

REGULATION OF CARE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Commentary on sections

Part 1: the Commission and Care Services

Regulations

Section 28: Regulations relating to the Commission, to registration and to registers

97. Subsection (1)(a) gives Scottish Ministers the power to make regulations conferring additional functions on the Commission. Providing for Scottish Ministers to give the Commission further functions through regulations will give it the necessary flexibility to react to future needs of service users and developments in care service provision without the need for primary legislation.
98. Subsection (1)(b) provides for Scottish Ministers to make regulations about how the Commission should maintain registers. Subsection (1)(c) allows regulations to be made about the information that should be provided in an application under Part 1 and Part 2 and what certificates of registration should include, for example the conditions of registration of a care service. Subsection (1)(c)(iii) provides for regulations specifying types of applicants who cannot make certain kinds of applications.
99. Subsections (1)(d) and (e) allow regulations to be made that define the circumstances and conditions, including the payment of a fee, under which the Commission should provide access to its registers. Subsection (2) allows for regulations to be made setting out when fees should not be payable and provides that the Commission can give access free of charge. These regulations would be, for example, to prevent unrestricted access to the names and addresses of services, such as children's services, where there might be a consequent risk to children. The regulations could contain a requirement for someone to show they had a legitimate interest before they could be granted access to certain registers.

Section 29: Regulations relating to care services

100. This section provides regulation-making powers which will cover the management, staff, premises and conduct of care services. It also provides for regulations to be made regarding the health and welfare of service users.
101. Subsection (1) provides a general power to make regulations imposing any requirements the Scottish Ministers see fit. Subsection (2) allows regulations to be made to ensure that care services are suitably managed, staffed and equipped and that premises are fit for their purpose.
102. Subsections (2)(e) and (6) provide powers to make regulations regarding the welfare of persons provided with care services. Subsection (6) allows for regulations under

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- subsection (2)(e) to specifically make provision about promoting and protecting people's health and about the control and restraint of service users where necessary.
103. Subsection (2)(j) provides that people acting as a GP, or another professional capacity to be specified by regulation, for persons at a care service should not have a financial interest in that service.
 104. Subsection (3) in conjunction with 29(2)(l)(i) provides that Scottish Ministers may make regulations requiring any receiver or liquidator of a company, a trustee of an individual registered as an owner of a care service or a supervisor/administrator of a company appointed under the Insolvency Act 1986 to notify the Commission of their appointment. 29(2)(l)(ii) provides for regulations to be made requiring that such a person appoint a person to manage the care service in question. The Commission will need to know if another individual has taken over managing of a care service because of financial difficulty. The replacement manager will have to meet the registration requirements set out in regulations.
 105. Subsections (4) and (5) provide that regulations may be made prohibiting a person's appointment as manager of, or employment in, a care service unless they are on a register of social care workers, maintained by the Scottish Social Services Council.
 106. Subsection (7) gives the Scottish Ministers power to regulate how the provision of a care service should be conducted, including the provision of facilities and services, record keeping, notification of events, arrangements for dealing with complaints and in relation to independent hospitals and clinics, the arrangements to be made to secure that any medical or psychiatric treatment or listed services meet appropriate standards.
 107. Subsection (7)(d) gives the power to make regulations that a person providing a care service must produce reports to the Commission, while (e) sets out what should be in reports and the timing of their submission. Subsection (7)(f) provides for regulations to require care service providers to notify the Commission of events arising in relation to care services. It will be necessary to inform the Commission of events such as accidents, fires or death.
 108. Subsection (7)(m) deals with notice of changes in the ownership or the officers of a company which was registered in respect of a service. Subsection (7)(k) sets out when notice is required, while (l) sets out arrangements for when the provider of a care service dies.
 109. Subsection (7)(o) allows Scottish Ministers, through regulations, to require owners or managers of independent health care services to put in place policies and procedures to secure that the quality and standards of healthcare are appropriate. Subsection (7)(o)(i) requires that these are in place for medical or psychiatric treatments. Subsections (7)(o)(ii) and (8) allow regulations to specify other types of treatment or technology that should also be covered.
 110. The regulations might specify what policies and procedures are required and, where necessary, how they should be managed and recorded. The regulations might say, for example, how a critical incident should be dealt with, what must be recorded and what needs to be reported and to whom. By setting these requirements out in secondary legislation, policies and procedures can be modified to respond to changes in safety procedures and other aspects of healthcare delivery, without having to amend primary legislation.
 111. Subsection (9) concerns regulations made in respect of secure accommodation for children, which may cover both its provision and its use.
 112. Subsection (10) provides that regulations made under subsections (1), (2), (7) or (9) may make it an offence to fail to comply with specific provisions within the regulations, or with a condition of registration. Subsection (11) provides that a person guilty of such

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an offence would be liable to a fine not exceeding level 5 on the standard scale (£5000 at present).

113. Subsection (12) requires the Scottish Ministers to consult such persons as they consider appropriate before making regulations under the powers in subsections (1) (2) and (7) and (9) of this section. Subsection (13) provides that any such regulations may make different provision for different purposes. This will enable certain regulatory requirements to be imposed on a limited number of services, for example regulations may be very different in relation to a childminder as to a large care provider. Regulations under 29(2)(i) may not, for example, require the Commission to look at the financial position of childminders, but they would require it to assess this in respect of those providing care home services.