

Public Services Reform (Scotland) Act 2010

2010 asp 8

PART 5

SOCIAL CARE AND SOCIAL WORK: SCRUTINY AND IMPROVEMENT

CHAPTER 3

CARE SERVICES

Registration of care services

59 Registration of care services

- (1) A person who seeks to provide a care service must apply to SCSWIS for registration of the service.
- (2) An application must—
 - (a) give such information as may be prescribed about prescribed matters,
 - (b) identify an individual (who may be the applicant) who is to manage the service,
 - (c) give any other information which SCSWIS may reasonably require the applicant to give,
 - (d) without prejudice to subsection (1)(b) of section 76, be accompanied by the fee imposed under subsection (2)(a) of that section.
- (3) A person who provides an adoption service or a fostering service must be a voluntary organisation.
- (4) Subsections (1) to (3) do not apply to a local authority—
 - (a) seeking to provide—
 - (i) an adoption service mentioned in paragraph 8(1)(a) of schedule 12, or
 - (ii) a fostering service mentioned in paragraph 9(a) or (c) of that schedule,or

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(b) seeking to provide a care service in respect of which it has made such determination as is mentioned in section 83(1)(c).

(5) Subsection (4)(b) is subject to section 83(3).

Commencement Information

I1 S. 59 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

I2 S. 59 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

60 Grant or refusal of registration

- (1) SCSWIS may grant or refuse registration of a care service under section 59.
- (2) A grant of registration may be subject to such conditions as SCSWIS thinks fit.
- (3) If SCSWIS is satisfied, in relation to an application, that the requirements of—
 - (a) such regulations as are applicable under section 78 to the care service, and
 - (b) any other enactment which appears to SCSWIS to be relevant,
 will be complied with in relation to that service, it must give notice under section 71(1), or as the case may be section 73(1); otherwise it must give notice under section 71(2).
- (4) On granting a registration, SCSWIS must issue a certificate of registration to the applicant.
- (5) The person for the time being providing the service must ensure that the certificate (or a copy of it) is, while the certificate is current, kept affixed in a conspicuous place in each of the premises in or from which that service is provided and, if different, the principal (or only) office of the service.

Commencement Information

I3 S. 60 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

I4 S. 60 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

61 Limited registration

- (1) For the purposes of Part 4 of the Adults with Incapacity (Scotland) Act 2000 (asp 4) (management of resident's finances), a person who provides, or seeks to provide, a service which provides accommodation but is not a care service may make an application to SCSWIS for registration of the service.
- (2) Subsection (2) of section 59 applies in relation to an application under subsection (1) as it applies in relation to an application under subsection (1) of that section.
- (3) Sections 60, 76 and 77 apply in relation to a service in respect of which an application is made under subsection (1) as they apply in relation to a care service.
- (4) Sections 53 to 58, 62 to 79 and 101 apply in relation to a service registered under section 60 by virtue of subsection (3) as they apply in relation to a registered care service.
- (5) A service so registered is, in this Part, referred to as a limited registration service.

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Commencement Information

- I5** S. 61 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
I6 S. 61 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

Improvement notices

62 Improvement notices: care services

- (1) SCSWIS may at any time give a notice (in this Part referred to as an “improvement notice”) to the person for the time being providing a care service registered under this Part that, unless within such reasonable period as may be specified in the notice, there is a significant improvement, of such a nature as may be so specified, in the provision of that service, SCSWIS intends—
- (a) in the case other than that mentioned in paragraph (b), to make a proposal under section 64 to cancel the registration, or
 - (b) in the case of a local authority providing an adoption service mentioned in paragraph 8(1)(a) of schedule 12, a fostering service mentioned in paragraph 9(a) or (c) of that schedule or any other care service registered under Chapter 4, to make a report to the Scottish Ministers under section 91.
- (2) Where a notice under subsection (1)(a) is given to a person other than a local authority, SCSWIS must send without delay a copy of that notice to the local authority within whose area the service is provided.

Commencement Information

- I7** S. 62 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
I8 S. 62 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

63 Special provision for certain care services provided by local authorities

- (1) Where—
- (a) SCSWIS has given an improvement notice to a local authority in respect of a care service provided by it and registered under this Chapter, and
 - (b) the authority determines that the service is one which it must provide in order to fulfil a statutory duty,
- the authority must within 14 days after receiving the notice notify that determination to SCSWIS together with a statement of its reasons.
- (2) On receiving notification under subsection (1), SCSWIS must as soon as practicable send a copy of the improvement notice to the Scottish Ministers together with a copy of the notification, of the statement of reasons and of a note of any reason SCSWIS has for not agreeing with the authority's determination.
- (3) On receiving an improvement notice sent under subsection (2) the Scottish Ministers must state whether or not, in their opinion, the determination of the authority is justified.
- (4) If their statement is that the determination is justified—

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- (a) the improvement notice is to be taken as duly given under subsection (1)(b) (and not subsection (1)(a)) of section 62, and
- (b) the care service is to be taken, for the purposes of any application of the provisions of this Part which follows on from the giving of an improvement notice, to be a care service duly registered under Chapter 4 (and not Chapter 3).

Commencement Information

- I9** S. 63 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)
- I10** S. 63 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

[^{F1}Care homes: emergency directions

Textual Amendments

- F1** [Ss. 63A, 63B](#) and cross-heading inserted (temp.) (27.5.2020) by virtue of [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(asp 10\)](#), s. 16(1), [sch. 1 para. 16\(2\)](#) (with s. 9)

63A Emergency power to direct care home service during coronavirus pandemic

- (1) A Health Board may, if the condition in subsection (2) is met, direct a person who provides a care home service registered under this Chapter at specified accommodation in the Board's area to take such steps as may be specified within such period as may be specified.
- (2) The condition is that the Health Board considers that, for a reason relating to coronavirus, there is a material risk to the health of persons at the specified accommodation.
- (3) The specified steps must relate directly to reducing the risk to the health of persons at the specified accommodation (for example, by requiring specified cleaning to take place).
- (4) A Health Board must have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions under this section.
- (5) The Scottish Ministers must publish any guidance that they issue under this section in such manner as they consider appropriate.
- (6) The power under subsection (1) to give a direction includes the power to vary or revoke an earlier direction under that subsection.
- (7) A direction given under this section must be in writing.
- (8) For the purposes of this section and section 63B—
 - “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020,
 - “Health Board” means a Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978, and “area” in relation to a Health Board, means the area for which the Board is constituted,
 - “specified” means specified in a direction given under subsection (1).

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63B Power to act where section 63A direction not complied with

- (1) This section applies where a Health Board that gave a direction under section 63A is not satisfied that the person to whom the direction was given has complied with the direction.
- (2) The Health Board may—
 - (a) take the specified steps (or such of those steps as have not been taken),
 - (b) take entry to the specified accommodation (if necessary to take the steps), and
 - (c) recover from the provider of the care home service the costs incurred by the authority in relation to taking the specified steps.
- (3) A sheriff may grant a warrant under this section to authorise the Health Board—
 - (a) to enter the premises, and
 - (b) to take the specified steps.
- (4) A sheriff may grant a warrant under this section only if satisfied that—
 - (a) there are reasonable grounds for entering the specified accommodation, and
 - (b) entry to the specified accommodation has been refused.
- (5) A warrant expires—
 - (a) 28 days after the day on which it was granted, or
 - (b) if earlier, when the specified steps have been taken.
- (6) For the purposes of section 64 (cancellation of registration), failure to comply with a warrant granted under this section is a relevant offence.]

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

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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

- I11** S. 64 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)
I12 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
 - (ii) health board,
 within whose area the care service is provided, and

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- (b) any other body established by or under an enactment whom SCSWIS thinks it appropriate to notify.

Commencement Information

I13 S. 65 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)

I14 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.](#)

[^{F2}65A Care homes: emergency intervention orders

- (1) The Scottish Ministers may apply to the court for an emergency intervention order in respect of a care home service provided at accommodation specified in the application.
- (2) An emergency intervention order is an order which—
- (a) authorises the Scottish Ministers to nominate a person to act as a nominated officer,
 - (b) authorises the nominated officer to—
 - (i) enter and occupy the accommodation specified in the order (“the accommodation”),
 - (ii) direct and control the provision of the care home service at the accommodation, and
 - (iii) do anything that the officer considers necessary to ensure that the care home service is provided to an appropriate standard, and
 - (c) requires the person who is (or, immediately prior to the granting of an order under section 65, was) registered under this Chapter as the provider of a care home service at the accommodation (“the affected provider”) to comply with any direction given by the officer in relation to the provision of care home services at the accommodation,
- for such period of up to 12 months as may be specified in the order.
- (3) On an application under subsection (1), the court may make such interim order as it thinks fit.
- (4) An order under this section has no effect on the rights or obligations of persons receiving care home services at the accommodation.
- (5) The Scottish Ministers may, where satisfied that it is essential do so for a reason relating to coronavirus, to prevent an imminent and serious risk to the life or health of persons at the accommodation, exercise the powers that would be available under an emergency intervention order prior to making an application to the court.
- (6) But, where the Scottish Ministers exercise powers under subsection (5), they must make an application under subsection (1) within 24 hours of their exercise of the powers (and may exercise the powers until the application is considered by the court).
- (7) The court must make an emergency intervention order if it appears to the court that, unless the order is made, for a reason relating to coronavirus there will be a serious risk to the life, health or wellbeing of persons at the accommodation.
- (8) The court may include such incidental provision in an order under this section as the court thinks fit (for example, prohibiting the sale of the accommodation or the disposal of any assets used in the provision of care services at the accommodation).

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- (9) As soon as practicable after the Scottish Ministers have made an application under subsection (1), they must notify the appropriate authorities.
- (10) Where the court makes an order under this section, the Scottish Ministers must as soon as reasonably practicable give a copy of it to—
- (a) the affected provider, and
 - (b) the appropriate authorities.
- (11) The court may grant an order under this section in the absence of the affected provider.
- (12) An order under this section has effect from—
- (a) the time at which it is made, or
 - (b) such other time as the court considers appropriate.
- (13) The court may, on the application of the Scottish Ministers or the affected provider—
- (a) vary an emergency intervention order,
 - (b) extend its duration for a further period of up to 6 months,
 - (c) revoke it (either immediately or on such date as the court may specify).
- (14) The court may, on the application of the Scottish Ministers or the affected provider, vary or recall an interim order granted under subsection (3).
- (15) An order made under this section has effect notwithstanding the making of an appeal in relation to the order.
- (16) For the purpose of this section—
- (a) the appropriate authorities are—
 - (i) SCSWIS,
 - (ii) the local authority and the health board within whose area the care home service is provided,
 - (iii) Healthcare Improvement Scotland,
 - (b) “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020,
 - (c) “court” means the Court of Session or the sheriff,
 - (d) “Health Board” means a Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978,
 - (e) “nominated officer” means a person appointed by the Scottish Ministers whom they consider suitable to perform the functions conferred under an emergency intervention order.

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)

65B Further provision in relation to emergency intervention orders

- (1) The Scottish Ministers may by regulations make further provision in connection with emergency intervention orders under section 65A.
- (2) Regulations under this section—

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- (a) must be laid before the Scottish Parliament as soon as practicable after they are made, and
 - (b) cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, they are approved by resolution of the Scottish Parliament.
- (3) In calculating the period of 28 days, no account is to be taken of any time during which the Scottish Parliament is dissolved or in recess for more than 4 days.
- (4) If regulations cease to have effect as a result of subsection (2)(b), that does not—
- (a) affect anything previously done under the regulations,
 - (b) prevent the making of new regulations.]

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)

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

- I15** S. 66 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
- I16** 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—
 - (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).

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- (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

I17 S. 67 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

I18 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

I19 S. 68 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

I20 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.](#)

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—

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- (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

- I21** S. 69 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
I22 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.
- (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

- I23** S. 70 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
I24 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.](#)

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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

I25 S. 71 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

I26 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.

Commencement Information

I27 S. 72 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

I28 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.

Changes to legislation: Public Services Reform (Scotland) Act 2010, Chapter 3 is up to date with all changes known to be in force on or before 15 February 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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

I29 S. 73 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)

I30 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
 - (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,

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- 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

I31 S. 74 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

I32 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

I33 S. 75 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

I34 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.](#)

Fees

76 Registration fees

- (1) The Scottish Ministers, after consulting such persons, or groups of persons, as they consider appropriate on the potential effect of so prescribing on the services which the persons, or persons they represent, provide, may prescribe—
- (a) maximum fees which may be imposed by SCSWIS under this section,
- (b) circumstances in which fees so imposed are or are not to be payable.
- (2) Subject to the provisions of this section, SCSWIS must impose fees in respect of—
- (a) any application made for registration under this Chapter or Chapter 4 or for cancellation of any such registration,
- (b) the annual continuation of any such registration,
- (c) any application made for the variation or removal of a condition for the time being in force in relation to any such registration,
- (d) issuing to a person a new certificate of registration—
- (i) at the instance of that person,
- (ii) by virtue of any application under this Chapter or Chapter 4 by that person, or
- (iii) by virtue of any new information provided by that person in pursuance of regulations under this Chapter or Chapter 4.

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- (3) Without prejudice to subsection (1)—
- (a) SCSWIS must, in fixing fees under this section, have regard to its reasonable expenses in carrying out its functions under this Chapter, but
 - (b) where it appears to SCSWIS to be appropriate it may charge a nominal fee, or remit the fee altogether.

Commencement Information

I35 S. 76 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

I36 S. 76 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

Regulations

77 Regulations: registers and registration

- (1) Regulations may—
- (a) make provision about the keeping of registers by SCSWIS,
 - (b) make provision about registration under this Chapter or Chapter 4 and in particular about—
 - (i) the making of applications for such registration,
 - (ii) the content of certificates of registration,
 - (iii) categories of applicant who cannot competently make certain applications,
 - (c) require SCSWIS to secure that, on such conditions, in such circumstances and, subject to subsection (2), on payment of such fees as may be specified in regulations, any person is to be afforded access to, and provided with a copy of an entry in or with an extract from, a register kept by SCSWIS,
 - (d) except such part of a register as may be specified in the regulations from any requirement made by virtue of paragraph (c),
 - (e) confer additional functions on SCSWIS in relation to registration under this Part.
- (2) Regulations under paragraph (c) of subsection (1) may specify circumstances in which the fees mentioned in that paragraph are not to be payable; and no fees are in any event payable in any case where SCSWIS consider it appropriate to provide the copy or extract in question free of charge.

Commencement Information

I37 S. 77 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

I38 S. 77 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

78 Regulations: care services

- (1) Regulations may confer, in relation to care services, additional functions on SCSWIS.
- (2) Regulations may impose, in relation to care services, any requirements which the Scottish Ministers consider appropriate for the purposes of this Part.

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- (3) Without prejudice to the generality of subsection (2), regulations may make it an offence to contravene or fail to comply with—
 - (a) any specified provision of the regulations, or
 - (b) a condition of registration for the time being in force.
- (4) A person who commits an offence under the regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) Before the Scottish Ministers make regulations containing provision as mentioned in subsection (1) or (3), they must consult such persons, or groups of persons, as they consider appropriate.

Commencement Information

I39 S. 78 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

I40 S. 78 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

Complaints

79 Complaints about care services

- (1) SCSWIS must establish a procedure by which a person, or someone acting on a person's behalf, may make complaints (or other representations) in relation to the provision to the person of a care service or about the provision of a care service generally.
- (2) The procedure must provide for it to be available whether or not procedures established by the provider of the service for making complaints (or other representations) about that service have been or are being pursued.
- (3) Before establishing a procedure under subsection (1), SCSWIS must consult the Scottish Public Services Ombudsman, all local authorities and such other persons, or groups of persons, as it considers appropriate on its proposals for such a procedure.
- (4) SCSWIS must keep the procedure under review and must vary it whenever, after such consultation, it considers it appropriate to do so.
- (5) SCSWIS must give such publicity to the procedure (including the procedure as varied under subsection (4)) as it considers appropriate and must give a copy of the procedure to any person who requests it.

Commencement Information

I41 S. 79 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

I42 S. 79 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

[F379A Reporting on coronavirus deaths in care homes

- (1) Any person who provides a care home service must make a report to SCSWIS every day on—

Changes to legislation: Public Services Reform (Scotland) Act 2010, Chapter 3 is up to date with all changes known to be in force on or before 15 February 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) the number of deaths of residents in the care home from coronavirus since the relevant date,
 - (b) the number of deaths of residents in the care home, since the relevant date, that are suspected to be attributable to coronavirus,
 - (c) the total number of deaths in the care home, since the relevant date, irrespective of whether or not they are attributable to coronavirus.
- (2) As soon as practicable after the end of each 7 day period during which SCSWIS has been receiving reports under subsection (1), using the information in those reports, SCSWIS must make a report to the Scottish Ministers on—
- (a) the total number of deaths in care homes in Scotland from coronavirus since the relevant date,
 - (b) the total number of deaths of residents in care homes in Scotland, since the relevant date, that are suspected to be attributable to coronavirus,
 - (c) the total number of deaths in care homes in Scotland, since the relevant date, irrespective of whether or not they are attributable to coronavirus.
- (3) The Scottish Ministers must lay each report from SCSWIS under subsection (2) before the Parliament as soon as practicable and in any event no later than 7 days after they have received it.
- (4) In this section—
- “coronavirus” has the meaning given by section 1 of the Coronavirus (Scotland) Act 2020,
 - “relevant date” means the day before the date on which paragraph 23 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020 comes into force.]

Textual Amendments

- F3** S. 79A inserted (temp.) (27.5.2020) by virtue of Coronavirus (Scotland) (No.2) Act 2020 (asp 10), s. 16(1), **sch. 1 para. 23(2)** (with s. 9)

Offences

80 Offences in relation to registration under Chapter 3

- (1) Any person who—
- (a) provides a care service while not registered under this Chapter, or
 - (b) with intent to deceive, pretends that a care service is registered under this Chapter,
- commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.
- (2) Any person who fails to comply with section 60(5) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) Subsection (1)(a) does not apply as respect actings which—
- (a) constitute an offence under section 75 of the Adoption and Children (Scotland) Act 2007 (asp 4), or
 - (b) fall within the exception provided for in subsection (1) of that section.

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Commencement Information

- I43** S. 80 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)
I44 S. 80 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

81 False statements in application under Chapter 3

Any person who, in an application—

- (a) for registration under this Chapter, or
- (b) for variation or removal of a condition in force in relation to a registration under this Chapter,

knowingly makes a statement which is false or misleading in a material respect commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Commencement Information

- I45** S. 81 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)
I46 S. 81 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

82 Offences by bodies corporate etc.

Where an offence under this Chapter, or under regulations made under this Chapter, committed by—

- (a) a body corporate other than a local authority, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is a director, manager or secretary of the body corporate, or
 - (ii) purports to act in any such capacity,
- (b) a local authority, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is an officer or member of the authority, or
 - (ii) purports to act in any such capacity,
- (c) a firm, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is a partner in the firm, or
 - (ii) purports to act in that capacity,
- (d) an unincorporated association other than a firm, is committed with the consent or connivance of, or is attributed to any neglect on the part of, a person who—
 - (i) is concerned in the management or control of the association, or
 - (ii) purports to act in the capacity of a person so concerned,

the person (as well as the body corporate or as the case may be the local authority, firm or association) commits the offence and is liable to be proceeded against and punished accordingly.

Commencement Information

- I47** S. 82 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321, art. 3, Sch.](#)

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I48 S. 82 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122, art. 2, Sch.](#)

Changes to legislation:

Public Services Reform (Scotland) Act 2010, Chapter 3 is up to date with all changes known to be in force on or before 15 February 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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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\(2\)](#)