

PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 5 – Social Care and Social Work: Scrutiny and Improvement

Chapter 5 – Miscellaneous

Section 93 – Grants to SCSWIS

170. This section makes provision for Scottish Ministers to make grants to SCSWIS in relation to the expenses that it incurs or will incur through either the initial establishment of the body or through the discharge of its functions.

Section 94 – Guarantees

171. This section gives Scottish Ministers the power to guarantee any borrowing of funds which SCSWIS 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.

Section 95 – Duty of SCSWIS to consult Scottish Social Services Council

172. This section provides that SCSWIS must consult the Scottish Social Service Council on matters where SCSWIS think appropriate. This may include consultation about cases, such as the manager of a care home being removed from the Council's register.

Section 96 – Duty of SCSWIS to consult the Mental Welfare Commission

173. This section provides that SCSWIS must consult the Mental Welfare Commission for Scotland (MWCS) where SCSWIS is exercising its functions in relation to the provision of guidance, advice or information and considers it appropriate to do so, having regard to the MWCS' similar powers to promote best practice.

Section 97 – Complaints procedure

174. This section requires SCSWIS to put in place a complaints procedure to deal with complaints about its operation. Subsection (2) provides that SCSWIS must consult the SPSO before establishing such procedures. Subsection (3) provides that it should keep these procedures under review and must, after suitable consultation, vary the procedure when it considers is appropriate to do so. Subsection (4) provides that it also make appropriate arrangements to publicise the procedures it establishes.

Section 98 – Inquiries

175. Subsection (1) enables Scottish Ministers to act on any concerns over SCSWIS's exercise of its functions or concerns over the provision of a social service, by setting

up an inquiry. Subsection (2) allows SCSWIS to set up an inquiry on the exercise of its functions, or over the provision of a social service. SCSWIS needs to have legal authority to investigate issues of serious concern that may arise in respect of its functions or any particular social service.

176. Subsection (3) enables an inquiry to be held in private. This might be necessary to protect, for example, a victim of child abuse.
177. Subsections (4) and (5) provide for section 210(2) to (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.
178. Subsections (6) and (7) allow SCSWIS to determine who should pay their expenses in relation to an inquiry. Subsection (8) allows SCSWIS to award expenses to parties involved in an inquiry and to direct who should pay those expenses.

Section 99 – Arrangements entered into by local authority or health body: services to be registered

179. This section provides that, although a service commissioned by a local authority or health board need not exist as a registered care service at the time the contract is entered into, the service must be registered by SCSWIS by the time it is actually provided.

Section 100 – Local authorities and health bodies: awareness of SCSWIS reports etc.

180. This section ensures that, when providing a care service, or when considering the commissioning of, or contracting for, the provision of such a service, local authorities and health boards must take into account relevant information about the quality of care services, or the organisation or co-ordination of such services as assessed by SCSWIS. (Information might include, for example, the grading of a service, inspection reports, and any other relevant information, such as condition notices, produced by the regulator). In doing this the authorities must follow any guidance issued by Scottish Ministers.

Section 101 – Giving of notice

181. This section deals with the serving of notice on a care service provider or a person seeking to be a care service provider, and sets out when notice is deemed to have been delivered.

Section 102 - Transfer of staff etc.

182. This section provides for the employees, property and liabilities of the Scottish Commission for the Regulation of Care ('the Care Commission') to transfer to SCSWIS on the date that the new body is established. It also makes provision for all the staff of the Social Work Inspection Agency ("SWIA"), which is an executive agency of the Scottish Executive, to transfer to SCSWIS on the same date and for the transfer of staff from HMIE to whom section 103 applies immediately before the transfer date. The transfer of Care Commission, SWIA and HMIE employees does not terminate their contracts of employment and has effect as if their contracts of employment were originally made with SCSWIS. All rights, obligations and acts surrounding a transferred person's contract of employment transfer to SCSWIS (see subsection (4)). Staff who are on secondment to SWIA from another part of the Scottish Administration are not to be transferred to the new body.

*These notes relate to the Public Services Reform (Scotland) Act
2010 (asp 8) which received Royal Assent on 28 April 2010*

183. A transferred person's right to terminate their contract of employment, where there is a substantially detrimental change to the person's contract of employment, is not affected by the provisions of subsections (1) to (4). However, the mere change of the identity of a person's employer from the Care Commission, SWIA or HMIE to SCSWIS is not to be treated as a substantially detrimental change to the person's contract of employment (see subsection (5)).

Section 103 – Transfer of staff: further provision

184. This section allows an order to be drafted to specify which (if any) staff currently employed by HMIE may be transferred to SCSWIS. Staff on loan or secondment to HMIE from another part of the Scottish Administration are not to be transferred to the new body.

Section 104 - Orders and regulations: procedure

185. This section provides that any order or regulations made by Scottish Ministers under this Part of the Act, including any consequential, supplemental, incidental, transitional, transitory or saving provision, must be by statutory instrument and may be exercised to make different provisions for different purposes. Orders and regulations made under section 49, 58(1) or 78 or schedule 12 must be made by affirmative procedure, whereas other orders and regulations made under Part 5 must be made by negative procedure.

Section 105 – Interpretation of Part 5

186. This section defines certain terms that are used in Part 5.

Section 106 – Minor and consequential amendments and repeals: SCSWIS

187. This section gives effect to schedule 14.

Section 107 – Minor modifications: Scottish Social Services Council

188. This section gives effect to schedule 15.