used, care services or services which prospectively are to become care services; or

(ii) care for such persons as fall within sub-head (i) above.

5 In paragraph 4 above, "requisite number" means at least two unless one sixth of the total number of members is (disregarding any fraction) a number greater than two, in which case it means at least that number greater than two.

General powers

6 Subject to any directions given by the Scottish Ministers, the Council may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions; and without prejudice to that generality the Council may in particular—

(a) co-operate with other persons in matters relevant to the exercise of its functions;

(b) acquire and dispose of land and other property;

(c) enter into contracts; and

(d) with the consent of the Scottish Ministers, borrow sums in sterling by way of overdraft for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.

Regulations as to appointments, procedure etc.

7 The Scottish Ministers, after consulting such persons, or groups of persons, as they consider appropriate, may by regulations make provision as to—

(a) the appointment of the convener (including any conditions to be fulfilled for appointment);

(b) the appointment of the other members (including, subject to paragraph 4 above, the number, or limits on the number, of those who may be appointed and any conditions to be fulfilled for appointment);

(c) the tenure of office of the convener and other members (including the circumstances in which they shall cease to hold office or may be removed or suspended from office);

(d) the appointment of, constitution of and exercise of functions by committees and sub-committees (including committees and sub-committees which consist of or include persons who are not members of the Council);

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(e) the procedure of the Council and of any of its committees or sub-committees (including the validation of proceedings in the event of vacancies or of defects in appointment);

(f) the payment by the Council to its convener and members (and to the members of its committees and sub-committees who are not members of the Council) of such remuneration and allowances—

(i) on such terms; and

(ii) subject to such conditions,

as the Scottish Ministers think fit;

(g) the payment by the Council to, or in respect of, persons who have been its convener or members (or such members of committees and sub-committees as are mentioned in head (f) above) of such pensions, allowances and gratuities—

(i) on such terms; and

(ii) subject to such conditions,

as the Scottish Ministers think fit;

(h) the payment by the Council of compensation to any person who, other than on the expiry of a term of office, ceases to be its convener or to be a member of it; and

(i) the delegation by the Council of any of its functions to any of its committees, sub-committees, members or employees.

Staff

8 (1) Subject to sub-paragraph (2) below, the Council may appoint as employees such persons (other than its convener or members) as it considers appropriate.

(2) The Council shall have, as a member of its staff, a chief officer who shall be responsible to the Council for the general exercise of its functions; and the appointment of that officer shall be subject to the approval of the Scottish Ministers.

(3) The remuneration and conditions of service of a chief officer appointed under this paragraph shall be such as the Council, with the consent of the Scottish Ministers, may determine.

(4) The Council may—

(a) pay, or make arrangements for the payment of;

(b) make payments towards the provision of; and

(c) provide and maintain schemes (whether contributory or not) for the payment of,

pensions, allowances and gratuities to or in respect of such of its employees, or former employees, as it thinks fit.

(5) The reference in sub-paragraph (4) above to pensions, allowances and gratuities includes, subject to sub-paragraph (6) below, a reference to pensions, allowances and gratuities by way of compensation for loss of employment or reduction in remuneration.

(6) Anything done by virtue of sub-paragraph (5) above requires the approval of the Scottish Ministers.

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Accounts

9 (1) The Council shall—
(a) keep accounts; and
(b) prepare annual accounts in respect of each financial year,
in accordance with such directions as the Scottish Ministers may give it.

(2) The Council shall send a copy of the annual accounts to the Auditor General for Scotland for auditing.

(3) The financial year of the Council is—
(a) the period beginning with the date on which the Council is established and ending with 31st March next following that date; and
(b) each successive period of twelve months ending with 31st March.

(4) If requested by any person, the Council shall make available at any reasonable time, without charge, in printed or in electronic form, its audited accounts, so that they may be inspected by that person.

Reports

10 (1) As soon as possible after the end of each financial year of the Council, it shall make a report to the Scottish Ministers on the exercise of its functions during that year; and they shall lay before the Parliament a copy of that report.

(2) The Council shall provide the Scottish Ministers with such reports and information relating to the exercise of its functions as they may from time to time require.

SCHEDULE 3

(introduced by section 79)

MINOR AND CONSEQUENTIAL AMENDMENTS

Human Tissue Act 1961 (c.54)

1 In section 1(7) of the Human Tissue Act 1961 (removal of parts of bodies for medical purposes), after the word “institution" there is inserted “ or in accommodation provided by a care home service (“care home service” having the meaning given by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8)) ”.

Commencement Information

I60 Sch. 3 para. 1 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c.49)

2 In section 50 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (events occurring in institutions)—
(a) the words “nursing home" are repealed;

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) after the word "institution", where it first occurs, there is inserted " or of accommodation provided by a care home service ("care home service" having the meaning given by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8)) "; and

(c) after the word "institution", where it occurs for the second and third times, there is in each case inserted " or accommodation ".

Commencement Information

I61 Sch. 3 para. 2 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Sewerage (Scotland) Act 1968 (c.47)

3 In section 59 of the Sewerage (Scotland) Act 1968 (interpretation)—

(a) in subsection (1), in the definition of "trade or industry", for the words—

(i) "and the carrying on of a hospital or a nursing home" there is substituted " , the carrying on of a hospital and the provision of a care home service "; and

(ii) "a nursing home", where they occur for the second time, there is substituted " as accommodation provided by a care home service "; and

(b) after subsection (3) there is inserted—

"(3A) In the definition of "trade or industry" in subsection (1) above, the references to a "care home service" shall be construed in accordance with section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8).".

Commencement Information

I62 Sch. 3 para. 3 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Social Work (Scotland) Act 1968 (c.49)

4 (1) The Social Work (Scotland) Act 1968 is amended as follows.

(2) In section 10(3A) (construction of the expression "voluntary organisation the sole or primary object of which is to promote social welfare"), for the words "an adoption society approved under Part I of the Adoption (Scotland) Act 1978" there is substituted " a person providing, as mentioned in section 2(11)(b) of the Regulation of Care (Scotland) Act 2001 (asp 8), an adoption service registered under Part 1 of that Act ".

(3) In section 13A, for subsection (2) there is substituted—

"(2) The arrangements made by virtue of subsection (1) above shall be made with a voluntary or other organisation or other person, being an organisation or person providing—

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) an independent health care service which is a private psychiatric hospital; or

(b) a care home service.

(2A) Expressions used in subsection (2) above have the same meanings as in the Regulation of Care (Scotland) Act 2001 (asp 8).”.

Commencement Information

I63 Sch. 3 para. 4 partly in force; Sch. 3 para. 4 not in force at Royal Assent see s. 81(2)-(4); Sch. 3 para. 4(1)(3) in force at 1.4.2002 by S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

I64 Sch. 3 para. 4(2) in force at 1.4.2004 by S.S.I. 2004/100, **art. 2(e)** (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

Medicines Act 1968 (c.67)

5 In section 10 of the Medicines Act 1968 (exemptions for pharmacists)—

(a) in subsection (1), after the word “hospital" there is inserted “ , a care home service ”; and

(b) at the end there is added—

“(9) In subsection (1) of this section, “care home service" has the meaning given by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8).”.

Commencement Information

I65 Sch. 3 para. 5 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Employment Agencies Act 1973 (c.35)

6 In section 13(8)(a) of the Employment Agencies Act 1973 (application of Act to Scotland), for the words from “any agency" to “1951" there is substituted “ a nurse agency as defined in section 2(6) of the Regulation of Care (Scotland) Act 2001 (asp 8) ”.

Commencement Information

I66 Sch. 3 para. 6 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Adoption (Scotland) Act 1978 (c.28)

7 (1) The Adoption (Scotland) Act 1978 is amended as follows.

(2) In section 1 (establishment of adoption service)—

(a) in each of subsections (1) and (3), for the words “approved adoption societies" there is substituted “ registered adoption services ”;

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Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) in subsection (4), for the words "approved adoption society" there is substituted " registered adoption service "; and

(c) after that subsection, there is inserted—

"(5) In this Act, "registered adoption service" means an adoption service provided as mentioned in section 2(11)(b) of the Regulation of Care (Scotland) Act 2001 (asp 8) and registered under Part 1 of that Act."

(3) Sections 2(f) (local authorities' social service functions), 3 (approval of adoption societies), 4 (withdrawal of approval) and 5 (procedure on refusal to approve, or withdrawal of approval from, adoption societies) are repealed.

(4) In section 9 (regulation of adoption agencies)—

(a) subsection (1) is repealed;

(b) in subsection (2)—

(i) for the words "an approved adoption society" there is substituted " a registered adoption service "; and

(ii) the words from "including," to the end are repealed; and

(c) in subsection (4), for the words "subsection (2)" there is substituted " this section ".

(5) In section 11 (restriction on arranging adoptions and placing of children)—

(a) in subsection (2), for the words "approved under section 3 of this Act" there is substituted " a registered adoption service "; and

(b) in subsection (3)(a), for the words "an approved adoption society" there is substituted " a registered adoption service ".

(6) In section 22A(1) (children subject to supervision requirements), for the words "An approved adoption society" there is substituted " A registered adoption service ".

(7) In section 30 (return of children placed for adoption by adoption agencies)—

(a) in subsection (1)—

(i) for the words "an approved adoption society or" there is substituted " a registered adoption service, an appropriate voluntary organisation (as defined by section 1(5) of the Adoption Act 1976 (c.36)) or a "; and

(ii) in each of paragraphs (a) and (b), for the word "society" there is substituted " service, organisation ";

(b) in subsection (3)—

(i) for the words "to an adoption society or local authority by any person, or by such a society or authority to any person, under subsection (1)" there is substituted " under subsection (1)(a) or (b) ";

(ii) for the words "such a society or authority" there is substituted " a registered adoption service, an appropriate voluntary organisation such as is mentioned in that subsection or a local authority "; and

(iii) for the words "the society" there is substituted " that service, organisation "; and

(c) in each of subsections (5) and (7), for the words "adoption society" there is substituted " service, organisation ".

(8) In section 45 (adopted children register)—

(a) in subsection (6)(d)—

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) the words "an adoption society" are repealed;

(ii) for the words from the beginning of sub-paragraph (i) to the end of the subsection there is substituted—

"(i) a registered adoption service, from that service;

(ii) an appropriate voluntary organisation (as defined by section 1(5) of the Adoption Act 1976 (c.36)), from that organisation; or

(iii) an adoption society registered under Article 4 of the Adoption (Northern Ireland) Order 1987, from that society.";

(b) for paragraph (b) of subsection (6B) there is substituted—

"(b) any registered adoption service, or any voluntary organisation or adoption society mentioned in subsection (6)(d)(ii) or (iii) insofar as (by virtue of section 11(2) of this Act) that organisation or society is acting as an adoption society in Scotland.";

and

(c) in subsection (7)—

(i) for the words "a local authority, Board or adoption society falling within subsection (6)" there is substituted—

"(a) a local authority or Board; or

(b) a service, organisation or society mentioned in subsection (6)(d)";

(ii) for the words "or adoption society", where they occur for the second time, there is substituted " , service, organisation or society "; and

(iii) for the words "the authority, Board or society" there is substituted " them or it ".

(9) In section 51A(1) (adoption allowances schemes), for paragraph (b) there is substituted—

"(b) a registered adoption service,".

(10) In section 60(2) (statutory instrument procedure), the words ", except section 3(1)," are repealed.

(11) In section 65(1) (interpretation)—

(a) the definition of "approved adoption society" is repealed;

(b) in the definition of "place of safety", for the words from "means" to the end there is substituted " has the meaning given by section 93(1) of the Children (Scotland) Act 1995 (c.36) "; and

(c) after the definition of "prescribed" there is inserted—

""registered adoption service" has the meaning given by section 1(5) of this Act;".

Commencement Information

I67 Sch. 3 para. 7(11)(b) in force at 1.4.2002 by S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

I68 Sch. 3 para. 7(1)-(10) in force at 1.4.2004 by S.S.I. 2004/100, **art. 2(e)** (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

I69 Sch. 3 para. 7(11)(a)(c) in force at 1.4.2004 by S.S.I. 2004/100, **art. 2(e)** (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

Water (Scotland) Act 1980 (c.45)

8 In section 50 of the Water (Scotland) Act 1980 (power to require supply by meter)—

(a) in paragraph (b), the words “, nursing home" are repealed; and

(b) after that paragraph, there is inserted—

“(bb) accommodation provided by a care home service (as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8);”.

Commencement Information

I70 Sch. 3 para. 8 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Administration of Justice Act 1982 (c.53)

9 In section 11 of the Administration of Justice Act 1982 (maintenance at public expense taken into account in assessment of damages)—

(a) the words “, nursing home" are repealed;

(b) the words from “a hospital" to “institution" become paragraph (a); and

(c) after that paragraph there is inserted—

“; or

(b) accommodation provided by a care home service (as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8),”.

Commencement Information

I71 Sch. 3 para. 9 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Anatomy Act 1984 (c.14)

10 In section 4(9) of the Anatomy Act 1984 (lawful examination of bodies after death)—

(a) the words “, nursing home" are repealed;

(b) the words from “a hospital" to “institution", where it occurs for the first time, become paragraph (a);

(c) after that paragraph, there is inserted—

“; or

(b) accommodation provided by a care home service (as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8)”; and

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(d) after the word "institution", where it occurs for the second time, there is inserted " or accommodation ".

Commencement Information

I72 Sch. 3 para. 10 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Mental Health (Scotland) Act 1984 (c.36)

11 (1) The Mental Health (Scotland) Act 1984 is amended as follows.

[F32](2) . . . . . .

[F32](3) . . . . . .

[F32](4) . . . . . .

[F32](5) . . . . . .

[F32](6) . . . . . .

[F32](7) . . . . . .

(8) In section 126 (preservation of amendments), subsection (1)(a) is repealed.

(9) In Schedule 3 (consequential amendments), paragraph 3 is repealed.

Textual Amendments

F32 Sch. 3 para. 11(2)-(7) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(2), **sch. 5 Pt. 1**; S.S.I. 2005/161, art. 3 (as substituted by S.S.I. 2005/375, art. 2 and as amended by S.S.I. 2005/459, art. 2)

Commencement Information

I73 Sch. 3 para. 11 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Foster Children (Scotland) Act 1984 (c.56)

12 (1) The Foster Children (Scotland) Act 1984 is amended as follows.

(2) In section 2(2)(d) (children who are not foster children), for the words from "nursing home" to the end there is substituted " accommodation provided by a care home service registered under Part 1 of the Regulation of Care (Scotland) Act 2001 (asp 8) ".

(3) In section 21(1) (interpretation)—

(a) at the appropriate place there is inserted—

""care home service" has the meaning given by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8);";

and

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) in the definition of "place of safety" for the words from "means" to the end there is substituted " has the meaning given by section 93(1) of the Children (Scotland) Act 1995 (c.36) ".

Commencement Information

I74 Sch. 3 para. 12 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33)

13 In section 2(5)(d) of the Disabled Persons (Services, Consultation and Representation) Act 1986 (rights of authorised representatives of disabled persons), for the words "an establishment (other than accommodation falling within paragraph (c) above) registered under section 61 of the 1968 Act" there is substituted " provided by a care home service within the meaning of the Regulation of Care (Scotland) Act 2001 (asp 8) ".

Commencement Information

I75 Sch. 3 para. 13 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Income and Corporation Taxes Act 1988 (c.1)

14 In section 155A(6) of the Income and Corporation Taxes Act 1988 (care for children) —

(a) in paragraph (a), the words "section 1 of the Nurseries and Child-Minders Regulation Act 1948 or" are repealed;

(b) the word "or" immediately following that paragraph is repealed;

(c) in paragraph (b), the words "section 71 or" are repealed;

(d) after paragraph (b), there is inserted—

", or

(c) the provision of such care constitutes the provision of a care service (within the meaning of the Registration of Care (Scotland) Act 2001 (asp 8))," ; and

(e) at the end there is added " or the care service is registered under that Act of 2001." ".

Commencement Information

I76 Sch. 3 para. 14 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Children Act 1989 (c.41)

15 (1) The Children Act 1989 is amended as follows.

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) In section 105 (interpretation)—

(a) in subsection (5A), paragraph (a) is repealed; and

(b) after subsection (5A), there is inserted—

"(5B) References in this Act to acting as a child minder and to a child minder shall be construed, in relation to Scotland, in accordance with section 2(17) of the Regulation of Care (Scotland) Act 2001 (asp 8).".

Commencement Information

I77 Sch. 3 para. 15 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Opticians Act 1989 (c.44)

16 In section 27(5) of the Opticians Act 1989 (sale of optical appliances to medical institutions), after paragraph (c) there is inserted—

"(cc) to any authority or person providing a care home service (as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8)), which includes the provision of medical or surgical treatment;".

Commencement Information

I78 Sch. 3 para. 16 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Environmental Protection Act 1990 (c.43)

17 In section 75(5)(e) of the Environmental Protection Act 1990 (meaning of "household waste"), for the words "nursing home" there is substituted " which are used to provide a care home service (as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8)) ".

Commencement Information

I79 Sch. 3 para. 17 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Local Government Finance Act 1992 (c.14)

18 In paragraph 8 of Schedule 1 to the Local Government Finance Act 1992 (persons disregarded for purposes of discount)—

(a) in sub-paragraph (1), for heads (a) and (b) there is substituted—

"(a) either—

(i) he has as his sole or main residence a private hospital in Scotland; or

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(ii) a care home service provides, in Scotland, accommodation which is his sole or main residence; and

(b) he is receiving care or treatment (or both) in the hospital or in the accommodation so provided.”;

(b) in sub-paragraph (2)—

(i) the definitions of “hostel", “nursing home" and “residential care home" are repealed; and

(ii) after the word “paragraph—" there is inserted—

““care home service” has the same meaning as in the Regulation of Care (Scotland) Act 2001 (asp 8); and”;

(c) sub-paragraph (3) is repealed; and

(d) in sub-paragraph (4)—

(i) the words “nursing home", are repealed; and

(ii) for the words “residential care home" there is substituted “ care home service ”.

Commencement Information

I80 Sch. 3 para. 18 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Children (Scotland) Act 1995 (c.36)

19 (1) The Children (Scotland) Act 1995 is amended as follows.

(2) In section 36(3) (persons who must notify local authority where child provided with residential accommodation)—

(a) sub-paragraph (ii), and the word “or" immediately preceding that sub-paragraph, are repealed; and

(b) after paragraph (c) there is added—

“; and

(d) any person providing a care home service (as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8)).”.

(3) In section 38(1)(b) (short-term refuges for children at risk of harm)—

(a) for the words from “carries on" to “that Act)" there is substituted “ provides a care home service (as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8)) ”;

(b) for the words “that establishment" there is substituted “ the accommodaton in question ”; and

(c) for the word “establishment", where it occurs for the third, fourth, fifth and sixth times, there is in each case substituted “ accommodation ”.

(4) In section 93(1) (interpretation of Part II of that Act), in the definition of “secure accommodation"—

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(a) after the word "approved" there is inserted " by the Scottish Ministers in accordance with regulations made under section 29(9)(a) of the Regulation of Care (Scotland) Act 2001 (asp 8) or "; and

(b) the words "section 60(1)(bb) of the Social Work (Scotland) Act 1968 or under" are repealed.

Commencement Information

I81 Sch. 3 para. 19 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

Criminal Procedure (Scotland) Act 1995 (c.46)

20 In section 307(1) of the Criminal Procedure (Scotland) Act 1995 (interpretation), in the definition of "hospital", in paragraph (b), for the words "registered under Part IV" there is substituted " as defined in section 12(2) ".

Police Act 1997 (c.50)

[F33]21 . . . . . .

Textual Amendments

F33 Sch. 3 para. 21 repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 17 Pt. 2**; S.S.I. 2006/166, art. 2(1)(d)

Adoption (Intercountry Aspects) Act 1999 (c.18)

22 In section 2 of the Adoption (Intercountry Aspects) Act 1999 (central authorities and accredited bodies)—

(a) subsection (2) is repealed;

(b) after subsection (2A) there is inserted—

"(2B) A registered adoption service is an accredited body for the purposes of the Convention if, in accordance with the conditions of its registration, the service may provide facilities in respect of Convention adoptions and adoptions effected by Convention adoption orders.";

and

(c) for subsection (6) there is substituted—

"(6) In this section in its application to Scotland, "registered adoption service" means an adoption service provided as mentioned in section 2(11)(b) of the Regulation of Care (Scotland) Act 2001 (asp 8) and registered under Part 1 of that Act; and "registration" shall be construed accordingly.".

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I82 Sch. 3 para. 22(b)(c) in force at 1.4.2004 by S.S.I. 2004/100, **art. 2(e)** (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

Adults with Incapacity (Scotland) Act 2000 (asp 4)

23 (1) The Adults with Incapacity (Scotland) Act 2000 is amended as follows.

(2) In section 35 (application of Part 4)—

(a) in subsection (1), for paragraphs (a) to (g) there is substituted—

"(a) a health service hospital;

(b) an independent hospital or private psychiatric hospital;

(c) a State hospital;

(d) a care home service; and

(e) a limited registration service.";

(b) in subsection (2), for the words "(ca), (cb), (d) or (f)" there is substituted " (d) or (e) ";

(c) in subsection (3)(b), for the words "for registration of an" there is substituted " , under section 7(1) of the Regulation of Care (Scotland) Act 2001 (asp 8), for registration of the service which comprises that "; and

(d) at the end there is added—

"(6) Expressions used in subsection (1) and in the Regulation of Care (Scotland) Act 2001 have the same meanings in that subsection as in that Act.".

(3) In section 40 (supervisory bodies)—

(a) in subsection (1), for the words from the beginning of the subsection to the end of paragraph (c) there is substituted—

"(1) The supervisory body for the purposes of this Part is, in relation to—

(a) a registered establishment, the Scottish Commission for the Regulation of Care; and

(b) an unregistered establishment, the Health Board for the area in which the establishment is situated;";

(b) in each of subsections (2) and (3), for the word "A" there is substituted " The "; and

(c) in subsection (4), for the words from "by regulations" to the end there is substituted " , as respects any authorised establishment, amend subsection (1) by substituting for the supervisory body allotted to that establishment a different supervisory body. ".

(4) In section 45 (appeal, revocation etc.)—

(a) for the word "a" where it first occurs there is substituted " the ";

(b) for paragraphs (a) and (b) there is substituted " that power to manage ";

(c) subsection (2) is repealed;

(d) in subsection (3), the words "registration or" are repealed; and

(e) in subsection (6), for the word "a" there is substituted " the ".

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) In section 84 (applications to guardians appointed under Criminal Procedure (Scotland) Act 1995 (c.46)), in subsection (1)(b) of the section prospectively inserted by subsection (2), for the words "60A" there is substituted " 60B ".

(6) In schedule 1 (managers of an establishment), for paragraphs (d) to (g) there is substituted—

"(d) in relation to a care service or limited registration service—

(i) the person identified under section 7(2)(b) of the Regulation of Care (Scotland) Act 2001 (asp 8) in the application for registration of the service;

(ii) if the application is made under section 33(1) of that Act, the local authority or any person appointed by the local authority to manage the service; or

(iii) if another person has been identified in pursuance of regulations under section 29(7)(j) of that Act, the other person so identified,

and in paragraph (d) above "care service" and "limited registration service" have the same meanings as in the Regulation of Care (Scotland) Act 2001.".

(7) In schedule 5 (minor and consequential amendments), in paragraph 26(3)—

(a) for the word "60" there is substituted " 60A ";

(b) for the words "60A" there is substituted " 60B "; and

(c) after the words "intervention order" there is inserted " (as defined in section 53(1) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) ".

Commencement Information

I83 Sch. 3 para. 23 wholly in force at 1.4.2002; Sch. 3 para. 23 not in force at Royal Assent see s. 81(2); Sch. 3 para. 23(7) in force at 1.10.2001 by S.I. 2001/304, **art. 2(1)(d)**; Sch. 3 para. 23(1)-(6) in force at 1.4.2002 by S.S.I. 2002/162, **art. 2(h)**

[F34]24 . . . . . .

Textual Amendments

F34 Sch. 3 para. 24 repealed (3.8.2001) by S.I. 2001/2478, **art. 2**

Sexual Offences (Amendment) Act 2000 (c.44)

25 (1) Section 4 (meaning of "position of trust") of the Sexual Offences (Amendment) Act 2000 is amended as follows.

(2) In subsection (4)—

(a) in paragraph (b), the words "residential care home, nursing home, mental nursing home or" are repealed; and

(b) after that paragraph, there is inserted the following paragraph—

"(bb) provided by a care home service;".

(3) In subsection (9)—

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) after the definition of "authority", there is inserted—

""care home service" has the meaning given by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8);";

(b) in the definition of "nursing home", paragraph (b) is repealed; and

(c) in the definition of "residential care home", paragraph (b) is repealed.

Commencement Information

I84 Sch. 3 para. 25 wholly in force at 1.4.2002, see s. 81(2)-(4) and S.S.I. 2002/162, **art. 2(h)** (subject to arts. 3-13)

SCHEDULE 4

(introduced by section 80(1))

REPEALS

Commencement Information

I85 Sch. 4 in force for specified purposes at 1.4.2002 by S.S.I. 2002/162, **art. 2(i)** (subject to arts. 3-13)

I86 Sch. 4 in force at 1.4.2004 for specified purposes by S.S.I. 2004/100, **art. 2(g)** (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

Enactment	*Extent of repeal*
Nursing Homes Registration (Scotland) Act 1938 (c.73)	The whole Act.
Nurses (Scotland) Act 1951 (c.55)	The whole Act.
Social Work (Scotland) Act 1968 (c.49)	In section 5(1B), paragraph (o); and the word "and" which immediately precedes that paragraph. In section 6A(1), paragraph (c). Sections 60 to 68. In section 94(1), in paragraph (c) of the definition of "prescribed", the words "62(2), 64A(3), 66(1) and (2),". Schedule 5.
Criminal Law Act 1977 (c.45)	In Schedule 6, the entries relating to the Nursing Homes Registration (Scotland) Act 1938 and to sections 60(3), 61(3), 62(6) and 65(4) of the Social Work (Scotland) Act 1968.
National Health Service (Scotland) Act 1978 (c.29)	In Schedule 16, paragraph 7.
Nurses, Midwives and Health Visitors Act 1979 (c.36)	In Schedule 7, paragraphs 1 to 6.

Status: *Point in time view as at 03/12/2007.*
Changes to legislation: *Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Health Services Act 1980 (c.53)	In Schedule 4, Part II, except paragraph 16.
Mental Health (Scotland) Act 1984 (c.36)	Part IV, except subsection (2) of section 12.
Foster Children (Scotland) Act 1984 (c.56)	Section 7(1)(e).
Registered Establishments (Scotland) Act 1987 (c.40)	The whole Act.
Children Act 1989 (c.41)	Section 19. Part X. Section 80. In section 102(6)(a), the words “76,". In section 108 (11), the words “section 19;" and “Part X; section 80(1)(h) and (i), (2) to (4), (5)(a), (b) and (h) and (6) to (12);". Schedule 9.
National Health Service and Community Care Act 1990 (c.19)	In section 63(2), paragraph (b); and the word “and" which immediately precedes that paragraph. In Schedule 9, paragraphs 3 and 10(8) to (10).
Tribunals and Inquiries Act 1992 (c.53)	In Part II of Schedule 1, paragraph 61(b).
Children (Scotland) Act 1995 (c.36)	Sections 34 and 37. In section 94, subsections (1) and (2). In Schedule 2, paragraphs 3 and 5(a). In Schedule 4, paragraphs 15(16) and 48(4).
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)	In Schedule 2, in Part II, the entries relating to the Nursing Homes Registration (Scotland) Act 1938 (c.73).
Registered Establishments (Scotland) Act 1998 (c.25)	The whole Act.
Adults with Incapacity (Scotland) Act 2000 (asp 4)	Section 36. Section 38. In schedule 5, paragraphs 10 and 11.

Status:
Point in time view as at 03/12/2007.

Changes to legislation:
Regulation of Care (Scotland) Act 2001 is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.