



Regulation of Care (Scotland) Act 2001

2001 asp 8

PART 1

THE COMMISSION AND CARE SERVICES

Proposals and applications in relation to registered care services

12 Cancellation of registration

- (1) The Commission 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 Part, 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—
 - (a) paragraph (a) of subsection (1) above, the following are relevant offences—
 - (i) an offence under this Act;
 - (ii) an offence under regulations made under this Act; or
 - (iii) an offence which, in the opinion of the Commission, makes it appropriate that the registration should be cancelled; and
 - (b) paragraph (b) of that subsection, the following are relevant requirements—
 - (i) any requirements or conditions imposed by or under this Act; or
 - (ii) the requirements of regulations made under this Act.
- (3) This section is without prejudice to section 18 of this Act.

13 Condition notices

- (1) The Commission may at any time give notice (in this Act referred to as a “condition notice”) to the person for the time being providing a service registered under this Part that it proposes to—

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- (a) vary or remove a condition for the time being in force; or
 - (b) impose an additional condition,
- in relation to the registration.

(2) This section is without prejudice to section 18 of this Act.

14 Applications under Part 1 in respect of conditions

- (1) A person providing a service registered under this Part may apply to the Commission—
- (a) for the variation or removal of any condition for the time being in force in relation to the registration; or
 - (b) for cancellation of the registration,
- but no such application shall be competent in circumstances mentioned in subsection (2) below.
- (2) The circumstances are that the Commission has given the person notice—
- (a) under section 15(2) of this Act of its proposal to cancel the registration (unless the Commission has decided not to take that step); or
 - (b) under section 17(3) of this Act of its decision to cancel the registration and the time within which an appeal may be brought has not expired or, if an appeal has been brought, that appeal has not been determined.
- (3) An application under subsection (1) above shall be made in such manner and state such particulars as may be prescribed; and, without prejudice to subsection (1)(b) of section 24 of this Act, shall be accompanied by the fee imposed under subsection (2) (a) or as the case may be (c) of that section.
- (4) If the Commission decides to grant an application under subsection (1)(a) above it shall give the applicant notice of its decision (stating, where applicable, the condition varied or removed) and issue a new certificate of registration.

15 Further provision as respects notice of proposals

- (1) If an application has been made under section 7 of this Act and the Commission proposes—
- (a) to grant that application but to do so subject to a condition which has not been agreed in writing between it and the applicant, it shall give the applicant notice of the proposed condition;
 - (b) to refuse that application, it shall give such notice of the proposed refusal.
- (2) Except where it makes an application under section 18(1) of this Act, the Commission shall give any person who provides a service registered under this Part notice of a proposal to cancel the registration (other than in accordance with an application under subsection (1)(b) of section 14 of this Act).
- (3) The Commission shall give an applicant under subsection (1)(a) of section 14 of this Act notice of a proposal to refuse that application.
- (4) A notice under this section shall give the Commission's reasons for its proposal.

16 Right to make representations to Commission as respects proposals under Part 1

- (1) A condition notice or a notice under section 15 of this Act shall state that, within fourteen days after service of the notice, the person to whom it is given may make written representations to the Commission concerning any matter which that person wishes to dispute.
- (2) Where such a notice has been given, the Commission shall do the thing proposed only after (whichever first occurs)—
 - (a) the person to whom the notice was given makes such representations as are mentioned in subsection (1) above;
 - (b) that person notifies the Commission in writing that such representations will not be made; or
 - (c) the period of fourteen days so mentioned elapses.
- (3) Subsections (1) and (2) of this section do not apply as respects a condition notice given by virtue of section 35.

17 Notice of Commission's decision under Part 1

- (1) If the Commission decides to grant unconditionally an application made under section 7 of this Act or to grant such application subject only to a condition which has been agreed in writing between the Commission and the applicant, it shall give the applicant notice of its decision.
- (2) A notice under subsection (1) above shall state the agreed condition.
- (3) If the Commission decides to implement a proposal in relation to which it has given a person a condition notice or a notice under section 15 of this Act, it shall give that person notice of the decision.
- (4) A notice under subsection (3) above shall—
 - (a) explain the right of appeal conferred by section 20 of this Act; 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 subsection (1)(a) of section 15 of this Act, state the condition subject to which the application is granted.
- (5) Subject to subsection (6) below, a decision to implement a proposal in relation to which a condition notice has been given or of which notice has been given under subsection (1)(a) or (2) of the said section 15 shall not take effect—
 - (a) if no appeal is brought, until the period of fourteen days referred to in section 20(1) of this Act 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 subsection (1)(a) of section 15 of this Act and the applicant notifies the Commission in writing, before the period of fourteen days referred to in section 20(1) of this Act has elapsed, that there will be no appeal, the decision shall take effect on receipt of that notification.

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18 Urgent procedures for cancellation of registration etc.

- (1) The Commission may make summary application to the sheriff for an order—
 - (a) cancelling the registration under this Part of a care service;
 - (b) varying or removing any condition for the time being in force in relation to the registration; or
 - (c) imposing an additional condition in relation to the registration,
 and if it appears to the sheriff that, unless the order is made, there will be a serious risk to some other person’s life, health or well-being the application may be granted.
- (2) As soon as practicable after the Commission makes an application under subsection (1) above, it shall so notify the appropriate authorities.
- (3) Where the order applied for is made, the Commission shall as soon as practicable thereafter give a copy of it to the person who provides the care service.
- (4) 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
 - (b) any statutory authority not mentioned in paragraph (a) above whom the Commission thinks it appropriate to notify.
- (5) In subsection (4)(b) above, “statutory authority” means a body established by or under an enactment.

19 Conditions as to numbers

Without prejudice to the generality of section 9(1), 13(1) or 18(1)(c) of this Act, a condition imposed under any of those provisions in relation to a care service may limit—

- (a) in the case of—
 - (i) a care home service;
 - (ii) a school care accommodation service; or
 - (iii) a secure accommodation service,
 the number of persons for whom the service may provide accommodation;
- (b) in the case of an adult placement service, the number of persons whom the service may place;
- (c) in the case of—
 - (i) a support service; or
 - (ii) an independent health care service,
 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,
 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, the number of persons for whom the agency may supply registered nurses, registered midwives or registered health visitors.

20 Appeal against decision to implement proposal

- (1) A person given notice under section 17(3) of this Act of a decision to implement a proposal may, within fourteen days after that notice is given, appeal to the sheriff against the decision.
- (2) The sheriff may, on appeal under subsection (1) above, confirm the decision or direct that it shall not 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.