



Regulation of Care (Scotland) Act 2001

2001 asp 8

PART 1

THE COMMISSION AND CARE SERVICES

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
 - (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.

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- (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 twelve months which immediately follows registration; and
 - (b) that after an exercise of the powers so conferred no greater period than twelve months elapses before those powers are again exercised.

[^{F1}(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;
 - (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,

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- 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.
- (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—

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- (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

F1 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

II 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;
 - (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

I2 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.

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- (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.
- (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

I3 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](#))

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