

# REGULATION OF CARE (SCOTLAND) ACT 2001

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on sections*

#### **Part 3: the Council**

#### **Registration**

#### ***Section 44: Register of social workers and of other social service workers***

139. This section provides for the Council to establish and maintain a register of social service workers. Subsection (2) provides that there should be separate parts of the register for social workers, for each prescribed description of other social service worker, and for students training to become social workers or prescribed social service workers.
140. The social services workforce is large and diverse: more than 100,000 people with a range of qualifications and experience. It would be impractical to register this many people in one go and it was therefore decided to begin with a limited qualifications based register. The White Paper identified 3 groups of staff which would be registered. The responses of the consultation document urged that these groups should be extended. It was therefore decided that initially, registers should cover social workers and 4 specified groups of other social service workers. A second tranche of 2 other groups of staff would be registered in due course and other staff would be registered as soon as this was practicable. Subsection (3) will enable specific parts of the register to be closed, for example to reflect any changes to the nature of service delivery in future.

#### ***Section 45: Applications for registration under Part 3***

141. This section provides for the Council to make rules, subject to approval by Scottish Ministers, governing how applications to register shall be made. Subsection (3) makes it an offence to knowingly give information which is false or misleading in a material respect when making an application for registration. The penalty is a fine not exceeding level 4 on the standard scale (£2500 at present).

#### ***Section 46: Grant or refusal of registration under Part 3***

142. Subsection (1) provides that applications for registration may be granted either unconditionally or subject to conditions. Subsection (2) lists the conditions an applicant must satisfy in order to be registered with the Council. The Council must be satisfied as to an applicant's good character. Applicants must satisfy any requirements imposed by the Council as to education and training, conduct and competence. Social service workers other than social workers must meet any other requirements that the Council may establish through rules. The Council must refuse an application for registration if it is not satisfied that an applicant meets the conditions. The Council must give notice

to an applicant if it proposes to refuse an application or impose conditions. Subsection (3) provides that this notice should set out the Council's reasons for the proposal.

143. Subsections (4)-(7) provide for the Council to recognise, for the purposes of registration, qualifications gained outwith Scotland. The Council can accept professional qualifications of nationals from any EEA state if these are prescribed as having Community equivalence. Such nationals may also have to satisfy other requirements imposed by rules made by the Council. Where the training of applicants from outwith Scotland is not recognised by the Council, additional training can be required, in accordance with Council rules.
144. As each of the UK countries will have its own regulatory body, this section applies to qualifications obtained in England, Wales and Northern Ireland as well as those gained in other EEA states and in other parts of the world.

#### ***Section 47: Variation etc. of conditions in relation to registration under Part 3***

145. This section allows for the Council to give notice to a person on its register that it intends to vary or remove an existing condition of registration or to impose a new condition. This notice must set out the Council's reasons for the proposal.

#### ***Section 48: Right to make representations to Council as respects proposals***

146. Subsection (1) gives an applicant or a registered person the right to make written representations to the Council about a proposal to vary or remove an existing condition or impose a condition or an additional condition on registration. It would give the same right to an applicant, where the Council proposes to refuse an application or to grant an application subject to conditions. In all cases, written representations would need to be made within 14 days of the Council giving notice of a proposal. Subsection (2) provides that no action can be taken by the Council in relation to a proposal until the period for representation has elapsed or a representation has been made within that period.
147. This section provides an applicant or a registered person with a first stage of appeal to the Council about its decisions rather than the first stage of appeal being to the sheriff. This should avoid a situation where the courts are burdened with cases that should rightly be considered by the Council in the first instance.

#### ***Section 49: Removal etc. from the Council's register***

148. This section provides for the Council to make rules, subject to the approval of Scottish Ministers, about the circumstances under which a person can be removed or suspended from any part of the register. It also provides for rules to be made about the circumstances under which a person can be restored to the register or their entry altered. The section explains that the rules will make provision for the procedure to be followed, standard of proof required, and for the rules of evidence in proceedings by which the matter can be determined. The intention is that the burden of proof should be on the balance of probabilities. These proceedings may be held in public.

#### ***Section 50: Notice of Council's decision***

149. This section requires the Council to give an applicant notice of a decision to grant an application for registration or to implement a proposal to refuse registration or to grant registration subject to conditions. It also requires the Council to give a registered person notice of a decision to remove, suspend, restore or alter an entry in a part of the register or to implement a proposal to vary or remove conditions or impose an additional condition on registration.
150. Subsection (3) provides that the Council would have to explain in the notice the right of appeal against the decision and, where appropriate, any new or varied conditions imposed on registration. The amendment would allow no action to be taken in relation to

*These notes relate to the Regulation of Care (Scotland) Act  
2001 (asp 8) which received Royal Assent on 5 July 2001*

the decision until the period of appeal (ie 14 days) has elapsed or the appeal, if brought, is finally determined or abandoned.

***Section 51: Appeal against decision of the Council***

151. This section provides for an applicant or registered person, given notice, following an appeal period or process, of a decision to implement a proposal relating to registration, to appeal that decision to the sheriff within 14 days. People will have the right to appeal against decisions made by the Council in respect of registration, for example, a decision not to register them or to remove them from the register. Access to an appeals procedure is essential because such decisions could affect an individual's ability to secure employment.