



# Regulation of Care (Scotland) Act 2001

## 2001 asp 8

### PART 7

#### GENERAL

#### 77 Interpretation

- (1) In this Act, unless the context otherwise requires—
- “act as a child minder” has the meaning given by subsection (17) of section 2 of this Act;
  - “adoption service” has the meaning given by subsection (11) of that section;
  - “adult placement service” has the meaning given by subsection (16) of that section;
  - “care home service” has the meaning given by subsection (3) of that section;
  - “care service” has the meaning given by subsection (1) of that section;
  - “child”—
    - (a) in relation to an adoption service, has the meaning given in section 65(1) of the Adoption (Scotland) Act 1978 (c.28);
    - (b) in relation to a fostering service mentioned—
      - (i) in subsection (14)(a) or (b) of section 2 of this Act, has the meaning given in section 93(2)(a) of the Children (Scotland) Act 1995 (c.36); and
      - (ii) in subsection (14)(c) of that section, has the meaning given in section 21(1) of the Foster Children (Scotland) Act 1984 (c.56); and
    - (c) for the purposes of section 29(9) of this Act, has the meaning given in section 93(2)(b) of the Children (Scotland) Act 1995;
- but otherwise means a person under the age of sixteen years;
- “child care agency” has the meaning given by subsection (7) of section 2 of this Act;
  - “child minding” has the meaning given by subsection (17) of that section;
  - “the Commission” means the Scottish Commission for the Regulation of Care (which is constituted under section 1 of this Act);

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*Status: Point in time view as at 17/10/2005.*

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“condition notice” has the meaning given by section 13 of this Act (including that section as applied by section 35 of this Act);

“the Council” means the Scottish Social Services Council (which is constituted under section 43 of this Act);

“day care of children” has the meaning given by section 2(20) of this Act;

“domestic premises” means any premises which are wholly or mainly used as a private dwelling;

“enactment” has the meaning given by section 126(1) of the Scotland Act 1998 (c. 46);

“equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Schedule 5 to the Scotland Act 1998;

“fostering service” has the meaning given by section 2(14) of this Act;

“health body” means a National Health Service Trust established by order under section 12A of the National Health Service (Scotland) Act 1978 (c.29) or a Health Board or Special Health Board constituted by order under section 2 of that Act;

“health service hospital” has the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978;

“hospital” has the meaning given by that section;

“housing support service” has the meaning given by section 2(27) of this Act;

“improvement notice” has the meaning given by section 10 of this Act;

“independent clinic” means a clinic which is not comprised in a hospital and in or from which services are provided, other than in pursuance of the National Health Service (Scotland) Act 1978, by a registered medical practitioner or registered dentist;

“independent health care service” has the meaning given by section 2(5) of this Act;

“independent hospital” means a hospital which is neither, subject to subsection (2) below, a health service hospital nor a private psychiatric hospital;

“independent medical agency” means an undertaking which is neither an independent clinic nor an undertaking comprised in a hospital and which consists of or includes the provision of services, other than in pursuance of the National Health Service (Scotland) Act 1978, by a registered medical practitioner;

“limited registration service” has the meaning given by section 8(4) of this Act;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

“medical records” means records relating to the physical or mental health of an individual which have been prepared by a medical practitioner who is, or has been, responsible for the clinical care of the individual;

[<sup>F1</sup>“medical treatment” has the meaning given by section 329 of the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#)];

“mental disorder” has the same meaning as in the [<sup>F2</sup>Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)];

“notice” means notice in writing;

“nurse agency” has the meaning given by subsection (6) of section 2 of this Act;

“offender accommodation service” has the meaning given by subsection (10) of that section;

“personal care” has the meaning given by subsection (28) of that section;

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- “personal support” has the meaning given by that subsection;
- “prescribed” means prescribed by order made by the Scottish Ministers;
- “premises” includes any vehicle;
- [<sup>F3</sup>“private psychiatric hospital” means any premises used or intended to be used for the provision of medical treatment to one or more patients subject to an order or direction under the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#) or the [Criminal Procedure \(Scotland\) Act 1995 \(c. 46\)](#) (whether or not other persons are treated there), not being—
- (a) any health service hospital (as defined in section 108(1) of the [National Health Service \(Scotland\) Act 1978 \(c. 29\)](#));
  - (b) any state hospital; or
  - (c) otherwise an independent health care service;]
- “provide”, in relation to a care service, means to carry on or manage such a service;
- “regulations” means regulations made by the Scottish Ministers;
- “registered dentist” has the meaning given by section 53(1) of the [Dentists Act 1984 \(c.24\)](#);
- “registered medical practitioner” shall be construed in accordance with section 2 of the [Medical Act 1983 \(c.54\)](#);
- “relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by affinity) or step-parent;
- “school care accommodation service” has the meaning given by subsection (4) of section 2 this Act;
- “secure accommodation service” has the meaning given by subsection (9) of that section;
- “social service worker” means a person, other than a person excepted from this definition by regulations, who—
- (a) has an entitling professional qualification in social work (that is to say a qualification which, if the person holding it also satisfies the requirements of subsection (2)(a) and (b) of section 46 of this Act and, except where subsection (4) of that section applies, the requirements as to education imposed as mentioned in subsection (2)(c)(i) of that section, entitles that person to be registered in the part for social workers of the register maintained under section 44(1) of this Act); or
  - (b) not being a person mentioned in paragraph (a) above, is employed in the provision of (or in managing the provision of) a care service; or
  - (c) being an employee of the Commission, is an authorised person within the meaning of sections 25 and 27 of this Act;
- “social worker” means a person described in paragraph (a) of the definition, above, of “social service worker”;
- “someone who cares for” (or “a person who cares for”) a person has the meaning given by subsection (28) of section 2 of this Act;
- “support service” (except in the expression “housing support service”) has the meaning given by subsection (2) of that section;
- “voluntary organisation” means a body, other than a public or local authority, the activities of which are not carried on for profit; and
- “vulnerability or need”, in relation to a person, has the meaning given by section 2(28) of this Act.

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- (2) A part of a health service hospital is an independent hospital if (not being a private psychiatric hospital)—
- (a) it is carried on as a separate unit;
  - (b) it does not provide treatment or nursing in pursuance of the National Health Service (Scotland) Act 1978 (c.29); and
  - (c) no part of it is contained within the same building as any such part which does provide treatment or nursing in pursuance of that Act.

#### Textual Amendments

- F1** Words in s. 77(1) inserted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 30(2)(b)**
- F2** Words in s. 77(1) substituted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), s. 333(2), **sch. 4 para. 10(b)**; S.S.I. 2005/161, art. 3 (as substituted by S.S.I. 2005/375, art. 2 and as amended by S.S.I. 2005/459, art. 2)
- F3** Words in s. 77(1) substituted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, **sch. 1 para. 30(2)(a)**

## 78 Orders and regulations

- (1) Any order or regulations made under this Act shall be made by statutory instrument; and, subject to subsection (2), a statutory instrument containing any such order, other than an order under section 81(2), or any such regulations shall be subject to annulment in pursuance of a resolution of the Parliament.
- (2) A statutory instrument containing—
- (a) regulations under section 28(1)(a), 56(1)(a) or 73(2)(b);
  - (b) an order under section 3 <sup>[F4]</sup> or 25(5A)]; or
  - (c) if it amends or repeals an enactment, an order under section 80(2),
- of this Act shall not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

#### Textual Amendments

- F4** Words in s. 78(2)(b) inserted (17.10.2005) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), **ss. 31(3)**, 43(3); S.S.I. 2005/492, art. 3(a), sch. 1

## 79 Minor and consequential amendments

Schedule 3 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, has effect.

#### Commencement Information

- I1** S. 79 in force for specified purposes at 1.10.2001 by [S.S.I. 2001/304](#), **art. 2(1)(b)**; s. 79 in force for specified purposes at 1.4.2002 by [S.S.I. 2002/162](#), **art. 2(f)** (subject to arts. 3-13)
- I2** S. 79 in force at 1.4.2004 for specified purposes by [S.S.I. 2004/100](#), **art. 2(d)** (with arts. 3, 4) (as amended (30.9.2004) by [S.S.I. 2004/377](#), art. 2)

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## **80 Repeals and transitional provisions etc.**

- (1) The enactments mentioned in schedule 4 to this Act are repealed to the extent mentioned in the second column of that schedule.
- (2) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act.
- (3) An order under subsection (2) above may amend or repeal any enactment (including any provision of this Act).
- (4) Before making an order under subsection (2) above, the Scottish Ministers shall consult such persons, or groups of persons, as they consider appropriate.

### **Commencement Information**

- I3** S. 81(3)(4) in force at 1.10.2001 by [S.S.I. 2001/304](#), [art. 2\(1\)\(c\)](#); s. 80(1) in force for certain purposes at 1.4.2002 by [S.S.I. 2002/162](#), [art. 2\(g\)](#) (subject to [arts. 3-13](#))
- I4** S. 80(1) in force at 1.4.2004 for specified purposes by [S.S.I. 2004/100](#), [art. 2\(f\)](#) (with [arts. 3, 4](#)) (as amended (30.9.2004) by [S.S.I. 2004/377](#), [art. 2](#))

## **81 Short title and commencement**

- (1) This Act may be cited as the Regulation of Care (Scotland) Act 2001.
- (2) There shall come into force at the end of the period of fourteen days beginning with the day of Royal Assent sections 1, 4, 28, 43, 56 to 62, 66, 68 and 69, 74 to 78 and 80(2) of, and schedules 1 and 2 to, this Act; and the other provisions of this Act, except this section, shall come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (3) Different days may be so appointed for different provisions and for different purposes.
- (4) An order under subsection (2) above may contain such transitional provisions and such savings as the Scottish Ministers think fit.

### **Subordinate Legislation Made**

- P1** [S. 81\(2\)\(3\)\(4\)](#) power partly exercised: 1.4.2002 appointed for specified provisions by [S.S.I. 2002/162](#), [art. 2\(a\)-\(d\)](#)
- P2** [S. 81\(2\)](#) power partly exercised: different dates appointed for specified provisions by [S.S.I. 2001/304](#), [art. 2](#)

**Status:**

Point in time view as at 17/10/2005.

**Changes to legislation:**

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