



# Regulation of Care (Scotland) Act 2001

## 2001 asp 8

### PART 1

#### THE COMMISSION AND CARE SERVICES

##### *Constitution of Commission*

#### **1 Constitution of Scottish Commission for the Regulation of Care**

- (1) There shall be a body corporate, to be known as the Scottish Commission for the Regulation of Care (in this Act referred to as “the Commission”), which shall—
  - (a) exercise the functions conferred on it by this Act or any other enactment; and
  - (b) have the general duty of furthering improvement in the quality of care services provided in Scotland.
- (2) The Commission shall, in the exercise of its functions, act—
  - (a) in accordance with any directions in writing given to it by the Scottish Ministers;
  - (b) under the general guidance of the Scottish Ministers; and
  - (c) in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (3) Schedule 1 to this Act shall have effect with respect to the Commission.

##### *Care services*

#### **2 Care services**

- (1) A “care service” is any of the following—
  - (a) a support service;
  - (b) a care home service;
  - (c) a school care accommodation service;
  - (d) an independent health care service;
  - (e) a nurse agency;

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- (f) a child care agency;
  - (g) a secure accommodation service;
  - (h) an offender accommodation service;
  - (i) an adoption service;
  - (j) a fostering service;
  - (k) an adult placement service;
  - (l) child minding;
  - (m) day care of children; and
  - (n) a housing support service.
- (2) A “support service” is a service provided, by reason of a person’s vulnerability or need (other than vulnerability or need arising by reason only of that person being of a young age), to that person or to someone who cares for that person by—
- (a) a local authority;
  - (b) any person under arrangements made by a local authority;
  - (c) a health body; or
  - (d) any person if it includes personal care or personal support,
- but the expression does not include a care home service, an independent health care service, a service which provides overnight accommodation, an adoption service, a fostering service or a service excepted from this definition by regulations, paragraphs (c) and (d) above do not apply where the provider is a health body acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978 (c. 29) and paragraph (d) above does not apply if the provider is an individual who personally and solely gives the care or support in question.
- (3) A “care home service” is a service which provides accommodation, together with nursing, personal care or personal support, for persons by reason of their vulnerability or need; but the expression does not include—
- (a) a hospital;
  - (b) a public, independent or grant-aided school;
  - (c) an independent health care service; or
  - (d) a service excepted from this definition by regulations.
- (4) A “school care accommodation service” is a service which is provided to a pupil by an education authority or the managers of an independent or grant-aided school, or by any person under arrangements made by any such authority or managers—
- (a) for the purpose of the pupil being in attendance at a public, independent or grant-aided school; and
  - (b) which consists of the provision, in a place in or outwith the school, of residential accommodation,
- but a service may be excepted from this definition by regulations.
- (5) An “independent health care service” is any of the following—
- (a) an independent hospital;
  - (b) a private psychiatric hospital;
  - (c) an independent clinic; and
  - (d) an independent medical agency.

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- (6) A “nurse agency” is a service which consists of or includes supplying, or introducing to persons who use the service, registered nurses, registered midwives or registered health visitors; but a service may be excepted from this definition by regulations.
- (7) A “child care agency” is a service which consists of or includes supplying, or introducing to persons who use the service, child carers; but the expression does not include a nurse agency and a service may be excepted from this definition by regulations.
- (8) In subsection (7) above, “child carer” means a person who—
- (a) whether or not for reward; and
  - (b) whether on a day-to-day or on an occasional basis,
- looks after a child wholly or mainly in the home of the child’s parents.
- (9) A “secure accommodation service” is a service which provides accommodation approved by the Scottish Ministers in accordance with regulations made under section 29(9)(a) of this Act.
- (10) An “offender accommodation service” is a service which consists of giving advice, guidance or assistance to persons who have been provided with accommodation under subsection (1)(b) or (c) of section 27 of the Social Work (Scotland) Act 1968 (c. 49) (supervision and care of persons put on probation or released from prison etc.); but the expression does not include a support service.
- (11) An “adoption service” is a service which is—
- (a) maintained by a local authority under section 1(1) of the Adoption (Scotland) Act 1978 (c. 28); or
  - (b) provided by a person other than a local authority and which consists of, or includes, the making of arrangements for or in connection with the adoption of children (whether the person functions generally or in relation to some service maintained, or to be maintained, as part of the Scottish Adoption Service).
- (12) For the purposes of subsection (11)(b) above, the making of arrangements for the adoption of a child where the proposed adopter is a relative of the child is not an adoption service.
- (13) In subsection (11)(b) above, “the Scottish Adoption Service” has the meaning given by section 1(4) of that Act of 1978.
- (14) A “fostering service” is a service which is provided by—
- (a) a local authority under paragraph (a) of section 26(1) of the Children (Scotland) Act 1995 (c. 36) (fostering of children looked after by a local authority);
  - (b) a person other than a local authority and which consists of, or includes, the making of arrangements for or in connection with the performance of functions assigned to a local authority—
    - (i) under that paragraph; or
    - (ii) by virtue of section 5(2) to (4) of the Social Work (Scotland) Act 1968 (c. 49) (regulations relating to performance of functions assigned to a local authority under that Act); or
  - (c) a local authority and which consists of, or includes, the functions assigned to the authority by sections 3 and 8 to 10 of the Foster Children (Scotland) Act 1984 (c. 56) (ensuring well-being etc. of certain privately fostered children).

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- (15) The services mentioned in subsection (14)(a) and (b) above and registered under this Act may be collectively referred to as the “Scottish public fostering service”; and those mentioned in subsection (14)(c) above and so registered may be collectively referred to as the “Scottish private fostering service”.
- (16) An “adult placement service” is a service which consists of, or includes, arranging for the provision of accommodation for an adult (that is to say for a person who has attained the age of eighteen years), together with—
- (a) personal care;
  - (b) personal support; or
  - (c) counselling, or other help, provided other than as part of a planned programme of care,
- by reason of the person’s vulnerability or need, by placing the person with a family or individual; but a service may be excepted from this definition by regulations.
- (17) “Child minding” means, subject to subsections (18), (19) and (21)(a) below, looking after one or more children on domestic premises for reward and “act as a child minder” shall be construed accordingly; but a service may be excepted from those definitions by regulations.
- (18) For the purposes of subsection (17) above, a person who—
- (a) is the parent, or a relative, of a child;
  - (b) has parental responsibilities (within the meaning given by section 1(3) of the Children (Scotland) Act 1995 (c. 36)) relating to the child;
  - (c) is a foster parent with whom a child is placed by a local authority; or
  - (d) maintains a foster child (within the meaning of the Foster Children (Scotland) Act 1984 (c. 56)),
- does not act as a child minder when looking after that child.
- (19) For the purposes of subsection (17) above, where a person—
- (a) looks after a child for the parents of the child and the work consists of looking after the child wholly or mainly in the parents' home; or
  - (b) looks after a child for the parents of the child (the “first parents”) and another child for the different parents of that other child (the “second parents”) and the work consists of looking after the children wholly or mainly in the first parents' home or in the second parents' home, or in both those homes,
- that work is not child minding.
- (20) “Day care of children” means, subject to subsections (21)(b) to (25) below, a service which consists of any form of care (whether or not provided to any extent in the form of an educational activity), supervised by a responsible person and not excepted from this definition by regulations, provided for children, on premises other than domestic premises, during the day (whether or not it is provided on a regular basis or commences or ends during the hours of daylight).
- (21) For the purposes of—
- (a) subsection (17) above, a person does not act as a child minder;
  - (b) subsection (20) above, a person does not provide day care of children,
- unless the period, or the total of periods, during which the service is provided exceeds two hours in any day.

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- (22) Where a person provides a service for children in particular premises on less than six days in any year, that provision is not day care of children for the purposes of subsection (20) above if the person has notified the Commission in writing, before the first occasion on which the service is so provided in that year, of the intention so to provide it.
- (23) In subsection (22) above, “year” means the year beginning with the day on which the service is (after the commencement of this section) first provided in the premises concerned; and thereafter any year beginning with the anniversary of that day.
- (24) For the purposes of subsection (20) above, a service which consists of looking after children who are patients in a hospital and is provided as part of the medical treatment which they are receiving there is not day care of children.
- (25) For the purposes of subsection (20) above, a person does not provide day care of children where—
- (a) the children are of school age;
  - (b) the service is provided—
    - (i) wholly or mainly in a public, independent or grant-aided school; and
    - (ii) as part of the school’s activities; and
  - (c) the person is—
    - (i) the education authority managing the school
    - (ii) the person carrying on the school; or
    - (iii) a person employed to work at the school and authorised to provide the service as part of the school’s activities.
- (26) Expressions used in subsection (3)(b), (4) or (25) above have the meanings given by section 135(1) of the Education (Scotland) Act 1980 (c. 44).
- (27) A “housing support service” is a service which provides support, assistance, advice or counselling to a person who has particular needs, with a view to enabling that person to occupy residential accommodation as a sole or main residence; but a service may be excepted from this definition by regulations and such residential accommodation does not include accommodation specified as excepted accommodation in regulations under section 91(9) of the Housing (Scotland) Act 2001 (asp 10).
- (28) In this Act, unless the context otherwise requires—
- “someone who cares for” (or “a person who cares for”) a person, means someone who, being an individual, provides on a regular basis a substantial amount of care for that person, not having contracted to do so and not doing so for payment or in the course of providing a care service;
- “vulnerability or need”, in relation to a person, means vulnerability or need arising by reason of that person—
- (a) being affected by infirmity or ageing;
  - (b) being, or having been, affected by disability, illness or mental disorder;
  - (c) being, or having been, dependent on alcohol or drugs; or
  - (d) being of a young age;
- “personal care” means care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash); and

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

### **3 Power to amend the definition of “care service”**

The Scottish Ministers, after consulting such persons, or groups of persons, as they consider appropriate, may by order amend the definition of “care service” in section 2(1) of this Act so as to add to the services which that definition comprehends such other service as they think fit.

### **4 Information and advice**

- (1) The Commission shall provide information to the public about the availability and quality of care services.
- (2) A person requesting from the Commission information provided under subsection (1) above is entitled to receive it in such form as that person may reasonably request.
- (3) The Commission—
  - (a) may at any time, and shall when asked to do so, provide advice to the Scottish Ministers; and
  - (b) shall when asked to do so provide advice to—
    - (i) persons who provide, seek to provide or may seek to provide care services;
    - (ii) persons, or groups of persons, representing those who use, or are eligible to use, care services;
    - (iii) persons, or groups of persons, representing those who care for those who use, or are eligible to use, care services;
    - (iv) local authorities;
    - (v) health bodies; and
    - (vi) such other persons, or groups of persons, as may be prescribed,
 about any matter relevant to the functions of the Commission.
- (4) The Commission may charge a reasonable fee determined by it for any advice, forms or documents provided for the assistance of any such person, authority or body as is mentioned in paragraph (b) of subsection (3) above.

### *National care standards*

### **5 National care standards**

- (1) The Scottish Ministers shall prepare and publish national care standards applicable to care services; and they shall keep the standards so published under review and shall publish amended such standards whenever they consider it appropriate to do so.
- (2) Before publishing under subsection (1) above any—
  - (a) standards; or
  - (b) amended standards which in the opinion of the Scottish Ministers are substantially different from the standards (or amended standards) last so published,
 they shall consult such persons, or groups of persons, as they consider appropriate.

- (3) In relation to a care service other than those mentioned in subsection (4) below, the national care standards and the Scottish Social Services Council's codes of practice (that is to say, the codes of practice published by the Council under section 53 of this Act) shall be taken into account—
  - (a) by the Commission in making any decision under this Part;
  - (b) in any proceedings for the making of an order under section 18 of this Act;
  - (c) in any proceedings on an appeal—
    - (i) under section 20(1) of this Act; or
    - (ii) against such an order; and
  - (d) in any proceedings for an offence in relation to registration under this Part.
- (4) In relation to an adoption service mentioned in subsection (11)(a) of section 2 of this Act, a fostering service mentioned in subsection (14)(a) or (c) of that section or any other care service registered under Part 2 of this Act, the national care standards and the codes of practice mentioned in subsection (3) above shall be taken into account—
  - (a) by the Commission in making any decision under this Part or Part 2 of this Act;
  - (b) in any proceedings on an appeal under section 39 of this Act; and
  - (c) in any proceedings for an offence in relation to registration under that Part.

### *Complaints*

## **6 Complaints about care services**

- (1) The Commission shall 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 provision to the person of a care service or about the provision of a care service generally.
- (2) The procedure must provide for it to be available whether or not procedures established by the provider of the service for making complaints (or other representations) about that service have been or are being pursued.
- (3) Before establishing a procedure under subsection (1) above, the Commission shall consult all local authorities and health bodies and such other persons, or groups of persons, as it considers appropriate on its proposals for such a procedure and shall require to obtain the consent of the Scottish Ministers to those proposals.
- (4) The Commission shall keep the procedure under review and shall vary it whenever, after such consultation and with such consent, it considers it appropriate to do so.
- (5) The Commission shall give such publicity to the procedure (including the procedure as varied under subsection (4) above) as it considers appropriate and shall give a copy of the procedure to any person who requests it.

### *Registration*

## **7 Applications for registration under Part 1**

- (1) A person who seeks to provide a care service shall make an application to the Commission for registration of the service.

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- (2) An application shall—
- (a) give such information as may be prescribed about prescribed matters;
  - (b) identify an individual (who may be the applicant) who is to manage the service;
  - (c) give any other information which the Commission may reasonably require the applicant to give; and
  - (d) without prejudice to subsection (1)(b) of section 24 of this Act, be accompanied by the fee imposed under subsection (2)(a) of that section.
- (3) A person who provides, or seeks to provide, more than one care service must make a separate application in respect of each of them.
- (4) The provision, by two or more branches, of services which (but for this subsection) would be one care service, shall, for the purposes of this Act, instead be treated as the provision of two, or as the case may be a number of, separate care services, each by one of those branches.
- (5) In subsection (4) above, “branch” means an entity, of whatever description, which is separately carried on or managed; but a branch may provide a care service from two or more premises.
- (6) A person who provides an adoption service or a fostering service must be a voluntary organisation.
- (7) Subsections (1) to (6) above do not apply to a local authority—
- (a) seeking to provide—
    - (i) an adoption service mentioned in subsection (11)(a); or
    - (ii) a fostering service mentioned in subsection (14)(a) or (c),
 of section 2 of this Act; or
  - (b) seeking to provide a care service in respect of which they have made such determination as is mentioned in section 33(1)(c) of this Act.
- (8) Subsection (7)(b) above is subject to section 33(3) of this Act.

## 8 Limited registration

- (1) For the purposes of Part 4 of the Adults with Incapacity (Scotland) Act 2000 ([asp 4](#)) (management of resident’s finances), a person who provides, or seeks to provide, a service which provides accommodation but is not a care service may make an application to the Commission for registration of the service.
- (2) Subsection (2) of section 7 of this Act applies in relation to an application under subsection (1) above as it applies in relation to an application under subsection (1) of that section.
- (3) Sections 7(3) to (5), 9, 24 and 28 of this Act apply in relation to a service in respect of which an application is made under subsection (1) above as they apply in relation to a care service.
- (4) Sections 6, 10 to 20, 24 to 28, 29 (except subsections (4) and (6)) and 32 apply in relation to a service registered under section 9 of this Act by virtue of subsection (3) above (a service so registered being, in this Act, referred to as a limited registration service) as they apply in relation to a registered care service.



## **9 Grant or refusal of registration under Part 1**

- (1) An application under section 7 of this Act may be granted either unconditionally or subject to such conditions as the Commission thinks fit to impose.
- (2) If the Commission is satisfied, in relation to the application, that the requirements of—
  - (a) such regulations as are applicable under section 29 of this Act to the care service; and
  - (b) any other enactment which appears to the Commission to be relevant,will be complied with in relation to that service, it shall give notice under section 15(1)(a), or as the case may be 17(1), of this Act; otherwise it shall give notice under section 15(1)(b) of this Act.
- (3) On granting the application the Commission shall issue a certificate of registration to the applicant.
- (4) The person for the time being providing the service shall ensure that the certificate (or a copy of it) is, while the certificate is current, kept affixed in a conspicuous place in each of the premises in or from which that service is provided; and, if those premises do not include the principal (or only) office of the service, then in that office also.

### *Improvement notices*

## **10 Improvement notices**

- (1) The Commission may at any time give notice (in this Act referred to as an “improvement notice”) to the person for the time being providing a service registered under this Act that, unless within such reasonable period as may be specified in the notice, there is a significant improvement, of such nature as may be so specified, in the provision of that service, it intends—
  - (a) in a case other than that mentioned in paragraph (b) below, to make a proposal under section 12 of this Act; or
  - (b) in the case of a local authority providing an adoption service mentioned in subsection (11)(a) of section 2 of this Act, a fostering service mentioned in subsection (14)(a) or (c) of that section or any other care service registered under Part 2 of this Act, to make a report to the Scottish Ministers under section 41 of this Act.
- (2) Where notice under subsection (1)(a) above is given to a person other than a local authority, the Commission shall send forthwith a copy of that notice to the local authority within whose area the service is provided.
- (3) This section is without prejudice to section 18 of this Act.

## **11 Special provision for certain care services provided by local authorities**

- (1) Where the Commission has given an improvement notice to a local authority in respect of a care service provided by them and registered under this Part and the authority determine that the service is one which they must provide in order to fulfil a statutory duty, they shall within fourteen days after receiving the notice notify that determination to the Commission; and the authority shall append to the notification a statement of their reasons for so determining.

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- (2) On receiving notification under subsection (1) above, the Commission shall as soon as practicable send a copy of the improvement notice to the Scottish Ministers together with a copy of the notification, of the appended statement and of a note of any reason the Commission has for not agreeing with the authority's determination.
- (3) On receiving an improvement notice sent under subsection (2) above, the Scottish Ministers shall state whether or not, in their opinion, the determination of the authority is justified; and if their statement is that the determination is justified, the care service shall be deemed, for the purposes of any application of the provisions of this Act which follows on from the giving of an improvement notice, to be a care service duly registered not under Part 1 but under Part 2 of this Act (the improvement notice itself being deemed duly given under subsection (1)(b) of section 10 of this Act and not under subsection (1)(a) of that section).

*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—
  - (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.

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- (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.

## **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;

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- (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.

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## **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.

### *Offences*

## **21 Offences in relation to registration under Part 1**

- (1) Any person who—
  - (a) provides a care service while it is not registered under this Part; or
  - (b) with intent to deceive, pretends that a care service is registered under this Part,
 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.
- (2) Any person who fails to comply with section 9(4) of this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) Subsection (1)(a) above does not apply as respects acts which—
  - (a) constitute an offence under section 11 of the Adoption (Scotland) Act 1978 (c. 28); or
  - (b) fall within the exception provided for in subsection (1) of that section.

## **22 False statements in applications under Part 1**

Any person who, in an application—

- (a) for registration under this Part; or
- (b) for variation or removal of a condition in force in relation to a registration under this Part,

knowingly makes a statement which is false or misleading in a material respect shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **23 Offences by bodies corporate etc.**

Where an offence under this Part, or under regulations made under this Part, committed by—

- (a) a body corporate other than a local authority, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
  - (i) is a director, manager or secretary of the body corporate; or
  - (ii) purports to act in any such capacity;

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- (b) a local authority, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is an officer or member of the authority; or
    - (ii) purports to act in any such capacity;
  - (c) a firm, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a partner in the firm; or
    - (ii) purports to act in that capacity;
  - (d) an unincorporated association other than a firm, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is concerned in the management or control of the association; or
    - (ii) purports to act in the capacity of a person so concerned;
- the person (as well as the body corporate or as the case may be the local authority, firm or association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

### *Fees*

## **24 Registration fees**

- (1) The Scottish Ministers, after consulting such persons, or groups of persons, as they consider appropriate on the potential effect of so prescribing on the services which the persons, or persons they represent, provide, may prescribe—
  - (a) maximum fees which may be imposed by the Commission under this section; and
  - (b) circumstances in which fees so imposed shall or shall not be payable.
- (2) Subject to the provisions of this section, the Commission shall impose fees in respect of—
  - (a) any application made for registration under this Part or Part 2 of this Act or for cancellation of any such registration;
  - (b) the annual continuation of any such registration;
  - (c) any application made for the variation or removal of a condition for the time being in force in relation to any such registration;
  - (d) issuing to a person a new certificate of registration—
    - (i) at the instance of that person;
    - (ii) by virtue of any application under this Part or that Part by that person; or
    - (iii) by virtue of any new information provided by that person in pursuance of regulations under this Part or that Part.
- (3) Without prejudice to subsection (1) above—
  - (a) the Commission shall, in fixing fees under this section, have regard to its reasonable expenses in carrying out its functions under this Act; but
  - (b) where it appears to the Commission to be appropriate it may charge a nominal fee, or remit the fee altogether.

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## *Inspections*

### **25 Inspections**

- (1) The Commission may at any time require a person providing a registered care service to supply it with any information relating to the service which it considers necessary or expedient to have for the purposes of its functions under this Act.
- (2) A person authorised by the Commission (in this section and in sections 26 and 27 of this Act referred to as an “authorised person”) may—
  - (a) inspect any care service; and
  - (b) at any time enter and inspect premises which are used, or which the person has reasonable cause to believe are used, for the purpose of providing any such service.
- (3) The Commission shall secure, in relation to the services mentioned in subsection (4) below—
  - (a) that the powers conferred by subsection (2)(a) above are exercised—
    - (i) at least twice in the period of twelve months which immediately follows registration; and
    - (ii) at least twice in each subsequent period of twelve months; and
  - (b) that at least one such exercise in each of those periods is without any prior notification.
- (4) The services mentioned are—
  - (a) a care home service;
  - (b) a school care accommodation service;
  - (c) a secure accommodation service; and
  - (d) an independent health care service which provides overnight accommodation, whether registered under this Part or Part 2 of this Act.
- (5) The Commission shall secure, in relation to each service registered under this Part or Part 2 of this Act which is not a service mentioned in subsection (4) above—
  - (a) that the powers conferred by subsection (2)(a) above are exercised at least once in the period of twelve months which immediately follows registration; and
  - (b) that after an exercise of the powers so conferred no greater period than twelve months elapses before those powers are again exercised.
- (6) The authorised person may—
  - (a) make any examination into and conduct any interview as regards—
    - (i) the state and management of the service or of such premises; and
    - (ii) the treatment of persons cared for by the service or cared for or accommodated in such premises,  
which the authorised person thinks appropriate;
  - (b) inspect and take copies of any documents or records (other than medical records) which regulations under this Act, section 9 of the Adoption (Scotland) Act 1978 (c. 28) or section 1(3) of the Adoption (Intercountry Aspects) Act 1999 (c. 18) require to be kept;
  - (c) without prejudice to the generality of paragraph (a) above, interview in private—



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- (i) the manager of the service or of such premises;
  - (ii) the person providing the service;
  - (iii) any person employed by the service or in such premises; or
  - (iv) any person who is cared for by the service or cared for or accommodated in such premises and who consents to be interviewed.
- (7) An interview is in private for the purposes of subsection (6)(c)(iv) above even if conducted in the presence of—
  - (a) a guardian, continuing attorney or welfare attorney of the person interviewed; or
  - (b) provided that the person interviewed so wishes and the authorised person does not object, some other person.
- (8) The powers conferred by subsection (6)(b) above include—
  - (a) power to require—
    - (i) the manager of the service or of such premises; or
    - (ii) the person providing the service,to produce any document or record, wherever kept, for inspection at an office of the service or on those premises; and
  - (b) in relation to records which are kept by electronic means, power to require a copy of the records to be produced in a form which is legible and can be taken away.
- (9) Where the authorised person—
  - (a) is a medical practitioner or a registered nurse; and
  - (b) has reasonable cause to believe that a person cared for by the service or accommodated in such premises is not receiving proper care,the authorised person may (either or both)—
  - (i) conduct in private an appropriate examination of, and with the consent of;
  - (ii) inspect any medical records relating to the treatment, by the service or in the premises, of,the person so cared for or accommodated.
- (10) Where the authorised person—
  - (a) is a registered dentist (as defined in section 53(1) of the Dentists Act 1984 (c. 24)); and
  - (b) has reasonable cause to believe that a person cared for by the service or accommodated in such premises is not receiving proper dental care,the authorised person may (either or both)—
  - (i) conduct in private a dental examination of, and with the consent of;
  - (ii) inspect any dental records relating to the treatment, by the service or in the premises, of,the person so cared for or accommodated.
- (11) An examination is in private for the purposes of subsection (9)(i) or (10)(i) above even if conducted in the presence of a third party provided that—
  - (a) the person examined so wishes and the authorised person does not object; or
  - (b) the authorised person so wishes and the person examined consents,to its being so conducted.

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- (12) A person who proposes to exercise any power of entry or inspection conferred by this section shall, if so required, produce some duly authenticated document showing that the Commission has given the requisite authority.
- (13) Any person who—
- (a) obstructs, intentionally, the exercise of any power conferred by this section or by section 27 of this Act; or
  - (b) fails, without reasonable excuse, to comply with any requirement imposed under this or that section,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (14) In—
- (a) subsection (7)(a) above, “guardian”, “continuing attorney” and “welfare attorney” have the same meanings as in section 1(4)(c)(i) of the Adults with Incapacity (Scotland) Act 2000 ([asp 4](#));
  - (b) subsection (9)(i) above, “appropriate examination” means, where the authorised person is—
    - (i) a medical practitioner, a medical examination (whether or not including a physical examination); or
    - (ii) a registered nurse, a physical examination; and
  - (c) subsections (9), (10) and (11)(b) above, “consent” means consent in so far as the person examined is capable of giving consent.

## 26 Integrated inspections

- (1) The Commission and Her Majesty’s inspectors shall collaborate in matters relating to the regulation and inspection of such care services as are mentioned in paragraphs (a) to (c) of subsection (2) below.
- (2) The care services are—
- (a) a school care accommodation service;
  - (b) a secure accommodation service; and
  - (c) day care of children which is to any extent provided in the form of an educational activity.
- (3) In subsection (1) above, “Her Majesty’s inspectors” has the same meaning as in the Education (Scotland) Act 1980 ([c. 44](#)).

## 27 Further provision as regards inspections

- (1) An authorised person who has reasonable grounds to believe that a document or other material or thing found in premises which, under section 25 of this Act, that person is entitled to enter and inspect may be evidence of a failure to comply with any condition or requirement imposed by or under this Act, may seize and remove that document, material or thing.
- (2) An authorised person may—
- (a) require any other person to afford such facilities and assistance with respect to matters within that other person’s control as are necessary to enable the

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- authorised person to exercise powers under the said section 25 or this section;  
and
- (b) take such measurements and photographs and make such recordings as the authorised person considers necessary for the exercise of those powers.
- (3) An authorised person is entitled to have access to, and to check the operation of, any computer and any associated apparatus which is or has been in use in connection with records which the authorised person is entitled to inspect.
- (4) The reference in section 25 of this Act to a person providing a care service includes, in the case of a service which is provided by a body corporate, a reference to a director, manager, secretary or other similar officer of the body.
- (5) Where a care service has been inspected under section 25(2) of this Act, the Commission—
- (a) shall prepare a report on the matters inspected; and
- (b) shall without delay send a copy of that report to the person providing that service.
- (6) Before finalising a report prepared under subsection (5) above, the Commission shall give the person providing the service inspected an opportunity of commenting on a draft of the report.
- (7) The Commission shall make copies of any report prepared under subsection (5) above available for inspection at its offices by any person at any reasonable time; and it shall take such other steps as it considers appropriate for publicising any such report.
- (8) A person who asks the Commission for a copy of any such report shall be entitled to have one on payment of a reasonable fee determined by the Commission; but nothing in this subsection prevents the Commission from providing a copy free of charge if it considers that to do so would be appropriate.
- (9) Copies of any report made available for inspection by a person at the Commission's offices under subsection (7) above, or provided to a person under subsection (8) above, shall be made available or provided in such a form as the person may reasonably request.

### *Regulations*

## **28 Regulations relating to the Commission, to registration and to registers**

- (1) Regulations may—
- (a) confer additional functions on the Commission;
- (b) make provision about the keeping of registers by the Commission;
- (c) make provision about registration under this Part or Part 2 of this Act and in particular about—
- (i) the making of applications for such registration;
- (ii) the content of certificates of registration; or
- (iii) categories of applicant who cannot competently make certain applications;
- (d) require the Commission to secure that, on such conditions, in such circumstances and, subject to subsection (2) below, on the payment of such fees as may be specified in the regulations, any person shall be afforded access

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to, and provided with a copy of an entry in or with an extract from, a register kept by the Commission; or

- (e) except such part of a register as may be specified in the regulations from any requirement made by virtue of paragraph (d) above.
- (2) Regulations under paragraph (d) of subsection (1) above may specify circumstances in which the fees mentioned in that paragraph shall not be payable; and the fees shall in any event not be payable in any case where the Commission considers it appropriate to provide the copy or extract in question free of charge.
- (3) Before the Scottish Ministers make regulations under subsection (1) above, they shall consult such persons, or groups of persons, as they consider appropriate.

## **29 Regulations relating to care services**

- (1) Regulations may impose, in relation to care services, any requirements which the Scottish Ministers think fit for the purposes of this Act and may in particular make any provision such as is mentioned in subsection (2), (7) or (9) below.
- (2) Without prejudice to the generality of subsection (1) above, regulations may—
- (a) make provision as to the persons who are fit to provide, or act as manager in relation to, a care service;
  - (b) make provision as to the persons who are fit to be employed in the provision of a care service;
  - (c) make provision as to the fitness of premises to be used for the provision of a care service;
  - (d) in relation to child minding, require that no person lives, or is likely to live, at the domestic premises to be used for the provision of the service who is not fit to be in the proximity of children;
  - (e) make provision for securing the welfare of persons provided with a care service;
  - (f) make provision as to the management and control of operations carried out in the course of providing a care service;
  - (g) make provision as to the numbers of persons, or persons of any particular category, working at premises where a care service is provided or for the purposes of an agency providing such a service;
  - (h) make provision as to the management and training of such persons as are mentioned in paragraph (g) above;
  - (i) impose requirements as to the financial position of a provider of care services;
  - (j) require that a person acting as a medical practitioner, or in such other professional capacity as may be specified in the regulations, for persons provided with a care service shall not have a financial interest in that service;
  - (k) require the provider of a care service to appoint a manager in such circumstances as may be specified in the regulations; or
  - (l) require any person to whom subsection (3) below applies—
    - (i) to notify the Commission accordingly; and
    - (ii) to appoint a person to manage the care service in question.
- (3) This subsection applies to any person appointed as—
- (a) a receiver of the property of a company which is a person providing a service registered under this Part;

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- (b) the liquidator or provisional liquidator of such a company;
  - (c) the supervisor of a voluntary arrangement of such a company under Part I of the Insolvency Act 1986 (c. 45) or the administrator of such a company appointed under Part II of that Act; or
  - (d) the permanent trustee or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) appointed in respect of a person providing a service registered under this Part.
- (4) Regulations under paragraph (a) of subsection (2) above may, in particular, make provision for prohibiting a person from acting as manager unless registered in, or in a particular part of, a register maintained by the Scottish Social Services Council.
- (5) Regulations under paragraph (b) of that subsection may, in particular, make provision for prohibiting a person from working, in the provision of a care service, in any such position as may be specified in the regulations unless registered as is mentioned in subsection (4) above.
- (6) Regulations under paragraph (e) of that subsection may, in particular, make provision—
- (a) as to—
    - (i) the promotion; and
    - (ii) the protection,  
of the health of the persons in question;
  - (b) for making available in premises where a care service is provided any service provided under or by virtue of the National Health Service (Scotland) Act 1978 (c. 29); and
  - (c) as to the control and restraint of such persons.
- (7) Regulations may make provision as to how the provision of care services is to be conducted, and such regulations may in particular—
- (a) make provision as to facilities and particular services to be provided;
  - (b) make provision as to the keeping of accounts;
  - (c) make provision as to the keeping of documents and records;
  - (d) require a person providing a care service to make returns to the Commission at such intervals as may be specified in the regulations;
  - (e) make provision as to the contents of a return made by virtue of paragraph (d) above and the period in respect of which and date by which the return is to be made;
  - (f) make provision as to the notification of any event—
    - (i) arising out of or in the course of; or
    - (ii) occurring in relation to,  
the provision of a care service;
  - (g) require the giving of notice by the person providing a care service of any period during which the manager of the service proposes to be absent;
  - (h) specify the information to be supplied in giving such notice as is mentioned in paragraph (g) above;
  - (i) provide for the making of adequate arrangements for the running of a care service during any period when the manager is absent;
  - (j) require the person providing a care service to give notice of any change in the identity of the manager;

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- (k) without prejudice to paragraph (m) below, require—
    - (i) the person providing a care service to give notice of any intended change which will result in the service being provided, instead, by a different person; or
    - (ii) where an unforeseen change has had the result mentioned in subparagraph (i) above, the person who in consequence of that change is providing a care service to give notice accordingly;
  - (l) where an individual who has been providing a care service dies and no other person is providing the service, require the personal representatives of the individual to give notice of the death;
  - (m) require the person providing a care service, if that person is—
    - (i) a body corporate, to give notice of any change in the ownership of the body or of the identity of its officers; or
    - (ii) a firm, to give notice of any change in the identity of the persons who are its partners;
  - (n) require—
    - (i) arrangements to be made, by the person providing, or managing the provision of, a care service, for dealing with complaints made by or on behalf of those provided with, or seeking to be provided with, that service; and
    - (ii) that person to take steps to publicise such arrangements; or
  - (o) require a person who provides, or manages, an independent health care service, to make arrangements for securing that—
    - (i) any medical or psychiatric treatments; or
    - (ii) services such as are mentioned in subsection (8) below,
 provided in or for the purposes of the hospital or clinic or (as the case may be) for the purposes of the agency, are of appropriate quality and meet appropriate standards.
- (8) For the purposes of subsection (7)(o)(ii) above, the services are—
- (a) medical treatment under—
    - (i) anaesthesia; or
    - (ii) sedation;
  - (b) dental treatment under—
    - (i) general anaesthesia; or
    - (ii) sedation;
  - (c) palliative care;
  - (d) obstetric services and, in connection with childbirth, medical services;
  - (e) termination of pregnancies;
  - (f) cosmetic surgery; and
  - (g) treatment using such—
    - (i) techniques; or
    - (ii) technology,
 as may be specified in the regulations.
- (9) Regulations may make provision—

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- (a) requiring the approval of the Scottish Ministers for the provision and use of accommodation for the purpose of restricting the liberty of children in residential premises where care services are provided; and
  - (b) imposing other requirements as to the placing of a child in accommodation provided for the purpose mentioned in paragraph (a) above, including a requirement to obtain the permission of any local authority who are looking after the child (“looking after” being construed in accordance with section 17(6) of the Children (Scotland) Act 1995 (c. 36)).
- (10) Regulations under any of subsections (1), (2), (7) and (9) above may make it an offence to contravene or fail to comply with—
- (a) any specified provision of the regulations; or
  - (b) a condition of registration for the time being in force.
- (11) A person guilty of an offence under the regulations shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (12) Before the Scottish Ministers make regulations under any of subsections (1), (2), (7) and (9) above, they shall consult such persons, or groups of persons, as they consider appropriate.
- (13) Regulations under any of subsections (1), (2), (7) and (9) above may make different provision for different purposes.

#### *Transfer of staff*

### **30 Transfer of staff**

- (1) The Scottish Ministers shall by order make a scheme for the transfer to the Commission of persons who are employed, under a contract of employment with a local authority or Health Board, on work which would have continued but for the provisions of this Part.
- (2) Such a scheme may apply to all, or any description of, such employees or to any individual such employee.
- (3) Such a scheme may be made only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred under it.
- (4) The contract of employment of an employee transferred under such a scheme—
- (a) is not terminated by the transfer; and
  - (b) has effect from the date of transfer as if originally made between the employee and the Commission.
- (5) Without prejudice to the generality of subsection (4) above, where an employee is transferred under such a scheme—
- (a) all the rights, powers, duties and liabilities of the transferor under or in connection with the employee’s contract of employment are by virtue of this subsection transferred to the Commission on the date of transfer; and
  - (b) anything done before that date by, or in relation to, the transferor in respect of that contract or the employee is to be treated from that date as having been done by, or in relation to, the Commission.

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- (6) Subsections (4) and (5) above do not transfer an employee’s contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if the employee objects to the transfer and so informs the transferor or the Commission.
- (7) Where an employee objects as mentioned in subsection (6) above, the contract of employment with the transferor is terminated immediately before the date of transfer; but the employee is not to be treated, for any purposes, as having been dismissed by the transferor.
- (8) This section does not prejudice any right of an employee to terminate the contract of employment if a substantial detrimental change in the employee’s working conditions is made; but no right to terminate that contract arises by reason only that, by virtue of this section, the identity of the employer changes unless it is shown that, in all the circumstances, the change is both—
- (a) significant; and
  - (b) detrimental,
- to the employee.
- (9) In this section—
- “date of transfer” means the date of transfer determined under the scheme in relation to the employee;
- “Health Board” means a Health Board constituted by order under section 2 of the National Health Service (Scotland) Act 1978 (c. 29); and
- “transferor” means the local authority, or as the case may be the Health Board, from whom the employee is or would be transferred under the scheme.

### *Miscellaneous*

## **31 Arrangements entered into by local authority or health body: services to be registered**

Where, in the performance of their functions—

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

make arrangements with any person for that person to provide a care service, they shall ensure that the service, when provided, is registered under this Part.

## **32 Giving of notice**

- (1) In this Part and Part 2 of this Act, any reference to a notice being given to a person providing, or seeking to provide, a care service shall 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 the secretary or clerk of that body; or
    - (iii) a firm, to a partner of that firm; or
  - (b) sent by post, properly addressed to the person, in a registered letter or by the recorded delivery service,
- but a notice sent by post shall be deemed not given until the third day after the day of posting.



- (2) For the purposes of subsection (1) above, a letter is properly addressed to—
- (a) a body corporate, if addressed to the body at its registered or principal office;
  - (b) a firm, if addressed to the firm at its principal office; or
  - (c) any other person, if addressed to the person at the address last known.

## PART 2

### LOCAL AUTHORITY ADOPTION AND FOSTERING SERVICES ETC.

#### **33 Local authority applications for registration under Part 2**

- (1) A local authority who seek to provide—
- (a) an adoption service mentioned in subsection (11)(a) of section 2 of this Act;
  - (b) a fostering service mentioned in subsection (14)(a) or (c) of that section; or
  - (c) any other care service if it is a service which the authority determine they must provide in order to fulfil a statutory duty,
- shall make an application to the Commission for registration of the service.
- (2) An application shall be made in such manner and give such information 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) of that section.
- (3) Where in relation to an application under subsection (1)(c) above the Commission does not agree with the determination made by the authority, it shall so notify the authority and the Scottish Ministers, giving its reason for not so agreeing.
- (4) On receiving notification under subsection (3) above, the Scottish Ministers shall state whether or not, in their opinion, the determination of the authority is justified; and if their statement is that the determination is not justified, the application shall be taken to have been duly made not under this section but under section 7 of this Act and shall be dealt with accordingly.

#### **34 Grant of local authority application under Part 2**

- (1) Subject to subsection (4) of section 33 of this Act, the Commission—
- (a) shall grant an application made under subsection (1) of that section unconditionally or subject to such conditions as the Commission thinks fit to impose; or
  - (b) shall propose to grant it subject to such conditions as the Commission thinks fit to impose,
- and shall give the authority notice—
- (i) that it has been granted; or
  - (ii) as the case may be, of the conditions subject to which it is proposed (under paragraph (b) above) that it should be granted.
- (2) On granting the application, the Commission shall issue a certificate of registration to the authority.

- (3) Subsection (4) of section 9 of this Act shall have effect in relation to a certificate issued under subsection (2) above as it has in relation to a certificate issued under subsection (3) of that section.

**35 Condition notices: services registered under Part 2**

Section 13(1) of this Act shall apply to a local authority providing a care service registered under this Part as that section applies to a person providing a care service registered under Part 1 of this Act.

**36 Applications under Part 2 in respect of conditions**

- (1) A local authority providing a care service registered under this Part may apply to the Commission for the variation or removal of any condition for the time being in force in relation to the registration.
- (2) Subsection (2) of section 33 of this Act shall apply to an application under subsection (1) above as it applies in relation to an application under subsection (1) of that section.
- (3) If the Commission—
- (a) decides to grant an application under subsection (1) above, it shall give the authority notice of its decision, stating the condition varied or removed, and issue a new certificate of registration; or
  - (b) proposes to refuse such an application, it shall give the authority notice of, and a statement of the reasons for, that proposal.

**37 Right to make representations to Commission under Part 2 as respects conditions**

- (1) A notice to which this section applies shall state that, within fourteen days after service of the notice, the local authority to whom it is given may make written representations to the Commission concerning any matter which they wish to dispute.
- (2) Where a notice to which this section applies has been given, the Commission shall do the thing proposed only after (whichever first occurs)—
- (a) the authority make such representations as are mentioned in subsection (1) above;
  - (b) the authority notify the Commission in writing that such representations will not be made; or
  - (c) the period of fourteen days so mentioned elapses.
- (3) This section applies to—
- (a) a notice under section 34(1)(ii) of this Act;
  - (b) a condition notice under section 13(1) of this Act, as applied by section 35; and
  - (c) a notice under section 36(3)(b) of this Act.

### **38 Notice of Commission's decision under Part 2**

- (1) If the Commission decides to implement a notice to which section 37 of this Act applies, it shall give the local authority to which that notice was given notice of its decision.
- (2) A notice under subsection (1) above shall—
  - (a) explain the right of appeal conferred by section 39 of this Act; and
  - (b) in the case of a decision—
    - (i) to grant an application in respect of which there has been a proposal under section 34(1)(b); or
    - (ii) to vary or remove a condition or to impose an additional condition, state the condition or additional condition imposed, or the condition varied or removed, as the case may be.
- (3) Subject to subsection (4) below, a decision to implement a notice to which section 37 of this Act applies shall not take effect—
  - (a) if no appeal is brought, until the period of fourteen days referred to in section 39(1) of this Act has elapsed; and
  - (b) if an appeal is brought, until that appeal is finally determined or abandoned.
- (4) Where the authority notify the Commission in writing, before the period of fourteen days referred to in section 39(1) of this Act has elapsed, that there will be no appeal against a notice under section 34(1)(ii), that notice shall take effect on receipt of such notification by the authority.

### **39 Appeal against decision under Part 2**

- (1) A local authority given notice of a decision under section 38(1) may, within fourteen days after that notice is given, appeal to the sheriff against the decision.
- (2) Subsection (2) of section 20 of this Act shall apply to an appeal under subsection (1) above as it applies to an appeal under subsection (1) of that section.

### **40 Offences under Part 2**

- (1) Sections 21(1) and (3) and 23 of this Act shall apply in relation to a care service registered under this Part as they apply in relation to such a service registered under Part 1 of this Act; and section 21(2) shall apply for the purposes of this Part as if the reference in that section to section 9(4) of this Act were a reference to section 9(4) as applied by section 34(3) of this Act.
- (2) Section 22 of this Act shall apply to a person who makes—
  - (a) an application for registration under this Part; or
  - (b) an application for variation or removal of a condition in force in relation to a registration under this Part,as it applies to a person who makes an application mentioned in paragraph (a) or (b) of that section.

#### **41 Report to Scottish Ministers**

- (1) Where the Commission has given an improvement notice to a local authority in respect of a care service provided by them and registered under this Part, the Commission shall forthwith—
  - (a) report that fact; and
  - (b) give a copy of the improvement notice,to the Scottish Ministers.
- (2) Within fourteen days after the expiry of the period specified in the improvement notice, the Commission shall report to the Scottish Ministers—
  - (a) where the improvement notice has been complied with, that it has been; or
  - (b) where the improvement notice has not been complied with, the respect in which it has not been,and shall give to the Scottish Ministers such other information as they may reasonably require in relation to the compliance or failure to comply, as the case may be.
- (3) Without prejudice to subsection (1) above, in a case where—
  - (a) any person has been convicted of a relevant offence in relation to the service provided by the authority; or
  - (b) it appears to the Commission that that service is being, or has at any time been, carried on other than in accordance with the relevant requirements,the Commission shall report that matter to the Scottish Ministers and give them such other information as they may reasonably require in relation to the matter.
- (4) For the purposes of—
  - (a) paragraph (a) of subsection (3) 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 there should be a report to the Scottish Ministers under that subsection; and
  - (b) paragraph (b) of that subsection and section 42 of this Act, the following are relevant requirements—
    - (i) any requirements (or conditions) imposed by or under this Act;
    - (ii) the requirements of regulations made under this Act; or
    - (iii) any requirements (or conditions) imposed by, under or by virtue of such other Act as may be prescribed.
- (5) The Commission shall report and provide information to the Scottish Ministers on such other matters in relation to a care service registered under this Part as may be prescribed.

#### **42 Default powers of Scottish Ministers**

- (1) If the Scottish Ministers (having received a report under section 41 of this Act or otherwise) are satisfied that a local authority providing a care service registered under this Part are, without reasonable excuse—
  - (a) failing to comply with an improvement notice; or
  - (b) carrying on the service other than in accordance with the relevant requirements,

they may take the action mentioned in subsection (2) below in respect of the matter.

- (2) The action is—
  - (a) to make an order declaring the authority to be in default; and
  - (b) to take such steps to remedy the matter as may be specified in the direction within such reasonable period as may be so specified.
- (3) If the authority fail to comply with a direction under subsection (2) above—
  - (a) the Scottish Ministers may—
    - (i) take the steps specified in the direction themselves; or
    - (ii) make arrangements for any other person to take those steps on their behalf; or
  - (b) the Court of Session may, on the application of the Lord Advocate, order specific performance of those steps.
- (4) All expenses of the Scottish Ministers under subsection (3) above shall be recoverable as a debt due by the authority to them.

### **PART 3**

#### **THE COUNCIL**

##### *Constitution*

#### **43 Constitution of Scottish Social Services Council**

- (1) There shall be a body corporate, to be known as the Scottish Social Services Council (in the following provisions of this Act referred to as “the Council”), which—
  - (a) shall exercise the functions conferred on it by this Act or any other enactment; and
  - (b) shall have the general duty of promoting high standards—
    - (i) of conduct and practice among social service workers; and
    - (ii) in their education and training.
- (2) The Council shall, in the exercise of its functions, act—
  - (a) in accordance with any directions in writing given to it by the Scottish Ministers;
  - (b) under the general guidance of the Scottish Ministers; and
  - (c) in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (3) Schedule 2 to this Act shall have effect with respect to the Council.

##### *Registration*

#### **44 Register of social workers and of other social service workers**

- (1) The Council shall maintain a register of—
  - (a) social workers;

- (b) social service workers of any other description prescribed; and
- (c) persons—
  - (i) participating in a course, approved by it under section 54(1) of this Act, for those wishing to become; or
  - (ii) employed in positions probationary to their becoming, social workers or social service workers of such other description.
- (2) There shall be a separate part of the register for social workers, for each description of social service workers prescribed by virtue of paragraph (b) of subsection (1) above and for such persons as are mentioned in paragraph (c) of that subsection.
- (3) It may be prescribed that as from a specified date a specified part of the register shall be closed, so that on and after that date no further persons shall be registered in that part.
- (4) The Scottish Ministers shall consult the Council and such other persons, or groups of persons, as they consider appropriate before making, varying or revoking an order by virtue of this section.

#### **45 Applications for registration under Part 3**

- (1) An application for registration under this Part shall be made to the Council in accordance with rules made by the Council.
- (2) An application under subsection (1) above shall specify—
  - (a) in relation to the register, each part of it in which registration is sought; and
  - (b) such other matters as may be required by the rules.
- (3) Any person who, in an application under subsection (1) above, knowingly makes a statement which is false or misleading in a material respect shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **46 Grant or refusal of registration under Part 3**

- (1) An application for registration under this Part may be granted either unconditionally or subject to such conditions as the Council thinks fit to impose.
- (2) If the Council is satisfied that the applicant—
  - (a) is of good character;
  - (b) satisfies such requirements as to competence or conduct as the Council may by rules impose; and
  - (c) except where subsection (4) below applies, either—
    - (i) satisfies such requirements as to education as the Council may by rules impose and has successfully completed a course of training, approved by the Council, for persons wishing to become social workers or, as the case may be, for persons wishing to become social service workers of the description in relation to which registration is sought; or
    - (ii) in the case of an application for registration as a social service worker other than a social worker, satisfies such requirements as the Council may by rules impose in relation to social service workers of the description in relation to which registration is sought,

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it shall grant the application unconditionally or give notice to the applicant that it proposes to grant the application subject to such conditions as it thinks fit; otherwise it shall give notice to the applicant that it proposes to refuse the application.

(3) A notice under subsection (2) above shall give the Council's reasons for the proposal.

(4) This subsection applies where the applicant—

(a) is a national of any EEA State who—

(i) has obtained, in an EEA State other than the United Kingdom, professional qualifications which are prescribed as having Community equivalence for the purposes of registration in the part of the register specified in the application; and

(ii) satisfies any other requirements which the Council may by rules impose; or

(b) has, outwith Scotland, undergone training which—

(i) is recognised by the Council as being to a standard sufficient for the applicant to be registered in the part of the register so specified; or

(ii) is not so recognised provided that the applicant has also undergone, in Scotland or elsewhere, such additional training as the Council may by rules require.

(5) An order made by virtue of sub-paragraph (i) of subsection (4)(a) above may provide that a professional qualification designated by the order is to be regarded as having Community equivalence for the purposes mentioned in that sub-paragraph only if prescribed conditions required by a directive issued by the Council of the European Communities are fulfilled; and different conditions may be prescribed with respect to the same qualification for different circumstances.

(6) A person who—

(a) is not a national of an EEA State; but

(b) is, by virtue of a right conferred by Article 11 of Council Regulation (EEC) No. 1612/68 (on freedom of movement for workers within the Community) or any other enforceable Community right, entitled to be treated, as regards the right to engage in the work of social service workers of the description in relation to which registration is sought, no less favourably than a national of such a State,

shall be treated, for the purposes of subsection (4)(a) above, as if such a national.

(7) In this section—

“EEA State” means a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as adjusted by the Protocol signed at Brussels on 17th March 1993); and

“national”, in relation to such a State, means the same as it does for the purposes of the Community Treaties.

#### **47 Variation etc. of conditions in relation to registration under Part 3**

(1) The Council may at any time give notice to a person registered under this Part that it proposes to—

(a) vary or remove a condition for the time being in force; or

(b) impose an additional condition,

in relation to the registration.

- (2) A notice under subsection (1) above shall give the Council's reasons for the proposal.

#### **48 Right to make representations to Council as respects proposal**

- (1) A notice under section 46(2) or 47 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 Council concerning any matter which that person wishes to dispute.
- (2) Where such a notice has been given, the Council 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 Council in writing that such representations will not be made; or
  - (c) the period of fourteen days so mentioned elapses.

#### **49 Removal etc. from the Council's register**

- (1) The Council shall, by rules made with the consent of the Scottish Ministers, determine circumstances in which, and the means by which—
- (a) an entry relating to a person in the register maintained by the Council may be removed from a part in which it appears;
  - (b) an entry removed by virtue of paragraph (a) above may be restored to the part in question;
  - (c) a person's registration in a part of that register may be suspended (and that person treated as not being registered in that part notwithstanding that the relevant entry still appears in it) for such period as the Council may specify in the case in question;
  - (d) a suspension by virtue of paragraph (c) above may be terminated; and
  - (e) an entry in a part of that register may be altered (other than in implementation of a proposal of which notice is given under section 47(1) of this Act).
- (2) Rules under subsection (1) above shall—
- (a) make provision as to—
    - (i) the procedure to be followed;
    - (ii) the standard of proof; and
    - (iii) the rules of evidence to be observed,
 in proceedings brought (whether before the Council or before any committee of the Council) for the purposes of the rules; and
  - (b) provide for such proceedings to be in public except in such cases (if any) as the rules may specify.
- (3) The Council shall maintain a register of persons who have been registered in the register maintained under section 44(1) of this Act but who, by virtue of paragraph (a) of subsection (1) above, are for the time being not so registered; and where an entry relating to a person is, by virtue of paragraph (b) of that subsection, restored, the entry relating to that person in the register maintained under this subsection shall be removed.



## **50 Notice of Council's decision**

- (1) If the Council decides to grant unconditionally an application for registration under this Part, it shall give the applicant notice of its decision.
- (2) If the Council decides—
  - (a) to implement a proposal in relation to which it has given a notice under section 46(2) or 47 of this Act; or
  - (b) in accordance with rules made under subsection (1) of section 49 of this Act, to do any of the things mentioned in paragraphs (a) to (e) of that subsection,it shall give the person affected notice of the decision.
- (3) A notice under subsection (2) above shall—
  - (a) explain the right of appeal conferred by section 51 of this Act;
  - (b) in the case of a decision to implement a proposal in relation to which notice was given under—
    - (i) section 46(2), being a proposal to grant the application, state the condition subject to which the application is granted; or
    - (ii) section 47, state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed.
- (4) A decision such as is mentioned in subsection (2) above, other than a decision under section 46(2) to refuse the application, shall not take effect—
  - (a) if no appeal is brought, until the period of fourteen days referred to in section 51(1) of this Act has elapsed; and
  - (b) if an appeal is brought, until that appeal is finally determined or is abandoned.

### *Appeal*

## **51 Appeal against decision of Council**

- (1) A person given notice under section 50(2) 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) On such an appeal the sheriff may—
  - (a) confirm the decision; or
  - (b) direct that it shall not have effect.
- (3) The sheriff shall also have power, on such an appeal—
  - (a) to vary any condition which, by virtue of section 46 of this Act, is in force in respect of the person;
  - (b) to direct that any such condition shall cease to have effect; or
  - (c) to direct that a condition which the sheriff thinks fit to impose shall have effect in respect of the person.

### *Offence*

#### **52 Use of title “social worker” etc.**

- (1) Any person who, with intent to deceive, while not registered in any relevant register as—
- (a) a social worker, takes or uses the title of social worker, or purports in any other way to be a social worker; or
  - (b) a social service worker of such other description as may be prescribed, takes or uses the title of that description of social service worker, or purports in any other way to be a social service worker of that description,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) For the purposes of subsection (1) above, a register is a relevant register if it is—
- (a) the register maintained by the Council under this Part; or
  - (b) such register as may be prescribed, being a register maintained under a provision of the law of England and Wales or of Northern Ireland which appears to the Scottish Ministers to correspond to section 44(1) of this Act.

### *Codes of practice*

#### **53 Codes of practice**

- (1) The Council shall prepare, and from time to time publish, codes of practice laying down standards of conduct and practice expected—
- (a) of social service workers; or
  - (b) in relation to social service workers, of persons employing or seeking to employ such workers.
- (2) Before publishing a code, the Council shall—
- (a) obtain the consent of the Scottish Ministers to the provisions of that code; and
  - (b) consult the Commission, any person, or group of persons, prescribed by the Scottish Ministers and any other person, or group of persons, the Council considers it appropriate to consult.
- (3) The Council shall keep the codes under review and shall vary the provisions of a code whenever, after such consultation, it considers it appropriate to do so.
- (4) The employer of a social service worker shall, in making any decision which relates to the conduct of that worker, take into account any code published under subsection (1) above by the Council.
- (5) The Council shall give a copy of a code so published to any person who requests such copy.

## *Training*

### **54 Approval of courses etc.**

- (1) The Council shall promote education and training for persons who are, or wish to become—
  - (a) social workers; or
  - (b) social service workers of any other description specified in the rules,and in particular may, in accordance with rules made by it, approve courses for such persons.
- (2) An approval given under subsection (1) above may be either unconditional or subject to such conditions as the Council thinks fit.
- (3) If it appears to the Council that adequate provision is not being made for further education or training for persons registered in any part of the register maintained by it, the Council shall provide, or secure the provision of, courses for such further education or training.
- (4) The Council may—
  - (a) conduct, or make arrangements for the conduct of, examinations or assessments in connection with such courses as are mentioned in this section; and
  - (b) carry out, or assist other persons in carrying out, research into matters relevant to such education or training (or further education or training) as is so mentioned.

### **55 Grants and allowances for social service workers' training**

- (1) Subject to subsections (2) to (4) below, the Council may, upon such terms and subject to such conditions as it considers appropriate—
  - (a) make grants; and
  - (b) pay travelling and other allowances,to persons resident in Scotland, in order to secure their education or training in, or education for training in, the work of social service workers.
- (2) The Council shall not make grants or pay allowances under subsection (1) above except for such purposes as the Scottish Ministers may direct.
- (3) The Scottish Ministers may by directions specify terms and conditions subject to which the Council is to make such grants or pay such allowances.
- (4) Without prejudice to the generality of subsections (2) and (3) above, directions under those subsections may specify—
  - (a) the courses for which, and the categories of students to whom, under subsection (1) above, grants may be made and allowances paid;
  - (b) maximum amounts to be spent—
    - (i) on such grants and allowances; and
    - (ii) on such grants and allowances to any individual; and
  - (c) the procedures for accounting for expenditure on such grants and allowances.

- (5) The Council may make grants to organisations providing such courses as are approved by it under section 54(1) of this Act.

*Regulations and rules*

**56 Regulations relating to the Council**

- (1) Regulations may—
- (a) confer additional functions on the Council in relation to—
    - (i) the regulation of persons employed in the provision of care services; or
    - (ii) the education or training of persons in respect of whom it maintains a register under section 44(1) of this Act; and
  - (b) require the Council to secure that, on such conditions, in such circumstances and on the payment of such fees as may be specified in the regulations, any person shall be afforded access to, and provided with a copy of an entry in or with an extract from, a register kept by the Council.
- (2) Before the Scottish Ministers make regulations under subsection (1) above, they shall consult such persons, or groups of persons, as they consider appropriate.

**57 Power of Council to make rules**

- (1) With the consent of the Scottish Ministers, the Council may by rules make provision about the registration of persons under this Part and, in particular—
- (a) as to the keeping of the register maintained by it;
  - (b) as to the documentary and other evidence to be produced by a person applying for—
    - (i) registration;
    - (ii) additional qualifications to be recorded; or
    - (iii) an entry in that register to be altered or restored; or
  - (c) subject to any rules made under section 49 of this Act, for a person's registration to remain effective without limitation of time or—
    - (i) to lapse after such period, or in such a case; or
    - (ii) to be subject to renewal in such manner and at such time, as the rules may provide.
- (2) With the consent of the Scottish Ministers and subject to any regulations made under section 56(1)(b) of this Act, the Council may by rules make provision for the payment of reasonable fees to it in connection with the discharge of its functions; and without prejudice to that generality the rules may in particular make provision—
- (a) for the payment of such fees in connection with—
    - (i) registration under this Part (including applications for registration or for amendment of the register maintained by it);
    - (ii) the approval by it, under this Part, of courses of education or training;
    - (iii) the provision of education or training; and
    - (iv) the provision of copies of codes published by it or copies of entries in, or of extracts from, that register; and

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- (b) requiring persons registered under this Part to pay a periodic fee to it of such amount, and at such time, as the rules may specify.
- (3) With the consent of the Scottish Ministers, the Council may by rules require persons registered in any part of the register maintained by it to attend a course of education or undertake further training and may in particular make provision with respect to persons who fail to comply with any requirement of such rules, including provision for their registration to cease or be suspended.
- (4) Before making, or varying, any rules by virtue of subsection (3) above, the Council shall take such steps as are reasonably practicable to consult the persons who are registered in the relevant part of the register and such other persons as the Council considers appropriate.
- (5) With the consent of the Scottish Ministers, the Council may by rules make provision—
- (a) about the content of, and methods of completing, courses approved by it under section 54(1) of this Act;
  - (b) as to the lapse, renewal and withdrawal of such approvals;
  - (c) as to the provision to the Council of information about such courses;
  - (d) as to the persons who may participate in such courses, or in such parts of those courses as are specified in the rules;
  - (e) as to the number of persons who may participate in such courses or parts of courses; and
  - (f) for the award by the Council of certificates of the successful completion of such courses.
- (6) With the consent of the Scottish Ministers, the Council may by rules make provision for the visiting of places at which or institutions by which or under whose direction—
- (a) any relevant course (or part of such course) is, or is proposed to be, given; or
  - (b) any examination is, or is proposed to be, held in connection with any such course.
- (7) Without prejudice to the generality of subsection (6) above, rules under that subsection may make provision for—
- (a) the appointment of visitors; and
  - (b) reports to be made by visitors on—
    - (i) the nature and quality of the instruction given, or to be given; and
    - (ii) the facilities provided, or to be provided, at the place, or by the institution, visited.
- (8) In subsection (6)(a) above, “relevant course” means—
- (a) any course for which approval by the Council has been given, or is being sought, under section 54(1) of this Act; or
  - (b) any course of education or further training provided for persons registered in any part of the register maintained by the Council.
- (9) The power of the Council to make rules under this Part may be exercised—
- (a) in relation to—
    - (i) all cases to which the power extends;
    - (ii) all except such cases as are specified in the rules; or
    - (iii) any specified cases or class of case; and
  - (b) so as to make, as respects the cases in relation to which it is exercised—

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- (i) the same provision for all;
  - (ii) different provision for different cases or classes of case; or
  - (iii) as respects the same case or class of case, different provision for different purposes.
- (10) Before making, or varying, any rules by virtue of any of subsections (1), (2), (5) and (6) above, the Council shall consult such persons, or groups of persons, as it considers appropriate.

### *Functions of the Scottish Ministers*

## **58 Functions of the Scottish Ministers under this Part**

- (1) The Scottish Ministers shall have the functions of—
- (a) ascertaining what numbers of—
    - (i) social workers; and
    - (ii) social service workers of other descriptions, are required within Scotland;
  - (b) ascertaining what education or training is required by persons who are, or wish to become, social service workers;
  - (c) ascertaining what financial and other assistance is required for promoting such training;
  - (d) encouraging the provision of such assistance; and
  - (e) drawing up occupational standards for such workers.
- (2) The Scottish Ministers shall encourage persons to take part—
- (a) in courses approved under section 54(1) of this Act by the Council; and
  - (b) in other courses relevant to the education or training of persons who are, or wish to become, social service workers.
- (3) The Scottish Ministers may, if it appears to them that adequate provision is not being made for the education or training of persons who are, or wish to become, social service workers, provide, or secure the provision of, courses for that purpose.
- (4) Any function of the Scottish Ministers under this section—
- (a) may be delegated by them to the Council; or
  - (b) may be exercised by any person, or by employees of any person, authorised to do so by the Scottish Ministers.
- (5) For the purpose of determining—
- (a) the terms and effect of an authorisation under subsection (4)(b) above; and
  - (b) the effect of so much of any contract made between the Scottish Ministers and the authorised person as relates to the exercise of the function,
- Part II of the Deregulation and Contracting Out Act 1994 (c. 40) shall have effect as if the authorisation were given by virtue of an order under section 69 of that Act.
- (6) In subsection (4)(b) above, “employee” has the same meaning as in the said Part II.

## PART 4

### GENERAL PRINCIPLES

#### 59 General principles

- (1) The Scottish Ministers, the Commission and the Council shall exercise their functions under this Act in accordance with the principles set out in the following subsections.
- (2) The safety and welfare of all persons who use, or are eligible to use, care services are to be protected and enhanced.
- (3) The independence of those persons is to be promoted.
- (4) Diversity in the provision of care services is to be promoted with a view to those persons being afforded choice.

## PART 5

### PROVISIONS COMMON TO COMMISSION AND COUNCIL

#### *Grants and guarantees*

#### 60 Grants

- (1) The Scottish Ministers may make grants to the Commission or to the Council towards expenses incurred, or to be incurred, by it in connection with—
  - (a) the initial establishment of the body in question; and
  - (b) the discharge by that body of its functions.
- (2) Any grant made under subsection (1) above 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.

#### 61 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 the Commission or the Council borrows from any person.
- (2) Where the Scottish Ministers give a guarantee under this section they shall forthwith 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 shall, 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, the Commission, or as the case may be the Council, shall make to the Scottish Ministers, at such times and in such manner as they may from time to time direct—

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- (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.

*Duty to consult*

**62 Duty of Commission and Council to consult each other**

The Commission and the Council shall each, in the exercise of its functions, consult the other in every case in which it appears to the body exercising the function appropriate that there should be such consultation.

**63 Guidance as to consultation**

The Scottish Ministers shall issue guidelines to the Commission and to the Council as to the fulfilment, by the body in question, of any requirement under this Act to consult any person or group of persons.

*Complaints, inquiries and maladministration*

**64 Complaints procedure**

- (1) The Commission and the Council shall each 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 by the body in question of, or failure by it to exercise, any of its functions under this Act in respect of the person.
- (2) Before establishing a procedure under subsection (1) above, the body in question shall consult the Scottish Ministers on its proposals for such a procedure and shall require to obtain their consent to those proposals.
- (3) The body in question shall keep the procedure so established by it under review and shall vary that procedure whenever, with such consent, it considers it appropriate to do so.
- (4) The body in question shall give such publicity to that procedure (including that procedure as varied under subsection (3) above) as it considers appropriate and shall give a copy of the procedure to any person who requests it.

**65 Inquiries**

- (1) The Scottish Ministers may cause an inquiry to be held into any matter connected with—
  - (a) the exercise by the Commission or by the Council of its functions; or
  - (b) the provision of a care service.
- (2) The Commission may cause an inquiry to be held into any matter connected with—
  - (a) the exercise of its functions; or
  - (b) the provision of a care service.



- (3) The Council may cause an inquiry to be held into any matter connected with the exercise of its functions.
- (4) Before there is commenced an inquiry—
- (a) under subsection (1) above, the Scottish Ministers;
  - (b) under subsection (2) above, the Commission; or
  - (c) under subsection (3) above, the Council,
- 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.
- (5) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (provisions relating to local inquiries) shall apply in relation to an inquiry under subsection (1) above as they apply in relation to a local inquiry under that section.
- (6) Subsections (2) to (6) of that section shall apply in relation to an inquiry under subsection (2) or (3) above as they apply in relation to such a local inquiry; except that, for the purposes of an inquiry under—
- (a) subsection (2) above, any reference in those subsections which, by virtue of the Scotland Act 1998 (c. 46), falls to be construed as a reference to—
    - (i) the Scottish Ministers, shall be construed as a reference to the Commission; and
    - (ii) a member of the staff of the Scottish Ministers, as a reference to an officer of the Commission; or
  - (b) subsection (3) above, any such reference in those subsections shall be construed as a reference to the Council or, as the case may be, to an officer of the Council.
- (7) The expenses incurred by the Commission or by the Council in relation to an inquiry under subsection (2), or as the case may be (3), above (including such reasonable sum as the body in question may determine for the services of any of its officers engaged in the inquiry) shall, unless that body 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 the body may certify the amount of the expenses so incurred.
- (8) Any sum certified under subsection (7) above and to be defrayed in accordance with a direction under that subsection shall be a debt due by the party directed and shall be recoverable accordingly.
- (9) In relation to an inquiry under—
- (a) subsection (2) above, the Commission; or
  - (b) subsection (3) above, the Council,
- may make an award as to the expenses of the parties and as to the parties by whom such expenses shall be paid.

## 66 Maladministration

The Commission and the Council shall each be subject to investigation by the Scottish Parliamentary Commissioner for Administration appointed in accordance with article 4 of the Scotland Act 1998 (Transitory and Transitional Provisions) (Complaints of Maladministration) Order 1999 (S.I. 1999/1351); and accordingly, in Schedule 1 to that Order (Scottish public authorities subject to investigation by the Scottish

Commissioner), at the appropriate places there shall be inserted the words “Scottish Commission for the Regulation of Care” and “Scottish Social Services Council”.

## PART 6

### MISCELLANEOUS

#### *Central Council for Education and Training in Social Work: cessation of Scottish functions*

#### **67 Cessation of exercise of certain functions by Central Council for Education and Training in Social Work**

The Central Council for Education and Training in Social Work shall cease to exercise in relation to Scotland the functions conferred on it by or under section 10 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41).

#### *Grants, loans and other payments*

#### **68 Grants in respect of activities relating to child care and family support**

- (1) The Scottish Ministers may make grants to persons who—
  - (a) to any extent, undertake or engage in activities which relate to—
    - (i) the protection or care, under or by virtue of the Social Work (Scotland) Act 1968 (c. 49) or the Children (Scotland) Act 1995 (c. 36), of children; or
    - (ii) the provision of support, under or by virtue of either of those Acts, to families; or
  - (b) propose to undertake or engage in such activities to any extent.
- (2) The Scottish Ministers may make the payment of a grant in pursuance of subsection (1) above subject to such conditions and requirements (including a requirement that the whole or any part of the grant be repaid) as they think fit.

#### **69 Amendment of Social Work (Scotland) Act 1968: delegation of power to make grants and loans to certain voluntary organisations etc.**

In section 10 of the Social Work (Scotland) Act 1968 (c. 49) (financial and other assistance to voluntary organisations etc. for social work)—

- (a) after subsection (1) there is inserted—

“(1A) The Scottish Ministers may make grants and loans of such amounts, and subject to such conditions, as they may determine to a voluntary organisation engaged as is mentioned in subsection (1) above to enable that organisation (in this section referred to as the “primary organisation”) to make grants and loans (in this section referred to as “secondary grants and loans”) to other voluntary organisations, or other persons, so engaged, in circumstances where it appears to the primary organisation that the secondary grants and loans should be made; and the Scottish Ministers may require that any secondary grant be subject

- to such conditions (including conditions for securing the repayment in whole or in part of that grant) as they may specify.”; and
- (b) in subsection (2), for the words “under the foregoing subsection” there is substituted “by the Scottish Ministers under subsection (1) or (1A) above”.

**70 Amendment of Social Work (Scotland) Act 1968: direct payments to children for care services**

In section 12B of the Social Work (Scotland) Act 1968 (c. 49) (direct payments in respect of community care services)—

- (a) in subsection (1)(a)—
- (i) the words from “have decided” to “care service” become sub-paragraph (i); and
  - (ii) for the words “within the meaning of section 5A of this Act,” there is substituted the word “; or” and the following sub-paragraph—
    - “(ii) have a duty to provide a service to him under section 22(1) of the Children (Scotland) Act 1995 (c. 36) (promotion of welfare of children in need) other than a service which comprises giving assistance in cash;”;
- (b) at the end there is added—
- “(7) The definition of “community care service” in section 5A of this Act shall, with the modification mentioned in subsection (8) below, apply for the purposes of this section as that definition applies for the purposes of that section.
  - (8) The modification is that the words “, other than services for children,” in the definition shall be disregarded.”.

**71 Amendment of Children Act 1975: maintenance payments to children**

In section 50 of the Children Act 1975 (c. 72) (which empowers a local authority to make payments for or towards the maintenance of a child under sixteen who is residing with and being cared for, other than as a foster child, by a person other than the parent of the child), for the word “sixteen” there is substituted “eighteen”.

*Nursing in local authority residential accommodation*

**72 Provision by local authorities of residential accommodation in which nursing is provided**

A local authority shall have power to provide and maintain such accommodation as is mentioned in subsection (1) of section 13A of the Social Work (Scotland) Act 1968 (c. 49) (residential accommodation with nursing); and accordingly—

- (a) in that subsection—
- (i) after the word “shall” there is inserted the following paragraph—
    - “(a) provide and maintain;”;
  - (ii) after that paragraph there is inserted the word “or”; and
  - (iii) the existing words “make such arrangements as they consider appropriate and adequate for the provision of” become paragraph (b);

- (b) in subsection (2) of that section, the word “The”, where it first occurs, is repealed; and
- (c) in section 59(1) of that Act (provision of residential and other establishments by local authorities etc.), for the words “Subject to” there are substituted the words “Without prejudice to their duties under”.

*After-care***73 Amendment of Children (Scotland) Act 1995: after-care**

(1) In section 29 of the Children (Scotland) Act 1995 (c. 36) (after-care for persons who have been looked after by local authorities)—

- (a) in subsection (3), at the beginning there is inserted “Subject to section 73(2) of the Regulation of Care (Scotland) Act 2001 (asp 8),”;
- (b) after subsection (4) there is added—

“(5) It is the duty of each local authority, in relation to any person to whom they have a duty under subsection (1) above or who makes an application under subsection (2) above, to carry out an assessment of the person’s needs.

(6) Each local authority shall establish a procedure for considering representations (including complaints) made to them by any person mentioned in subsection (1) or (2) above about the discharge of their functions under the provisions of subsections (1) to (5) above.

(7) In subsection (1) above, the reference to having been “looked after by a local authority” shall be construed as including having been looked after by a local authority in England and Wales; and subsection (4) of section 105 of the Children Act 1989 (c. 41) (construction of references to a child looked after by a local authority) shall apply for the purposes of this subsection as it applies for the purposes of that Act (“local authority in England and Wales” being construed in accordance with subsection (1) of that section).”.

(2) The Scottish Ministers may in regulations—

- (a) specify, either generally or in relation to a category or description of persons mentioned in subsection (1) or (2) of section 29 of the Children (Scotland) Act 1995 (or treated, by virtue of paragraph (b)(i) below, as so mentioned), the manner in which assistance is to be provided or, as the case may be, may be provided under the subsection in question;
- (b) prescribe a category or description of persons who—
  - (i) though not mentioned in subsection (1) or (2) of that section are, for the purposes of the subsection in question, to be treated as persons so mentioned; or
  - (ii) though so mentioned are, for the purposes of the subsection in question, not to be treated as so mentioned,

but such category or description must for the purposes of sub-paragraph (i) above be of persons who are, or have been, “eligible children” within the meaning of paragraph 19B(1) of Schedule 2 to the Children Act 1989 (local authority support for children and families) or “relevant children” within the meaning of section 23A(1) of that Act (functions of responsible authority)

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- and for the purposes of sub-paragraph (ii) above be of persons to whom the subsection in question applies by virtue of subsection (1) above;
- (c) make provision as to assessments for the purposes of subsection (5) of section 29 of the Children (Scotland) Act 1995; or
  - (d) make provision as to procedures established under subsection (6) of that section.
- (3) Regulations under subsection (2)(c) above may in particular make provision about—
- (a) who is to be consulted in relation to an assessment;
  - (b) the way in which an assessment is to be carried out, by whom and when;
  - (c) the recording of the results of an assessment; or
  - (d) the considerations to which the local authority are to have regard in carrying out the assessment.
- (4) Regulations under this section may make different provision for different areas.

#### *Place of safety*

### **74 Amendment of Children (Scotland) Act 1995: “place of safety”**

In section 93(1) of the Children (Scotland) Act 1995 (c. 36) (interpretation), in the definition of “place of safety”, for paragraph (d) (and the word “or” which immediately precedes that paragraph) there is substituted—

- “(d) a hospital, or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child;
- (e) the dwelling-house of a suitable person who is so willing; or
- (f) any other suitable place the occupier of which is so willing.”.

#### *Panels*

### **75 Panels for curators ad litem, reporting officers and safeguarders**

In section 101 of the Children (Scotland) Act 1995 (c. 36) (establishment of a panel of persons from whom curators ad litem, reporting officers and safeguarders may be appointed)—

- (a) for subsection (1) there is substituted—
  - “(1) The Scottish Ministers may by regulations make provision for the establishment of one or more of each of the following—
  - (a) a panel of persons from which curators ad litem may be appointed under section 58 of the Adoption (Scotland) Act 1978 or under section 87(4) of this Act;
  - (b) a panel of persons from which reporting officers may be appointed under either of those sections; and
  - (c) a panel of persons from which appointments may be made under section 41(1) of this Act.”;
- (b) in subsection (2), in each of paragraphs (a) and (b), for the words “the panel” there is substituted “those panels”; and
- (c) for subsection (3) there is substituted—

- “(3) Regulations under subsection (1) above may provide—
- (a) for the defrayment by local authorities of expenses incurred by members of any panel established by virtue of that subsection; and
  - (b) for the payment by local authorities of fees and allowances for such members.
- (4) Paragraphs 9 and 10(b) of Schedule 1 to this Act shall apply in relation to any panel established by virtue of subsection (1)(c) above as they apply in relation to children’s panels.”.

## 76 **Amendment of Children (Scotland) Act 1995: Children’s Panel Advisory Committees**

In Schedule 1 to the Children (Scotland) Act 1995 (c. 36) (children’s panels and Children’s Panel Advisory Committees)—

- (a) in paragraph 9, the words from “to recruit” to the end become sub-paragraph (a) and after that sub-paragraph there is added—

“; and

- (b) to train members, or possible members, of the Children’s Panel Advisory Committees (or of any sub-committees of any of those committees).”; and

- (b) in paragraph 10(b), the words “panel members or potential panel members” become head (i) and after that head there is added—

“; and

- (ii) members or potential members of Children’s Panel Advisory Committees (or of any sub-committees of any of those committees).”.

## **PART 7**

### **GENERAL**

## 77 **Interpretation**

- (1) In this Act, unless the context otherwise requires—
- “act as a child minder” has the meaning given by subsection (17) of section 2 of this Act;
  - “adoption service” has the meaning given by subsection (11) of that section;
  - “adult placement service” has the meaning given by subsection (16) of that section;
  - “care home service” has the meaning given by subsection (3) of that section;
  - “care service” has the meaning given by subsection (1) of that section;
  - “child”—
    - (a) in relation to an adoption service, has the meaning given in section 65(1) of the Adoption (Scotland) Act 1978 (c. 28);
    - (b) in relation to a fostering service mentioned—

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- (i) in subsection (14)(a) or (b) of section 2 of this Act, has the meaning given in section 93(2)(a) of the Children (Scotland) Act 1995 (c. 36); and
  - (ii) in subsection (14)(c) of that section, has the meaning given in section 21(1) of the Foster Children (Scotland) Act 1984 (c. 56); and
- (c) for the purposes of section 29(9) of this Act, has the meaning given in section 93(2)(b) of the Children (Scotland) Act 1995;
- but otherwise means a person under the age of sixteen years;
- “child care agency” has the meaning given by subsection (7) of section 2 of this Act;
- “child minding” has the meaning given by subsection (17) of that section;
- “the Commission” means the Scottish Commission for the Regulation of Care (which is constituted under section 1 of this Act);
- “condition notice” has the meaning given by section 13 of this Act (including that section as applied by section 35 of this Act);
- “the Council” means the Scottish Social Services Council (which is constituted under section 43 of this Act);
- “day care of children” has the meaning given by section 2(20) of this Act;
- “domestic premises” means any premises which are wholly or mainly used as a private dwelling;
- “enactment” has the meaning given by section 126(1) of the Scotland Act 1998 (c. 46);
- “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Schedule 5 to the Scotland Act 1998;
- “fostering service” has the meaning given by section 2(14) of this Act;
- “health body” means a National Health Service Trust established by order under section 12A of the National Health Service (Scotland) Act 1978 (c. 29) or a Health Board or Special Health Board constituted by order under section 2 of that Act;
- “health service hospital” has the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978;
- “hospital” has the meaning given by that section;
- “housing support service” has the meaning given by section 2(27) of this Act;
- “improvement notice” has the meaning given by section 10 of this Act;
- “independent clinic” means a clinic which is not comprised in a hospital and in or from which services are provided, other than in pursuance of the National Health Service (Scotland) Act 1978, by a registered medical practitioner or registered dentist;
- “independent health care service” has the meaning given by section 2(5) of this Act;
- “independent hospital” means a hospital which is neither, subject to subsection (2) below, a health service hospital nor a private psychiatric hospital;
- “independent medical agency” means an undertaking which is neither an independent clinic nor an undertaking comprised in a hospital and which consists of or includes the provision of services, other than in pursuance of the National Health Service (Scotland) Act 1978, by a registered medical practitioner;
- “limited registration service” has the meaning given by section 8(4) of this Act;

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“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);

“medical records” means records relating to the physical or mental health of an individual which have been prepared by a medical practitioner who is, or has been, responsible for the clinical care of the individual;

“mental disorder” has the same meaning as in the Mental Health (Scotland) Act 1984 (c. 36);

“notice” means notice in writing;

“nurse agency” has the meaning given by subsection (6) of section 2 of this Act;

“offender accommodation service” has the meaning given by subsection (10) of that section;

“personal care” has the meaning given by subsection (28) of that section;

“personal support” has the meaning given by that subsection;

“prescribed” means prescribed by order made by the Scottish Ministers;

“premises” includes any vehicle;

“private psychiatric hospital” means a private hospital as defined in section 12(2) of the Mental Health (Scotland) Act 1984;

“provide”, in relation to a care service, means to carry on or manage such a service;

“regulations” means regulations made by the Scottish Ministers;

“registered dentist” has the meaning given by section 53(1) of the Dentists Act 1984 (c. 24);

“registered medical practitioner” shall be construed in accordance with section 2 of the Medical Act 1983 (c. 54);

“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 subsection (4) of section 2 of this Act;

“secure accommodation service” has the meaning given by subsection (9) of that section;

“social service worker” means a person, other than a person excepted from this definition by regulations, who—

- (a) has an entitling professional qualification in social work (that is to say a qualification which, if the person holding it also satisfies the requirements of subsection (2)(a) and (b) of section 46 of this Act and, except where subsection (4) of that section applies, the requirements as to education imposed as mentioned in subsection (2)(c)(i) of that section, entitles that person to be registered in the part for social workers of the register maintained under section 44(1) of this Act); or
- (b) not being a person mentioned in paragraph (a) above, is employed in the provision of (or in managing the provision of) a care service; or
- (c) being an employee of the Commission, is an authorised person within the meaning of sections 25 and 27 of this Act;

“social worker” means a person described in paragraph (a) of the definition, above, of “social service worker”;

“someone who cares for” (or “a person who cares for”) a person has the meaning given by subsection (28) of section 2 of this Act;

“support service” (except in the expression “housing support service”) has the meaning given by subsection (2) of that section;



“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 section 2(28) of this Act.

- (2) A part of a health service hospital is an independent hospital if (not being a private psychiatric hospital)—
- (a) it is carried on as a separate unit;
  - (b) it does not provide treatment or nursing in pursuance of the National Health Service (Scotland) Act 1978 (c. 29); and
  - (c) no part of it is contained within the same building as any such part which does provide treatment or nursing in pursuance of that Act.

## **78 Orders and regulations**

- (1) Any order or regulations made under this Act shall be made by statutory instrument; and, subject to subsection (2), a statutory instrument containing any such order, other than an order under section 81(2), or any such regulations shall be subject to annulment in pursuance of a resolution of the Parliament.
- (2) A statutory instrument containing—
- (a) regulations under section 28(1)(a), 56(1)(a) or 73(2)(b);
  - (b) an order under section 3; or
  - (c) if it amends or repeals an enactment, an order under section 80(2),
- of this Act shall not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

## **79 Minor and consequential amendments**

Schedule 3 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, has effect.

## **80 Repeals and transitional provisions etc.**

- (1) The enactments mentioned in schedule 4 to this Act are repealed to the extent mentioned in the second column of that schedule.
- (2) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act.
- (3) An order under subsection (2) above may amend or repeal any enactment (including any provision of this Act).
- (4) Before making an order under subsection (2) above, the Scottish Ministers shall consult such persons, or groups of persons, as they consider appropriate.

## **81 Short title and commencement**

- (1) This Act may be cited as the Regulation of Care (Scotland) Act 2001.
- (2) There shall come into force at the end of the period of fourteen days beginning with the day of Royal Assent sections 1, 4, 28, 43, 56 to 62, 66, 68 and 69, 74 to 78 and

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80(2) of, and schedules 1 and 2 to, this Act; and the other provisions of this Act, except this section, shall come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

- (3) Different days may be so appointed for different provisions and for different purposes.
- (4) An order under subsection (2) above may contain such transitional provisions and such savings as the Scottish Ministers think fit.