



Public Services Reform (Scotland) Act 2010

2010 asp 8

PART 5

SOCIAL CARE AND SOCIAL WORK: SCRUTINY AND IMPROVEMENT

CHAPTER 5

MISCELLANEOUS

93 Grants to SCSWIS

- (1) The Scottish Ministers may make grants to SCSWIS towards expenses incurred, or to be incurred, by it in connection with—
 - (a) the initial establishment of SCSWIS, and
 - (b) the discharge by SCSWIS of its functions.
- (2) Any grant made under subsection (1) may be made on such terms and subject to such conditions (including conditions as to repayment) as the Scottish Ministers think fit; and the Scottish Ministers may from time to time after the grant is made vary such terms and conditions.

Commencement Information

- I1** [S. 93](#) in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
- I2** [S. 93](#) in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

94 Guarantees

- (1) The Scottish Ministers may guarantee, in such manner and on such conditions as they think fit, the discharge of any financial obligation in connection with any sum which SCSWIS borrows from any person.

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- (2) Where the Scottish Ministers give a guarantee under this section they must without delay lay a statement of the guarantee before the Parliament.
- (3) Where any sum is paid out in fulfilment of a guarantee under this section, the Scottish Ministers must, as soon as reasonably practicable after the end of each financial year (beginning with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged), lay before the Parliament a statement relating to that sum.
- (4) Where any sum is paid out in fulfilment of a guarantee under this section, SCSWIS must make to the Scottish Ministers, at such times and in such manner as they may from time to time direct—
 - (a) payments of such amounts as they may so direct in or towards repayment of the sum so paid out, and
 - (b) payment of interest, at such rate as they may so direct, on what is outstanding for the time being in respect of that sum.

Commencement Information

- I3** [S. 94](#) in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)
I4 [S. 94](#) in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), art. 2, [Sch.](#)

95 Duty of SCSWIS to consult Scottish Social Services Council

SCSWIS must, in the exercise of its functions, consult the Scottish Social Services Council in every case in which it appears to SCSWIS appropriate that there should be such consultation.

Commencement Information

- I5** [S. 95](#) in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)
I6 [S. 95](#) in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), art. 2, [Sch.](#)

96 Duty of SCSWIS to consult the Mental Welfare Commission for Scotland

SCSWIS must, in the exercise of its functions relating to the provision of guidance, advice or information, consult the Mental Welfare Commission for Scotland in every case in which it appears to SCSWIS appropriate having regard to the Commission's functions under sections 5(b) and 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

Commencement Information

- I7** [S. 96](#) in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)
I8 [S. 96](#) 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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97 Complaints procedure

- (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 exercise of, or failure by it to exercise, any of its functions under this Part in respect of the person.
- (2) Before establishing a procedure under subsection (1), SCSWIS must consult the Scottish Public Services Ombudsman on its proposals for such a procedure.
- (3) SCSWIS must keep the procedure so established by it under review and must vary that procedure whenever, after such consultation, it considers it appropriate to do so.
- (4) SCSWIS must give such publicity to that procedure (including that procedure as varied under subsection (3)) as it considers appropriate and must give a copy of the procedure to any person who requests it.

Commencement Information

I9 [S. 97](#) in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)

I10 [S. 97](#) in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), art. 2, [Sch.](#)

98 Inquiries

- (1) The Scottish Ministers may cause an inquiry to be held into any matter connected with—
 - (a) the exercise by SCSWIS of its functions, or
 - (b) the provision of a social service.
- (2) SCSWIS may cause an inquiry to be held into any matter connected with—
 - (a) the exercise of its functions, or
 - (b) the provision of a social service.
- (3) Before the commencement of—
 - (a) an inquiry under subsection (1), the Scottish Ministers, or
 - (b) an inquiry under subsection (2), SCSWIS,may direct that it be held in private; but where no such direction has been given the person holding the inquiry may if that person thinks fit hold it, or any part of it, in private.
- (4) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (provisions relating to local inquiries) apply in relation to an inquiry under subsection (1) as they apply in relation to a local inquiry under that section.
- (5) Subsections (2) to (6) of that section apply in relation to an inquiry under subsection (2) as they apply in relation to such a local inquiry; except that, for the purposes of an inquiry under subsection (2) any reference in those subsections which, by virtue of the Scotland Act 1998 (c. 46), falls to be construed as a reference to—
 - (a) the Scottish Ministers, is to be construed as a reference to SCSWIS, and
 - (b) a member of the staff of the Scottish Ministers, is to be construed as a reference to a member of staff of SCSWIS.

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- (6) The expenses incurred by SCSWIS in relation to an inquiry under subsection (2) (including such reasonable sum as SCSWIS may determine for the services of any of its staff engaged in the inquiry) must, unless SCSWIS is of the opinion that those expenses should be defrayed in whole or in part by it, be paid by such party to the inquiry as it may direct; and SCSWIS may certify the amount of the expenses so incurred.
- (7) Any sum certified under subsection (6) and to be defrayed in accordance with a direction under that subsection is a debt due by the party directed and recoverable accordingly.
- (8) In relation to an inquiry under subsection (2), SCSWIS may make an award as to the expenses of the parties and as to the parties by whom such expenses are to be paid.

Commencement Information

- I11** [S. 98](#) in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
I12 [S. 98](#) in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

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

Where, in the performance of its functions—

- (a) a local authority, or
- (b) a health body,

makes arrangements with any person to provide a care service, it must ensure that the service, when provided, is registered under Chapter 3.

Commencement Information

- I13** [S. 99](#) in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)
I14 [S. 99](#) in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

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

- (1) For the purposes of its functions as they relate to the provision of care services (including the making of arrangements with other persons to provide such services)—
 - (a) a local authority,
 - (b) a health body,
 must take into account the matters mentioned in subsection (3).
- (2) In carrying out its duty under subsection (1), a local authority or health body must have regard to any guidance issued by the Scottish Ministers in respect of that duty.
- (3) The matters are such—
 - (a) reports,
 - (b) information,
 - (c) notices,

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prepared, disseminated, given or otherwise produced by SCSWIS as are relevant to the provision of the services mentioned in subsection (1) or, as the case may be, to the organisation or co-ordination of those services.

Commencement Information

I15 [S. 100](#) in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), [art. 3](#), [Sch.](#)

I16 [S. 100](#) in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), [art. 2](#), [Sch.](#)

[F1101 Giving of notice

- (1) In Chapters 3 and 4, any reference to a notice being given to a person providing, or seeking to provide, a care service is to be construed as a reference to its being—
 - (a) delivered, where the person is—
 - (i) an individual, to that individual,
 - (ii) a body corporate, to a director, secretary or other similar officer of that body or to a manager (or other similar officer) of the care service provided by that body,
 - (iii) a firm, to a partner of that firm,
 - (b) sent by post, properly addressed to the person—
 - (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000), or
 - (ii) by a postal service which provides for the delivery of the document to be recorded, or
 - (c) transmitted to the person electronically.
- (2) In subsection (1)(a)(ii), “manager”, in relation to a care service provided by a body corporate, means the manager whose name is entered in the register maintained under regulation 5 of the Social Care and Social Work Improvement Scotland (Registration) Regulations 2011 ([S.S.I. 2011/28](#)) in relation to the care service.
- (3) For the purpose of subsection (1)(b)—
 - (a) a letter is properly addressed to—
 - (i) a body corporate, if addressed to the body at its registered or principal office,
 - (ii) a firm, if addressed to the firm at its principal office,
 - (iii) any other person, if addressed to the person at the address last known,
 - (b) a notice sent by post is to be taken to have been received on the third day after the day of posting unless the contrary is shown.
- (4) For the purpose of subsection (1)(c)—
 - (a) electronic transmission of a notice must be effected in a way that the person has indicated to SCSWIS that the person is willing to receive the notice,
 - (b) the person’s willingness to receive a notice in a particular way may be—
 - (i) specific to the notice in question or generally applicable to notices or other documents of that kind,
 - (ii) expressed specifically to SCSWIS or generally (for example on a website),

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- (iii) inferred from the person having previously been willing to receive notices or other documents from SCSWIS in that way and not having indicated an unwillingness to do so again,
- (c) SCSWIS' uploading of a notice to an electronic storage system from which the person is able to download the notice may constitute electronic transmission of the notice from SCSWIS to the person, where the person is sent a notification that the notice has been uploaded in that way,
- (d) a notice transmitted electronically is to be taken to have been received on the day of transmission unless the contrary is shown.]

Textual Amendments

F1 S. 101 substituted (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\)](#), ss. [38\(2\)](#), [59\(1\)](#)

102 Transfer of staff etc.

- (1) With effect from the date on which section 44 comes into force—
 - (a) any person employed by the Scottish Commission for the Regulation of Care immediately before that date is, subject to section 109, transferred into the employment of SCSWIS,
 - (b) all property (including rights) and liabilities of the Scottish Commission for the Regulation of Care subsisting immediately before that date are, subject to section 109, transferred to, and vest in, SCSWIS,
 - (c) subject to subsection (2), any person who is a member of staff of the Scottish Ministers employed in the Executive Agency of the Scottish Ministers known as the Social Work Inspection Agency immediately before that date is transferred into the employment of SCSWIS,
 - (d) any person to whom section 103 applies immediately before that date is transferred into the employment of SCSWIS.
- (2) Subsection (1)(c) does not apply to staff on secondment or loan to the Executive Agency of the Scottish Ministers known as the Social Work Inspection Agency from another part of the Scottish Administration.
- (3) The contract of employment of a person transferred by virtue of subsection (1)(a), (c) or (d)—
 - (a) is not terminated by the transfer, and
 - (b) has effect from the date of transfer as if originally made between the person and SCSWIS.
- (4) Without prejudice to subsection (3), where a person is transferred by virtue of subsection (1)(a), (c) or (d)—
 - (a) all the rights, powers, duties and liabilities of the Scottish Commission for the Regulation of Care or, as the case may be, the Scottish Ministers, under or in connection with the person's contract of employment are transferred to SCSWIS on the date of transfer, and
 - (b) anything done before that date by or in relation to the Scottish Commission for the Regulation of Care or, as the case may be, the Scottish Ministers, in respect of the person or the contract is to be treated from that date as having been done by or in relation to SCSWIS.

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- (5) Subsections (1) to (4) do not affect any right of any person so transferred to terminate the person's contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but any such change is not to be taken to have occurred by reason only that the identity of the person's employer changes by virtue of those subsections.

Commencement Information

- I17** S. 102 in force at 1.10.2010 for specified purposes by S.S.I. 2010/321, art. 3, Sch.
I18 S. 102 in force at 1.4.2011 in so far as not already in force by S.S.I. 2011/122, art. 2, Sch.

103 Transfer of staff: further provision

- (1) This section applies to such persons who are members of staff of the Scottish Ministers employed in the Executive Agency of the Scottish Ministers known as Her Majesty's Inspectorate of Education in Scotland as the Scottish Ministers may by order specify.
- (2) Such an order may specify any description of such employees or any individual such employee.
- (3) For the purposes of subsection (1), an order may not be made in relation to staff on secondment or loan to the Executive Agency of the Scottish Ministers known as Her Majesty's Inspectorate of Education in Scotland from another part of the Scottish Administration.
- (4) The power to make an order under subsection (1)—
- (a) must be exercised by statutory instrument,
 - (b) may be exercised so as to make different provision for different purposes.
- (5) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Parliament.

104 Orders and regulations: procedure

- (1) Any power conferred by this Part on the Scottish Ministers to make an order or regulations—
- (a) must be exercised by statutory instrument,
 - (b) includes power to make such consequential, supplemental, incidental, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
 - (c) may be exercised so as to make different provision for different purposes.
- (2) No order is, or regulations are, to be made under section 49, 58(1) or 78 or schedule 12 unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, the Parliament.
- (3) A statutory instrument containing an order or regulations under any other provision of this Part is subject to annulment in pursuance of a resolution of the Parliament.

Commencement Information

- I19** S. 104 in force at 1.10.2010 for specified purposes by S.S.I. 2010/321, art. 3, Sch.

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I20 S. 104 in force at 1.4.2011 in so far as not already in force by S.S.I. 2011/122, art. 2, Sch.

105 Interpretation of Part 5

(1) In this Part, unless the context otherwise requires—

- “act as a child minder” has the meaning given by paragraph 12(1) of schedule 12;
- “adoption service” has the meaning given by paragraph 8 of that schedule;
- “adult placement service” has the meaning given by paragraph 11 of that schedule;
- “care home service” has the meaning given by paragraph 2 of that schedule;
- “care service” has the meaning given by section 47(1);
- “child”—
 - (a) in relation to an adoption service, means a person who is under the age of 18,
 - (b) in relation to a fostering service, means a person who is under the age of 18, and
 - (c) for the purposes of paragraph 6 of schedule 12, [^{F2}means a person who is under the age of 18]

but otherwise means a person under the age of 16;

- “child care agency” has the meaning given by paragraph 5 of schedule 12;
- “child minding” has the meaning given by paragraph 12 of that schedule;
- “condition notice” has the meaning given by section 66;
- “day care of children” has the meaning given by paragraph 13 of schedule 12;
- “domestic premises” means any premises which are wholly or mainly used as a private dwelling;
- “fostering service” has the meaning given by paragraph 9 of schedule 12;
- “health body” means a Health Board or Special Health Board constituted by order under section 2 of the National Health Service (Scotland) Act 1978 (c. 29);
- “health records” means records relating to the physical or mental health of an individual (including dental records and medical records);
- “hospital” has the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978;
- “housing support service” has the meaning given by paragraph 19 of schedule 12;
- “improvement notice” has the meaning given by section 62;
- “limited registration service” has the meaning given by section 61(5);
- “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39) [^{F3}and, other than in section 51(3), a reference to a local authority includes a person who is providing services in exercise of functions delegated to that person by a local authority in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014.];
- “local authority condition notice” has the meaning given by section 85;
- “medical records” means records relating to the physical or mental health of an individual which have been prepared by a registered medical practitioner who is, or has been, responsible for the clinical care of the individual;
- “mental disorder” has the same meaning as in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);

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“notice” means notice in writing;
“nurse agency” has the meaning given by paragraph 4 of schedule 12;
“offender accommodation service” has the meaning given by paragraph 7 of that schedule;
“personal care” has the meaning given by paragraph 20 of that schedule;
“personal support” has the meaning given by that paragraph;
“premises” includes any vehicle;
“prescribed” means prescribed by order made by the Scottish Ministers;
“provide”, in relation to a care service, means to carry on or manage such a service; and includes, in the case of a care service which is provided by a body corporate, a reference to a director, manager, secretary to other similar officer of the body;
“regulations” means regulations made by the Scottish Ministers;
“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 paragraph 3 of schedule 12;
“secure accommodation service” has the meaning given by paragraph 6 of that schedule;
“social services” and “social service” have the meanings given by section 46;
“social work services” has the meaning given by section 48;
“someone who cares for” (or “a person who cares for”) a person has the meaning given by paragraph 20 of schedule 12;
“SCSWIS” means Social Care and Social Work Improvement Scotland (which is constituted under section 44);
“support service” (except in the expression “housing support service”) has the meaning given by paragraph 1 of schedule 12;
“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 paragraph 20 of schedule 12.

- (2) In this Part, a person who uses, or is eligible to use, a social service includes any person to whom that service is, or may be, provided.
- (3) For the purposes of this Part, information is “confidential information” where—
- (a) the identity of an individual is ascertainable—
 - (i) from that information, or
 - (ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person holding that information, and
 - (b) the information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.

Textual Amendments

F2 Words in s. 105(1) substituted (24.6.2013) by [The Children's Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, [Sch. 1 para. 19\(2\)](#)

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F3 Words in [s. 105\(1\)](#) inserted (1.4.2015) by [The Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(Consequential Modifications and Saving\) Order 2015 \(S.S.I. 2015/157\)](#), art. 1(1), [Sch. para. 10\(3\)](#)

Commencement Information

I21 S. 105 in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)

I22 S. 105 in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), art. 2, [Sch.](#)

106 Minor and consequential amendments and repeals: SCSWIS

Schedule 14 (which makes minor modifications of enactments and modifications consequential on the provisions of this Part) has effect.

Commencement Information

I23 [S. 106](#) in force at 1.10.2010 for specified purposes by [S.S.I. 2010/321](#), art. 3, [Sch.](#)

I24 [S. 106](#) in force at 1.4.2011 in so far as not already in force by [S.S.I. 2011/122](#), art. 2, [Sch.](#)

107 Minor modifications: Scottish Social Services Council

Schedule 15 (which makes minor modifications of Part 3 of the Regulation of Care (Scotland) Act 2001 (asp 8)) has effect.

Commencement Information

I25 [S. 107](#) in force at 1.8.2010 by [S.S.I. 2010/221](#), art. 3(2), [Sch.](#)

Changes to legislation:

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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 amendment to earlier affecting provision 2019 asp 6, s. 12(2) by [S.S.I. 2023/127 reg. 3\(4\)](#)
- Pt. 5 Ch. 3A inserted by [2019 asp 6 s. 12\(2\)](#)