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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 121**

**The Public Services Reform (Scotland) Act 2010 (Health and Social Care) Savings and Transitional Provisions Order 2011**

**PART IV**

**SAVINGS PROVISIONS**

**Applications**

**15.**—(1) Subject to paragraphs (2) and (3), where a person who seeks to provide a care service or an independent healthcare service has made an application to the Commission in accordance with section 7 or 8 of the 2001 Act in respect of that service, and that application has not been determined by the Commission before the appointed day, that application is to continue to be dealt with under those provisions, and sections 9 and 15 of the 2001 Act remain in force for that purpose.

(2) Where paragraph (1) applies—

- (a) if the application relates to a care service all references to the Commission are to read as references to SCSWIS; and
- (b) if the application relates to an independent health care service all references to the Commission are to read as references to HIS.

(3) Where SCSWIS or HIS determine that such an application should be granted, SCSWIS or HIS, as the case may be, must grant registration under section 60 of the 2010 Act or section 10Q of the NHS Act, as the case may be, subject to such conditions as they think fit.

**Care Commission inspections**

**16.** Where prior to the appointed day the Commission has commenced an inspection of a care service or an independent health care service under section 25 of the 2001 Act, which has not concluded by the appointed day, that section and section 27 of the 2001 Act will continue in force for the purposes of that inspection.

**Integrated inspections**

**17.** Where before the appointed day the Commission and Her Majesty's inspectors have commenced an integrated inspection under section 26 of the 2001 Act, which has not concluded by the appointed day, that section will continue in force for the purposes of that inspection.

**Urgent cancellation proceedings**

**18.**—(1) Where prior to the appointed day the Commission has made a summary application to the sheriff for an order under section 18 of the 2001 Act, Part 1 of the 2001 Act continues to apply for the purposes of the service which is the subject of that application, until the final determination of that application.

(2) Where the registration of the service is not cancelled—

- (a) if the service is a care service, it is to be treated for all purposes as if it had been registered under Part 5 of the 2010 Act;
- (b) if the service is an independent health care service it is to be treated for all purposes as if it had been registered under section 10P of the NHS Act,

immediately following determination of the application.

### **Appeal proceedings**

**19.** Where a person has been given notice within 14 days prior to the appointed day under section 17(3) of the 2001 Act, from the appointed day any right of appeal under section 20 of the 2001 Act is to be treated as arising under section 75 of the 2010 Act and any appeal taken under section 20 of the 2001 Act is to be treated as taken under section 75 of the 2010 Act.

### **Offences**

**20.**—(1) Where prior to the appointed day criminal proceedings are ongoing in respect of an offence under section 21, 22, 23 or 40 of the 2001 Act, those sections continue in force for the purposes of those proceedings.

(2) Any offence committed under section 21, 22, 23 or 40 of the 2001 Act before the appointed day may be prosecuted after that day as if Part 1 of the 2001 Act had not been repealed.

### **Regulations**

**21.** Despite the repeal of section 29 of the 2001 Act<sup>(1)</sup>, the following regulations continue in force—

- (a) the Regulation of Care (Fitness of Employees in relation to Care Services) (Scotland) (No. 2) Regulations 2009<sup>(2)</sup>;
- (b) regulations 19 to 24 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002<sup>(3)</sup> and such other provisions of those Regulations as are necessary for the purposes of regulations 19 to 24.

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(1) Section 29 of the Regulation of Care (Scotland) Act 2001 was repealed by the [Public Services Reform \(Scotland\) Act 2010](#) (asp 8), schedule 14.

(2) S.S.I. 2009/118 as amended by 2009/349, 2010/413.

(3) S.S.I. 2002/114 as amended by 2003/149, 2003/572, 2004/94, 2006/274.