Regulation of Care (Scotland) Act 2001

2001 asp 8

PART 3

THE COUNCIL

Constitution

43 Constitution of Scottish Social Services Council

(1) There shall be a body corporate, to be known as the Scottish Social Services Council (in the following provisions of this Act referred to as "the Council"), which—

(a) shall exercise the functions conferred on it by this Act or any other enactment; and

(b) shall have the general duty of promoting high standards—

(i) of conduct and practice among social service workers; and

(ii) in their education and training.

(2) The Council shall, in the exercise of its functions, act—

(a) in accordance with any directions in writing given to it by the Scottish Ministers;

(b) under the general guidance of the Scottish Ministers; and

(c) in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.

(3) Schedule 2 to this Act shall have effect with respect to the Council.

Registration

44 Register of social workers and of other social service workers

(1) The Council shall maintain a register of—

(a) social workers;

(b) social service workers of any other description prescribed; and

(c) persons—

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(i) participating in a course, approved by it under section 54(1) of this Act, for those wishing to become; or

(ii) employed in positions probationary to their becoming,

social workers or social service workers of such other description.

(2) There shall be a separate part of the register for social workers, for each description of social service workers prescribed by virtue of paragraph (b) of subsection (1) above and for such persons as are mentioned in paragraph (c) of that subsection.

(3) It may be prescribed that as from a specified date a specified part of the register shall be closed, so that on and after that date no further persons shall be registered in that part.

(4) The Scottish Ministers shall consult the Council and such other persons, or groups of persons, as they consider appropriate before making, varying or revoking an order by virtue of this section.

Commencement Information

I1 S. 44 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)

45 Applications for registration under Part 3

(1) An application for registration under this Part shall be made to the Council in accordance with rules made by the Council.

(2) An application under subsection (1) above shall specify—

(a) in relation to the register, each part of it in which registration is sought; and

(b) such other matters as may be required by the rules.

(3) Any person who, in an application under subsection (1) above, knowingly makes a statement which is false or misleading in a material respect shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Commencement Information

I2 S. 45 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)

46 Grant or refusal of registration under Part 3

(1) An application for registration under this Part may be granted either unconditionally or subject to such conditions as the Council thinks fit to impose.

(2) If the Council is satisfied that the applicant—

(a) is of good character;

(b) satisfies such requirements as to competence or conduct as the Council may by rules impose; and

(c) except where subsection (4) below applies, either—

(i) satisfies such requirements as to education as the Council may by rules impose and has successfully completed a course of training, approved by the Council, for persons wishing to become social workers or, as the case may be, for persons wishing to become social

service workers of the description in relation to which registration is sought; or

(ii) in the case of an application for registration as a social service worker other than a social worker, satisfies such requirements as the Council may by rules impose in relation to social service workers of the description in relation to which registration is sought,

it shall grant the application unconditionally or give notice to the applicant that it proposes to grant the application subject to such conditions as it thinks fit; otherwise it shall give notice to the applicant that it proposes to refuse the application.

(3) A notice under subsection (2) above shall give the Council's reasons for the proposal.

(4) This subsection applies where the applicant—

(a) is a national of any EEA State who—

(i) has obtained, in an EEA State other than the United Kingdom, professional qualifications which are prescribed as having Community equivalence for the purposes of registration in the part of the register specified in the application; and

(ii) satisfies any other requirements which the Council may by rules impose; or

(b) has, outwith Scotland, undergone training which—

(i) is recognised by the Council as being to a standard sufficient for the applicant to be registered in the part of the register so specified; or

(ii) is not so recognised provided that the applicant has also undergone, in Scotland or elsewhere, such additional training as the Council may by rules require.

(5) An order made by virtue of sub-paragraph (i) of subsection (4)(a) above may provide that a professional qualification designated by the order is to be regarded as having Community equivalence for the purposes mentioned in that sub-paragraph only if prescribed conditions required by a directive issued by the Council of the European Communities are fulfilled; and different conditions may be prescribed with respect to the same qualification for different circumstances.

(6) A person who—

(a) is not a national of an EEA State; but

(b) is, by virtue of a right conferred by Article 11 of Council Regulation (EEC) No. 1612/68 (on freedom of movement for workers within the Community) or any other enforceable Community right, entitled to be treated, as regards the right to engage in the work of social service workers of the description in relation to which registration is sought, no less favourably than a national of such a State,

shall be treated, for the purposes of subsection (4)(a) above, as if such a national.

(7) In this section—

"EEA State" means a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as adjusted by the Protocol signed at Brussels on 17th March 1993); and

"national", in relation to such a State, means the same as it does for the purposes of the Community Treaties.

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Commencement Information

I3 S. 46 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)

47 Variation etc. of conditions in relation to registration under Part 3

(1) The Council may at any time give notice to a person registered under this Part that it proposes to—

(a) vary or remove a condition for the time being in force; or

(b) impose an additional condition,

in relation to the registration.

(2) A notice under subsection (1) above shall give the Council's reasons for the proposal.

Commencement Information

I4 S. 47 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)

48 Right to make representations to Council as respects proposal

(1) A notice under section 46(2) or 47 of this Act shall state that, within fourteen days after service of the notice, the person to whom it is given may make written representations to the Council concerning any matter which that person wishes to dispute.

(2) Where such a notice has been given, the Council shall do the thing proposed only after (whichever first occurs)—

(a) the person to whom the notice was given makes such representations as are mentioned in subsection (1) above;

(b) that person notifies the Council in writing that such representations will not be made; or

(c) the period of fourteen days so mentioned elapses.

Commencement Information

I5 S. 48 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)

49 Removal etc. from the Council's register

(1) The Council shall, by rules made with the consent of the Scottish Ministers, determine circumstances in which, and the means by which—

(a) an entry relating to a person in the register maintained by the Council may be removed from a part in which it appears;

(b) an entry removed by virtue of paragraph (a) above may be restored to the part in question;

(c) a person's registration in a part of that register may be suspended (and that person treated as not being registered in that part notwithstanding that the relevant entry still appears in it) for such period as the Council may specify in the case in question;

(d) a suspension by virtue of paragraph (c) above may be terminated; and

(e) an entry in a part of that register may be altered (other than in implementation of a proposal of which notice is given under section 47(1) of this Act).

(2) Rules under subsection (1) above shall—

(a) make provision as to—

(i) the procedure to be followed;

(ii) the standard of proof; and

(iii) the rules of evidence to be observed,

in proceedings brought (whether before the Council or before any committee of the Council) for the purposes of the rules; and

(b) provide for such proceedings to be in public except in such cases (if any) as the rules may specify.

(3) The Council shall maintain a register of persons who have been registered in the register maintained under section 44(1) of this Act but who, by virtue of paragraph (a) of subsection (1) above, are for the time being not so registered; and where an entry relating to a person is, by virtue of paragraph (b) of that subsection, restored, the entry relating to that person in the register maintained under this subsection shall be removed.

Commencement Information

I6 S. 49 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)

50 Notice of Council's decision

(1) If the Council decides to grant unconditionally an application for registration under this Part, it shall give the applicant notice of its decision.

(2) If the Council decides—

(a) to implement a proposal in relation to which it has given a notice under section 46(2) or 47 of this Act; or

(b) in accordance with rules made under subsection (1) of section 49 of this Act, to do any of the things mentioned in paragraphs (a) to (e) of that subsection,

it shall give the person affected notice of the decision.

(3) A notice under subsection (2) above shall—

(a) explain the right of appeal conferred by section 51 of this Act;

(b) in the case of a decision to implement a proposal in relation to which notice was given under—

(i) section 46(2), being a proposal to grant the application, state the condition subject to which the application is granted; or

(ii) section 47, state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed.

(4) A decision such as is mentioned in subsection (2) above, other than a decision under section 46(2) to refuse the application, shall not take effect—

(a) if no appeal is brought, until the period of fourteen days referred to in section 51(1) of this Act has elapsed; and

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(b) if an appeal is brought, until that appeal is finally determined or is abandoned.

Commencement Information

I7 S. 50 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)

Appeal

51 Appeal against decision of Council

(1) A person given notice under section 50(2) of this Act of a decision to implement a proposal may, within fourteen days after that notice is given, appeal to the sheriff against the decision.

(2) On such an appeal the sheriff may—

(a) confirm the decision; or

(b) direct that it shall not have effect.

(3) The sheriff shall also have power, on such an appeal—

(a) to vary any condition which, by virtue of section 46 of this Act, is in force in respect of the person;

(b) to direct that any such condition shall cease to have effect; or

(c) to direct that a condition which the sheriff thinks fit to impose shall have effect in respect of the person.

Commencement Information

I8 S. 51 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)

VALID FROM 01/09/2005

Offence

52 Use of title “social worker" etc.

(1) Any person who, with intent to deceive, while not registered in any relevant register as—

(a) a social worker, takes or uses the title of social worker, or purports in any other way to be a social worker; or

(b) a social service worker of such other description as may be prescribed, takes or uses the title of that description of social service worker, or purports in any other way to be a social service worker of that description,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) For the purposes of subsection (1) above, a register is a relevant register if it is—

(a) the register maintained by the Council under this Part; or

(b) such register as may be prescribed, being a register maintained under a provision of the law of England and Wales or of Northern Ireland which appears to the Scottish Ministers to correspond to section 44(1) of this Act.

Codes of practice

53 Codes of practice

(1) The Council shall prepare, and from time to time publish, codes of practice laying down standards of conduct and practice expected—
(a) of social service workers; or
(b) in relation to social service workers, of persons employing or seeking to employ such workers.

(2) Before publishing a code, the Council shall—
(a) obtain the consent of the Scottish Ministers to the provisions of that code; and
(b) consult the Commission, any person, or group of persons, prescribed by the Scottish Ministers and any other person, or group of persons, the Council considers it appropriate to consult.

(3) The Council shall keep the codes under review and shall vary the provisions of a code whenever, after such consultation, it considers it appropriate to do so.

(4) The employer of a social service worker shall, in making any decision which relates to the conduct of that worker, take into account any code published under subsection (1) above by the Council.

(5) The Council shall give a copy of a code so published to any person who requests such copy.

Training

54 Approval of courses etc.

(1) The Council shall promote education and training for persons who are, or wish to become—
(a) social workers; or
(b) social service workers of any other description specified in the rules,

and in particular may, in accordance with rules made by it, approve courses for such persons.

(2) An approval given under subsection (1) above may be either unconditional or subject to such conditions as the Council thinks fit.

(3) If it appears to the Council that adequate provision is not being made for further education or training for persons registered in any part of the register maintained by it, the Council shall provide, or secure the provision of, courses for such further education or training.

(4) The Council may—

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(a) conduct, or make arrangements for the conduct of, examinations or assessments in connection with such courses as are mentioned in this section; and

(b) carry out, or assist other persons in carrying out, research into matters relevant to such education or training (or further education or training) as is so mentioned.

55 Grants and allowances for social service workers' training

(1) Subject to subsections (2) to (4) below, the Council may, upon such terms and subject to such conditions as it considers appropriate—

(a) make grants; and

(b) pay travelling and other allowances,

to persons resident in Scotland, in order to secure their education or training in, or education for training in, the work of social service workers.

(2) The Council shall not make grants or pay allowances under subsection (1) above except for such purposes as the Scottish Ministers may direct.

(3) The Scottish Ministers may by directions specify terms and conditions subject to which the Council is to make such grants or pay such allowances.

(4) Without prejudice to the generality of subsections (2) and (3) above, directions under those subsections may specify—

(a) the courses for which, and the categories of students to whom, under subsection (1) above, grants may be made and allowances paid;

(b) maximum amounts to be spent—

(i) on such grants and allowances; and

(ii) on such grants and allowances to any individual; and

(c) the procedures for accounting for expenditure on such grants and allowances.

(5) The Council may make grants to organisations providing such courses as are approved by it under section 54(1) of this Act.

Regulations and rules

56 Regulations relating to the Council

(1) Regulations may—

(a) confer additional functions on the Council in relation to—

(i) the regulation of persons employed in the provision of care services; or

(ii) the education or training of persons in respect of whom it maintains a register under section 44(1) of this Act; and

(b) require the Council to secure that, on such conditions, in such circumstances and on the payment of such fees as may be specified in the regulations, any person shall be afforded access to, and provided with a copy of an entry in or with an extract from, a register kept by the Council.

(2) Before the Scottish Ministers make regulations under subsection (1) above, they shall consult such persons, or groups of persons, as they consider appropriate.

57 Power of Council to make rules

(1) With the consent of the Scottish Ministers, the Council may by rules make provision about the registration of persons under this Part and, in particular—

(a) as to the keeping of the register maintained by it;

(b) as to the documentary and other evidence to be produced by a person applying for—

(i) registration;

(ii) additional qualifications to be recorded; or

(iii) an entry in that register to be altered or restored; or

(c) subject to any rules made under section 49 of this Act, for a person's registration to remain effective without limitation of time or—

(i) to lapse after such period, or in such a case; or

(ii) to be subject to renewal in such manner and at such time,

as the rules may provide.

(2) With the consent of the Scottish Ministers and subject to any regulations made under section 56(1)(b) of this Act, the Council may by rules make provision for the payment of reasonable fees to it in connection with the discharge of its functions; and without prejudice to that generality the rules may in particular make provision—

(a) for the payment of such fees in connection with—

(i) registration under this Part (including applications for registration or for amendment of the register maintained by it);

(ii) the approval by it, under this Part, of courses of education or training;

(iii) the provision of education or training; and

(iv) the provision of copies of codes published by it or copies of entries in, or of extracts from, that register; and

(b) requiring persons registered under this Part to pay a periodic fee to it of such amount, and at such time, as the rules may specify.

(3) With the consent of the Scottish Ministers, the Council may by rules require persons registered in any part of the register maintained by it to attend a course of education or undertake further training and may in particular make provision with respect to persons who fail to comply with any requirement of such rules, including provision for their registration to cease or be suspended.

(4) Before making, or varying, any rules by virtue of subsection (3) above, the Council shall take such steps as are reasonably practicable to consult the persons who are registered in the relevant part of the register and such other persons as the Council considers appropriate.

(5) With the consent of the Scottish Ministers, the Council may by rules make provision—

(a) about the content of, and methods of completing, courses approved by it under section 54(1) of this Act;

(b) as to the lapse, renewal and withdrawal of such approvals;

(c) as to the provision to the Council of information about such courses;

(d) as to the persons who may participate in such courses, or in such parts of those courses as are specified in the rules;

(e) as to the number of persons who may participate in such courses or parts of courses; and

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(f) for the award by the Council of certificates of the successful completion of such courses.

(6) With the consent of the Scottish Ministers, the Council may by rules make provision for the visiting of places at which or institutions by which or under whose direction—
(a) any relevant course (or part of such course) is, or is proposed to be, given; or
(b) any examination is, or is proposed to be, held in connection with any such course.

(7) Without prejudice to the generality of subsection (6) above, rules under that subsection may make provision for—
(a) the appointment of visitors; and
(b) reports to be made by visitors on—
(i) the nature and quality of the instruction given, or to be given; and
(ii) the facilities provided, or to be provided,
at the place, or by the institution, visited.

(8) In subsection (6)(a) above, "relevant course" means—
(a) any course for which approval by the Council has been given, or is being sought, under section 54(1) of this Act; or
(b) any course of education or further training provided for persons registered in any part of the register maintained by the Council.

(9) The power of the Council to make rules under this Part may be exercised—
(a) in relation to—
(i) all cases to which the power extends;
(ii) all except such cases as are specified in the rules; or
(iii) any specified cases or class of case; and
(b) so as to make, as respects the cases in relation to which it is exercised—
(i) the same provision for all;
(ii) different provision for different cases or classes of case; or
(iii) as respects the same case or class of case, different provision for different purposes.

(10) Before making, or varying, any rules by virtue of any of subsections (1), (2), (5) and (6) above, the Council shall consult such persons, or groups of persons, as it considers appropriate.

Functions of the Scottish Ministers

58 Functions of the Scottish Ministers under this Part

(1) The Scottish Ministers shall have the functions of—
(a) ascertaining what numbers of—
(i) social workers; and
(ii) social service workers of other descriptions,
are required within Scotland;
(b) ascertaining what education or training is required by persons who are, or wish to become, social service workers;

(c) ascertaining what financial and other assistance is required for promoting such training;

(d) encouraging the provision of such assistance; and

(e) drawing up occupational standards for such workers.

(2) The Scottish Ministers shall encourage persons to take part—

(a) in courses approved under section 54(1) of this Act by the Council; and

(b) in other courses relevant to the education or training of persons who are, or wish to become, social service workers.

(3) The Scottish Ministers may, if it appears to them that adequate provision is not being made for the education or training of persons who are, or wish to become, social service workers, provide, or secure the provision of, courses for that purpose.

(4) Any function of the Scottish Ministers under this section—

(a) may be delegated by them to the Council; or

(b) may be exercised by any person, or by employees of any person, authorised to do so by the Scottish Ministers.

(5) For the purpose of determining—

(a) the terms and effect of an authorisation under subsection (4)(b) above; and

(b) the effect of so much of any contract made between the Scottish Ministers and the authorised person as relates to the exercise of the function,

Part II of the Deregulation and Contracting Out Act 1994 (c.40) shall have effect as if the authorisation were given by virtue of an order under section 69 of that Act.

(6) In subsection (4)(b) above, “employee” has the same meaning as in the said Part II.

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