



# Public Services Reform (Scotland) Act 2010

2010 asp 8

## PART 5

### SOCIAL CARE AND SOCIAL WORK: SCRUTINY AND IMPROVEMENT

#### CHAPTER 3

##### CARE SERVICES

###### *Proposals and applications in relation to registered care services*

#### **64 Cancellation of registration**

- (1) SCSWIS may, at any time after the expiry of the period specified in an improvement notice given in respect of a care service, propose to cancel the registration, under this Chapter, of a care service—
- (a) on the ground that any person has been convicted of a relevant offence in relation to the service,
  - (b) on the ground that the service is being, or has at any time been, carried on other than in accordance with the relevant requirements, or
  - (c) on any other ground which may be prescribed.
- (2) For the purposes of subsection (1)(a), the following are relevant offences—
- (a) an offence under this Part,
  - (b) an offence under regulations made under this Part, or
  - (c) an offence which, in the opinion of SCSWIS, makes it appropriate that the registration should be cancelled.
- (3) For the purposes of subsection (1)(b), the following are relevant requirements—
- (a) any requirements or conditions imposed by or under this Part, or
  - (b) the requirements of regulations made under this Part.

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- (4) Where a person providing a registered care service ceases to provide the service, SCSWIS may cancel the registration of the service.

**Modifications etc. (not altering text)**

- C1** S. 64(1) modified (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Health and Social Care\) Savings and Transitional Provisions Order 2011 \(S.S.I. 2011/121\)](#), arts. 1(1), 4

**Commencement Information**

- I1** S. 64 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)  
**I2** S. 64 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), art. 2, [Sch.](#)

**65 Emergency cancellation of registration**

- (1) SCSWIS may apply to the sheriff for an order cancelling the registration, under this Chapter, of a care service.
- (2) The application may be granted if it appears to the sheriff that, unless the order is made, there will be a serious risk to the life, health or wellbeing of persons.
- (3) The sheriff may make such interim order as the sheriff thinks fit.
- (4) As soon as practicable after SCSWIS has applied for an order under subsection (1), it must notify the appropriate authorities.
- (5) Where the order applied for is made (or an interim order is made), SCSWIS must as soon as reasonably practicable give a copy of it to the person who provides the care service.
- (6) The sheriff may determine an application under this section in the absence of the person providing the care service to which the application relates.
- (7) An order under this section has effect—
  - (a) from the time at which it is made, or
  - (b) from such other time as the sheriff considers appropriate.
- (8) Within 14 days of the day on which an order under this section is made, an appeal may be made to the sheriff principal against the making of the order.
- (9) On an appeal under subsection (8), the sheriff principal may—
  - (a) confirm the order,
  - (b) revoke the order,
  - (c) modify the order,
  - (d) make such other order as the sheriff principal thinks fit.
- (10) The decision of the sheriff principal on an appeal under subsection (8) is final.
- (11) An order under this section has effect notwithstanding the making of an appeal in relation to the order.
- (12) For the purposes of this section, the appropriate authorities are—
  - (a) each—
    - (i) local authority, and

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- (ii) health board,  
within whose area the care service is provided, and
- (b) any other body established by or under an enactment whom SCSWIS thinks it appropriate to notify.

**Commencement Information**

- I3** S. 65 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
- I4** S. 65 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

**F1 65A Care homes: emergency intervention orders**

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**Textual Amendments**

- F1** [Ss. 65A, 65B](#) inserted (temp.) (27.5.2020) by virtue of [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\)](#), [s. 16\(1\)](#), [sch. 1 para. 17\(2\)](#) (with [s. 9](#)) (which affecting provision expires (1.10.2022) by virtue of [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\)](#), [s. 9\(1\)](#))

**F2 65B Further provision in relation to emergency intervention orders**

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**Textual Amendments**

- F2** [Ss. 65A, 65B](#) inserted (temp.) (27.5.2020) by virtue of [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\)](#), [s. 16\(1\)](#), [sch. 1 para. 17\(2\)](#) (with [s. 9](#)); but then repealed (1.10.2022) by virtue of [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\)](#), [s. 9\(1\)](#)

**66 Condition notices**

SCSWIS may at any time give notice (in this Part referred to as a “condition notice”) to the person for the time being providing a service registered under this Chapter 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.

**Commencement Information**

- I5** S. 66 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
- I6** S. 66 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

**67 Emergency condition notices**

- (1) Subsection (2) applies where—

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- (a) a person is providing a care service registered under this Chapter, and
  - (b) SCSWIS believes that the absence of a condition in relation to the registration of that service poses a serious risk to the life, health or wellbeing of persons.
- (2) SCSWIS may at any time give notice (an “emergency condition notice”) to the person providing the service specifying a condition, in relation to registration, in respect of that risk.
- (3) The condition so specified takes effect immediately on receipt of the emergency condition notice.
- (4) An emergency condition notice must—
- (a) state that, within 14 days after service of the notice, the person to whom it is given may make written representations to SCSWIS concerning any matter which that person wishes to dispute, and
  - (b) explain the right of appeal conferred by section 69(1).
- (5) SCSWIS must consider any representations made under subsection (4)(a) and, following such consideration, must—
- (a) give the person providing the service a condition notice stating that SCSWIS proposes to vary or remove the condition specified in the emergency condition notice, or
  - (b) notify the person that it does not intend to give such a condition notice.
- (6) When notifying a person under subsection (5)(b), SCSWIS must explain the right of appeal conferred by section 69(1).
- (7) Where a condition notice has been given by virtue of subsection (5)(a) containing a proposal to remove the condition, SCSWIS must implement the proposal unless it appears to it that it would be inappropriate to do so.

#### Commencement Information

**I7** S. 67 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

**I8** S. 67 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

#### 68 Application of Part to condition notices following emergency condition notices

- (1) Section 72 does not apply to a condition notice given by virtue of section 67(5)(a).
- (2) The reference in section 73(5) to a proposal in relation to which a condition notice has been given does not include a reference to a proposal contained in a condition notice given by virtue of section 67(5)(a) to remove the condition mentioned in that provision.
- (3) The reference to a proposal in section 75(1) does not include a reference to a proposal contained in a condition notice given by virtue of section 67(5)(a) to remove the condition mentioned in that provision.

#### Commencement Information

**I9** S. 68 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

**I10** S. 68 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

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## 69 Emergency condition notices: appeals

- (1) A person—
- (a) who is given an emergency condition notice, and
  - (b) who—
    - (i) makes no written representations in accordance with section 67(4)(a), or
    - (ii) makes such representations but is notified as mentioned in section 67(5)(b),
- may, within 14 days after the relevant date, appeal to the sheriff against the imposition of the condition.
- (2) In subsection (1), “relevant date” means—
- (a) where sub-paragraph (i) of subsection (1)(b) applies, the date of service of the emergency condition notice,
  - (b) where sub-paragraph (ii) of that subsection applies, the date notification mentioned in that sub-paragraph is given.
- (3) The sheriff may, on an appeal under subsection (1)—
- (a) direct that the condition specified in the emergency condition notice is to continue to have effect,
  - (b) direct that the condition is to cease to have effect,
  - (c) direct that the condition be varied as specified in the direction,
  - (d) impose an additional condition in relation to the registration.

### Commencement Information

**I11** S. 69 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

**I12** S. 69 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

## 70 Applications under Chapter 3 in respect of conditions

- (1) A person providing a service registered under this Chapter may apply to SCSWIS—
- (a) for the variation or removal of any condition for the time being in force, or for the addition of a condition, in relation to the registration, or
  - (b) for cancellation of the registration.
- (2) But no such application is competent where—
- (a) SCSWIS has given the person notice under section 71(3) of its proposal to cancel the registration (unless SCSWIS has decided not to take that step), or
  - (b) SCSWIS has given the person notice under section 73(3) of its decision to cancel the registration and—
    - (i) the time within which an appeal may be brought has not expired, or
    - (ii) if an appeal has been brought, that appeal has not been determined.
- (3) An application under subsection (1) must be made in such manner and state such particulars as may be prescribed; and, without prejudice to subsection (1)(b) of section 76, must be accompanied by the fee imposed under subsection (2)(a) or as the case may be (c) of that section.

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- (4) If SCSWIS decides to grant an application under subsection (1)(a) it must give the applicant notice of its decision (stating, where applicable, the condition varied, removed or added) and issue a new certificate of registration.

**Commencement Information**

- I13** S. 70 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)  
**I14** S. 70 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

**71 Further provision as respects notice of proposals**

- (1) If SCSWIS proposes to grant an application made under section 59 but to do so subject to a condition which has not been agreed in writing between it and the applicant, it must give the applicant notice of the proposed condition.
- (2) If SCSWIS proposes to refuse an application made under section 59, it must give the applicant notice of the proposed refusal.
- (3) SCSWIS must give any person who provides a service registered under this Chapter notice of a proposal to cancel the registration (other than in accordance with an application under subsection (1)(b) of section 70).
- (4) SCSWIS must give an applicant under subsection (1)(a) of section 70 notice of a proposal to refuse that application.
- (5) A notice under this section must give SCSWIS's reasons for its proposal.

**Commencement Information**

- I15** S. 71 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)  
**I16** S. 71 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

**72 Right to make representations to SCSWIS as respects proposals under Chapter 3**

- (1) A condition notice or a notice under section 71 must state that, within 14 days after service of the notice, the person to whom it is given may make written representations to SCSWIS concerning any matter which that person wishes to dispute.
- (2) Where such a notice has been given SCSWIS may decide to implement the proposal only after (whichever first occurs)—
- (a) if the person to whom the notice was given makes representations under subsection (1), it has considered those representations,
  - (b) that person notifies SCSWIS in writing that such representations will not be made, or
  - (c) the period of 14 days mentioned in that subsection elapses without such representations being made and without SCSWIS receiving such notification.
- (3) In the circumstances mentioned in subsection (2)(b) or (c), SCSWIS must implement the proposal unless it appears to it that it would be inappropriate to do so.

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#### Commencement Information

- I17** S. 72 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)  
**I18** S. 72 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

### 73 Notice of SCSWIS's decision under Chapter 3

- (1) If SCSWIS decides to grant unconditionally an application made under section 59 or to grant such application subject only to a condition which has been agreed in writing between SCSWIS and the applicant, it must give the applicant notice of its decision.
- (2) A notice under subsection (1) must state the agreed condition.
- (3) If SCSWIS decides to implement a proposal in relation to which it has given a person a condition notice or a notice under section 71, it must give that person notice of the decision.
- (4) A notice under subsection (3) must—
  - (a) explain the right of appeal conferred by section 75, and
  - (b) in the case of a decision to implement a proposal—
    - (i) in relation to which a condition notice has been given, state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed, or
    - (ii) of which notice has been given under section 71(1), state the condition subject to which the application is granted.
- (5) Subject to subsection (6), a decision to implement a proposal in relation to which a condition notice has been given or of which notice has been given under section 71(1) or (3) does not take effect—
  - (a) if no appeal is brought, until the period of 14 days referred to in section 75(1) has elapsed, and
  - (b) if an appeal is brought, until that appeal is finally determined or is abandoned.
- (6) Where the decision is to implement a proposal of which notice has been given under section 71(1) and the applicant notifies SCSWIS in writing, before the period of 14 days referred to in section 75(1) has elapsed, that there will be no appeal, the decision takes effect on receipt of that notification.

#### Commencement Information

- I19** S. 73 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)  
**I20** S. 73 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

### 74 Conditions as to numbers

Without prejudice to the generality of section 60(2) or 66, a condition imposed under any of those provisions in relation to a care service may—

- (a) in the case of—
  - (i) a care home service,
  - (ii) a school care accommodation service, or

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- (iii) a secure accommodation service,
  - limit the number of persons for whom the service may provide accommodation,
- (b) in the case of an adult placement service, limit the number of persons whom the service may place,
- (c) in the case of support service, limit the number of persons to whom the service may be provided,
- (d) in the case of—
  - (i) child minding, or
  - (ii) day care of children,
 limit the number of children for whom a person may act as a child minder or for whom day care may be provided, and
- (e) in the case of a nurse agency, limit the number of persons for whom the agency may supply registered nurses, registered midwives or registered health visitors.

#### Commencement Information

- I21** S. 74 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)  
**I22** S. 74 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

## 75 Appeal against decision to implement proposal

- (1) A person given notice under section 73(3) of a decision to implement a proposal may, within 14 days after that notice is given, appeal to the sheriff against the decision.
- (2) The sheriff may, on appeal under subsection (1), confirm the decision or direct that it is not to have effect; and where the registration is not to be cancelled may (either or both)—
  - (a) vary or remove any condition for the time being in force in relation to the registration,
  - (b) impose an additional condition in relation to the registration.

#### Commencement Information

- I23** S. 75 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)  
**I24** S. 75 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 5 Ch. 3A inserted by [2019 asp 6 s. 12\(2\)](#)