

REGULATION OF CARE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Commentary on sections

Part 6: Miscellaneous

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

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

179. This section ensures the functions of CCETSW cease in relation to Scotland.

Grants, loans and other payments

Section 68: Grants in respect of activities relating to child care and family support

180. This section gives Scottish Ministers a clear statutory power to make grants to a wide range of organisations or persons involved in child care and family support activities.

181. Organisations or persons to whom grants could be made would include local authorities, other public bodies, private companies, voluntary organisations, charities, academic researchers, or any other relevant persons. Grants could be made to support a wide range of activities; including (but not limited to) service provision, research activities, and developmental and promotional work.

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

182. Section 10 (1) of the Social Work (Scotland) Act 1968 empowers Scottish Ministers to make grants and loans to voluntary organisations and others engaged in any activity connected with the functions of Scottish Ministers or local authorities under the Social Work (Scotland) Act 1968 and other specified enactments. It is not entirely clear that the organisations in receipt of grants and loans under this section can then pass on some or all of the money to other organisations or people. Section 69 adds a new subsection to section 10 of the 1968 Act to clarify the position and enables secondary grants and loans to be made for the activities described in section 10(1). Scottish Ministers may also determine that specific conditions are attached to the secondary grants and loans.

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

183. The Community Care (Direct Payments) Act 1996 amended the Social Work (Scotland) Act 1968 to insert new sections 12B and 12C and to make a consequential amendment to section 13, with the effect of enabling local authorities responsible for providing (or arranging the provision of) community care services, to make direct payments to

persons in respect of their securing the provision of such services. The definition of ‘community care services’ excludes children’s services. The Community Care (Direct Payments) (Scotland) Regulations 1997 and The Community Care (Direct Payments) (Scotland) Amendment Regulations 2000 specify the persons to whom direct payments may be made under the Act.

184. **Section 70** amends the definition of ‘community care services’ for the purposes of sections 12B and 12C of the 1968 Act so that direct payments can be made to children for services available under section 22(1) of the Children (Scotland) Act 1995. The 1997 Regulations will be further amended to specify that direct payments may only be made to children aged 16 and 17.

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

185. Local authorities use their discretionary powers to pay relatives or friends maintenance payments for children they look after. Payments are dependent on individual cases and the resources available to authorities. Section 71 increases the age limit of children for whom local authorities may make these payments from 16 to 18.

Nursing in local authority residential accommodation

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

186. **Section 52** amends sections 13A(1)-(2) and 59(1) of the Social Work (Scotland) Act 1968 to allow local authorities to provide and maintain residential accommodation where nursing care is provided. This will allow local authorities to maintain care homes under the single definition in section 2(3).

Aftercare

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

187. This section amends the current provisions in Section 29 of the Children (Scotland) Act 1995 which deal with local authority provision of after-care for children formerly looked after. Local authorities will be required to make an assessment of qualifying young people’s needs and establish a procedure for considering representations about the work they do on this. Scottish Ministers will be empowered to make regulations specifying to whom assistance may be given and how assistance is to be provided.

Place of safety

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

188. Section 57 of the Children (Scotland) Act 1995 includes a provision for sheriffs to make child protection orders for the emergency protection of children. A child protection order may among other things authorise the removal of the child to a “place of safety” which is defined in section 93(1) of the 1995 Act. In practice the interpretation of the definition has not always been straightforward, particularly in relation to private houses. Section 74 therefore amends the definition to remove possible doubt about what may constitute a place of safety so that children can be placed in the home of a relative, friend or foster carer as appropriate.

Panels

Section 75: Panels for curators ad litem, reporting officers and safeguarders

189. Section 41 of the Children (Scotland) Act 1995 requires a children’s hearing (or sheriff) to consider whether to appoint a person to safeguard the interests of the child in certain proceedings before them. Such individuals are known as “safeguarders”.

*These notes relate to the Regulation of Care (Scotland) Act
2001 (asp 8) which received Royal Assent on 5 July 2001*

Panels of persons from which safeguarders may be appointed, exist at local authority level. Appointments are made, following consultation with the sheriff principal and the chairman of the local authority children's panel. The primary role of the safeguarder is to provide an independent opinion on the child's circumstances and recommend what he or she considers is in the best interests of the child. In doing so the safeguarder must take into account the child's wishes and feelings and, if necessary, represent them to the hearing or court. Safeguarders may belong to more than one panel.

190. [Section 75](#) clarifies the arrangements for the training of safeguarders and for the payment of their fees, allowances and expenses. Section 101 of the 1995 Act currently permits the Scottish Ministers to make regulations on certain matters in respect of a single panel. This is amended to allow for the establishment and running of panels at local authority level. A duty is placed on local authorities to provide training for safeguarders and the Scottish Ministers may, as they do for children's panel members, assist with training.

***Section 76: Amendment of Children (Scotland) Act 1995: Children's Panel
Advisory Committees***

191. This section amends the Children (Scotland) Act 1995 to place a duty on local authorities to train members of Children's Panel Advisory Committees and their sub-committees, and to give Scottish Ministers the power to assist in that training.