



Registered Establishments (Scotland) Act 1987

1987 CHAPTER 40

An Act to make further provision as to the registration of establishments under the Social Work (Scotland) Act 1968 and the Nursing Homes Registration (Scotland) Act 1938; and for connected purposes. [15th May 1987]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by authority of the same, as follows:—

1 Definition of "establishments"

(1) For subsection (1) of section 61 of the Social Work (Scotland) Act 1968 (in this Act referred to as "the 1968 Act") substitute—

“(1) The following provisions of this Part of this Act apply to any residential or other establishment the whole or a substantial part of whose function is to provide persons with such personal care or support, whether or not combined with board, and whether for reward or not, as may be required for the purposes of this Act.

(1A) For the purposes of subsection (1) above—

"establishment" does not include any establishment controlled or managed by a Government department or by a local authority or, subject to sections 61A and 63B below, required to be registered, or in respect of which a person is required to be registered, with a Government department or a local authority under any other enactment;

"personal care" includes the provision of appropriate help with physical and social needs; and

"support" means counselling or other help provided as part of a planned programme of care.”.

- (2) In subsection (2) of the said section 61, at the beginning insert "Subject to section 62(8) and (8A) below".

2 Voluntary registration

- (1) After the said section 61 of the 1968 Act insert—

“61A Voluntary registration.

- (1) Any grant-aided school or independent school within the meaning of section 135(1) of the Education (Scotland) Act 1980 (which defines terms used in that Act) which performs functions such as are described in section 61(1) above may, but shall not be required to, apply for registration under this Part of this Act in accordance with the provisions of this section.
- (2) Where an application for registration of a grant-aided school or independent school is granted, the establishment shall be entered in the register kept for the purposes of section 61 (2) above by the local authority or, as the case may be, the Secretary of State.
- (3) Any certificate of registration granted in respect of an establishment to which this section applies shall relate to the whole of the establishment, excepting any part thereof which is used exclusively for educational purposes.
- (4) The provisions of this Part of this Act shall apply to establishments to which this section applies subject to the following—
 - (a) section 61(2) and (3) shall not apply;
 - (b) section 62(8) and (8A) shall not apply;
 - (c) section 65 shall not apply;
 - (d) the provisions of section 67(1) shall apply only where the person carrying on the establishment has been registered; and
 - (e) section 67(2) shall not apply.”
- (2) In the said section 135(1) of the Education (Scotland) Act 1980, in the definition of "school" the words "but does not include an establishment or residential establishment within the meaning of the Social Work (Scotland) Act 1968" shall be omitted.

3 Registration

- (1) For subsection (4) of section 62 of the 1968 Act (which provides for the cancellation of registration of persons in respect of establishments on certain grounds), substitute—
- “(4) Without prejudice to subsection (2) of this section, where the person registered in respect of an establishment proposes to employ a manager, that is, a person engaged to run the establishment from day to day, he shall
- (a) include in the application for registration a note of the proposed manager's name; and
 - (b) inform the authority, within 28 days in either case, of—
 - (i) the departure of the manager presently employed, or
 - (ii) the employment of a new manager.

- (4A) Where any person registered in respect of an establishment employs a manager at the date when this enactment comes into force, he shall within 28 days of that date inform the local authority of the manager's name.
- (4B) Where any person registered in respect of an establishment intends to cease to carry on the establishment, he shall give the local authority at least 28 days' notice of that fact.
- (4C) The local authority may at any time cancel the registration of a person in respect of an establishment—
- (a) on any ground which would entitle them to refuse an application for the registration of that person in respect of an establishment; or
 - (b) on the ground that that person—
 - (i) has failed to notify the authority of a change in manager under subsection (4) above, or
 - (ii) has been convicted of an offence against this section or against any regulations under this Part of this Act relating to the conduct of an establishment; or
 - (c) on the ground that any other person has been convicted of such an offence as is mentioned in sub-paragraph (b)(ii) above in respect of that establishment; or
 - (d) on the ground that the annual fee for the continuation of registration has not been paid on the due date.”.
- (2) For subsection (5) of the said section 62 substitute—
- “(5) It shall be a condition of the registration of any person in respect of an establishment that he shall comply with such reasonable conditions with regard to the proper operation of the establishment as the local authority may impose, and such conditions shall include conditions as to—
- (a) the maximum number of persons (excluding persons carrying on or employed in the establishment and their families) who may be accommodated at any one time in the establishment, and
 - (b) the categories of persons who may be admitted to the establishment.
- (5A) The local authority may, at their own instance or at that of the person registered in respect of the establishment, at any time—
- (a) impose any new condition with regard to the operation of the establishment; or
 - (b) vary any condition imposed under subsection (5) or paragraph (a) above.”.
- (3) In subsection (6) of the said section 62, for the words "condition imposed by or under the last foregoing subsection" substitute "condition, new condition or variation of a condition imposed by or under subsection (5) or (5A) above or section 63A(7) below".
- (4) After the said subsection (6) insert—
- “(6A) The certificate of registration issued under this section in respect of any premises shall include the following information—
- (a) the name of the person registered in respect of the establishment;
 - (b) the name of any manager appointed by the person mentioned in paragraph (a) above;

- (c) the address of the premises at which the establishment is to be carried on;
- (d) the maximum number of persons who may be accommodated in the establishment under subsection (5)(a) above;
- (e) the categories of persons who may be admitted to the establishment under subsection (5)(b) above,

and where any material change occurs in any of the information mentioned in this subsection the local authority shall issue a new certificate.

(6B) Where an establishment to which the provisions of this Part of this Act apply is being carried on on the date when this enactment comes into force the local authority shall, within 60 days of that date issue to the person carrying on that establishment a new certificate including the information mentioned in subsection (6A) above.”.

(5) After subsection (8) of the said section 62 (which makes provision for the carrying on of an establishment for a limited period without registration in the event of the death of the person registered) insert—

“(8A) Notwithstanding anything in subsection (1) of this section, where for any reason the person registered in respect of an establishment ceases to be so registered, the local authority may allow another person to carry on the establishment for such period not exceeding 60 days as the authority may sanction, and subject to such conditions as the authority think appropriate.”.

4 Appeals against conditions imposed on registration or subsequently

After section 63 of the 1968 Act insert—

“63A Appeals against conditions imposed on registration or subsequently.

- (1) Not less than fourteen days before determining—
- (a) the conditions intended to be imposed under section 62(5) above in respect of the registration of any person in respect of an establishment;
 - or
 - (b) any new condition or variation of an existing condition intended to be imposed under section 62(5A) above,
- the Secretary of State or, as the case may be, the local authority shall send by recorded delivery service to the applicant or the person registered, as the case may be, notice of their intention.
- (2) Every notice under subsection (1) above shall contain an intimation that if within fourteen days after the receipt of the notice the applicant or, as the case may be, the person registered informs the authority or the Secretary of State in writing of his desire—
- (a) to show cause, in person or by a representative, why the proposed conditions, new conditions or variation of existing conditions should not be imposed;
 - (b) to make representations as to what conditions, new conditions or variation of conditions should be imposed in substitution for those proposed,

the authority or the Secretary of State shall, before carrying out their intention, afford him an opportunity so to do.

- (3) The local authority or the Secretary of State, after giving the applicant or the person registered, as the case may be, an opportunity of being heard by them, shall send a notice to him by recorded delivery service informing him of what conditions, new conditions or variation of conditions they have decided to impose.
- (4) A person aggrieved by a notice of a local authority or of the Secretary of State under subsection (3) above may appeal to an appeal tribunal established by Schedule 5 to this Act, and any such appeal shall be brought within twenty-one days of the date of that notice.
- (5) Where an appeal under subsection (4) above relates to the imposition of conditions on the initial registration of a person in respect of an establishment, the registration shall not take effect until—
 - (a) the appeal has been determined; or
 - (b) the time for bringing an appeal has elapsed without—
 - (i) an appeal having been brought, or
 - (ii) an appeal which has been intimated having been proceeded with,and in either of the cases mentioned in paragraph (b) above the registration shall be subject to the conditions proposed in the notice sent to the applicant under subsection (3) above.
- (6) Where an appeal under subsection (4) above relates to the proposed imposition of new conditions or of a variation of existing conditions, the new conditions or variation shall not take effect until—
 - (a) the appeal has been determined; or
 - (b) the time for bringing an appeal has elapsed without—
 - (i) an appeal having been brought, or
 - (ii) an appeal which has been intimated having been proceeded with.
- (7) On any appeal under subsection (4) above the tribunal may confirm or vary any condition, new condition or variation of a condition against which the appeal is brought.”.

5 Jointly registrable establishments

- (1) After section 63 of the 1968 Act insert—

“63B Special provisions for jointly registrable establishments.

- (1) Subject to the provisions of this section, where a person registered or intending to be registered under section 1 of the Nursing Homes Registration (Scotland) Act 1938 (which relates to the registration of nursing homes) in respect of an establishment intends that that establishment should also carry out functions in respect of which registration is required under this Act, the provisions of this Part of this Act shall apply in relation to the registration of that person for the purpose of carrying out those functions in that establishment.

- (2) In this Part of this Act "jointly registrable establishment" means an establishment required to be registered under both this Part of this Act and the said Act of 1938.
 - (3) Any certificate of registration issued by a local authority to such a person as is described in subsection (1) above shall relate to the whole of the establishment, excepting any part thereof which is used exclusively for the purpose of carrying out functions under the said Act of 1938.
 - (4) Where a local authority cancel the registration of a jointly registrable establishment under section 62(4) above they shall inform the Health Board responsible under the 1938 Act for the registration of that establishment of the fact of and the reasons for the cancellation.
 - (5) Any person who, on the date when this enactment comes into force, is carrying on a jointly registrable establishment which is not registered under this Part of this Act shall within 3 months of that date apply for such registration.
 - (6) No fee shall be chargeable by a local authority under section 64A below in respect of any application made by virtue of subsection (5) above.”.
- (2) After section 2 of the Nursing Homes Registration (Scotland) Act 1938 insert—

“2A Special provisions for jointly registrable establishments.

- (1) Subject to the provisions of this section, where a person registered or intending to be registered under section 62 of the Social Work (Scotland) Act 1968 in respect of an establishment carrying out functions in respect of which registration is required under Part IV of that Act intends that that establishment should also carry out functions in respect of which registration is required under this Act, the provisions of this Act shall apply in relation to the registration of that person for the purpose of carrying out those functions in that establishment.
- (2) In this Act "jointly registrable establishment" means an establishment required to be registered under both this Act and Part IV of the said Act of 1968.
- (3) Any certificate of registration issued by a Health Board to such a person as is described in subsection (1) above shall relate to the whole of the establishment, excepting any part thereof which is used exclusively for the purpose of carrying out functions under Part IV of the said Act of 1968.
- (4) Where a Health Board cancel the registration of a jointly registrable establishment under section 2 above they shall inform the local authority with which the establishment is registered of the fact of and the reasons for the cancellation.
- (5) Any person who, on the date when this enactment comes into force, is carrying on a jointly registrable establishment which is not registered under this Act shall within 3 months of that date apply for such registration.
- (6) No fee shall be chargeable by a Health Board under section 1 A(a) above in respect of any application made by virtue of subsection (5) above.”.

6 Registration fees

(1) After section 64 of the 1968 Act insert—

“64A Registration fees.

(1) Subject to the provisions of this section, a local authority shall impose fees in respect of—

- (a) an application for registration made by any person in respect of the carrying on of any establishment to which this section applies;
- (b) the annual continuation of any such registration;
- (c) an application made by the person registered in respect of the establishment for a variation in any condition imposed under section 62(5) or (5A) of this Act; and
- (d) the issuing of a new certificate following any change in the information mentioned in section 62(6A) above made at the instance of or resulting from an application by the person registered in respect of the establishment.

(2) This section applies to any establishment such as is mentioned in section 61(1) of this Act which is a residential establishment other than any establishment—

- (a) the whole or a substantial part of whose function is to accommodate children for the purposes of this Act; or
- (b) such as is mentioned in section 61A above.

(3) The Secretary of State may prescribe—

- (a) the maximum fees which may be imposed by local authorities under this section; and
- (b) the times at which fees may be charged.

(4) Subject to subsection 3(a) above, a local authority shall have regard to their reasonable expenses in carrying out their functions under this Part of this Act in fixing fees under this section:

Provided that where it appears to the authority to be appropriate they may charge a nominal fee, or remit the fee altogether.

(5) Where an application for registration in respect of an establishment has been made to a local authority before the coming into force of this section no fee shall be payable in respect of that registration.”.

(2) In section 94(1) of the 1968 Act (which defines terms used in that Act)—

- (a) in paragraph (c) of the definition of "prescribed", after "62(2)," insert "64A(3),"; and
- (b) after the said paragraph (c) insert "and "prescribe" shall be construed accordingly."

(3) After section 1 of the Nursing Homes Registration (Scotland) Act 1938 insert—

“1A Registration fees.

—A Health Board may impose fees, of such amounts and at such times as may be prescribed by the Secretary of State in regulations under this Act, in respect of—

- (a) an application for registration made by any person in respect of the carrying on of a nursing home;
 - (b) the annual continuation of any such registration;
 - (c) an application made under section 1(3F) above by the person registered in respect of the home for a variation in any condition such as is mentioned in section 1(3D) or (3E) above which has effect in relation to the home; and
 - (d) the issuing under section 1(3) above of a new certificate following any variation, made as a result of an application under section 1(3F) above, in the conditions under section 1(3D) or (3E) above subject to which the registration has been granted.”.
- (4) In section 1(2) of the said Act of 1938 (which relates to the registration of nursing homes) the words "and shall be accompanied by such fee as may be so prescribed" shall cease to have effect.

7 Re-occupation of premises where residents removed

- (1) In section 65(4) of the 1968 Act (which provides for the removal of persons from establishments in certain circumstances)—
- (a) after the word "who" insert "—(a)";
 - (b) after the word "subsection" insert “; or—
 - (b) re-occupies the premises for the purpose of carrying on the establishment without any appeal under section 64 above having been decided in his favour,”.

8 Citation, commencement and extent

- (1) This Act may be cited as the Registered Establishments (Scotland) Act 1987.
- (2) This Act shall come into force on such day as the Secretary of State may appoint and different days may be so appointed for different provisions or different purposes.
- (3) This Act applies to Scotland only.