



Regulation of Care (Scotland) Act 2001

2001 asp 8

PART 1

THE COMMISSION AND CARE SERVICES

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,

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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 (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.
- (4) A “school care accommodation service” is a service which is provided to a pupil by an education authority or the managers of an independent or grant-aided school, or by any person under arrangements made by any such authority or managers—
- (a) for the purpose of the pupil being in attendance at a public, independent or grant-aided school; and
 - (b) which consists of the provision, in a place in or outwith the school, of residential accommodation,
- but a service may be excepted from this definition 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.
- (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
 - (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)

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(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
 - (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—

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- (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.
- (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

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- (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.

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.

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—

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- (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,
- 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.