

*This draft Scottish Statutory Instrument supersedes the draft published on 12th February 2009 and laid in the Scottish Parliament on 6th February 2009. It is being issued free of charge to all known recipients of that draft Scottish Statutory Instrument. Draft Order laid before the Scottish Parliament under section 78(2) of the Regulation of Care (Scotland) Act 2001, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2009 No.**

**SOCIAL CARE**

**The Regulation of Care (Scotland) Act 2001  
(Minimum Frequency of Inspections) Order 2009**

*Made* - - - -

*Coming into force* - - *1st April 2009*

The Scottish Ministers make the following Order, in exercise of the powers conferred on them by sections 25(5A) and (5B) of the Regulation of Care (Scotland) Act 2001<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 25(5A) of that Act, they have consulted such persons as they consider appropriate.

In accordance with section 78(2) of that Act a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

**Citation and commencement**

1. This Order may be cited as the Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2009 and shall come into force on 1st April 2009.

**Interpretation**

2. In this Order—

“the Act” means the Regulation of Care (Scotland) Act 2001.

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(1) 2001 asp 8 (“the Act”). Section 25(5A) and (5B) was inserted by the [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), section 31(2) and section 78(2) was amended by that Act.

### **Revocation of the Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2007**

3. The Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2007(2) is hereby revoked.

### **Amendment to the Regulation of Care (Scotland) Act 2001**

4. In section 25(3) of the Act for sub-paragraphs (i) and (ii) of paragraph (a) substitute—
- “(i) if the service is a care home service(3), at least twice in the period of 12 months which immediately follows registration and at least twice in each subsequent period of 12 months;
  - (ii) if the service is a school care accommodation service(4), at least twice in the period of 24 months which immediately follows registration and at least twice in each subsequent period of 48 months;
  - (iii) if the service is a secure accommodation service(5), at least twice at the period of 12 months which immediately follows registration and at least twice in each subsequent period of 12 months; and
  - (iv) if the service is an independent health care service(6) which provides overnight accommodation, at least twice in the period of 24 months which immediately follows registration and at least twice in each subsequent period of 24 months; and”.
5. In section 25(5) of the Act, in each of paragraphs (a) and (b) for “twelve months” substitute—
- “(i) if the service is day care of children provided for children aged 3 years or over only, is a child care agency or is a nurse agency(7), 24 months;
  - (ii) if the service is child minding(8) 24 months;
  - (iii) if the service is a housing support service(9) which is not provided in conjunction with any other form of care service, 36 months; and
  - (iv) in the case of any other service, 12 months.”.

St Andrew’s House,  
Edinburgh  
2009

Authorised to sign by the Scottish Ministers

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(2) [S.S.I. 2007/231](#).  
(3) “Care home service” has the meaning given by section 2(3) of the Act.  
(4) “School care accommodation service” has the meaning given by section 2(4) of the Act as amended by section 82 of the [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#).  
(5) “Secure accommodation service” has the meaning given by section 2(9) of the Act.  
(6) “Independent health care service” has the meaning given by section 2(5) of the Act.  
(7) “Day care of children” has the meaning given by section 2(20) of the Act; “Child care agency” has the meaning given by section 2(7) of the Act and “Nurse agency” has the meaning given by section 2(b) of the Act.  
(8) “Child minding” has the meaning given by section 2(17) of the Act.  
(9) “Housing support service” has the meaning given by section 2(27) of the Act.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends section 25(5) of the Regulation of Care (Scotland) Act 2001 (“the Act”). It amends the minimum frequency within which the Scottish Commission for the Regulation of Care (“the Care Commission”) must carry out inspections of certain care services under the Act.

Article 3 of the Order revokes the Regulation of Care (Scotland) Act 2001 (Minimum Frequency of Inspections) Order 2007 which had made earlier amendments to section 25 of the Act.

Section 25(3) and (5) of the Act provide for two inspection regimes. The first covers care home services, school care accommodation services, secure accommodation services and independent healthcare services which provide overnight accommodation registered under Part 1 or Part 2 of the Act. Under the first regime, the Care Commission must secure that those services are inspected at least twice in the period of 12 months immediately following registration and at least twice in each subsequent 12 month period. At least one inspection in each of those two periods must be without prior notification. Article 4 of this Order amends the periods in the first regime. The 12 month period is extended for school care accommodation services and independent healthcare services, which provide overnight accommodation, reducing the frequency with which the Care Commission must inspect these services;

to twice in the period of 24 months immediately following registration, and twice in every 48 month period thereafter, in respect of school care accommodation services; and

to twice in the period of 24 months immediately following registration, and twice every 24 months thereafter, in respect of independent healthcare services which provide overnight accommodation, the periods for care homes and secure accommodation services are unchanged.

The second regime applies to any other care service registered under Part 1 or Part 2 of the Act. Under the second regime, the Care Commission must inspect such a care service at least once in the period of 12 months immediately following registration and for subsequent periods after that must ensure that no greater period than 12 months elapses before the care service is inspected again.

Article 5 of this Order amends the periods in the second regime. Both 12 month periods are extended as follows for the following care services, reducing the frequency within which the Care Commission must inspect those services—

- (a) to 36 months for housing support services which are not provided in conjunction with any other form of care service; and
- (b) to 24 months for—
  - Day care of children provided for children aged 3 years or over only;
  - Child care agencies;
  - Nurse agencies; and
  - Child minding.

The minimum periods for inspection of all other care services under the second regime remain at 12 months.