

REGULATION OF CARE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Commentary on sections

Part 5: Provisions Common to the Commission and Council

Grants and guarantees

Section 60: Grants

169. This section makes provision for Scottish Ministers to make grants to the Commission and Council in relation to the expenses that they incur. Both bodies will be funded wholly through this route initially, although it is intended that once they assume their functions registration fees paid by care services for the Commission and social services staff for the Council will meet or largely meet the cost of the bodies.

Section 61: Guarantees

170. **Section 61** gives Scottish Ministers the power to guarantee any borrowing of funds which the Commission or Council undertakes. Scottish Ministers will be required to lay details of any such guarantees before Parliament, and also provide the Parliament with an annual statement setting out the sum or sums borrowed, until these have been repaid. It is not expected that this power will be widely used but it is considered that to include it provides flexibility.

Duty to consult

Section 62: Duty of Commission and Council to consult each other

171. This section provides that the Commission and Council should have a constant dialogue with each other on matters which are of interest to both parties. This may include consultation about cases such as the manager of a care home being removed from the Council's register.

Section 63: Guidance as to consultation

172. This section imposes a duty on Scottish Ministers to issue guidelines to the Commission and Council on how they should fulfil the consultation requirements of the Act. This could include examples of the kind of bodies that it is expected should be consulted in particular circumstances. The guidelines would have statutory force -ie they would be regarded much more seriously by the courts than guidelines issued without a specific statutory provision.

Complaints, inquiries and maladministration

Section 64: Complaints procedure

173. This section requires the Commission and the Council each to put in place a complaints procedure to deal with complaints about their own operation. Subsection (2) provides that both bodies shall get consent from Scottish Ministers before establishing procedures. Subsection (3) provides that they should keep these procedures under review. Subsection (4) provides that the bodies also make appropriate arrangements to publicise the procedures they establish.

Section 65: Inquiries

174. Subsection (1) enables Scottish Ministers to act on any concerns over the Commission or Council's exercise of its functions or concerns over the provision of a care service, by setting up an inquiry. Subsection (2) allows the Commission to set up an inquiry on the exercise of its functions, or over the provision of a care service. Subsection (3) allows the Council to set up an inquiry on the exercise of its functions. The Commission and the Council need to have legal authority to investigate issues of serious concern that may arise in respect of their functions or any particular care service.
175. Subsection (4) enables an inquiry to be held in private. This might be necessary to protect, for example, a victim of child abuse.
176. Subsections (5) and (6) provide for section 210(2)-(8) of the Local Government (Scotland) Act 1973 to apply in relation to an inquiry. This will enable the person holding the inquiry to issue a summons requiring an individual to give evidence or produce any documents in their custody or under their control at a stated time and place. If that person fails to attend (for reasons other than not having the necessary expenses of their visit paid or tendered), they are liable to a fine or imprisonment.
177. Subsections (7) and (8) allow the Commission and the Council to determine who should pay their expenses in relation to an inquiry. Subsection (9) allows both bodies also to award expenses to parties involved in an inquiry and to direct who should pay those expenses.

Section 66: Maladministration

178. This section gives the Scottish Parliamentary Commissioner for Administration power to investigate the Commission and the Council in cases of maladministration.