



# Public Services Reform (Scotland) Act 2010

2010 asp 8

## PART 1 **S**

### SIMPLIFICATION OF PUBLIC BODIES

#### *Transfer of functions*

#### **1** **Transfer to Scottish Natural Heritage of functions of Deer Commission for Scotland** **S**

- (1) The functions conferred on the Deer Commission for Scotland by or under the Deer (Scotland) Act 1996 (c. 58) or any other enactment are transferred to Scottish Natural Heritage.
- (2) All property, rights, liabilities and obligations of the Deer Commission for Scotland are transferred to Scottish Natural Heritage.
- (3) The Deer Commission for Scotland is dissolved.
- (4) Anything done by or in relation to the Deer Commission for Scotland has effect, in relation to any time after this section comes into force, as if done by or in relation to Scottish Natural Heritage.
- (5) Schedule 1 (which makes modifications of enactments in consequence of this section) has effect.

#### **Commencement Information**

**11** S. 1 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

**Status:** Point in time view as at 01/08/2010. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Public Services Reform (Scotland) Act 2010 is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## 2 **Transfer to Scottish Natural Heritage of functions of Advisory Committee on sites of special scientific interest** **S**

- (1) The committee referred to in section 21(1) of the Nature Conservation (Scotland) Act 2004 (asp 6) is dissolved.
- (2) All property, rights, liabilities and obligations of the committee referred to in subsection (1) are transferred to Scottish Natural Heritage.
- (3) In the Nature Conservation (Scotland) Act 2004—
  - (a) in section 21 (Advisory Committee on sites of special scientific interest), subsections (1) to (5) are repealed,
  - (b) in subsection (8) of that section, for paragraphs (a) to (c) substitute—
    - “(a) consider the matter, and
    - (b) take such action as it thinks fit.”,
  - (c) in the title to that section, for “Advisory Committee” substitute “Representations to SNH”,
  - (d) in section 58(1) (interpretation), the definition “Advisory Committee” is repealed,
  - (e) in schedule 1 (notification relating to sites of special scientific interest: procedure)—
    - (i) in paragraph 9(b), for “refer the matter to the Advisory Committee” substitute “consider the matter,”,
    - (ii) in paragraph 9, for “paragraphs (a) and (b)” substitute “paragraph (a)”,
    - (iii) for the title to paragraph 9, substitute “Representations to SNH on sites of special scientific interest”,
    - (iv) paragraph 11 is repealed,
    - (v) in paragraph 12(a), for “a matter has been referred to the Advisory Committee” substitute “SNH is required by subsection (8) of section 21 to consider a matter,”.
- (4) In the Freedom of Information (Scotland) Act 2002 (asp 13), in Part 7 of schedule 1 (Scottish public authorities), the paragraph relating to the Advisory Committee on Sites of Special Scientific Interest is repealed.
- (5) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), in schedule 2 (the specified authorities), the entry relating to the Advisory Committee on Sites of Special Scientific Interest is repealed.

### Commencement Information

**12** S. 2 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

VALID FROM 15/08/2011

## 3 **Transfer to certain bodies of functions of Waterwatch Scotland** **S**

- (1) The position of the Convener of the Water Customer Consultation Panels is abolished.

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(2) In schedule 2 to the Scottish Public Services Ombudsman Act 2002 (asp 11) (listed authorities), after paragraph 16 insert—

“16A Scottish Water.”.

(3) The Water Customer Consultation Panels are dissolved.

(4) The National Consumer Council is to exercise its functions under the Consumers, Estate Agents and Redress Act 2007 (c. 17) in relation to services provided by Scottish Water.

(5) But nothing in this section is to be taken as restricting in any way the exercise of functions by the National Consumer Council.

(6) Schedule 2 (which makes modification of enactments in consequence of this section) has effect.

(7) Schedule 3 (which makes provision for the transfer of staff, property, liabilities and ongoing matters) has effect.

#### *Dissolution of bodies etc.*

#### **4 Dissolution of Scottish Records Advisory Council** **S**

(1) The Scottish Records Advisory Council is dissolved.

(2) All property, rights, liabilities and obligations of the Scottish Records Advisory Council are transferred to the Scottish Ministers.

(3) Section 7 of the Public Records (Scotland) Act 1937 (c. 43) (Advisory Council) is repealed.

(4) Section 19(1) of the National Heritage (Scotland) Act 1985 (c. 16) (amendment of the Public Records (Scotland) Act 1937) is repealed.

(5) In the Freedom of Information (Scotland) Act 2002 the following provisions are repealed—

(a) section 70(2) (amendment of the Public Records (Scotland) Act 1937),

(b) in Part 7 of schedule 1 (Scottish public authorities), the paragraph relating to the Scottish Records Advisory Council.

(6) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (the specified authorities), the entry relating to the Scottish Records Advisory Council is repealed.

(7) Section 15 of the Scottish Register of Tartans Act 2008 (asp 7) (amendment of section 7 of the Public Records (Scotland) Act 1937) is repealed.

#### **Commencement Information**

**I3** S. 4 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

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## 5 Dissolution of Scottish Industrial Development Advisory Board **S**

- (1) The Scottish Industrial Development Advisory Board is dissolved.
- (2) Section 20 of the Scottish Development Agency Act 1975 (c. 69) (Scottish Industrial Development Advisory Board) is repealed.
- (3) In the Enterprise and New Towns (Scotland) Act 1990 (c. 35), in Schedule 4 (minor and consequential amendments), paragraph 8 is repealed.
- (4) In the Freedom of Information (Scotland) Act 2002, in Part 7 of schedule 1 (Scottish public authorities), the paragraph relating to the Scottish Industrial Development Advisory Board is repealed.
- (5) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (the specified authorities), the entry relating to the Scottish Industrial Development Advisory Board is repealed.

### Commencement Information

**I4** S. 5 in force at 1.8.2010 by [S.S.I. 2010/221](#), art. 3(2), [Sch.](#)

## 6 Dissolution of Building Standards Advisory Committee **S**

- (1) The Building Standards Advisory Committee is dissolved.
- (2) In the Building (Scotland) Act 2003 (asp 8) the following provisions are repealed—
  - (a) in section 1(2) (building regulations)—
    - (i) paragraph (a) and the word “and” immediately following it,
    - (ii) in paragraph (b), the word “other”,
  - (b) in section 3(5) (relaxation of building regulations)—
    - (i) paragraph (a) and the word “and” immediately following it,
    - (ii) in paragraph (b), the word “other”,
  - (c) section 31 (Building Standards Advisory Committee),
  - (d) in section 56(1) (interpretation), the definition “Building Standards Advisory Committee”.
- (3) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (the specified authorities), the entry relating to the Building Standards Advisory Committee is repealed.

### Commencement Information

**I5** S. 6 in force at 1.8.2010 by [S.S.I. 2010/221](#), art. 3(2), [Sch.](#)

## 7 Dissolution of Historic Environment Advisory Council for Scotland **S**

- (1) The Historic Environment Advisory Council for Scotland is dissolved.
- (2) All property, rights, liabilities and obligations of the Historic Environment Advisory Council for Scotland are transferred to the Scottish Ministers.

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- (3) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003 the following provisions are repealed—
- (a) section 15 (the Historic Environment Advisory Council for Scotland),
  - (b) section 16 (the Advisory Council's functions),
  - (c) in section 20 (interpretation), the definition “the Advisory Council”,
  - (d) in schedule 2 (the specified authorities), the entry relating to the Historic Environment Advisory Council for Scotland,
  - (e) schedule 3 (the Advisory Council).
- (4) In the Freedom of Information (Scotland) Act 2002, in Part 7 of schedule 1 (Scottish public authorities), the paragraph relating to the Historic Environment Advisory Council for Scotland is repealed.

#### Commencement Information

**I6** S. 7 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

## 8 Dissolution of Regional Boards of Scottish Environment Protection Agency **S**

- (1) The Regional Boards of the Scottish Environment Protection Agency are dissolved.
- (2) In the Environment Act 1995 (c. 25), in Schedule 6 (the Scottish Environment Protection Agency), paragraph 16 is repealed.

#### Commencement Information

**I7** S. 8 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

### *Delegation of functions etc.*

## 9 Delegation of Ministerial functions under section 7 of Industrial Development Act 1982 **S**

In section 7 of the Industrial Development Act 1982 (c. 52) (selective financial assistance for industry in assisted areas), after subsection (4) insert—

- “(4A) The Scottish Ministers may, to such extent and subject to such conditions as they think appropriate, delegate their function under subsection (1) to such persons as they may determine.
- (4B) Where the Scottish Ministers make a delegation under subsection (4A) to a person, they may also delegate to that person their function of being satisfied as mentioned in subsection (4).
- (4C) Where the Scottish Ministers make a delegation under subsection (4A), the reference in subsection (3)(a) to a company formed for the purpose of giving financial assistance is to be construed as a reference to a company formed by the person to whom the function is delegated under subsection (4A).
- (4D) A delegation under subsection (4A) or (4B) does not affect the ability of the Scottish Ministers to carry out the function delegated.

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(4E) A delegation under subsection (4A) or (4B) may be varied or revoked at any time.”.

#### Commencement Information

**I8** S. 9 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

### 10 Delegation of Ministerial functions under section 5 of Science and Technology Act 1965 **S**

After subsection (1) of section 5 of the Science and Technology Act 1965 (c. 4) (further powers of the Scottish Ministers) insert—

“(1A) The Scottish Ministers may, to such extent and subject to such conditions as they think appropriate, delegate their power to undertake any activity as mentioned in paragraphs (a) to (c) of subsection (1) above to such persons as they consider appropriate; and any expenses which such persons incur in undertaking such activities are to be met out of the expenses the Scottish Ministers may defray by virtue of subsection (1) above.

(1B) Where power to undertake the activity as mentioned in paragraph (c) of subsection (1) above is delegated under subsection (1A), that paragraph applies as if for the words “Secretary of State” there were substituted “ person to whom the power is delegated under subsection (1A) below ”.

(1C) A delegation under subsection (1A) does not affect the ability of the Scottish Ministers to exercise the power delegated.

(1D) A person to whom a function is delegated under subsection (1A) may, subject to any conditions as mentioned in that subsection, exercise the function in the same way and to the same extent as the Scottish Ministers notwithstanding any restrictions or limitations on the exercise of the person's functions which would, apart from this subsection, prevent them from exercising the function in that way or to that extent.”.

#### Commencement Information

**I9** S. 10 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

### 11 Delegation of certain functions of Forestry Commissioners under Forestry Act 1967 **S**

In the Forestry Act 1967 (c. 10), after section 7A insert—

#### “7B Delegation of functions of Commissioners: Scotland

(1) The Commissioners may, to such extent and subject to such conditions as they think appropriate, delegate their functions under section 3(1) and (3) of this Act to such community bodies as they consider appropriate.

(2) A delegation under subsection (1) may only be made in relation to land in Scotland—

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- (a) placed at the disposal of the Commissioners by the Scottish Ministers under this Act, and
  - (b) which is let to the community body to which the delegation is made.
- (3) A delegation under subsection (1) does not affect the ability of the Commissioners to carry out the function delegated.
- (4) A delegation under subsection (1) does not affect the ability of the Scottish Ministers to—
  - (a) determine which land in Scotland is placed at the disposal of the Forestry Commissioners,
  - (b) give directions under section 1 to the Commissioners in relation to the land in question.
- (5) A delegation under subsection (1) may be varied or revoked at any time.
- (6) In this section, “community body” has the meaning given in section 7C.

#### **7C Delegation of functions under section 7B: community bodies**

- (1) A community body is, subject to subsection (3), a company limited by guarantee the articles of association of which include the following—
  - (a) a definition of the community to which the company relates,
  - (b) provision that the company must have not fewer than 20 members,
  - (c) provision that the majority of the members of the company is to consist of members of the community,
  - (d) provision by which the members of the company who consist of members of the community have control of the company,
  - (e) provision ensuring proper arrangements for the financial management of the company and the auditing of its accounts.
- (2) The Commissioners may, if they think it in the public interest to do so, disapply such requirements specified in paragraphs (b) to (d) in subsection (1) in relation to any body they may specify.
- (3) A body is not a community body unless the Commissioners have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.
- (4) Unless the Scottish Ministers otherwise direct, a community—
  - (a) must be defined for the purposes of subsection (1)(a) by reference to a postcode unit or postcode units, and
  - (b) must comprise the persons from time to time—
    - (i) resident in that postcode unit or in one of those postcode units, and
    - (ii) entitled to vote, at a local government election, in a polling district which includes that postcode unit or those postcode units (or part of it or them).
- (5) In subsection (4) above, “postcode unit” means an area in relation to which a single postcode is used to facilitate the identification of postal service delivery points within the area.

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(6) In subsection (1), “company limited by guarantee” has the meaning given by section 3(3) of the Companies Act 2006 (c. 46).”.

#### Commencement Information

**I10** S. 11 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

## 12 Forestry Commissioners: joint ventures etc. **S**

(1) In the Forestry Act 1967, in section 7A (incidental powers of Commissioners), after the word “to” insert “ land in Scotland or ”.

(2) In the Countryside (Scotland) Act 1967 (c. 86), in section 58 (powers of the Forestry Commissioners), after subsection (2) insert—

“(2A) For the purposes of the exercise of their functions under subsection (2), the Commissioners may—

- (a) form, or participate in the forming of, a body corporate,
- (b) invest in a body corporate,
- (c) provide loans,
- (d) establish a charitable trust,
- (e) act, or appoint a person to act, as an officer of a body corporate or as a trustee of a charitable trust.”.

#### Commencement Information

**I11** S. 12 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

VALID FROM 31/01/2011

### *Regulation of officers of court*

## 13 Regulation of officers of court **S**

Schedule 4, which—

- (a) makes modifications of Part 5 of the Debtors (Scotland) Act 1987 (c. 18) relating to the regulation of officers of court,
  - (b) makes modifications of Part 3 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) relating to such regulation, and
  - (c) makes further minor and consequential modifications of that Act and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17),
- has effect.



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## PART 2 **S**

### ORDER-MAKING POWERS

#### *Improving the exercise of public functions*

#### **14 Public functions: efficiency, effectiveness and economy **S****

- (1) The Scottish Ministers may by order make any provision which they consider would improve the exercise of public functions, having regard to—
  - (a) efficiency,
  - (b) effectiveness, and
  - (c) economy.
- (2) In subsection (1), “public functions” are functions of the persons, bodies and office-holders listed in schedule 5, subject to any limitations specified in that schedule.
- (3) The provision that may be made under subsection (1) includes provision—
  - (a) modifying, conferring, abolishing, transferring, or providing for the delegation of, any function,
  - (b) amending the constitution of a person, body or office-holder listed in schedule 5 other than—
    - (i) the Scottish Ministers,
    - (ii) the Scottish Court Service,
    - (iii) a cross-border public authority,
    - (iv) a person listed by virtue of section 15(5)(e), or
    - (v) a company (within the meaning of the Companies Act 2006 (c. 46)),
  - (c) creating—
    - (i) a person, body or office-holder on which functions are conferred,
    - (ii) a person, body or office-holder to which functions (modified or otherwise) are transferred or may be delegated.
- (4) For the purposes of subsection (3)(b)(ii), the constitution of the Scottish Court Service is as set out in schedule 3 to the Judiciary and Courts (Scotland) Act 2008 (asp 6).
- (5) The transfer or delegation referred to in subsection (3)(a) must be a transfer or delegation to—
  - (a) a person, body or office-holder listed in schedule 5,
  - (b) a person, body or office-holder created in pursuance of subsection (3)(c), or
  - (c) a local authority (meaning a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39)).
- (6) An order under this section containing provision creating a person, body or office-holder in pursuance of subsection (3)(c)—
  - (a) must include provision adding that person, body or office-holder to schedule 5,
  - (b) may include provision adding that person, body or office-holder to schedule 6,
  - (c) may specify the extent to which any functions are to be public functions for the purposes of subsection (1).
- (7) An order under this section may—

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- (a) modify any enactment, instrument or other document,
  - (b) contain such consequential, incidental, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
- (8) An order under this section may include provision dissolving any person, body or office-holder listed in schedule 5, other than those listed in subsection (3)(b)(i) to (v), but only if the person, body or office-holder has, or will have by virtue of the order, no exercisable functions.
- (9) An order under this section may bind the Crown.
- (10) An order under this section must be made in accordance with this Part.

#### Commencement Information

**I12** S. 14 in force at 1.8.2010 by [S.S.I. 2010/221](#), art. 3(2), [Sch.](#)

## 15 Public functions: further provision **S**

- (1) Schedule 5, which lists persons, bodies and office-holders for the purposes of section 14, has effect.
- (2) The Scottish Ministers may by order modify schedule 5 by—
  - (a) adding an entry for any person, body or office-holder falling within subsection (5),
  - (b) removing any entry.
- (3) An order under subsection (2)(a) containing provision adding an entry to schedule 5 may include provision adding a corresponding entry to schedule 6.
- (4) An order under subsection (2)(b) containing provision removing an entry from schedule 5 must include provision removing any corresponding entry from schedule 6.
- (5) Those persons, bodies and office-holders are—
  - (a) an office-holder in the Scottish Administration,
  - (b) a Scottish public authority with mixed functions or no reserved functions,
  - (c) a cross-border public authority,
  - (d) a publicly-owned company,
  - (e) any other person, not being a public body or the holder of a public office, who either—
    - (i) appears to the Scottish Ministers to exercise functions of a public nature, or
    - (ii) is providing, under a contract made with a person, body or office-holder listed in schedule 5, any service the provision of which is the function of that person, body or office-holder.
- (6) A company is publicly-owned for the purposes of subsection (5)(d) if it is wholly owned—
  - (a) by the Scottish Ministers, or
  - (b) by any other person, body or office-holder listed in schedule 5 except a person, body or office-holder listed—

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- (i) by virtue of subsection (5)(e)(i) in relation only to some of its functions, or
  - (ii) by virtue of subsection (5)(e)(ii).
- (7) For the purposes of subsection (6) a company is wholly owned—
- (a) by the Scottish Ministers if it has no members except—
    - (i) the Scottish Ministers or companies wholly owned by the Scottish Ministers, or
    - (ii) persons acting on behalf of the Scottish Ministers or of such companies,
  - (b) by any other person, body or office-holder if it has no members except—
    - (i) the person, body or office-holder or companies wholly owned by the person, body or office-holder, or
    - (ii) persons acting on behalf of the person, body or office-holder or of such companies.
- (8) An entry added to schedule 5 by an order under subsection (2)(a) made by virtue of subsection (5)(e) must specify the functions of a public nature or, as the case may be, the service being provided; and only those functions or that service are public functions of the person in question for the purposes of section 14(1).
- (9) In this section—
- “company” includes any body corporate;
  - “local authority” means a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
  - “Scottish public authority with mixed functions or no reserved functions” is to be construed in accordance with paragraphs 1(4) and 2 of Part 3 of Schedule 5 to the Scotland Act 1998 (c. 46); but does not include a local authority.

#### Commencement Information

**I13** S. 15 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

## 16 Preconditions **S**

- (1) The Scottish Ministers may not make provision under section 14, other than provision which merely restates an enactment, unless they consider that the conditions in subsection (2), where relevant, are satisfied in relation to that provision.
- (2) Those conditions are that—
- (a) the effect of the provision is proportionate to the policy objective,
  - (b) the provision does not remove any necessary protection,
  - (c) any public function which is to be modified will, as modified, be broadly consistent with the general objects or purpose of the person, body or office-holder concerned,
  - (d) any function which is conferred on a person, body or office-holder listed in schedule 5 (other than a function being transferred without substantial modification from another such person, body or office-holder) is broadly consistent with the general objects or purpose of the person, body or office-holder concerned,

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- (e) any function which is conferred on a person, body or office-holder created by virtue of section 14 is broadly consistent with—
  - (i) the general objects or purpose of a person, body or office-holder listed in schedule 5 which is abolished, or whose functions are modified, by virtue of section 14 or otherwise, or
  - (ii) public functions abolished or modified by virtue of that section or otherwise.
- (3) Examples of protections for the purposes of subsection (2)(b) are (without prejudice to the generality of that provision) protections in relation to—
  - (a) the independence of judicial decision-making, or decision-making of a judicial nature, by a person occupying a judicial office,
  - (b) civil liberties,
  - (c) health and safety of persons,
  - (d) the environment,
  - (e) cultural heritage (including access, through display, exhibition or otherwise, to cultural heritage).
- (4) For the purposes of subsection (2)(b), the continued independence of the judiciary as mentioned in section 1 of the Judiciary and Courts (Scotland) Act 2008 (asp 6) is a necessary protection.
- (5) For the purposes of subsection (2)(b), the holding, care or preservation of property which is cultural heritage by persons separate from the Scottish Ministers and any statutory restrictions on the disposal of such property are necessary protections where the property is vested in such persons as trustees for the public under statute.
- (6) For the purposes of subsection (2)(b), the provision in paragraph 7(4) of schedule 2 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) as to who the convener shall be in relation to certain proceedings before the Mental Health Tribunal for Scotland is a necessary protection.
- (7) For the purposes of subsection (2)(b), a provision is not to be treated as removing a necessary protection if provision is made that delivers the same or similar protection in an alternative manner.
- (8) For the purposes of the application of subsection (2)(c), (d) and (e) to functions exercised, or to be exercised, by the Scottish Ministers, references to their general objects or purpose are to the broad remit of the part of the Scottish Administration through which the functions are, or are to be, exercised.
- (9) For the purposes of subsection (2)(d), a modification of a function being transferred is not to be treated as substantial if it is necessary to enable the effective exercise of the function by the person, body or office-holder to which it is transferred.
- (10) The Scottish Ministers may not make provision under section 14 which merely restates an enactment unless they consider that the provision made would make the law more accessible or more easily understood.
- (11) In subsection (3)(a) “judicial office” means—
  - (a) the office of judge of any court,
  - (b) the office of member of any tribunal,
  - (c) any other office, or appointment, consisting of functions of a judicial nature.

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### Commencement Information

**114** S. 16 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

## Removing and reducing burdens

### 17 Power to remove or reduce burdens **S**

- (1) The Scottish Ministers may by order make any provision which they consider would remove or reduce any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation.
- (2) In this section “burden” means any of the following—
  - (a) a financial cost,
  - (b) an administrative inconvenience,
  - (c) an obstacle to best regulatory practice,
  - (d) an obstacle to efficiency, productivity or profitability, or
  - (e) a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.
- (3) For the purposes of subsection (1), a financial cost or administrative inconvenience may result from the form of any legislation (for example, where the legislation is hard to understand).
- (4) For the purposes of subsection (2)(c), “best regulatory practice” means practice under which (in particular) regulatory activities should be—
  - (a) carried out in a way that is transparent, accountable, proportionate and consistent,
  - (b) targeted only at such cases as require action.
- (5) In this section “legislation” means any of the following or a provision of any of the following—
  - (a) a public general or local Act of Parliament (whenever passed) or an Act of the Scottish Parliament (whenever passed), or
  - (b) any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other subordinate instrument made at any time under an Act referred to in paragraph (a).
- (6) The provision that may be made under subsection (1) includes provision—
  - (a) abolishing, conferring or transferring, or providing for the delegation of, functions of any description,
  - (b) creating a body or office.
- (7) An order under this section may not amend the constitution of the Scottish Court Service.
- (8) For the purposes of subsection (7), the constitution of the Scottish Court Service is as set out in schedule 3 to the Judiciary and Courts (Scotland) Act 2008.
- (9) An order under this section may—
  - (a) modify any enactment,

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- (b) contain such consequential, incidental, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
- (10) An order under this section may include provision dissolving any body or office, other than those listed in section 14(3)(b)(i) to (v), but only if the body or office has, or will have by virtue of the order, no exercisable functions.
- (11) An order under this section may bind the Crown.
- (12) An order under this section must be made in accordance with this Part.

#### Commencement Information

**I15** S. 17 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

## 18 Preconditions **S**

- (1) The Scottish Ministers may not make provision under section 17(1), other than provision which merely restates an enactment, unless they consider that the conditions in subsection (2), where relevant, are satisfied in relation to that provision.
- (2) Those conditions are that—
  - (a) the policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means,
  - (b) the effect of the provision is proportionate to the policy objective,
  - (c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it,
  - (d) the provision does not remove any necessary protection,
  - (e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.
- (3) Examples of protections for the purposes of subsection (2)(d) are (without prejudice to the generality of that provision) protections in relation to—
  - (a) the independence of judicial decision-making, or decision-making of a judicial nature, by a person occupying a judicial office,
  - (b) civil liberties,
  - (c) health and safety of persons,
  - (d) the environment,
  - (e) cultural heritage (including access, through display, exhibition or otherwise, to cultural heritage).
- (4) For the purposes of subsection (2)(d), the continued independence of the judiciary as mentioned in section 1 of the Judiciary and Courts (Scotland) Act 2008 is a necessary protection.
- (5) For the purposes of subsection (2)(d), the holding, care or preservation of property which is cultural heritage by persons separate from the Scottish Ministers and any statutory restrictions on the disposal of such property are necessary protections where the property is vested in such persons as trustees for the public under statute.
- (6) For the purposes of subsection (2)(d), the provision in paragraph 7(4) of schedule 2 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) as to who the

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convener shall be in relation to certain proceedings before the Mental Health Tribunal for Scotland is a necessary protection.

- (7) For the purposes of subsection (2)(d) a provision is not to be treated as removing a necessary protection if provision is also made that delivers the same or similar protection in an alternative manner.
- (8) The Scottish Ministers may not make provision under section 17(1) which merely restates an enactment unless they consider that the provision made would make the law more accessible or more easily understood.
- (9) In subsection (3)(a) “judicial office” means—
  - (a) the office of judge of any court,
  - (b) the office of member of any tribunal,
  - (c) any other office, or appointment, consisting of functions of a judicial nature.

#### Commencement Information

**I16** S. 18 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

#### *Specific restrictions*

### **19 Order in relation to certain bodies: requirement for request and consent** **S**

- (1) The Scottish Ministers may not propose to make provision under section 14 or 17(1) which relates to any of the persons, bodies or office-holders listed in schedule 6 unless requested to do so in writing by the Scottish Parliamentary Corporate Body.
- (2) The Scottish Ministers may not lay a draft order containing such provision before the Scottish Parliament in accordance with section 25(2)(b)(i) unless the Scottish Parliamentary Corporate Body consents.

#### Commencement Information

**I17** S. 19 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

#### *General restrictions*

### **20 Subordinate legislation and powers of direction, appointment and consent** **S**

- (1) An order under section 14 or 17(1) may confer or transfer a function of legislating only on or to the Scottish Ministers, the First Minister or the Lord Advocate.
- (2) An order under section 14 or 17(1) may not make provision for the delegation of any function of legislating.
- (3) An order under section 14 or 17(1) may not make provision to confer a function of legislating on the Scottish Ministers, the First Minister or the Lord Advocate unless the conditions in subsections (4) and (5) are satisfied.
- (4) The condition in this subsection is that the function is exercisable by statutory instrument.

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- (5) The condition in this subsection is that such a statutory instrument—
- (a) is subject to annulment in pursuance of a resolution of the Scottish Parliament, or
  - (b) is not to be made unless a draft of the statutory instrument has been laid before and approved by a resolution of the Parliament.
- (6) Subsections (1) to (3) do not apply to provision which merely restates an enactment.
- (7) An order under section 14 or 17(1) may not make provision which has the effect of transferring to a person other than the Scottish Ministers, the First Minister or the Lord Advocate any function to which subsection (8) applies.
- (8) This subsection applies to any function of—
- (a) giving directions,
  - (b) appointing a person to any office or position, or
  - (c) consenting to any thing,
- conferred by any enactment on the Scottish Ministers, the First Minister or the Lord Advocate.

#### Commencement Information

**I18** S. 20 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

## 21 Local taxation **S**

An order under section 14 or 17(1) may not make provision to impose, abolish or vary any local tax to fund local authority expenditure.

#### Commencement Information

**I19** S. 21 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

## 22 Criminal penalties **S**

- (1) An order under section 14 or 17(1) may not make provision to create a new offence that is punishable, or increase the penalty for an existing offence so that it is punishable—
- (a) on indictment, with imprisonment for a term exceeding two years, or
  - (b) on summary conviction, with—
    - (i) imprisonment for a term exceeding 12 months, or
    - (ii) a fine exceeding level 5 on the standard scale.
- (2) In the case of an offence which is triable either on indictment or summarily and is not an offence triable on indictment only by virtue of section 292(6) and (7) of the Criminal Procedure (Scotland) Act 1995 (c. 46), the reference in subsection (1)(b)(ii) to a fine exceeding level 5 on the standard scale is to be construed as a reference to the statutory maximum.
- (3) Subsection (1) does not apply to provision which merely restates an enactment.



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#### Commencement Information

**I20** S. 22 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

### 23 Forcible entry etc. **S**

- (1) An order under section 14 or 17(1) may not make provision to—
  - (a) authorise any forcible entry, search or seizure, or
  - (b) compel the giving of evidence.
- (2) Subsection (1) does not prevent an order from extending any power for purposes similar to those to which the power applied before the order was made.
- (3) Subsection (1) does not apply to provision which merely restates an enactment.

#### Commencement Information

**I21** S. 23 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

### 24 Prohibition on modification of this Part **S**

An order under section 14 or 17(1) may not make provision modifying any provision of this Part other than schedule 5.

#### Commencement Information

**I22** S. 24 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

## Procedure

### 25 Procedure **S**

- (1) An order under this Part must be made by statutory instrument.
- (2) The Scottish Ministers may not make an order under section 14 or 17(1) unless—
  - (a) they have consulted in accordance with section 26,
  - (b) following that consultation, they have laid before the Scottish Parliament—
    - (i) a draft order, and
    - (ii) an explanatory document prepared in accordance with section 27, and
  - (c) the draft order has been approved by resolution of the Parliament.
- (3) Except as mentioned in subsection (7), the Scottish Ministers may not make an order under section 15 unless—
  - (a) they have consulted in accordance with subsection (4),
  - (b) following that consultation, they have laid before the Parliament—
    - (i) a draft order, and
    - (ii) an explanatory document prepared in accordance with subsection (5),and

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- (c) the draft order has been approved by resolution of the Parliament.
- (4) The Scottish Ministers must consult any person, body or office-holder in respect of which they propose to add an entry to schedule 5.
- (5) The explanatory document must give details of—
  - (a) any consultation undertaken under subsection (4),
  - (b) any representations received as a result of the consultation,
  - (c) the changes (if any) made to the proposals mentioned in subsection (4) as a result of those representations.
- (6) Subsections (2) to (4) of section 27 apply to consultation under subsection (4) of this section as those subsections of section 27 apply to consultation under section 26; and references to subsection (1)(f)(ii) in section 27(2) and (3) are to be read as references to subsection (5)(b) of this section.
- (7) Where an order under section 15 contains only a provision mentioned in subsection (2) (b) of that section and, if applicable, a provision mentioned in subsection (4) of that section, the order is subject to annulment in pursuance of a resolution of the Parliament.

#### Commencement Information

**I23** S. 25 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

## 26 Consultation **S**

- (1) If the Scottish Ministers propose to make an order under section 14 or 17(1) they must—
  - (a) consult such organisations as appear to them to be representative of interests substantially affected by the proposals,
  - (b) where the proposals relate to the functions of one or more persons, bodies or office-holders, consult those persons, bodies or office-holders, or persons appearing to them to be representative of those persons, bodies or office-holders,
  - (c) in such cases as they consider appropriate, consult the Scottish Law Commission, and
  - (d) consult such other persons as they consider appropriate.
- (2) For the purposes of any consultation required by subsection (1), the Scottish Ministers must—
  - (a) lay before the Parliament—
    - (i) a copy of the proposed draft order, and
    - (ii) a copy of the proposed explanatory document referred to in section 25(2)(b)(ii) (excepting the details required by section 27(1)(f)),
  - (b) send a copy of the proposed draft order and proposed explanatory document to any person to be consulted under subsection (1), and
  - (c) have regard to any representations about the proposed draft order that are made to them within 60 days of the date on which the copy of the proposed draft order is laid before the Parliament under paragraph (a).

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- (3) In calculating any period of 60 days for the purposes of subsection (2)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
- (4) If, as a result of any consultation required by subsection (1), it appears to the Scottish Ministers that it is appropriate to change the whole or any part of their proposals, they must undertake such further consultation with respect to the changes as they consider appropriate.
- (5) If, before the day on which this section comes into force, any consultation was undertaken which, had it been undertaken after that day, would to any extent have satisfied the requirements of this section, those requirements are to that extent to be taken to have been satisfied.

#### Commencement Information

I24 S. 26 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

## 27 Explanatory document laid before the Scottish Parliament **S**

- (1) The explanatory document referred to in section 25(2)(b)(ii) must—
  - (a) explain under which power (or powers) in this Part the provision contained in the draft order is made,
  - (b) introduce and give reasons for the provision,
  - (c) in the case of an order under section 14—
    - (i) explain why the Scottish Ministers consider that the conditions in section 16(2) (where relevant) are satisfied or the condition in section 16(10) is satisfied,
    - (ii) explain how the provision made by the order would improve the exercise of public functions, and
    - (iii) if the order relates to the functions of the Scottish Ministers, or confers functions on or transfers or delegates functions to, the Scottish Ministers, describe the functions and identify the part of the Scottish Administration through which the functions are, or are to be, exercised,
  - (d) in the case of an order under section 17(1)—
    - (i) explain why the Scottish Ministers consider that the conditions in section 18(2) (where relevant) are satisfied or the condition in section 18(8) is satisfied, and
    - (ii) include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens (within the meaning of that section),
  - (e) identify and give reasons for—
    - (i) any functions of legislating conferred by the order, and
    - (ii) the procedural requirements attaching to the exercise of those functions, and
  - (f) give details of—
    - (i) any consultation undertaken under section 26,
    - (ii) any representations received as a result of the consultation,

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- (iii) the changes (if any) made to the proposed draft order as a result of those representations.
- (2) Where a person making representations in response to consultation under section 26 has requested the Scottish Ministers not to disclose them, the Scottish Ministers must not disclose them under subsection (1)(f)(ii) if or to the extent that to do so would (disregarding any connection with proceedings in the Scottish Parliament) constitute a breach of confidence actionable by any person.
- (3) If information in representations made by a person in response to consultation under section 26 relates to another person, the Scottish Ministers need not disclose the information under subsection (1)(f)(ii) if or to the extent that—
- (a) it appears to the Scottish Ministers that the disclosure of that information could adversely affect the interests of that other person, and
  - (b) the Scottish Ministers have been unable to obtain the consent of that other person to the disclosure.
- (4) Subsections (2) and (3) do not affect any disclosure that is requested by, and made to, a committee of the Parliament charged with reporting on the draft order.

#### Commencement Information

**I25** S. 27 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

## 28 Combination with powers under European Communities Act 1972 **S**

- (1) The power to make an order under section 14 or 17(1) may be exercised together with, and by the same instrument as, the power to make an order under section 2(2) of the European Communities Act 1972 (c. 68).
- (2) Where the powers referred to in subsection (1) are so exercised—
- (a) sections 25 to 27 apply to the order under section 2(2) of the European Communities Act 1972 as they apply to the order under section 14 or 17(1) of this Act, and
  - (b) paragraph 2(2) of Schedule 2 to the European Communities Act 1972 does not apply.

#### Commencement Information

**I26** S. 28 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

### General

## 29 Order-making powers: modifications of enactments **S**

Schedule 7 (which contains minor amendments and amendments consequential on this Part) has effect.

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#### Commencement Information

**I27** S. 29 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

### 30 Interpretation of Part 2 **S**

In this Part—

“cultural heritage” includes objects, structures and other things (in whatever form) resulting from human activity of all periods, traditions, ways of life and the historic, scientific, artistic and literary associations of people, places and landscapes;

“restate an enactment” means to replace it with alterations only of form or arrangement (and for these purposes to remove an ambiguity is to make an alteration other than one of form or arrangement);

“function of legislating” is a function of legislating by order, rules, regulations or other subordinate instrument.

#### Commencement Information

**I28** S. 30 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

VALID FROM 01/10/2010

## PART 3 **S**

### INFORMATION ON EXERCISE OF PUBLIC FUNCTIONS

#### 31 Public functions: duties to provide information on certain expenditure etc. **S**

- (1) As soon as is reasonably practicable after the end of each financial year each listed public body must publish a statement of any expenditure that it has incurred during that financial year on or in connection with the matters described in subsection (2).
- (2) Those matters are—
  - (a) public relations,
  - (b) overseas travel,
  - (c) hospitality and entertainment,
  - (d) external consultancy.
- (3) As soon as is reasonably practicable after the end of each financial year each listed public body must publish a statement specifying the amount, date, payee and subject-matter of any payment made during that financial year which has a value in excess of £25,000.
- (4) As soon as is reasonably practicable after the end of each financial year each listed public body must publish a statement specifying the number of individuals (if any)

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who, during that financial year, received remuneration in excess of £150,000 in relation to service as a member of the listed public body or a member of its staff.

- (5) No information is to be provided under subsection (3) about the remuneration of, or other payments made to or in respect of, any individual in relation to that individual's service as a member of the listed public body or a member of its staff.
- (6) In subsections (4) and (5), the references to a member of a listed public body—
  - (a) where the body is an office-holder which is not a body corporate, are to that office-holder,
  - (b) where the body is a company (within the meaning of the Companies Act 2006 (c. 46)), are to a director or a secretary of that company.
- (7) Each listed public body must have regard to any guidance issued by the Scottish Ministers about the duties imposed by this section.
- (8) The Scottish Ministers must lay a copy of any such guidance before the Parliament as soon as is reasonably practicable.

### **32 Public functions: duty to provide information on exercise of functions** S

- (1) As soon as is reasonably practicable after the end of each financial year each listed public body must publish a statement of the steps that it has taken during that financial year—
  - (a) to promote and increase sustainable growth through the exercise of its functions,
  - (b) to improve efficiency, effectiveness and economy in the exercise of its functions.
- (2) Each listed public body must have regard to any guidance issued by the Scottish Ministers about the duty imposed by subsection (1).
- (3) The Scottish Ministers must lay a copy of any such guidance before the Parliament as soon as is reasonably practicable.

### **33 Public functions: duty to provide information on special advisers** S

- (1) As soon as is reasonably practicable after the end of each financial year the Scottish Ministers must publish a statement of the total amount of remuneration paid to special advisers during that financial year.
- (2) In subsection (1), “special advisers” means a person appointed by virtue of article 3(4) of the Civil Service Order in Council 1995.

### **34 Public functions: duties to provide information: further provision** S

- (1) The Scottish Ministers may by order—
  - (a) modify subsection (1), (3) or (4) of section 31 by varying the periods to which for the time being statements are to relate and the frequency with which for the time being statements are to be published,
  - (b) modify subsection (2) of that section by—
    - (i) adding a matter,
    - (ii) removing a matter,

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<p>(iii) amending the description of a matter,</p> <p>(c) vary the figure for the time being specified in subsection (3) or (4) of that section.</p> <p>(2) Any power to make an order conferred by this Part on the Scottish Ministers must be exercised by statutory instrument.</p> <p>(3) An order under subsection (1) or under section 35 may make different provision in relation to different listed public bodies.</p> <p>(4) No order is to be made under subsection (1) unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.</p> <p>(5) A statutory instrument containing an order under section 35 is subject to annulment in pursuance of a resolution of the Parliament.</p> <p><b>35 Interpretation of Part 3 S</b></p> <p>In this Part—</p> <p>“financial year” means a year ending with 31 March or such other date as the Scottish Ministers may by order specify;</p> <p>“listed public body” is a person, body or office-holder listed in schedule 8.</p>
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## PART 4 S

### CREATIVE SCOTLAND

#### *Creative Scotland*

## 36 Establishment of Creative Scotland S

- (1) There is established a body to be known as Creative Scotland or Alba Chruthachail.
- (2) Schedule 9 (which makes further provision about the status, constitution, proceedings etc. of Creative Scotland) has effect.

### Commencement Information

I29 S. 36 in force at 1.7.2010 by S.S.I. 2010/221, art. 3(1)

## 37 General functions of Creative Scotland S

- (1) Creative Scotland has the general functions of—
  - (a) identifying, supporting and developing quality and excellence in the arts and culture from those engaged in artistic and other creative endeavours,
  - (b) promoting understanding, appreciation and enjoyment of the arts and culture,
  - (c) encouraging as many people as possible to access and participate in the arts and culture,

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- (d) realising, as far as reasonably practicable to do so, the value and benefits (in particular, the national and international value and benefits) of the arts and culture,
  - (e) encouraging and supporting artistic and other creative endeavours which contribute to an understanding of Scotland's national culture in its broad sense as a way of life,
  - (f) promoting and supporting industries and other commercial activity the primary focus of which is the application of creative skills.
- (2) In exercising the function mentioned in subsection (1)(c), Creative Scotland must do so with a view to increasing the diversity of people who access and participate in the arts and culture.
- (3) Creative Scotland may encourage and support such persons as it considers appropriate in the exercise by those persons of any of the functions mentioned in paragraphs (a) to (f) of subsection (1) (or functions similar to those).
- (4) In subsection (3), “persons” includes groups of persons.

#### Commencement Information

**I30** S. 37 in force at 1.7.2010 by S.S.I. 2010/221, art. 3(1)

### 38 Advisory and other functions **S**

- (1) Creative Scotland must provide the Scottish Ministers with such advice, information and assistance as they may reasonably require in relation to—
- (a) the arts and culture,
  - (b) industries and other commercial activity the primary focus of which is the application of creative skills,
  - (c) the exercise of any of Creative Scotland's functions.
- (2) Creative Scotland may provide the Scottish Ministers with such other advice and information as it considers appropriate in relation to the matters mentioned in subsection (1)(a), (b) and (c).
- (3) Creative Scotland may provide such other persons as it considers appropriate with such advice, information and assistance as it considers appropriate in relation to—
- (a) the arts and culture,
  - (b) industries and other commercial activity the primary focus of which is the application of creative skills.
- (4) Any advice, information or assistance under subsection (1) or (2) must be provided in such manner as the Scottish Ministers may determine.
- (5) In this section, “assistance” does not include financial assistance.
- (6) In subsection (3), “persons” includes groups of persons.

#### Commencement Information

**I31** S. 38 in force at 1.7.2010 by S.S.I. 2010/221, art. 3(1)



**Status:** Point in time view as at 01/08/2010. This version of this Act contains provisions that are not valid for this point in time.

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### 39 Grants and loans **S**

- (1) The Scottish Ministers may make grants to Creative Scotland.
- (2) In addition to any grants made under subsection (1), the Scottish Ministers may make grants to Creative Scotland for particular purposes.
- (3) A grant under subsection (1) or (2) is subject to such terms and conditions (including conditions as to repayment) as the Scottish Ministers may determine.
- (4) Creative Scotland may make grants and loans to such persons as it considers appropriate for the purpose of, in connection with, or where it appears conducive to, the exercise of its functions.
- (5) A grant or loan under subsection (4) is subject to such terms and conditions (including conditions as to repayment) as Creative Scotland may determine.

#### Commencement Information

**I32** [S. 39](#) in force at 1.7.2010 by [S.S.I. 2010/221](#), [art. 3\(1\)](#)

### 40 Directions and guidance **S**

- (1) The Scottish Ministers may give Creative Scotland directions (of a general or specific nature) as to the exercise of its functions.
- (2) But the Scottish Ministers may not give directions so far as relating to artistic or cultural judgement in respect of the exercise of Creative Scotland's functions under section 37(1) or (3), 38(3) or 39(4).
- (3) Creative Scotland must—
  - (a) comply with any directions given to it by the Scottish Ministers under this Part,
  - (b) have regard to any guidance issued by the Scottish Ministers in relation to the exercise of its functions.
- (4) Subject to subsection (2), the Scottish Ministers may vary or revoke any direction given under this Part.

#### Commencement Information

**I33** [S. 40](#) in force at 1.7.2010 by [S.S.I. 2010/221](#), [art. 3\(1\)](#)

#### *Miscellaneous and general*

### 41 Dissolution of Scottish Arts Council **S**

- (1) The Scottish Arts Council is dissolved and the charter constituting that body is revoked.
- (2) In subsection (1), the “charter” is the Royal Charter granted by Her Majesty on 8 February 1994.

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#### Commencement Information

**I34** S. 41 in force at 1.7.2010 by S.S.I. 2010/221, art. 3(1)

### 42 Transfer of staff etc. **S**

- (1) With effect from the date on which section 41 comes into force—
  - (a) any person employed by—
    - (i) the Scottish Arts Council immediately before that date, or
    - (ii) Scottish Screen immediately before that date,
 is transferred into the employment of Creative Scotland,
  - (b) all property (including rights) and liabilities of—
    - (i) the Scottish Arts Council subsisting immediately before that date,
    - (ii) Scottish Screen subsisting immediately before that date,
 are transferred to, and vest in, Creative Scotland.
- (2) The contract of employment of a person transferred by virtue of subsection (1)(a)—
  - (a) is not terminated by the transfer, and
  - (b) has effect from the date of transfer as if originally made between the person and Creative Scotland.
- (3) Without prejudice to subsection (2), where a person is transferred by virtue of subsection (1)(a)—
  - (a) all the rights, powers, duties and liabilities of the Scottish Arts Council or, as the case may be, Scottish Screen, under or in connection with the person's contract of employment are transferred to Creative Scotland on the date of transfer, and
  - (b) anything done before that date by or in relation to the Scottish Arts Council or, as the case may be, Scottish Screen, in respect of the person or the contract is to be treated from that date as having been done by or in relation to Creative Scotland.
- (4) Subsections (1) to (3) do not affect any right of any person so transferred to terminate the person's contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but any such change is not to be taken to have occurred by reason only that the identity of the person's employer changes by virtue of those subsections.

#### Commencement Information

**I35** S. 42 in force at 1.7.2010 by S.S.I. 2010/221, art. 3(1)

### 43 Creative Scotland: modifications of enactments **S**

Schedule 10 (which contains modifications of enactments consequential on this Part) has effect.

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#### Commencement Information

**I36** S. 43 in force at 1.7.2010 by S.S.I. 2010/221, art. 3(1)

## PART 5 **S**

### SOCIAL CARE AND SOCIAL WORK: SCRUTINY AND IMPROVEMENT

## CHAPTER 1 **S**

### SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND

#### *Social Care and Social Work Improvement Scotland*

#### **44 Social Care and Social Work Improvement Scotland **S****

- (1) There is established a body to be known as Social Care and Social Work Improvement Scotland (in this Part referred to as “SCSWIS”), which—
  - (a) is to exercise the functions conferred on it by this Act or any other enactment, and
  - (b) has the general duty of furthering improvement in the quality of social services.
- (2) SCSWIS must, in the exercise of its functions, act—
  - (a) in accordance with any directions given to it by the Scottish Ministers, and
  - (b) under the general guidance of the Scottish Ministers.
- (3) The Scottish Ministers may vary or revoke any direction given under subsection (2)(a).
- (4) Schedule 11 (which makes further provision about the status, constitution, proceedings etc. of Social Care and Social Work Improvement Scotland) has effect.

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#### Commencement Information

**I37** S. 44 in force at 1.8.2010 for specified purposes by S.S.I. 2010/221, art. 3(2)(3), Sch.

VALID FROM 01/10/2010

#### **45 General principles **S****

- (1) SCSWIS must exercise its functions in accordance with the principles set out in the following subsections.
- (2) The safety and wellbeing of all persons who use, or are eligible to use, any social service are to be protected and enhanced.
- (3) The independence of those persons is to be promoted.

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- (4) Diversity in the provision of social services is to be promoted with a view to those persons being afforded choice.
- (5) Good practice in the provision of social services is to be identified, promulgated and promoted.

VALID FROM 01/10/2010

### Key definitions

#### 46 Social services **S**

- (1) In this Part, “social services” means—
- (a) care services, and
  - (b) social work services.
- (2) Any reference to a “social service” in this Part means any care service or social work service.

#### 47 Care services **S**

- (1) In this Part, a “care service” is any of the following—
- (a) a support service,
  - (b) a care home service,
  - (c) a school care accommodation service,
  - (d) a nurse agency,
  - (e) a child care agency,
  - (f) a secure accommodation service,
  - (g) an offender accommodation service,
  - (h) an adoption service,
  - (i) a fostering service,
  - (j) an adult placement service,
  - (k) child minding,
  - (l) day care of children,
  - (m) a housing support service.
- (2) Schedule 12 (which provides definitions for the purposes of subsection (1)) has effect.

#### 48 Social work services **S**

In this Part—

“social work services” means—

- (a) services which are provided by a local authority in the exercise of any of its social work services functions, or

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- (b) services which are provided by another person pursuant to arrangements made by a local authority in the exercise of its social work services functions;  
“social work services functions” means functions under the enactments specified in schedule 13.

#### 49 Power to modify key definitions **S**

The Scottish Ministers, after consulting such persons (or groups of persons) as they consider appropriate, may by order—

- (a) modify—  
(i) section 47(1),  
(ii) schedule 12,  
(b) modify—  
(i) the definition of social work services in section 48,  
(ii) the definition of social work services functions by adding an entry to or removing any entry from schedule 13.

VALID FROM 01/10/2010

### *Miscellaneous*

#### 50 Standards and outcomes **S**

- (1) The Scottish Ministers must prepare and publish standards and outcomes applicable to—  
(a) care services,  
(b) social work services.
- (2) The Scottish Ministers must keep any standards and outcomes so published under review and may under subsection (1) publish amended standards and outcomes whenever they consider it appropriate to do so.
- (3) Before publishing under subsection (1) any—  
(a) standards and outcomes,  
(b) amended standards and outcomes which in the opinion of the Scottish Ministers are substantially different from the standards and outcomes (or amended standards and outcomes) last so published,  
the Scottish Ministers must consult such persons, or groups of persons, as they consider appropriate.
- (4) In relation to a care service other than one mentioned in subsection (5), any applicable standards and outcomes published under subsection (1) 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 Regulation of Care (Scotland) Act 2001 (asp 8)) must be taken into account—  
(a) by SCSWIS in making any decision under this Chapter or Chapter 2 or 3,  
(b) in any proceedings on an appeal under section 75(1), and  
(c) in any proceedings for an offence in relation to registration under Chapter 3.

**Status:** Point in time view as at 01/08/2010. This version of this Act contains provisions that are not valid for this point in time.

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- (5) In relation to an adoption service mentioned in paragraph 8(1)(a) of schedule 12, a fostering service mentioned in paragraph 9(a) or (c) of that schedule or any other care service registered under Chapter 4, any applicable standards and outcomes published under subsection (1) and the codes of practice mentioned in subsection (4) must be taken into account—
  - (a) by SCSWIS in making any decision under this Chapter or Chapter 2, 3 or 4,
  - (b) in any proceedings on an appeal under section 89,
  - (c) in any proceedings for an offence in relation to registration under Chapter 4.
- (6) In relation to a social work service, any applicable standards and outcomes published under subsection (1) and the codes of practice mentioned in subsection (4) must be taken into account by SCSWIS in making any decision under this Chapter or Chapter 2.
- (7) The Scottish Ministers may make different provision for different services under subsection (1).
- (8) The Scottish Ministers may delegate their functions under subsections (1) to (3) to SCSWIS or such other persons as they consider appropriate.

## 51 Information and advice S

- (1) SCSWIS must provide information to the public about the availability and quality of social services.
- (2) A person requesting from SCSWIS information to be provided under subsection (1) is entitled to receive it in such form as that person may reasonably request.
- (3) SCSWIS—
  - (a) may at any time, and must when asked to do so, provide advice to the Scottish Ministers,
  - (b) must when asked to do so provide advice to—
    - (i) persons who provide, seek to provide or may seek to provide social services,
    - (ii) persons, or groups of persons, representing those who use, or are eligible to use, social services,
    - (iii) persons, or groups of persons, representing those who care for those who use, or are eligible to use, social 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 SCSWIS,
  - (c) may disseminate such information as it considers relevant of general or specific application arising out of or in connection with the discharge of its functions.
- (4) SCSWIS may charge a reasonable fee determined by it for any advice, forms or documents provided for the assistance of any person, authority or body mentioned in subsection (3)(b).

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## 52 Dissolution of Scottish Commission for the Regulation of Care **S**

The Scottish Commission for the Regulation of Care is dissolved.

VALID FROM 01/10/2010

## CHAPTER 2 **S**

### SOCIAL SERVICES: INSPECTIONS

#### *Inspections*

## 53 Inspections **S**

- (1) SCSWIS may inspect—
  - (a) any social service,
  - (b) the organisation or co-ordination of any social services.
- (2) The purposes of an inspection under this section may include—
  - (a) reviewing and evaluating the effectiveness of the provision of the services which are the subject of the inspection,
  - (b) encouraging improvement in the provision of those services,
  - (c) enabling consideration as to the need for any recommendations to be prepared as to any such improvement to be included in the report prepared under section 57,
  - (d) investigating any incident, event or cause for concern,
  - (e) in the case of care services, enabling consideration as to the need for—
    - (i) an improvement notice under section 62,
    - (ii) a condition notice under section 66 or a local authority condition notice under section 85.
- (3) An inspection under this section may be in relation to—
  - (a) any social service or combination of social services,
  - (b) such of the services concerned provided to a particular child or other person or particular children or other persons,
  - (c) the whole or any part of Scotland.
- (4) An inspection under this section must be conducted in accordance with a plan—
  - (a) prepared in accordance with section 54, and
  - (b) approved by the Scottish Ministers.
- (5) An inspection under this section may, subject to any regulations made under section 58, take such form as SCSWIS considers appropriate.
- (6) SCSWIS may at any time require a person providing any social 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 Part.

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#### **54 Inspections under section 53: best regulatory practice** S

- (1) SCSWIS must prepare a plan for carrying out inspections in accordance with best regulatory practice.
- (2) The plan—
  - (a) must set out arrangements for inspections to be so carried out (including inspections of those services subject to self evaluation),
  - (b) may make different provision for different purposes.
- (3) For the purposes of subsection (1), “best regulatory practice” means practice under which (in particular) inspections should be carried out in a way that is transparent, accountable, proportionate and consistent.
- (4) In preparing a plan under subsection (1), SCSWIS must have regard to any guidance issued by the Scottish Ministers about those matters.
- (5) SCSWIS—
  - (a) must keep the plan under review, and
  - (b) may from time to time revise, with the approval of the Scottish Ministers, the plan.
- (6) SCSWIS must, in preparing a plan (or any revision), consult such persons as it considers appropriate.

#### **55 Inspections at request of Scottish Ministers** S

- (1) SCSWIS must, at the request of the Scottish Ministers inspect—
  - (a) any social service that they may specify,
  - (b) the organisation or co-ordination of any social services that they may specify.
- (2) The Scottish Ministers may specify purposes for any inspection under this section.
- (3) An inspection under this section must be conducted in accordance with a timetable approved by the Scottish Ministers.
- (4) The Scottish Ministers may request under subsection (1) that there be conducted an inspection of—
  - (a) any services concerned in the relevant area,
  - (b) such of the services concerned provided in the relevant area as they may specify, or
  - (c) such of the services concerned provided to a particular child or other person or particular children or other persons as they may specify.
- (5) In paragraphs (a) and (b) of subsection (4), the “relevant area” is the whole of Scotland or such part of Scotland as the Scottish Ministers specify in their request.

#### **56 Inspections: authorised persons** S

- (1) Any inspection under this Part must be carried out by a person authorised by SCSWIS (an “authorised person”).
- (2) A person may be authorised by SCSWIS to carry out inspections in relation to any social service or all of them.



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- (3) An authorised person may 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 the social service which is subject to inspection.
- (4) Where an authorised person is in possession of confidential information which has been obtained for the purposes of an inspection under this Part, the authorised person must not use or disclose that information other than—
  - (a) for the purposes of that inspection,
  - (b) so as to comply with an enactment or court order requiring disclosure,
  - (c) to the extent considered necessary by the authorised person for the purpose of protecting the welfare of—
    - (i) any child,
    - (ii) any adult at risk (within the meaning of section 3 of the Adult Support and Protection (Scotland) Act 2007 (asp 10)), or
  - (d) to the extent considered necessary by the authorised person for the purpose of the prevention or detection of crime or the apprehension or prosecution of offenders.

## 57 Inspections: reports **S**

- (1) Where an inspection under this Part has been completed, SCSWIS—
  - (a) must prepare a report on the matters inspected, and
  - (b) must without delay send a copy of that report to the person providing the service which has been inspected.
- (2) Before finalising the report, SCSWIS must give the person providing the service an opportunity of commenting on a draft of the report.
- (3) SCSWIS must make copies of the report available for inspection at its offices by any person at any reasonable time; and it must take such other steps as it considers appropriate for publicising the report.
- (4) Regulations may make further provision about the preparation, content and effect of reports under this section and in particular may make—
  - (a) provision (including provision modifying any duties under this section) specifying circumstances in which—
    - (i) any right to receive,
    - (ii) access to,
    - (iii) availability of,copies of reports (or of parts of such reports) may be restricted, refused or withheld,
  - (b) provision requiring copies of reports to be sent to the Scottish Ministers (or such other persons as may be specified in regulations) in such circumstances as may be so specified.

### *Regulations*

## 58 Regulations: inspections **S**

- (1) Regulations may make further provision concerning inspections under this Part.

**Status:** Point in time view as at 01/08/2010. This version of this Act contains provisions that are not valid for this point in time.

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- (2) Regulations under subsection (1) may, in particular, make provision—
- (a) as to types of inspection which may be conducted,
  - (b) as to timing and frequency of inspections,
  - (c) as to seizure and removal of anything found during the course of an inspection,
  - (d) as to persons who may be authorised to carry out inspections,
  - (e) requiring or facilitating the sharing or production of information (including health records) for the purposes of an inspection under this Part,
  - (f) as to interviews and examinations (including physical and mental examinations) which may be carried out in connection with the inspections,
  - (g) requiring any person to provide to an authorised person an explanation of information produced to an authorised person,
  - (h) requiring information produced to an authorised person to be held in compliance with prescribed conditions and further disclosures to be made in compliance with such conditions,
  - (i) empowering an authorised person to disclose to a person prescribed for the purposes of this paragraph any information of a prescribed nature which the authorised person holds in consequence of such an inspection,
  - (j) creating offences punishable on summary conviction by a fine not exceeding level 4 on the standard scale for the purpose of enforcing any provision of the regulations.
- (3) In subsection (2), “prescribed” means prescribed by regulations under subsection (1).

VALID FROM 01/10/2010

## CHAPTER 3 **S**

### CARE SERVICES

#### *Registration of care services*

#### 59 **Registration of care services** **S**

- (1) A person who seeks to provide a care service must apply to SCSWIS for registration of the service.
- (2) An application must—
  - (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 SCSWIS may reasonably require the applicant to give,
  - (d) without prejudice to subsection (1)(b) of section 76, be accompanied by the fee imposed under subsection (2)(a) of that section.

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- (3) A person who provides an adoption service or a fostering service must be a voluntary organisation.
- (4) Subsections (1) to (3) do not apply to a local authority—
  - (a) seeking to provide—
    - (i) an adoption service mentioned in paragraph 8(1)(a) of schedule 12, or
    - (ii) a fostering service mentioned in paragraph 9(a) or (c) of that schedule, or
  - (b) seeking to provide a care service in respect of which it has made such determination as is mentioned in section 83(1)(c).
- (5) Subsection (4)(b) is subject to section 83(3).

#### **60 Grant or refusal of registration** **S**

- (1) SCSWIS may grant or refuse registration of a care service under section 59.
- (2) A grant of registration may be subject to such conditions as SCSWIS thinks fit.
- (3) If SCSWIS is satisfied, in relation to an application, that the requirements of—
  - (a) such regulations as are applicable under section 78 to the care service, and
  - (b) any other enactment which appears to SCSWIS to be relevant,will be complied with in relation to that service, it must give notice under section 71(1), or as the case may be section 73(1); otherwise it must give notice under section 71(2).
- (4) On granting a registration, SCSWIS must issue a certificate of registration to the applicant.
- (5) The person for the time being providing the service must 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 different, the principal (or only) office of the service.

#### **61 Limited registration** **S**

- (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 SCSWIS for registration of the service.
- (2) Subsection (2) of section 59 applies in relation to an application under subsection (1) as it applies in relation to an application under subsection (1) of that section.
- (3) Sections 60, 76 and 77 apply in relation to a service in respect of which an application is made under subsection (1) as they apply in relation to a care service.
- (4) Sections 53 to 58, 62 to 79 and 101 apply in relation to a service registered under section 60 by virtue of subsection (3) as they apply in relation to a registered care service.
- (5) A service so registered is, in this Part, referred to as a limited registration service.

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### Improvement notices

#### 62 Improvement notices: care services **S**

- (1) SCSWIS may at any time give a notice (in this Part referred to as an “improvement notice”) to the person for the time being providing a care service registered under this Part that, unless within such reasonable period as may be specified in the notice, there is a significant improvement, of such a nature as may be so specified, in the provision of that service, SCSWIS intends—
- (a) in the case other than that mentioned in paragraph (b), to make a proposal under section 64 to cancel the registration, or
  - (b) in the case of a local authority providing an adoption service mentioned in paragraph 8(1)(a) of schedule 12, a fostering service mentioned in paragraph 9(a) or (c) of that schedule or any other care service registered under Chapter 4, to make a report to the Scottish Ministers under section 91.
- (2) Where a notice under subsection (1)(a) is given to a person other than a local authority, SCSWIS must send without delay a copy of that notice to the local authority within whose area the service is provided.

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

- (1) Where—
- (a) SCSWIS has given an improvement notice to a local authority in respect of a care service provided by it and registered under this Chapter, and
  - (b) the authority determines that the service is one which it must provide in order to fulfil a statutory duty,
- the authority must within 14 days after receiving the notice notify that determination to SCSWIS together with a statement of its reasons.
- (2) On receiving notification under subsection (1), SCSWIS must as soon as practicable send a copy of the improvement notice to the Scottish Ministers together with a copy of the notification, of the statement of reasons and of a note of any reason SCSWIS has for not agreeing with the authority's determination.
- (3) On receiving an improvement notice sent under subsection (2) the Scottish Ministers must state whether or not, in their opinion, the determination of the authority is justified.
- (4) If their statement is that the determination is justified—
- (a) the improvement notice is to be taken as duly given under subsection (1)(b) (and not subsection (1)(a)) of section 62, and
  - (b) the care service is to be taken, for the purposes of any application of the provisions of this Part which follows on from the giving of an improvement notice, to be a care service duly registered under Chapter 4 (and not Chapter 3).

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### *Proposals and applications in relation to registered care services*

#### **64 Cancellation of registration S**

- (1) SCSWIS 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 Chapter, 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 subsection (1)(a), the following are relevant offences—
  - (a) an offence under this Part,
  - (b) an offence under regulations made under this Part, or
  - (c) an offence which, in the opinion of SCSWIS, makes it appropriate that the registration should be cancelled.
- (3) For the purposes of subsection (1)(b), the following are relevant requirements—
  - (a) any requirements or conditions imposed by or under this Part, or
  - (b) the requirements of regulations made under this Part.
- (4) Where a person providing a registered care service ceases to provide the service, SCSWIS may cancel the registration of the service.

#### **65 Emergency cancellation of registration S**

- (1) SCSWIS may apply to the sheriff for an order cancelling the registration, under this Chapter, of a care service.
- (2) The application may be granted if it appears to the sheriff that, unless the order is made, there will be a serious risk to the life, health or wellbeing of persons.
- (3) The sheriff may make such interim order as the sheriff thinks fit.
- (4) As soon as practicable after SCSWIS has applied for an order under subsection (1), it must notify the appropriate authorities.
- (5) Where the order applied for is made (or an interim order is made), SCSWIS must as soon as reasonably practicable give a copy of it to the person who provides the care service.
- (6) The sheriff may determine an application under this section in the absence of the person providing the care service to which the application relates.
- (7) An order under this section has effect—
  - (a) from the time at which it is made, or
  - (b) from such other time as the sheriff considers appropriate.
- (8) Within 14 days of the day on which an order under this section is made, an appeal may be made to the sheriff principal against the making of the order.
- (9) On an appeal under subsection (8), the sheriff principal may—

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- (a) confirm the order,
  - (b) revoke the order,
  - (c) modify the order,
  - (d) make such other order as the sheriff principal thinks fit.
- (10) The decision of the sheriff principal on an appeal under subsection (8) is final.
- (11) An order under this section has effect notwithstanding the making of an appeal in relation to the order.
- (12) 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 other body established by or under an enactment whom SCSWIS thinks it appropriate to notify.

#### **66 Condition notices** S

SCSWIS may at any time give notice (in this Part referred to as a “condition notice”) to the person for the time being providing a service registered under this Chapter 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.

#### **67 Emergency condition notices** S

- (1) Subsection (2) applies where—
- (a) a person is providing a care service registered under this Chapter, and
  - (b) SCSWIS believes that the absence of a condition in relation to the registration of that service poses a serious risk to the life, health or wellbeing of persons.
- (2) SCSWIS may at any time give notice (an “emergency condition notice”) to the person providing the service specifying a condition, in relation to registration, in respect of that risk.
- (3) The condition so specified takes effect immediately on receipt of the emergency condition notice.
- (4) An emergency condition notice must—
- (a) state that, within 14 days after service of the notice, the person to whom it is given may make written representations to SCSWIS concerning any matter which that person wishes to dispute, and
  - (b) explain the right of appeal conferred by section 69(1).
- (5) SCSWIS must consider any representations made under subsection (4)(a) and, following such consideration, must—

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- (a) give the person providing the service a condition notice stating that SCSWIS proposes to vary or remove the condition specified in the emergency condition notice, or
  - (b) notify the person that it does not intend to give such a condition notice.
- (6) When notifying a person under subsection (5)(b), SCSWIS must explain the right of appeal conferred by section 69(1).
- (7) Where a condition notice has been given by virtue of subsection (5)(a) containing a proposal to remove the condition, SCSWIS must implement the proposal unless it appears to it that it would be inappropriate to do so.

#### **68 Application of Part to condition notices following emergency condition notices** **S**

- (1) Section 72 does not apply to a condition notice given by virtue of section 67(5)(a).
- (2) The reference in section 73(5) to a proposal in relation to which a condition notice has been given does not include a reference to a proposal contained in a condition notice given by virtue of section 67(5)(a) to remove the condition mentioned in that provision.
- (3) The reference to a proposal in section 75(1) does not include a reference to a proposal contained in a condition notice given by virtue of section 67(5)(a) to remove the condition mentioned in that provision.

#### **69 Emergency condition notices: appeals** **S**

- (1) A person—
  - (a) who is given an emergency condition notice, and
  - (b) who—
    - (i) makes no written representations in accordance with section 67(4)(a), or
    - (ii) makes such representations but is notified as mentioned in section 67(5)(b),may, within 14 days after the relevant date, appeal to the sheriff against the imposition of the condition.
- (2) In subsection (1), “relevant date” means—
  - (a) where sub-paragraph (i) of subsection (1)(b) applies, the date of service of the emergency condition notice,
  - (b) where sub-paragraph (ii) of that subsection applies, the date notification mentioned in that sub-paragraph is given.
- (3) The sheriff may, on an appeal under subsection (1)—
  - (a) direct that the condition specified in the emergency condition notice is to continue to have effect,
  - (b) direct that the condition is to cease to have effect,
  - (c) direct that the condition be varied as specified in the direction,
  - (d) impose an additional condition in relation to the registration.

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## 70 Applications under Chapter 3 in respect of conditions **S**

- (1) A person providing a service registered under this Chapter may apply to SCSWIS—
  - (a) for the variation or removal of any condition for the time being in force, or for the addition of a condition, in relation to the registration, or
  - (b) for cancellation of the registration.
- (2) But no such application is competent where—
  - (a) SCSWIS has given the person notice under section 71(3) of its proposal to cancel the registration (unless SCSWIS has decided not to take that step), or
  - (b) SCSWIS has given the person notice under section 73(3) of its decision to cancel the registration and—
    - (i) the time within which an appeal may be brought has not expired, or
    - (ii) if an appeal has been brought, that appeal has not been determined.
- (3) An application under subsection (1) must be made in such manner and state such particulars as may be prescribed; and, without prejudice to subsection (1)(b) of section 76, must be accompanied by the fee imposed under subsection (2)(a) or as the case may be (c) of that section.
- (4) If SCSWIS decides to grant an application under subsection (1)(a) it must give the applicant notice of its decision (stating, where applicable, the condition varied, removed or added) and issue a new certificate of registration.

## 71 Further provision as respects notice of proposals **S**

- (1) If SCSWIS proposes to grant an application made under section 59 but to do so subject to a condition which has not been agreed in writing between it and the applicant, it must give the applicant notice of the proposed condition.
- (2) If SCSWIS proposes to refuse an application made under section 59, it must give the applicant notice of the proposed refusal.
- (3) SCSWIS must give any person who provides a service registered under this Chapter notice of a proposal to cancel the registration (other than in accordance with an application under subsection (1)(b) of section 70).
- (4) SCSWIS must give an applicant under subsection (1)(a) of section 70 notice of a proposal to refuse that application.
- (5) A notice under this section must give SCSWIS's reasons for its proposal.

## 72 Right to make representations to SCSWIS as respects proposals under Chapter 3 **S**

- (1) A condition notice or a notice under section 71 must state that, within 14 days after service of the notice, the person to whom it is given may make written representations to SCSWIS concerning any matter which that person wishes to dispute.
- (2) Where such a notice has been given SCSWIS may decide to implement the proposal only after (whichever first occurs)—
  - (a) if the person to whom the notice was given makes representations under subsection (1), it has considered those representations,



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- (b) that person notifies SCSWIS in writing that such representations will not be made, or
  - (c) the period of 14 days mentioned in that subsection elapses without such representations being made and without SCSWIS receiving such notification.
- (3) In the circumstances mentioned in subsection (2)(b) or (c), SCSWIS must implement the proposal unless it appears to it that it would be inappropriate to do so.

### 73 Notice of SCSWIS's decision under Chapter 3 **S**

- (1) If SCSWIS decides to grant unconditionally an application made under section 59 or to grant such application subject only to a condition which has been agreed in writing between SCSWIS and the applicant, it must give the applicant notice of its decision.
- (2) A notice under subsection (1) must state the agreed condition.
- (3) If SCSWIS decides to implement a proposal in relation to which it has given a person a condition notice or a notice under section 71, it must give that person notice of the decision.
- (4) A notice under subsection (3) must—
  - (a) explain the right of appeal conferred by section 75, 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 section 71(1), state the condition subject to which the application is granted.
- (5) Subject to subsection (6), a decision to implement a proposal in relation to which a condition notice has been given or of which notice has been given under section 71(1) or (3) does not take effect—
  - (a) if no appeal is brought, until the period of 14 days referred to in section 75(1) 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 section 71(1) and the applicant notifies SCSWIS in writing, before the period of 14 days referred to in section 75(1) has elapsed, that there will be no appeal, the decision takes effect on receipt of that notification.

### 74 Conditions as to numbers **S**

Without prejudice to the generality of section 60(2) or 66, a condition imposed under any of those provisions in relation to a care service may—

- (a) in the case of—
  - (i) a care home service,
  - (ii) a school care accommodation service, or
  - (iii) a secure accommodation service,

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- limit the number of persons for whom the service may provide accommodation,
- (b) in the case of an adult placement service, limit the number of persons whom the service may place,
- (c) in the case of support service, limit 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,
 limit 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, limit the number of persons for whom the agency may supply registered nurses, registered midwives or registered health visitors.

#### **75 Appeal against decision to implement proposal S**

- (1) A person given notice under section 73(3) of a decision to implement a proposal may, within 14 days after that notice is given, appeal to the sheriff against the decision.
- (2) The sheriff may, on appeal under subsection (1), confirm the decision or direct that it is not to 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.

#### *Fees*

#### **76 Registration fees S**

- (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 SCSWIS under this section,
  - (b) circumstances in which fees so imposed are or are not to be payable.
- (2) Subject to the provisions of this section, SCSWIS must impose fees in respect of—
  - (a) any application made for registration under this Chapter or Chapter 4 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 Chapter or Chapter 4 by that person, or
    - (iii) by virtue of any new information provided by that person in pursuance of regulations under this Chapter or Chapter 4.

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- (3) Without prejudice to subsection (1)—
- (a) SCSWIS must, in fixing fees under this section, have regard to its reasonable expenses in carrying out its functions under this Chapter, but
  - (b) where it appears to SCSWIS to be appropriate it may charge a nominal fee, or remit the fee altogether.

### Regulations

#### 77 Regulations: registers and registration **S**

- (1) Regulations may—
- (a) make provision about the keeping of registers by SCSWIS,
  - (b) make provision about registration under this Chapter or Chapter 4 and in particular about—
    - (i) the making of applications for such registration,
    - (ii) the content of certificates of registration,
    - (iii) categories of applicant who cannot competently make certain applications,
  - (c) require SCSWIS to secure that, on such conditions, in such circumstances and, subject to subsection (2), on payment of such fees as may be specified in regulations, any person is to be afforded access to, and provided with a copy of an entry in or with an extract from, a register kept by SCSWIS,
  - (d) except such part of a register as may be specified in the regulations from any requirement made by virtue of paragraph (c),
  - (e) confer additional functions on SCSWIS in relation to registration under this Part.
- (2) Regulations under paragraph (c) of subsection (1) may specify circumstances in which the fees mentioned in that paragraph are not to be payable; and no fees are in any event payable in any case where SCSWIS consider it appropriate to provide the copy or extract in question free of charge.

#### 78 Regulations: care services **S**

- (1) Regulations may confer, in relation to care services, additional functions on SCSWIS.
- (2) Regulations may impose, in relation to care services, any requirements which the Scottish Ministers consider appropriate for the purposes of this Part.
- (3) Without prejudice to the generality of subsection (2), regulations 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.
- (4) A person who commits an offence under the regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) Before the Scottish Ministers make regulations containing provision as mentioned in subsection (1) or (3), they must consult such persons, or groups of persons, as they consider appropriate.

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### *Complaints*

#### **79 Complaints about care services** S

- (1) SCSWIS must 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), SCSWIS must consult the Scottish Public Services Ombudsman, all local authorities and such other persons, or groups of persons, as it considers appropriate on its proposals for such a procedure.
- (4) SCSWIS must keep the procedure under review and must vary it whenever, after such consultation, it considers it appropriate to do so.
- (5) SCSWIS must give such publicity to the procedure (including the procedure as varied under subsection (4)) as it considers appropriate and must give a copy of the procedure to any person who requests it.

### *Offences*

#### **80 Offences in relation to registration under Chapter 3** S

- (1) Any person who—
  - (a) provides a care service while not registered under this Chapter, or
  - (b) with intent to deceive, pretends that a care service is registered under this Chapter,
 commits an offence and is 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 60(5) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) Subsection (1)(a) does not apply as respect actings which—
  - (a) constitute an offence under section 75 of the Adoption and Children (Scotland) Act 2007 (asp 4), or
  - (b) fall within the exception provided for in subsection (1) of that section.

#### **81 False statements in application under Chapter 3** S

Any person who, in an application—

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

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

## 82 Offences by bodies corporate etc. **S**

Where an offence under this Chapter, or under regulations made under this Chapter, 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,
- (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 attributed 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) commits the offence and is liable to be proceeded against and punished accordingly.

VALID FROM 01/10/2010

## CHAPTER 4 **S**

LOCAL AUTHORITY ADOPTION AND FOSTERING SERVICES ETC.

## 83 Local authority applications for registration under Chapter 4 **S**

- (1) A local authority which seeks to provide—
  - (a) an adoption service mentioned in paragraph 8(1)(a) of schedule 12,
  - (b) a fostering service mentioned in paragraph 9(a) or (c) of that schedule, or
  - (c) any other care service if it is a service which the authority determines it must provide in order to fulfil a statutory duty,must make an application to SCSWIS for registration of the service.

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- (2) An application must be made in such manner and give such information as may be prescribed and, without prejudice to subsection (1)(b) of section 76, must be accompanied by the fee imposed under subsection (2)(a) of that section.
- (3) Where in relation to an application under subsection (1)(c) SCSWIS does not agree with the determination made by the authority, it must so notify the authority and the Scottish Ministers, giving its reason for not so agreeing.
- (4) On receiving notification under subsection (3), the Scottish Ministers must state whether or not, in their opinion, the determination of the authority is justified.
- (5) If their statement is that the determination is not justified, the application is to be taken to have been duly made not under this section but under section 59 and is to be dealt with accordingly.

#### **84 Grant of local authority application under Chapter 4 S**

- (1) Subject to subsections (4) and (5) of section 83, SCSWIS must—
  - (a) grant an application made under subsection (1) of that section unconditionally or subject to such conditions as SCSWIS thinks fit to impose and give the authority notice of its decision, or
  - (b) propose to grant it subject to such conditions as SCSWIS thinks fit to impose and give the authority notice of those conditions.
- (2) On granting the application, SCSWIS must issue a certificate of registration to the authority.
- (3) The authority must 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 the service is provided and, if different, the principal office of the authority.

#### **85 Condition notices: services registered under Chapter 4 S**

SCSWIS may at any time give notice (in this Part referred to as a “local authority condition notice”) to a local authority providing a care service registered under this Chapter 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.

#### **86 Applications under Chapter 4 in respect of conditions S**

- (1) A local authority providing a care service registered under this Chapter may apply to SCSWIS for the variation or removal of any condition for the time being in force in relation to the registration.
- (2) An application must be made in such manner and give such information as may be prescribed and, without prejudice to subsection (1)(b) of section 76, must be accompanied by the fee imposed under subsection (2)(a) of that section.
- (3) If SCSWIS decides to grant an application under subsection (1), it must give the authority notice of its decision, stating the condition varied or removed, and issue a new certificate of registration.

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- (4) If SCSWIS proposes to refuse such an application, it must give the authority notice of, and a statement of the reasons for, that proposal.

**87 Right to make representations to SCSWIS under Chapter 4 as respects conditions** **S**

- (1) This section applies to—
- (a) a notice under section 84(1)(b),
  - (b) a local authority condition notice, and
  - (c) a notice under section 86(4).
- (2) The notice must state that, within 14 days after service of the notice, the local authority to which it is given may make written representations to SCSWIS about any matter which the authority wishes to dispute.
- (3) Where the notice has been given, SCSWIS may do the thing proposed only after (whichever first occurs)—
- (a) if the authority makes representations under subsection (2), it has considered those representations,
  - (b) the authority notifies SCSWIS in writing that such representations will not be made, or
  - (c) the period of 14 days so mentioned elapses without such representations being made and without SCSWIS receiving such notification.
- (4) In the circumstances mentioned in subsection (3)(b) or (c), SCSWIS must do the thing proposed unless it appears to it that it would be inappropriate to do so.

**88 Notice of SCSWIS's decision under Chapter 4** **S**

- (1) If SCSWIS decides to implement a notice to which section 87 applies, it must give the local authority to which that notice was given notice of its decision.
- (2) A notice under subsection (1) must—
- (a) explain the right of appeal conferred by section 89, and
  - (b) in the case of a decision—
    - (i) to grant an application in respect of which there has been a proposal under section 84(1), 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), a decision to implement a notice to which section 87 applies does not take effect—
- (a) if no appeal is brought, until the period of 14 days referred to in section 89(1) has elapsed, and
  - (b) if an appeal is brought, until that appeal is finally determined or abandoned.
- (4) Where the authority notifies SCSWIS in writing, before the period of 14 days referred to in section 89(1) has elapsed, that there will be no appeal against a notice under section 84(1)(b), that notice takes effect on receipt by SCSWIS of that notification.

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### **89 Appeal against decision under Chapter 4 S**

- (1) A local authority given notice of a decision under section 88(1) may, within 14 days after that notice is given, appeal to the sheriff against the decision.
- (2) The sheriff may, on appeal under subsection (1), confirm the decision or direct that it is not to 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.

### **90 Offences under Chapter 4 S**

- (1) Sections 80(1) and (3) and 82 apply in relation to a care service registered under this Chapter as they apply in relation to such a service registered under Chapter 3.
- (2) Any person who fails to comply with section 84(3) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) Any person who, in an application—
  - (a) for registration under this Chapter, or
  - (b) for variation or removal of a condition in force in relation to a registration under this Chapter,
 knowingly makes a statement which is false or misleading in a material respect commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **91 Report to Scottish Ministers S**

- (1) Where SCSWIS has given an improvement notice to a local authority in respect of a care service provided by it and registered under this Chapter, SCSWIS must without delay—
  - (a) report that fact, and
  - (b) give a copy of the improvement notice,
 to the Scottish Ministers.
- (2) Within 14 days after the expiry of the period specified in the improvement notice, SCSWIS must 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 must 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) 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 SCSWIS that that service is being, or has at any time been, carried on other than in accordance with the relevant requirements,



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SCSWIS must 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 subsection (3)(a), the following are relevant offences—
- (a) an offence under this Part,
  - (b) an offence under regulations made under this Part, or
  - (c) an offence which, in the opinion of SCSWIS makes it appropriate that there should be a report to the Scottish Ministers under that subsection.
- (5) For the purposes of subsection (3)(b) and section 92, the following are relevant requirements—
- (a) any requirements (or conditions) imposed by or under this Part,
  - (b) the requirements of regulations made under this Part, or
  - (c) any requirements (or conditions) imposed by, under or by virtue of such other Act as may be prescribed.
- (6) SCSWIS must report and provide information to the Scottish Ministers on such other matters in relation to a care service registered under this Chapter as may be prescribed.

## 92 Default powers of Scottish Ministers **S**

- (1) If the Scottish Ministers (having received a report under section 91 or otherwise) are satisfied that a local authority providing a care service registered under this Chapter is, 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) in respect of the matter.
- (2) The action is—
- (a) to declare the authority to be in default, and
  - (b) to direct the authority 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 fails to comply with a direction under subsection (2)—
- (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 Scottish Ministers, order specific performance of those steps.
- (4) All expenses of the Scottish Ministers under subsection (3) are recoverable as a debt due by the authority to them.

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## CHAPTER 5 S

### MISCELLANEOUS

VALID FROM 01/10/2010

#### 93 Grants to SCSWIS S

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

VALID FROM 01/10/2010

#### 94 Guarantees S

- (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 SCSWIS borrows from any person.
- (2) Where the Scottish Ministers give a guarantee under this section they must without delay 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 must, 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, SCSWIS must make to the Scottish Ministers, at such times and in such manner as they may from time to time direct—
  - (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.

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VALID FROM 01/10/2010

**95 Duty of SCSWIS to consult Scottish Social Services Council** **S**

SCSWIS must, in the exercise of its functions, consult the Scottish Social Services Council in every case in which it appears to SCSWIS appropriate that there should be such consultation.

VALID FROM 01/10/2010

**96 Duty of SCSWIS to consult the Mental Welfare Commission for Scotland** **S**

SCSWIS must, in the exercise of its functions relating to the provision of guidance, advice or information, consult the Mental Welfare Commission for Scotland in every case in which it appears to SCSWIS appropriate having regard to the Commission's functions under sections 5(b) and 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

VALID FROM 01/10/2010

**97 Complaints procedure** **S**

- (1) SCSWIS must 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 of, or failure by it to exercise, any of its functions under this Part in respect of the person.
- (2) Before establishing a procedure under subsection (1), SCSWIS must consult the Scottish Public Services Ombudsman on its proposals for such a procedure.
- (3) SCSWIS must keep the procedure so established by it under review and must vary that procedure whenever, after such consultation, it considers it appropriate to do so.
- (4) SCSWIS must give such publicity to that procedure (including that procedure as varied under subsection (3)) as it considers appropriate and must give a copy of the procedure to any person who requests it.

VALID FROM 01/10/2010

**98 Inquiries** **S**

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

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

VALID FROM 01/10/2010

**99 Arrangements entered into by local authority or health body: services to be registered S**

Where, in the performance of its functions—

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

makes arrangements with any person to provide a care service, it must ensure that the service, when provided, is registered under Chapter 3.

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VALID FROM 01/10/2010

**100 Local authorities and health bodies: awareness of SCSWIS reports etc. S**

- (1) For the purposes of its functions as they relate to the provision of care services (including the making of arrangements with other persons to provide such services) —
- (a) a local authority,
  - (b) a health body,
- must take into account the matters mentioned in subsection (3).
- (2) In carrying out its duty under subsection (1), a local authority or health body must have regard to any guidance issued by the Scottish Ministers in respect of that duty.
- (3) The matters are such—
- (a) reports,
  - (b) information,
  - (c) notices,
- prepared, disseminated, given or otherwise produced by SCSWIS as are relevant to the provision of the services mentioned in subsection (1) or, as the case may be, to the organisation or co-ordination of those services.

VALID FROM 01/10/2010

**101 Giving of notice S**

- (1) In Chapters 3 and 4, any reference to a notice being given to a person providing, or seeking to provide, a care service is to 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 is taken not to have been received until the third day after the day of posting.
- (2) For the purposes of subsection (1), 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.

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VALID FROM 01/10/2010

## 102 Transfer of staff etc. **S**

- (1) With effect from the date on which section 44 comes into force—
  - (a) any person employed by the Scottish Commission for the Regulation of Care immediately before that date is, subject to section 109, transferred into the employment of SCSWIS,
  - (b) all property (including rights) and liabilities of the Scottish Commission for the Regulation of Care subsisting immediately before that date are, subject to section 109, transferred to, and vest in, SCSWIS,
  - (c) subject to subsection (2), any person who is a member of staff of the Scottish Ministers employed in the Executive Agency of the Scottish Ministers known as the Social Work Inspection Agency immediately before that date is transferred into the employment of SCSWIS,
  - (d) any person to whom section 103 applies immediately before that date is transferred into the employment of SCSWIS.
- (2) Subsection (1)(c) does not apply to staff on secondment or loan to the Executive Agency of the Scottish Ministers known as the Social Work Inspection Agency from another part of the Scottish Administration.
- (3) The contract of employment of a person transferred by virtue of subsection (1)(a), (c) or (d)—
  - (a) is not terminated by the transfer, and
  - (b) has effect from the date of transfer as if originally made between the person and SCSWIS.
- (4) Without prejudice to subsection (3), where a person is transferred by virtue of subsection (1)(a), (c) or (d)—
  - (a) all the rights, powers, duties and liabilities of the Scottish Commission for the Regulation of Care or, as the case may be, the Scottish Ministers, under or in connection with the person's contract of employment are transferred to SCSWIS on the date of transfer, and
  - (b) anything done before that date by or in relation to the Scottish Commission for the Regulation of Care or, as the case may be, the Scottish Ministers, in respect of the person or the contract is to be treated from that date as having been done by or in relation to SCSWIS.
- (5) Subsections (1) to (4) do not affect any right of any person so transferred to terminate the person's contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but any such change is not to be taken to have occurred by reason only that the identity of the person's employer changes by virtue of those subsections.

## 103 Transfer of staff: further provision **S**

- (1) This section applies to such persons who are members of staff of the Scottish Ministers employed in the Executive Agency of the Scottish Ministers known as Her Majesty's Inspectorate of Education in Scotland as the Scottish Ministers may by order specify.

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- (2) Such an order may specify any description of such employees or any individual such employee.
- (3) For the purposes of subsection (1), an order may not be made in relation to staff on secondment or loan to the Executive Agency of the Scottish Ministers known as Her Majesty's Inspectorate of Education in Scotland from another part of the Scottish Administration.
- (4) The power to make an order under subsection (1)—
  - (a) must be exercised by statutory instrument,
  - (b) may be exercised so as to make different provision for different purposes.
- (5) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Parliament.

VALID FROM 01/10/2010

#### 104 Orders and regulations: procedure **S**

- (1) Any power conferred by this Part on the Scottish Ministers to make an order or regulations—
  - (a) must be exercised by statutory instrument,
  - (b) includes power to make such consequential, supplemental, incidental, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (c) may be exercised so as to make different provision for different purposes.
- (2) No order is, or regulations are, to be made under section 49, 58(1) or 78 or schedule 12 unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, the Parliament.
- (3) A statutory instrument containing an order or regulations under any other provision of this Part is subject to annulment in pursuance of a resolution of the Parliament.

VALID FROM 01/10/2010

#### 105 Interpretation of Part 5 **S**

- (1) In this Part, unless the context otherwise requires—
  - “act as a child minder” has the meaning given by paragraph 12(1) of schedule 12;
  - “adoption service” has the meaning given by paragraph 8 of that schedule;
  - “adult placement service” has the meaning given by paragraph 11 of that schedule;
  - “care home service” has the meaning given by paragraph 2 of that schedule;
  - “care service” has the meaning given by section 47(1);
  - “child”—
    - (a) in relation to an adoption service, means a person who is under the age of 18,

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(b) in relation to a fostering service, means a person who is under the age of 18, and

(c) for the purposes of paragraph 6 of schedule 12, has the meaning given in section 93(2)(b) of the Children (Scotland) Act 1995 (c. 36),

but otherwise means a person under the age of 16;

“child care agency” has the meaning given by paragraph 5 of schedule 12;

“child minding” has the meaning given by paragraph 12 of that schedule;

“condition notice” has the meaning given by section 66;

“day care of children” has the meaning given by paragraph 13 of schedule 12;

“domestic premises” means any premises which are wholly or mainly used as a private dwelling;

“fostering service” has the meaning given by paragraph 9 of schedule 12;

“health body” means a Health Board or Special Health Board constituted by order under section 2 of the National Health Service (Scotland) Act 1978 (c. 29);

“health records” means records relating to the physical or mental health of an individual (including dental records and medical records);

“hospital” has the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978;

“housing support service” has the meaning given by paragraph 19 of schedule 12;

“improvement notice” has the meaning given by section 62;

“limited registration service” has the meaning given by section 61(5);

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

“local authority condition notice” has the meaning given by section 85;

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

“mental disorder” has the same meaning as in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);

“notice” means notice in writing;

“nurse agency” has the meaning given by paragraph 4 of schedule 12;

“offender accommodation service” has the meaning given by paragraph 7 of that schedule;

“personal care” has the meaning given by paragraph 20 of that schedule;

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

“premises” includes any vehicle;

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

“provide”, in relation to a care service, means to carry on or manage such a service; and includes, in the case of a care service which is provided by a body corporate, a reference to a director, manager, secretary to other similar officer of the body;

“regulations” means regulations made by the Scottish Ministers;

“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;



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“school care accommodation service” has the meaning given by paragraph 3 of schedule 12;

“secure accommodation service” has the meaning given by paragraph 6 of that schedule;

“social services” and “social service” have the meanings given by section 46;

“social work services” has the meaning given by section 48;

“someone who cares for” (or “a person who cares for”) a person has the meaning given by paragraph 20 of schedule 12;

“SCSWIS” means Social Care and Social Work Improvement Scotland (which is constituted under section 44);

“support service” (except in the expression “housing support service”) has the meaning given by paragraph 1 of schedule 12;

“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 paragraph 20 of schedule 12.

(2) In this Part, a person who uses, or is eligible to use, a social service includes any person to whom that service is, or may be, provided.

(3) For the purposes of this Part, information is “confidential information” where—

(a) the identity of an individual is ascertainable—

(i) from that information, or

(ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person holding that information, and

(b) the information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.

VALID FROM 01/10/2010

**106 Minor and consequential amendments and repeals: SCSWIS S**

Schedule 14 (which makes minor modifications of enactments and modifications consequential on the provisions of this Part) has effect.

**107 Minor modifications: Scottish Social Services Council S**

Schedule 15 (which makes minor modifications of Part 3 of the Regulation of Care (Scotland) Act 2001 (asp 8)) has effect.

**Commencement Information**

**I38** [S. 107](#) in force at 1.8.2010 by [S.S.I. 2010/221](#), art. 3(2), [Sch.](#)

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## PART 6 **S**

### HEALTH CARE: SCRUTINY AND IMPROVEMENT

#### 108 **Healthcare Improvement Scotland **S****

After section 10 of the National Health Service (Scotland) Act 1978 (c. 29) insert—

#### *“Healthcare Improvement Scotland*

##### **10A Healthcare Improvement Scotland**

- (1) There is established a body to be known as Healthcare Improvement Scotland (in this Act referred to as “HIS”) which—
  - (a) is to exercise the functions conferred on it by virtue of this Act and any other enactment; and
  - (b) has the general duty of furthering improvement in the quality of health care.
- (2) In subsection (1)(b), “health care” means services for or in connection with the prevention, diagnosis or treatment of illness provided—
  - (a) under the health service; or
  - (b) by persons providing independent health care services.
- (3) In carrying out its functions, HIS is to act subject to and in accordance with such directions as may be given by the Scottish Ministers.
- (4) The Scottish Ministers may vary or revoke any direction given under subsection (3).
- (5) Schedule 5A (which makes further provision about the status, constitution, proceedings etc. of HIS) has effect.

#### *Principles*

##### **10B Principles**

- (1) HIS must exercise its functions in accordance with the principles set out in the following subsections.
- (2) The safety and wellbeing of all persons who use services provided under the health service and independent health care services are to be protected and enhanced.
- (3) Good practice in the provision of those services is to be identified, promulgated and promoted.
- (4) The provision of those services in a manner which takes appropriate account of guidance and other information (including evidence) published or endorsed by HIS is to be promoted and encouraged.

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### *Functions related to the health service*

#### **10C Health service functions**

- (1) HIS is to exercise the following functions of the Scottish Ministers—
- (a) functions in relation to supporting, ensuring and monitoring the quality of health care provided or secured by the health service including, without prejudice to the foregoing generality, providing quality assurance and accreditation;
  - (b) functions in relation to supporting, ensuring and monitoring the discharge of the duty under section 2B by each body to whom that section applies;
  - (c) functions in relation to supporting, ensuring and monitoring the discharge of the duty under section 2D by each body to whom that section applies, other than HIS, insofar as the discharge of that duty is relevant to—
    - (i) the quality of health care provided or secured by the health service; or
    - (ii) the discharge of the duty under section 2B;
  - (d) functions in relation to the evaluation and provision of advice to the health service on the clinical and cost effectiveness of new and existing health technologies including drugs,
- conferred on them by this Act including, without prejudice to the foregoing generality, those functions specified in section 1(1).
- (2) HIS is to exercise the following functions of the Scottish Ministers subject to any limitations specified—
- (a) the power of the Scottish Ministers under section 16(1) to assist voluntary organisations whose activities include the provision of a service similar to or related to the functions of HIS;
  - (b) the power of the Scottish Ministers under section 16B to give financial assistance to voluntary organisations whose activities consist of or include the provision of services similar to or related to the functions of HIS; and such assistance may be given only on such terms and conditions as the Scottish Ministers determine;
  - (c) the power of the Scottish Ministers under section 42 to disseminate, in respect of the functions of HIS, information relating to the promotion and maintenance of health and the prevention of illness;
  - (d) the duties of the Scottish Ministers under section 47—
    - (i) to make available such facilities as appear to HIS to be reasonably required for undergraduate and post-graduate clinical teaching and research and for the education and training of persons providing or intending to provide services under this Act; and
    - (ii) to conduct, or assist by grants or otherwise under that section any person to conduct, research into matters relating to the functions of HIS;
  - (e) the powers of the Scottish Ministers under section 79(1) to take on lease or to purchase moveable property and land so far as required for

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- the purposes of HIS and to use for those purposes and manage any heritable or moveable property so acquired;
- (f) the powers of the Scottish Ministers under section 79(1A) to dispose of land no longer required for the purposes of HIS.
- (3) HIS is to exercise the following functions—
- (a) a duty to provide information to the public about the availability and quality of services provided under the health service;
  - (b) a duty to provide such information to a person in such form as that person may reasonably request;
  - (c) when requested by the Scottish Ministers, a duty to provide to the Scottish Ministers advice about any matter relevant to the health service functions of HIS;
  - (d) a power to provide such advice to Scottish Ministers at any time;
  - (e) when asked to do so, a duty to provide such advice to—
    - (i) persons who provide, seek to provide or may provide services under the health service;
    - (ii) persons, or groups of persons, representing those who use, or are eligible to use, such services;
    - (iii) persons, or groups of persons, representing those who care for those who use, or are eligible to use, such services;
    - (iv) local authorities;
    - (v) a Health Board, Special Health Board or the Agency (each a “body” for the purposes of subsection (4));
    - (vi) such other persons, or groups of persons as may be prescribed;
  - (f) a power to disseminate such information as HIS considers relevant of general or specific application arising out of or in connection with the exercise of its health service functions.
- (4) HIS 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 subsection (3)(e).
- (5) References in this Act to the health service functions of HIS are, subject to subsections (6) and (7), to the functions conferred by virtue of this section and section 10D (including any functions delegated by order under that section).
- (6) Where a provision of this section which confers a function on HIS refers to the health service functions of HIS, that reference is to be construed as a reference to the functions conferred by virtue of this section and section 10D other than the function conferred by the provision.
- (7) Where a provision of this section which confers a function on HIS refers to the functions of HIS, that reference is to be construed as including a reference to the functions conferred by virtue of this section and section 10D other than the function conferred by the provision.

### **10D Health service functions: further provision**

- (1) The Scottish Ministers may by order delegate to HIS such of their functions relating to the health service as they consider appropriate.

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- (2) HIS is to provide such services, and carry out such tasks, for bodies associated with the health service as the Scottish Ministers and those bodies may agree; and is to do so on such terms and conditions as may be so agreed.
- (3) Notwithstanding that it is exercising functions relating to the health service on behalf of the Scottish Ministers or other bodies associated with the health service, HIS—
  - (a) is entitled to enforce any rights acquired in the exercise of those functions;
  - (b) is to be liable in respect of any liabilities incurred (including liability in damages for wrongful or negligent acts or omissions) in the exercise of those functions,in all respects as if HIS were acting as a principal.
- (4) All proceedings for the enforcement of such rights or liabilities are to be brought by or against HIS in its own name.

#### *Functions related to independent health care*

### **10E Independent health care functions**

- (1) HIS is to exercise the following functions—
  - (a) a duty to provide information to the public about the availability and quality of independent health care services;
  - (b) a duty to provide such information to a person in such form as that person may reasonably request;
  - (c) when requested by the Scottish Ministers, a duty to provide to the Scottish Ministers advice about any matter relevant to the independent health care functions of HIS;
  - (d) a power to provide such advice to the Scottish Ministers at any time;
  - (e) when asked to do so, a duty to provide such advice to—
    - (i) persons who provide, seek to provide or may seek to provide independent health care services;
    - (ii) persons, or groups of persons, representing those who use, or are eligible to use, such services;
    - (iii) persons, or groups of persons, representing those who care for those who use, or are eligible to use, such services;
    - (iv) local authorities;
    - (v) a Health Board, Special Health Board or the Agency (each a “body” for the purposes of subsection (2));
    - (vi) such other persons, or groups of persons as may be prescribed;
  - (f) a power to disseminate such information as HIS considers relevant of general or specific application arising out of or in connection with the exercise of its independent health care functions.
- (2) HIS may charge a reasonable fee determined by it for any advice, forms or documents provided for the assistance of any person, authority or body as is mentioned in subsection (1)(e).

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- (3) References in this Act to the independent health care functions of HIS are, subject to subsection (4)—
- (a) to the functions conferred on HIS, or on a person acting on behalf of HIS, by this section and by sections 10J, 10K, 10P to 10Z3, 10Z5, 10Z8 and 10Z19;
  - (b) to any functions delegated to HIS under section 10H(6) to the extent that such functions relate to standards and outcomes applicable to independent health care services;
  - (c) to the functions conferred on HIS by section 10M to the extent that such functions relate to inspections of independent health care services; and
  - (d) to the functions conferred on HIS by section 10N to the extent that such functions relate to reports on inspections of independent health care services.
- (4) Where a provision of this section, or those sections, which confers a function on HIS refers to the independent health care functions of HIS, the reference is to be construed as a reference to the functions conferred by this section and those sections other than the function conferred by the provision.

*Meaning of “independent health care services”*

**10F Meaning of “independent health care services”**

- (1) In this Act, an “independent health care service” is any of the following—
- (a) an independent hospital;
  - (b) a private psychiatric hospital;
  - (c) an independent clinic;
  - (d) an independent medical agency;
  - (e) an independent ambulance service.
- (2) In subsection (1)—
- “independent hospital” means a hospital which is neither a health service hospital nor a private psychiatric hospital; and for the purposes of this definition includes part of a health service 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 this Act;
  - (c) no part of it is contained within the same building as any such part which does provide treatment or nursing in pursuance of this Act;
- “private psychiatric hospital” means any premises used or intended to be used for the provision of medical treatment to one or more patients subject to an order or direction under the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) or the Criminal Procedure (Scotland) Act 1995 (c. 46) (whether or not other persons are treated there), not being—
- (a) a health service hospital;
  - (b) a state hospital; or
  - (c) otherwise an independent health care service;

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“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 this Act, by a medical practitioner or dental practitioner;

“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 this Act, by a medical practitioner;

“independent ambulance service” means, subject to subsection (5), a service which consists of or includes—

- (a) provision (other than provision falling within paragraph (b) below) of medical treatment, medical care or other care to relevant patients while such patients are being transported to or from a place of medical treatment;
- (b) provision, at or in connection with a public event, of medical treatment outwith relevant premises under arrangements made between the provider of the service and another (whether or not the service includes a means of transport for transporting patients from the event to relevant premises).

- (3) In paragraph (a) of the definition of “independent ambulance service” in subsection (2)—

“relevant patient” is a patient—

- (a) whose condition or recovery would or might be impaired were the treatment or care mentioned in that paragraph not to be provided;
- (b) whose condition affects the patient's mobility to such an extent that, were such treatment or care not to be provided while the patient is being transported as mentioned in that paragraph, the patient's condition or recovery would or might be impaired;
- (c) whose mobility is such that, without such treatment or care, it would be difficult or impossible for the patient to be transported as mentioned in that paragraph;

“place of medical treatment” means a hospital or other premises used or intended to be used for the provision of medical or dental treatment, and includes an independent health care service mentioned in paragraphs (a) to (d) of subsection (1).

- (4) In paragraph (b) of the definition of “independent ambulance service” in subsection (2)—

“public event” means an event, function or other organised activity of any kind to which members of the public have access;

“medical treatment” includes medical care and medical advice;

“relevant premises” means premises used or intended to be used for the provision of medical treatment, medical care or medical advice, but does not include—

- (a) any means of transport as mentioned in that paragraph; or
- (b) any temporary premises at or near, and provided in connection with, the public event.

- (5) A service does not fall within the definition of “independent ambulance service” in subsection (2) if it is provided under the health service, unless it is so provided for remuneration.

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- (6) In subsection (5), “remuneration” does not include remuneration payable by a health service body under arrangements made for the provision of the service.
- (7) Where, by virtue of payment of remuneration, the provider of a service under the health service acts as an independent ambulance service, HIS's independent health care functions are exercisable in relation to that provider only where, and to the extent that, the provider is so acting.

### **10G Power to modify definitions**

The Scottish Ministers, after consulting such persons (or groups of persons) as they consider appropriate, may by order—

- (a) modify the independent health care functions of HIS by amending, removing or adding to those functions;
- (b) modify the definition of independent health care service in section 10F(1).

### *Standards and outcomes*

### **10H Standards and outcomes**

- (1) The Scottish Ministers may prepare and publish standards and outcomes applicable to—
  - (a) services provided under the health service;
  - (b) independent health care services.
- (2) The Scottish Ministers must keep any standards and outcomes so published under review and may under subsection (1) publish amended standards and outcomes whenever they consider it appropriate to do so.
- (3) Before publishing under subsection (1) any—
  - (a) standards and outcomes;
  - (b) amended standards and outcomes which in the opinion of the Scottish Ministers are substantially different from the standards and outcomes (or amended standards and outcomes) last so published,
 the Scottish Ministers must consult such persons, or groups of persons, as they consider appropriate.
- (4) In relation to a service provided under the health service, or an independent health care service, any applicable standards and outcomes published under subsection (1) must be taken into account—
  - (a) by HIS in making any decision under this Part;
  - (b) in any proceedings on an appeal under section 10Z4; and
  - (c) in any proceedings for an offence in relation to registration under section 10P.
- (5) The Scottish Ministers may make different provision for different services under subsection (1).
- (6) The Scottish Ministers may delegate their functions under subsections (1) to (3) to HIS or such other persons as they consider appropriate.



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## Inspections

### 10I Inspections of services provided under the health service

- (1) HIS may, in pursuance of its general duty of furthering improvement in the quality of health care in Scotland, inspect any service provided under the health service.
- (2) An inspection under this section must be conducted in accordance with a plan—
  - (a) prepared in accordance with section 10L; and
  - (b) approved by the Scottish Ministers.

### 10J Inspections of independent health care services

- (1) HIS may inspect—
  - (a) any independent health care service;
  - (b) the organisation or co-ordination of any independent health care service.
- (2) The purposes of an inspection under this section may include—
  - (a) reviewing and evaluating the effectiveness of the provision of the services which are the subject of the inspection;
  - (b) encouraging improvement in the provision of those services;
  - (c) enabling consideration as to the need for any recommendations to be prepared as to any such improvement to be included in the report prepared under section 10N;
  - (d) investigating any incident, event or cause for concern; and
  - (e) enabling consideration as to the need for—
    - (i) an improvement notice under section 10R;
    - (ii) a condition notice under section 10U.
- (3) An inspection under this section may be in relation to—
  - (a) any independent health care service or combination of independent health care services;
  - (b) such of the services concerned provided to particular groups of persons;
  - (c) any part of Scotland.
- (4) An inspection under this section must be conducted in accordance with a plan—
  - (a) prepared in accordance with section 10L; and
  - (b) approved by the Scottish Ministers.
- (5) HIS may at any time require a person providing any independent health 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 independent health care functions.
- (6) References in this section to a person providing an independent health care service include, 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.

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- (7) An inspection under this section may, subject to any regulations made under section 10O, take such form as HIS considers appropriate.

### **10K Authorised persons**

- (1) Any inspection under section 10J must be carried out by a person authorised by HIS (an “authorised person”).
- (2) A person may be authorised by HIS to carry out inspections in relation to any independent health care service or all of them.
- (3) An authorised person may 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 the independent health care service which is the subject of the inspection.
- (4) Where an authorised person is in possession of confidential information which has been obtained for the purposes of an inspection under section 10J the authorised person must not use or disclose that information other than—
- (a) for the purposes of that inspection;
  - (b) so as to comply with an enactment or court order requiring disclosure;
  - (c) to the extent considered necessary by the authorised person for the purpose of protecting the welfare of—
    - (i) any child under the age of 16 years;
    - (ii) any adult at risk (within the meaning of section 3 of the Adult Support and Protection (Scotland) Act 2007 (asp 10)); or
  - (d) to the extent considered necessary by the authorised person for the purpose of the prevention or detection of crime or the apprehension or prosecution of offenders.
- (5) For the purposes of subsection (4), information is “confidential information” where—
- (a) the identity of an individual is ascertainable—
    - (i) from that information; or
    - (ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person holding that information; and
  - (b) the information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.

### **10L Inspections: best regulatory practice**

- (1) HIS must prepare a plan for carrying out inspections in accordance with best regulatory practice.
- (2) The plan—
- (a) must set out arrangements for inspections to be so carried out (including inspections of those services subject to self evaluation);
  - (b) may make different provision for different purposes.

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- (3) For the purposes of subsection (1), “best regulatory practice” means practice under which (in particular) inspections should be carried out in a way that is transparent, accountable, proportionate and consistent.
- (4) In preparing a plan under subsection (1), HIS must have regard to any guidance issued by the Scottish Ministers about those matters.
- (5) HIS—
  - (a) must keep the plan under review; and
  - (b) may from time to time revise, with the approval of the Scottish Ministers, the plan.
- (6) HIS must, in preparing a plan (or any revision), consult such persons as it considers appropriate.

### **10M Inspections at request of Scottish Ministers**

- (1) HIS must, at the request of the Scottish Ministers, inspect—
  - (a) any service provided under the health service as they may specify;
  - (b) any independent health care service so specified;
  - (c) the organisation or co-ordination of any service mentioned in paragraph (a) or (b) so specified;
  - (d) any independent health care service so specified together with any service provided under the health service so specified.
- (2) The Scottish Ministers may specify purposes for any inspection under this section.
- (3) An inspection under this section is to be conducted in accordance with a timetable approved by the Scottish Ministers.

### **10N Inspections: reports**

- (1) Where an inspection under section 10I, 10J or section 10M has been completed, HIS—
  - (a) must prepare a report on the matters inspected; and
  - (b) must without delay send a copy of that report to the person providing the service which has been inspected.
- (2) Before finalising a report prepared under subsection (1), HIS must give the person providing the service an opportunity of commenting on a draft of the report.
- (3) HIS must make copies of any report prepared under subsection (1) available for inspection at its offices by any person at any reasonable time; and it must take such other steps as it considers appropriate for publicising any such report.
- (4) Regulations may make further provision concerning the preparation, content and effect of reports under subsection (1), and in particular may make—
  - (a) different provision in relation to different independent health care services and different services provided under the health service;

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- (b) provision requiring copies of reports to be sent to the Scottish Ministers (or such other persons as may be specified in regulations) in such circumstances as may be so specified;
- (c) provision (including provision modifying any duties under this section) specifying circumstances in which—
  - (i) any right to receive;
  - (ii) access to;
  - (iii) availability of,
 copies of reports (or of parts of such reports) may be restricted, refused or withheld.

### 100 Regulations relating to inspections

- (1) Regulations may make further provision concerning inspections under—
  - (a) section 10I;
  - (b) section 10J;
  - (c) section 10M.
- (2) Regulations under subsection (1) may make different provision for different inspections provided for under the provisions mentioned in that subsection.
- (3) Regulations under subsection (1) may, in particular, make provision—
  - (a) as to types of inspection which may be conducted;
  - (b) as to timing and frequency of inspections;
  - (c) as to seizure and removal of anything found during the course of an inspection;
  - (d) as to persons who may be authorised to carry out inspections;
  - (e) requiring or facilitating the sharing or production of information (including health records) for the purposes of an inspection;
  - (f) as to interviews and examinations (including physical and mental examinations) which may be carried out in connection with the inspections;
  - (g) requiring any person to provide to an authorised person an explanation of information produced to an authorised person;
  - (h) requiring information produced to an authorised person to be held in compliance with prescribed conditions and further disclosures to be made in compliance with such conditions;
  - (i) empowering an authorised person to disclose to a person prescribed for the purposes of this paragraph any information of a prescribed nature which the authorised person holds in consequence of an inspection;
  - (j) creating offences punishable on summary conviction by a fine not exceeding level 4 on the standard scale for the purpose of enforcing any provision of the regulations.
- (4) In subsection (3)(e), “health records” means records relating to the physical or mental health of an individual (including dental records and medical records); and for the purposes of this subsection “medical records” means records which have been prepared by a medical practitioner who is, or has been, responsible for the clinical care of the individual.

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## Registration

### 10P Registration of independent health care services

- (1) A person who seeks to provide a independent health care service must apply to HIS for registration of the service.
- (2) An application must—
  - (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 HIS may reasonably require the applicant to give;
  - (d) without prejudice to subsection (1)(b) of section 10Z5, be accompanied by the fee imposed under subsection (2)(a) of that section.

### 10Q Grant or refusal of registration

- (1) HIS may grant or refuse registration of an independent health care service under section 10P.
- (2) A grant of registration may be subject to such conditions as HIS considers appropriate.
- (3) If HIS is satisfied, in relation to the application, that the requirements of—
  - (a) such regulations as are applicable under section 10Z7; and
  - (b) any other enactment which appears to HIS to be relevant,will be complied with in relation to that service, it must give notice under section 10Z(1)(a), or as the case may be section 10Z2; otherwise it must give notice under section 10Z(1)(b).
- (4) On granting a registration HIS must issue a certificate of registration to the applicant.
- (5) The person for the time being providing the service must 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

### 10R Improvement notices: independent health care services

HIS may at any time give a notice (an “improvement notice”) to the person for the time being providing a registered independent health care service that, unless within such reasonable period as may be specified in the notice, there is a significant improvement, of such a nature as may be so specified, in the provision of that service, it intends to make a proposal under section 10S.

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### *Proposals and applications in relation to registered independent health care services*

#### **10S Cancellation of registration**

- (1) HIS may, at any time after the expiry of the period specified in an improvement notice under section 10R given in respect of an independent health care service, propose to cancel the registration of the 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) the following are relevant offences—
    - (i) an offence under any of sections 10G to 10Z18 (in this section, “this group of sections”);
    - (ii) an offence under regulations made under this group of sections; or
    - (iii) an offence which, in the opinion of HIS, 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 group of sections; or
    - (ii) the requirements of regulations made under this group of sections.
- (3) Where a person providing a registered independent health care service ceases to provide the service, HIS may cancel the registration of the service.

#### **10T Emergency cancellation of registration**

- (1) HIS may apply to the sheriff for an order cancelling the registration of an independent health care service.
- (2) The application may be granted if it appears to the sheriff that, unless the order is made, there will be a serious risk to the life, health or wellbeing of persons.
- (3) The sheriff may make such interim order as the sheriff thinks fit.
- (4) As soon as practicable after HIS has applied for an order under subsection (1), it must notify the appropriate authorities.
- (5) Where the order applied for is made (or an interim order is made), HIS must as soon as reasonably practicable give a copy of it to the person who provides the independent health care service.
- (6) The sheriff may determine an application under this section in the absence of the person providing the independent health care service to which the application relates.

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- (7) An order under this section has effect—
  - (a) from the time at which it is made; or
  - (b) from such other time as the sheriff considers appropriate.
- (8) Within 14 days of the day on which an order under this section is made, an appeal may be made to the sheriff principal against the making of the order.
- (9) On an appeal under subsection (8), the sheriff principal may—
  - (a) confirm the order;
  - (b) revoke the order;
  - (c) modify the order;
  - (d) make such other order as the sheriff principal thinks fit.
- (10) The decision of the sheriff principal on an appeal under subsection (8) is final.
- (11) An order under this section has effect notwithstanding the making of an appeal in relation to the order.
- (12) For the purposes of this section, the appropriate authorities are—
  - (a) each—
    - (i) local authority; and
    - (ii) Health Board,  
within whose area the independent health care service is provided; and
  - (b) any other body established by or under an enactment whom HIS thinks it appropriate to notify.

### **10U Condition notices**

HIS may at any time give notice (in sections 10V, 10W, 10Z1 and 10Z2 referred to as a “condition notice”) to the person for the time being providing a registered independent health care service 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.

### **10V Emergency condition notices**

- (1) Subsection (2) applies where—
  - (a) a person is providing a registered independent health care service; and
  - (b) HIS believes that the absence of a condition in relation to the registration of that service poses a serious risk to the life, health or wellbeing of persons.
- (2) HIS may at any time give notice (an “emergency condition notice”) to the person providing the registered independent health care service specifying a condition, in relation to registration, in respect of that risk.
- (3) The condition so specified takes effect immediately on receipt of the emergency condition notice.
- (4) An emergency condition notice must—

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- (a) state that, within 14 days after service of the notice, the person to whom it is given may make written representations to HIS concerning any matter which that person wishes to dispute; and
  - (b) explain the right of appeal conferred by section 10X(1).
- (5) HIS must consider any representations made under subsection (4)(a) and, following such consideration, must—
- (a) give the person providing the registered independent health care service a condition notice stating that HIS proposes to vary or remove the condition specified in the emergency condition notice; or
  - (b) notify the person that it does not intend to give such a condition notice.
- (6) When notifying a person under subsection (5)(b), HIS must explain the right of appeal conferred by section 10X(1).
- (7) Where a condition notice has been given by virtue of subsection (5)(a) containing a proposal to remove the condition, HIS must implement the proposal unless it appears to it that it would be inappropriate to do so.

#### **10W Application of Act to condition notices following emergency condition notices**

- (1) Section 10Z1 does not apply to a condition notice given by virtue of section 10V(5)(a).
- (2) The reference in section 10Z2(5) to a proposal in relation to which a condition notice has been given does not include a reference to a proposal contained in a condition notice given by virtue of section 10V(5)(a) to remove the condition mentioned in that provision.
- (3) The reference to a proposal in section 10Z4(1) does not include a reference to a proposal contained in a condition notice given by virtue of section 10V(5)(a) to remove the condition mentioned in that provision.

#### **10X Emergency condition notices: appeals**

- (1) A person—
  - (a) who is given an emergency condition notice; and
  - (b) who—
    - (i) makes no written representations in accordance with section 10V(4)(a); or
    - (ii) makes such representations but is notified as mentioned in section 10V(5)(b),
 may, within 14 days after the relevant date, appeal to the sheriff against the imposition of the condition.
- (2) In subsection (1), “relevant date” means—
  - (a) where sub-paragraph (i) of subsection (1)(b) applies, the date of service of the emergency condition notice;
  - (b) where sub-paragraph (ii) of that subsection applies, the date notification mentioned in that sub-paragraph is given.
- (3) The sheriff may, on an appeal under subsection (1)—



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- (a) direct that the condition specified in the emergency condition notice is to continue to have effect;
- (b) direct that the condition is to cease to have effect;
- (c) direct that the condition be varied as specified in the direction;
- (d) impose an additional condition in relation to the registration.

### **10Y Applications in respect of conditions**

- (1) A person providing a registered independent health care service may apply to HIS—
  - (a) for the variation or removal of any condition for the time being in force, or for the addition of a condition, in relation to the registration; or
  - (b) for cancellation of the registration,but no such application is competent in circumstances mentioned in subsection (2).
- (2) The circumstances are that HIS has given the person notice—
  - (a) under section 10Z(2) of its proposal to cancel the registration (unless HIS has decided not to take that step); or
  - (b) under section 10Z2(3) 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) must be made in such manner and state such particulars as may be prescribed; and, without prejudice to subsection (1)(b) of section 10Z5, must be accompanied by the fee imposed under subsection (2)(a) or, as the case may be, (c) of that section.
- (4) If HIS decides to grant an application under subsection (1)(a) it must give the applicant notice of its decision (stating, where applicable, the condition varied, removed or added) and issue a new certificate of registration.

### **10Z Further provision as respects notice of proposals**

- (1) If an application has been made under section 10P and HIS 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 must give the applicant notice of the proposed condition;
  - (b) to refuse that application, it must give such notice of the proposed refusal.
- (2) HIS must give any person who provides a registered independent health care service notice of a proposal to cancel the registration (other than in accordance with an application under subsection (1)(b) of section 10Y).
- (3) HIS must give an applicant under subsection (1)(a) of section 10Y notice of a proposal to refuse that application.
- (4) A notice under this section must give HIS's reasons for its proposal.

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### **10Z1 Right to make representations to HIS as respects proposals**

- (1) A condition notice or a notice under section 10Z must state that, within 14 days after service of the notice, the person to whom it is given may make written representations to HIS concerning any matter which that person wishes to dispute.
- (2) Where such a notice has been given—
  - (a) HIS may not decide to implement the proposal until (whichever first occurs)—
    - (i) where the person to whom the notice was given makes such representations as are mentioned in subsection (1), it has considered those representations;
    - (ii) that person notifies HIS in writing that such representations will not be made;
    - (iii) the period of 14 days mentioned in that subsection elapses without such representations being made and without HIS receiving such notification; and
  - (b) where the circumstances are as mentioned in paragraph (a)(ii) or (iii) above, HIS must implement the proposal unless it appears to it that it would be inappropriate to do so.

#### *Notice of decision on application for registration*

### **10Z2 Notice of HIS's decisions**

- (1) If HIS decides to grant unconditionally an application made under section 10P, or to grant such application subject only to a condition which has been agreed in writing between HIS and the applicant, it must give the applicant notice of its decision.
- (2) A notice under subsection (1) must state the agreed condition.
- (3) If HIS decides to implement a proposal in relation to which it has given a person a condition notice or a notice under section 10Z, it must give that person notice of the decision.
- (4) A notice under subsection (3) must—
  - (a) explain the right of appeal conferred by section 10Z4; 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 10Z, state the condition subject to which the application is granted.
- (5) Subject to subsection (6), 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 section 10Z does not take effect—

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- (a) if no appeal is brought, until the period of 14 days referred to in section 10Z4(1) 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 10Z and the applicant notifies HIS in writing, before the period of 14 days referred to in section 10Z4(1) has elapsed, that there will be no appeal, the decision takes effect on receipt of that notification.

#### *Conditions as to numbers*

### **10Z3 Conditions as to numbers**

Without prejudice to the generality of section 10Q(2) or 10U, a condition imposed under either of those provisions in relation to an independent health care service may limit the number of persons to whom the service may be provided.

#### *Appeal against decision to implement proposal*

### **10Z4 Appeal against decision to implement proposal**

- (1) A person given notice under section 10Z2(3) of a decision to implement a proposal may, within 14 days after that notice is given, appeal to the sheriff against the decision.
- (2) The sheriff may, on appeal under subsection (1), confirm the decision or direct that is not to 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.

#### *Fees*

### **10Z5 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 HIS under this section;
  - (b) circumstances in which fees so imposed are or are not to be payable.
- (2) Subject to the provisions of this section, HIS must impose fees in respect of—
  - (a) any application made for registration of an independent health care service 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;

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- (d) issuing to a person a new certificate of registration—
  - (i) at the instance of that person;
  - (ii) by virtue of any application by that person; or
  - (iii) by virtue of any new information provided by that person in pursuance of regulations under this group of sections (within the meaning of section 10S(2)(a)).
- (3) Without prejudice to subsection (1)—
  - (a) HIS must, in fixing fees under this section, have regard to its reasonable expenses in carrying out its functions; but
  - (b) where it appears to HIS to be appropriate it may charge a nominal fee, or remit the fee altogether.

### *Regulations*

#### **10Z6 Regulations: registers and registration**

- (1) Regulations may—
  - (a) make provision about the keeping of registers by HIS;
  - (b) make provision about registration under section 10P and in particular about—
    - (i) the making of applications for such registration;
    - (ii) the content of certificates of registration;
    - (iii) categories of applicant who cannot competently make certain applications;
  - (c) require HIS to secure that, on such conditions, in such circumstances and, subject to subsection (2) on payment of such fees as may be specified in regulations, any person is to be afforded access to, and provided with a copy of an entry in or with an extract from, a register kept by HIS;
  - (d) except such part of a register as may be specified in the regulations from any requirement made by virtue of paragraph (c);
  - (e) confer additional functions on HIS in relation to registration under section 10P.
- (2) Regulations under paragraph (c) of subsection (1) may specify circumstances in which the fees mentioned in that paragraph are not to be payable; and the fees must in any event not be payable in any case where HIS consider it appropriate to provide the copy or extract in question free of charge.

#### **10Z7 Regulations: independent health care services**

- (1) Regulations may impose, in relation to independent health care services, any requirements which the Scottish Ministers consider appropriate for the purposes of this Part.
- (2) Without prejudice to the generality of subsection (1) regulations 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.

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- (3) A person who commits an offence under the regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Before the Scottish Ministers make regulations containing provision as mentioned in subsection (2), they must consult such persons, or groups of persons, as they consider appropriate.

### *Complaints about independent health care services*

#### **10Z8 Complaints about independent health care services**

- (1) HIS must 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 an independent health care service or about the provision of an independent health 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), HIS must consult the Scottish Public Services Ombudsman and such persons, or groups of persons, as it considers appropriate on its proposals for such a procedure.
- (4) HIS must keep the procedure under review and must vary it whenever, after such consultation, it considers it appropriate to do so.
- (5) HIS must give such publicity to the procedure (including the procedure as varied under subsection (4)) as it considers appropriate and must give a copy of the procedure to any person who requests it.

### *Offences*

#### **10Z9 Offences in relation to registration**

- (1) Any person who—
  - (a) provides an independent health care service while it is not registered under section 10P; or
  - (b) with intent to deceive, pretends that an independent health care service is so registered,commits an offence and is 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 10Q(5) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

#### **10Z10 False statements in applications**

Any person who, in an application—

- (a) for registration of an independent health care service; or

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- (b) for variation or removal of a condition in force in relation to such a registration,

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

### **10Z11 Offences by bodies corporate etc.**

Where an offence under this group of sections (within the meaning of section 10S(2)(a)), or under regulations made under those sections, 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;
- (b) 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;
- (c) an unincorporated association other than a firm, is committed with the consent or connivance of, or is attributed 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, firm or association) commits the offence and is liable to be proceeded against and punished accordingly.

### *Inquiries*

### **10Z12 Inquiries**

- (1) HIS may cause an inquiry to be held into any matter connected with—
  - (a) the exercise of its functions; or
  - (b) the provision of an independent health care service or a service provided under the health service.
- (2) Before there is commenced an inquiry under subsection (1), HIS 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.
- (3) Subject to subsection (4), subsections (2) to (6) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (provisions relating to local inquiries) apply in relation to an inquiry under subsection (1) as they apply in relation to a local inquiry under that section.

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- (4) For the purposes of an inquiry under subsection (1), any reference in those subsections which, by virtue of the Scotland Act 1998 (c. 46), falls to be construed as a reference to—
  - (a) the Scottish Ministers, is to be construed as a reference to HIS; and
  - (b) a member of the staff of the Scottish Ministers, is to be construed as a reference to a member of staff of HIS.
- (5) The expenses incurred by HIS in relation to an inquiry under subsection (1) (including such reasonable sum as HIS may determine for the services of any of its staff engaged in the inquiry) must, unless HIS 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 HIS may certify the amount of the expenses so incurred.
- (6) Any sum certified under subsection (5) and to be defrayed in accordance with a direction under that subsection is a debt due by the party directed and is to be recoverable accordingly.
- (7) In relation to an inquiry under subsection (1), HIS may make an award as to the expenses of the parties and as to the parties by whom such expenses are to be paid.

#### *Arrangements to provide independent health care services: registration*

##### **10Z13 Arrangements entered into by certain bodies: services to be registered**

Where, in the performance of its functions—

- (a) a local authority;
- (b) a Health Board; or
- (c) a Special Health Board,

makes arrangements with any person to provide an independent health care service, it must ensure that the service, when provided, is registered under section 10P.

#### *Duty of certain bodies to be aware of reports, etc.*

##### **10Z14 Local authorities and other bodies: awareness of HIS reports etc.**

- (1) For the purposes of its functions as they relate to the provision of independent health care services (including the making of arrangements with other persons to provide such services)—
  - (a) a local authority;
  - (b) a Health Board;
  - (c) a Special Health Board,must take into account the matters mentioned in subsection (3).
- (2) In carrying out its duty under subsection (1), a local authority, Health Board or Special Health Board must have regard to any guidance issued by the Scottish Ministers in respect of that duty.

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(3) The matters are such—

- (a) reports;
- (b) information;
- (c) notices,

prepared, disseminated, given or otherwise produced by HIS as are relevant to the provision of the services mentioned in subsection (1) or, as the case may be, to the organisation or co-ordination of those services.

### *Giving of notice*

#### **10Z15 Giving of notice**

(1) In this Part, any reference to a notice being given to a person providing, or seeking to provide, an independent health care service is to 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 is deemed not given until the third day after the day of posting.

(2) For the purposes of subsection (1), 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.

### *Scottish Health Council*

#### **10Z16 Establishment of Scottish Health Council**

(1) HIS must establish under paragraph 8(1) of Schedule 5A a committee to be known as the Scottish Health Council.

(2) When the Scottish Health Council is established—

- (a) HIS must delegate to the Council the functions mentioned in section 10C(1)(b) and (c); and
- (b) the Scottish Ministers are to appoint a member of HIS to chair the Council.

(3) The Scottish Ministers may, by order—

- (a) modify subsection (2)(a) in relation to the functions of HIS which must be delegated to the Scottish Health Council; or
- (b) dissolve the Council.



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- (4) Where the Scottish Ministers make an order under subsection (3)(b) dissolving the Scottish Health Council, subsection (1) has no effect for so long as the order is in force in that respect.
- (5) This section is without prejudice to Schedule 5A.

### *Miscellaneous*

#### **10Z17 Transfer of staff**

For the purposes of section 12CA, the functions conferred on, delegated to or otherwise exercisable by HIS are to be treated as functions transferred from a health service body; and for the purposes of that transfer—

- (a) NHS Quality Improvement Scotland is to be treated as the transferor authority;
- (b) HIS is to be treated as the transferee authority; and
- (c) the date on which section 10A is commenced is to be treated as the transfer date.

#### **10Z18 “Provide” in relation to independent health care services**

In this Part, “provide” in relation to an independent health care service, means to carry on or manage such a service; and related expressions are to be construed accordingly.

### *Consultation with Mental Welfare Commission for Scotland*

#### **10Z19 Duty of HIS to consult the Mental Welfare Commission for Scotland**

HIS must, in the exercise of its functions relating to the provision of guidance, advice or information, consult the Mental Welfare Commission for Scotland in every case in which it appears to HIS appropriate having regard to the Commission's functions under sections 5(b) and 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).”

#### **Commencement Information**

**I39** S. 108 in force at 1.8.2010 for specified purposes by [S.S.I. 2010/221](#), art. 3(2)(3), [sch.](#)

### **109 Transfer of staff etc. to Healthcare Improvement Scotland** S

- (1) This subsection applies to such persons employed by the Scottish Commission for the Regulation of Care as the Scottish Ministers may by order specify.
- (2) An order under subsection (1) may specify any description of such employees or any individual such employee.
- (3) Section 102(1)(a), (3), (4) and (5) applies to those persons to whom subsection (1) of this section applies with the effect that they are transferred into the employment of

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Healthcare Improvement Scotland; and any reference to “SCSWIS” in section 102 is to be read as a reference to “Healthcare Improvement Scotland” in relation to those persons.

- (4) This subsection applies to such property (including rights) and liabilities of the Scottish Commission for the Regulation of Care as the Scottish Ministers may by order specify.
- (5) An order under subsection (4) may specify any description of such property or liabilities or any particular property or liability; but such an order may not include liabilities under or in connection with any person's contract of employment.
- (6) Section 102(1)(b) applies to such property and liabilities to which subsection (4) of this section applies with the effect that they are transferred to, and vest in, Healthcare Improvement Scotland.
- (7) The power to make an order under subsection (1)—
  - (a) must be exercised by statutory instrument,
  - (b) may be exercised so as to make different provision for different purposes.
- (8) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Parliament.

## 110 Healthcare Improvement Scotland: constitution, etc. **S**

- (1) Schedule 16 (which inserts Schedule 5A into the National Health Service (Scotland) Act 1978 (c. 29)) has effect.
- (2) Schedule 17 (which contains modifications of enactments consequential on section 108) has effect.

### Commencement Information

**I40** [S. 110\(1\)](#) in force at 1.8.2010 for specified purposes by [S.S.I. 2010/221](#), [art. 3\(2\)\(3\)](#), [Sch.](#)

## PART 7 **S**

### THE MENTAL WELFARE COMMISSION FOR SCOTLAND

## 111 The Mental Welfare Commission for Scotland **S**

- (1) The Mental Health (Care and Treatment) Scotland Act 2003 (asp 13) is amended as follows.
- (2) In section 4 (Mental Welfare Commission for Scotland), after subsection (2) insert—
 

“(2A) In so discharging its functions, the Commission shall act in a manner which seeks to protect the welfare of persons who have a mental disorder.”.
- (3) After section 4 insert—

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## “Commission Visitors

### 4A Commission Visitors

- (1) Commission Visitors are to exercise the functions conferred on them by this Act or any other enactment on behalf of the Commission.
  - (2) Commission Visitors may, in addition to the other functions conferred in this Part, exercise the functions of the Commission mentioned in—
    - (a) section 8A of this Act;
    - (b) section 9(1)(d) of the Adults with Incapacity (Scotland) Act 2000 (asp 4).
  - (3) The Commission may give the Commission Visitors directions of a general or specific nature in relation to the exercise of the functions conferred on them.
  - (4) A Commission Visitor must—
    - (a) comply with any direction given under subsection (3); and
    - (b) act in accordance with any guidance issued by the Commission in relation to the exercise of the functions of Commission Visitors.
  - (5) A Commission Visitor acting in the exercise of any function must, if required, produce evidence of the Commission Visitor's authority.
  - (6) In this Act, “Commission Visitors” are persons appointed under paragraph 7A(1) or (2) of schedule 1 to this Act.”.
- (4) In section 5 (duty to monitor operation of Act and promote best practice)—
- (a) in paragraph (a), for “operation” substitute “ practical application of the observance of Part 1 ”,
  - (b) in paragraph (b), for the words from “operation” to the end of the paragraph substitute “ practical application of the observance of Part 1 of this Act ”.
- (5) After section 8 insert—

### “8A Duty to raise service concerns with certain bodies

- (1) The Commission shall, as it considers appropriate, raise any concerns (of a general or specific nature) about the provision of any service mentioned in subsection (2) as respects a person who has a mental disorder, with—
  - (a) Social Care and Social Work Improvement Scotland;
  - (b) Healthcare Improvement Scotland; or
  - (c) such other relevant persons, or group of persons.
- (2) The services are—
  - (a) any social service (within the meaning of Part 5 of the Public Services Reform (Scotland) Act 2010 (asp 8));
  - (b) health care (within the meaning of section 10A of the National Health Service (Scotland) Act 1978 (c. 29)).
- (3) In subsection (1), the “provision” of any service includes the organisation or co-ordination of any such service.”.

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(6) After section 9 insert—

**“9A Duty to give advice: further provision**

The Commission shall when asked to do so provide advice, so far as is reasonable, to any person about any matters relevant to the functions of the Commission.”.

(7) In section 10 (publishing information, guidance etc.), after subsection (2) add—

“(3) The Commission may, with the agreement of a person to whom advice is provided under section 9A, publish that advice.”.

(8) In section 11 (investigations)—

(a) in subsection (1)—

- (i) for “the Commission”, where it first occurs, substitute “ a Commission Visitor ”,
- (ii) after “Commission”, where it second occurs, insert “ Visitor ”,
- (iii) in paragraph (a), for “it” substitute “ the Commission Visitor ”,
- (iv) in paragraph (b), for “it” substitute “ the Commission Visitor ”,

(b) after that subsection insert—

“(1A) Where it is brought to the attention of the Commission that any of the circumstances mentioned in subsection (2) below may apply in respect of a patient, the Commission may—

- (a) direct a Commission Visitor to carry out such investigation as the Commission considers appropriate into the patient's case; and
- (b) having consulted the Visitor after the investigation, make such recommendations as it considers appropriate as respects the case.”.

(9) In section 12 (investigations: further provision), in subsection (1), for “under section 11(1)” substitute “ in relation to any of the circumstances mentioned in section 11(2) ”.

(10) In section 13 (visits in relation to patients)—

(a) in subsection (1)—

- (i) for “person authorised by it” substitute “ Commission Visitor ”,
- (ii) after “Commission”, in the second place it occurs, insert “ Visitor ”,
- (iii) for “it”, in the third place it occurs, substitute “ the Commission Visitor ”,

(b) in subsection (3)—

- (i) for “person authorised by the Commission” substitute “ Commission Visitor ”,
- (ii) the words “either of” are repealed,
- (iii) for “subsection (5)” substitute “ subsection (5A) ”,

(c) for subsection (5) substitute—

“(5A) The purposes are—

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- (a) to provide an opportunity for any patient who may for the time being be present in the premises to meet a Commission Visitor and discuss with the Visitor any concerns that the patient may have; and
  - (b) to assess whether the requirements of such patients in relation to this Act, the Adults with Incapacity (Scotland) Act 2000 (asp 4) and other relevant legislation are being met.
- (5B) A Commission Visitor may, when visiting premises under subsection (3), conduct an assessment of the suitability of the premises (and its facilities) in relation to the requirements of the patients (or any one of them).”,
- (d) subsection (7) is repealed,
- (e) in subsection (8)—
  - (a) in paragraph (a), for “section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8)” substitute “ paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010 (asp 8) ”,
  - (b) in paragraph (b), for “section 2(9) of” substitute “ paragraph 6 of schedule 12 to ”.
- (11) In section 14 (interviews)—
  - (a) in subsection (1), for “person authorised to do so by the Commission (an “authorised person”)” substitute “ Commission Visitor ”,
  - (b) in subsection (1)(a)(ii), for “authorised person” substitute “ Commission Visitor ”,
  - (c) in subsection (2)(a)—
    - (i) for “an authorised person” substitute “ a Commission Visitor ”,
    - (ii) in sub-paragraph (ii), for “authorised person” substitute “ Commission Visitor ”,
    - (iii) for “authorised person”, in the third place it occurs, substitute “ Commission Visitor ”,
  - (d) in subsection (2)(b)—
    - (i) for “an authorised person” substitute “ a Commission Visitor ”,
    - (ii) for “authorised person” in the second place it occurs, substitute “ Commission Visitor ”,
  - (e) subsection (3) is repealed.
- (12) In section 15 (medical examination)—
  - (a) in subsection (1), for “person authorised by the Commission (an “authorised person”)” substitute “ Commission Visitor ”,
  - (b) after that subsection insert—

“(1A) Only a Commission Visitor who has also been appointed as a Medical Visitor may exercise the functions under subsection (1).”,
  - (c) subsections (2) and (3) are repealed.
- (13) In section 16 (inspection etc. of records)—
  - (a) in subsection (1)—
    - (i) immediately before “may” insert “ or Commission Visitor ”,
    - (ii) at the end add “ or, as the case may be, the Commission Visitor ”,

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- (b) in subsection (2), paragraph (a) and the word “or” immediately following are repealed,
  - (c) in subsection (3), the words “a member of the Commission or, as the case may be,” are repealed.
- (14) In section 17 (duties of Scottish Ministers, local authorities and others as respects Commission), after “afford the Commission,” insert “ any Commission Visitor, ”.
- (15) Schedule 18 (which makes provision about the governance of the Commission, and Commission Visitors) has effect.

#### Commencement Information

**I41** S. 111 in force at 1.8.2010 for specified purposes by S.S.I. 2010/221, art. 3(2)(3), Sch.

## PART 8 S

### SCRUTINY AND COMPLAINTS

VALID FROM 01/10/2010

#### *User focus*

#### **112** Scrutiny: user focus S

- (1) The persons, bodies and office-holders listed in schedule 19 (the “listed scrutiny authorities”) must make arrangements which—
  - (a) secure continuous improvement in user focus in the exercise of their scrutiny functions, and
  - (b) demonstrate that improvement.
- (2) User focus is the involvement of users of scrutinised services in the design and delivery of scrutiny functions in relation to those services and the governance of the listed scrutiny authorities.
- (3) Scrutinised services are services provided in pursuance of functions and activities which are—
  - (a) subject to scrutiny by a listed scrutiny authority, or
  - (b) provided by a person, body or office-holder which is subject to scrutiny by a listed scrutiny authority.
- (4) Users of a service include—
  - (a) persons who will or may use the service in the future,
  - (b) persons who act on behalf of others in respect of whom the service is provided, and
  - (c) other persons with a direct interest in, or directly affected by—
    - (i) the provision of the service, or
    - (ii) the scrutiny of the service or the person, body or office-holder providing it.

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- (5) The Scottish Ministers may by order modify the list in schedule 19 by—
  - (a) adding a person, body or office-holder which has scrutiny functions, or
  - (b) removing an entry.
- (6) Before making an order under subsection (5)(a), the Scottish Ministers must consult the person, body or office-holder in question and may consult any other person they think fit.
- (7) In this section references to the scrutiny functions of a person, body or office-holder are to such of the functions of the person, body or office-holder as relate to the regulation, audit or inspection of other persons, bodies or office-holders or their functions or activities.

### 113 User focus: guidance etc. **S**

- (1) In fulfilling its duty under subsection (1) of section 112 a listed scrutiny authority must have regard—
  - (a) to any guidance in relation to the duty provided by the Scottish Ministers, and
  - (b) to what are regarded as proper arrangements for the purposes of that subsection (or purposes which include those purposes).
- (2) Guidance provided by the Scottish Ministers may in particular include guidance on—
  - (a) how to make, and what is to be included in, arrangements for the purposes of that subsection,
  - (b) how to demonstrate continuous improvement in user focus.
- (3) Arrangements may be regarded as proper arrangements for the purposes of that subsection by reference to a generally recognised published code or otherwise.
- (4) Before providing guidance under this section the Scottish Ministers must consult any person they think fit.
- (5) If there is a conflict between guidance provided under subsection (1)(a) and proper arrangements referred to in subsection (1)(b), the guidance prevails.
- (6) The Scottish Ministers may require a listed scrutiny authority which does not comply with any guidance provided under subsection (1)(a) to provide a written explanation of why it has not done so; and the authority must comply with the requirement.
- (7) The Scottish Ministers may publish an explanation provided under subsection (6).

VALID FROM 01/10/2010

### *Duty of co-operation*

### 114 Scrutiny: duty of co-operation **S**

- (1) The persons, bodies and office-holders listed in schedule 20 (the “scheduled scrutiny authorities”) must co-operate and co-ordinate activity with—
  - (a) each other, and
  - (b) where appropriate, the Scottish Ministers,

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with a view to achieving the purpose in subsection (2).

- (2) That purpose is improving the exercise of the scrutiny functions of the scheduled scrutiny authorities in relation to—
  - (a) local authorities,
  - (b) social services, and
  - (c) health services,
 having regard to efficiency, effectiveness and economy.
- (3) The Scottish Ministers may by order modify the list in schedule 20 by—
  - (a) adding a person, body or office-holder which has scrutiny functions in relation to—
    - (i) local authorities or public services provided by them or on their behalf,
    - (ii) social services, or
    - (iii) health services, or
  - (b) removing an entry.
- (4) Before making an order under subsection (3)(a) the Scottish Ministers must consult the person, body or office-holder in question and may consult any other person they think fit.
- (5) The duty in subsection (1) does not apply in so far as compliance with it would prevent or delay action by a scheduled scrutiny authority in the exercise of its scrutiny functions which the authority considers to be necessary as a matter of urgency.
- (6) In complying with the duty in subsection (1) the scheduled scrutiny authorities must—
  - (a) comply with any directions given by the Scottish Ministers, and
  - (b) have regard to any guidance provided by the Scottish Ministers.
- (7) Directions and guidance—
  - (a) may be of a general or a specific nature,
  - (b) may relate to all scheduled scrutiny authorities or to such authorities as are specified in the directions or guidance,
  - (c) may relate to all the scrutiny functions of the authorities in question or to such of those functions as are specified in the directions or guidance.
- (8) The Scottish Ministers may vary or revoke any direction.
- (9) Before providing guidance the Scottish Ministers must consult any person they think fit.
- (10) In this section—
  - (a) references to the scrutiny functions of a person, body or office-holder in relation to local authorities are to such of the functions of the person, body or office-holder as relate to the regulation, audit or inspection of—
    - (i) local authorities, or
    - (ii) public services provided by them or on their behalf,
  - (b) references to the scrutiny functions of a person, body or office-holder in relation to social services or health services are to such of the functions of the



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person, body or office-holder as relate to the regulation, audit or inspection of those services.

(11) In this section—

“health services” means—

- (a) the health service within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978 (c. 29), and
- (b) independent health care services within the meaning of section 10F of that Act;

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

“social services” has the same meaning as in section 46 of this Act.

VALID FROM 01/10/2010

### *Joint inspections*

#### **115 Joint inspections** **S**

- (1) Any two or more of the persons and bodies to which this section applies must, at the request of the Scottish Ministers, conduct an inspection (a “joint inspection”) in relation to the provision of—
  - (a) children's services,
  - (b) such other services as the Scottish Ministers may specify in respect of which such persons or bodies have inspection functions, or
  - (c) both.
- (2) The Scottish Ministers may specify purposes for any joint inspection.
- (3) The Scottish Ministers may request under subsection (1) that there be conducted a joint inspection of—
  - (a) any services concerned in the relevant area,
  - (b) such of the services concerned provided in the relevant area as they may specify, or
  - (c) such of the services concerned provided to a particular child or other person or particular children or other persons as they may specify.
- (4) In paragraphs (a) and (b) of subsection (3), the “relevant area” is the whole of Scotland or such part of Scotland as the Scottish Ministers specify in their request.
- (5) A joint inspection is to be conducted in accordance with—
  - (a) a timetable approved by the Scottish Ministers,
  - (b) any directions given by the Scottish Ministers.
- (6) The persons and bodies to which this section applies are—
  - Healthcare Improvement Scotland,
  - Her Majesty's Chief Inspector of Constabulary and Her Majesty's Inspectors of Constabulary appointed under section 33 of the Police (Scotland) Act 1967 (c. 77),
  - Her Majesty's Chief Inspector of Prisons for Scotland,

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Her Majesty's Chief Inspector of Prosecution in Scotland,  
Her Majesty's inspectors of schools (that is to say, the inspectors of schools appointed by Her Majesty under the Education (Scotland) Act 1980 (c. 44)),  
Mental Welfare Commission for Scotland,  
Social Care and Social Work Improvement Scotland,  
any Special Health Board.

- (7) Where, in the opinion of any person or body to whom this section applies, a joint inspection would be appropriate, it must bring that to the attention of the Scottish Ministers.
- (8) Those persons or bodies conducting a joint inspection must—
- (a) report to the Scottish Ministers and make any recommendations to them which those conducting the inspection think appropriate,
  - (b) have regard to any code of practice or practice note issued by the Scottish Ministers for the purpose of—
    - (i) giving practical and general guidance on matters relating to such an inspection (including, without prejudice to that generality, such matters as access to confidential information and the holding, sharing and destruction of such information),
    - (ii) promoting what appear to them to be desirable practices with regard to such matters.
- (9) Subsection (6) may be amended by the Scottish Ministers by order so as to—
- (a) add an entry to it, or
  - (b) remove any entry from it.
- (10) The Scottish Ministers may vary or revoke any direction given under this section.
- (11) For the purposes of subsection (8) of this section and section 117(3), information is “confidential information” where—
- (a) the identity of an individual is ascertainable—
    - (i) from that information, or
    - (ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person holding that information, and
  - (b) the information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.
- (12) In this section, “children's services” means services to which the provisions of section 15(1) of the Local Government in Scotland Act 2003 (asp 1) (community planning) apply which are provided predominantly to, or for the benefit of, children.

## 116 Participation in joint inspections **S**

- (1) The Scottish Ministers may direct a person or body—
- (a) not listed in section 115(6), but
  - (b) which has inspection functions,
- to participate in the conduct of a joint inspection to the extent and for the purposes specified in the direction.

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- (2) In directing under subsection (1) a person or body to participate in a joint inspection, the Scottish Ministers may also direct that the person, or any person authorised by the body, is not to be able to exercise any such power conferred by regulations under section 117 as is specified in the direction; or is to be able to exercise any such power but only to the extent or for the purposes there specified.

## 117 Regulations relating to joint inspections **S**

- (1) The Scottish Ministers may by regulations make further provision concerning joint inspections.
- (2) Regulations under subsection (1) may, in particular, make provision—
- (a) as to seizure and removal of anything found during the course of a joint inspection,
  - (b) as to persons who may be authorised to carry out joint inspections,
  - (c) requiring or facilitating the sharing or production of information (including health records) for the purposes of a joint inspection,
  - (d) as to interviews and examinations (including physical and mental examinations) which may be carried out in connection with the inspections,
  - (e) requiring any person to provide to a person authorised to carry out a joint inspection an explanation of information produced to an authorised person,
  - (f) requiring information produced to a person authorised to carry out a joint inspection to be held in compliance with prescribed conditions and further disclosures to be made in compliance with such conditions,
  - (g) empowering a person authorised to carry out a joint inspection to enter any premises for the purposes of such an inspection,
  - (h) empowering a person authorised to carry out a joint inspection to disclose to a person prescribed for the purposes of this paragraph any information of a prescribed nature which the authorised person holds in consequence of such an inspection,
  - (i) as to reports in relation to a joint inspection,
  - (j) creating offences punishable on summary conviction by a fine not exceeding level 4 on the standard scale for the purpose of enforcing any provision of the regulations.
- (3) Where a person authorised to carry out a joint inspection is in possession of confidential information which has been obtained for the purposes of such an inspection, the person must not use or disclose that information other than—
- (a) for the purposes of that inspection,
  - (b) so as to comply with an enactment or court order requiring disclosure,
  - (c) to the extent considered necessary by the person for the purpose of protecting the welfare of—
    - (i) any child,
    - (ii) any adult at risk (within the meaning of section 3 of the Adult Support and Protection (Scotland) Act 2007 (asp 10)), or
  - (d) to the extent considered necessary by the person for the purpose of the prevention or detection of crime or the apprehension or prosecution of offenders.
- (4) In subsection (2), “health records” has the same meaning as in Part 5.

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(5) In subsection (2), “prescribed” means prescribed by regulations under subsection (1).

VALID FROM 01/10/2010

*Public finance and accountability*

**118 Amendment of Public Finance and Accountability (Scotland) Act 2000 S**

- (1) The Public Finance and Accountability (Scotland) Act 2000 (asp 1) is amended in accordance with this section.
- (2) In section 10 (Audit Scotland), in subsection (2)(c), for the words “jointly by the Auditor General and the Chairman” substitute “ by the Scottish Commission for Public Audit ”.
- (3) In section 12(2)(a) (Scottish Commission for Public Audit), immediately before the word “Audit” insert “ Public ”.
- (4) In section 13 (Auditor General for Scotland)—
  - (a) after subsection (4) insert—
 

“(4A) A person appointed to be the Auditor General holds office for a period of 8 years.”,
  - (b) in subsection (5)—
    - (i) after paragraph (a) insert—
 

“(aa) vacates office on the expiry of the period of appointment,”,
    - (ii) at the beginning of paragraph (c) insert “ in other respects, ”,
  - (c) after that subsection insert—
 

“(5A) A person having held the office of the Auditor General is not eligible for reappointment.”.
- (5) In section 22 (audit of accounts: further provisions), in subsection (5), at the beginning of paragraph (b) insert “ except where the account and the report are published by the body or office-holder in question, ”.
- (6) In section 23 (economy, efficiency and effectiveness examinations), after subsection (10) add—
 

“(11) The Auditor General may publish the results of any examination carried out under this section.”.
- (7) After that section insert—

**“23A Defamation**

For the purposes of the law of defamation, the following are absolutely privileged—

- (a) reports sent to the Scottish Ministers under section 22(4),

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(b) results of an examination carried out and reported to the Parliament under section 23.”.

(8) In schedule 2 (Audit Scotland: further provisions)—

(a) in paragraph 2—

(i) the word “not” is inserted after the word “is” where it second appears,

(ii) the words from “but” to the end of the paragraph are repealed,

(b) after that paragraph insert—

“2A

An appointment under section 10(2)(c) may be for a period not exceeding 3 years.

2B

A person appointed under section 10(2)(c) is, on ceasing to be a member, eligible for reappointment for a single further period.”.

(c) in paragraph 3—

(i) in sub-paragraph (a), for the words “Auditor General and the Chairman” substitute “ Scottish Commission for Public Audit ”,

(ii) in sub-paragraph (c), for the words “Auditor General and the Chairman” substitute “ Scottish Commission for Public Audit ”,

(d) in paragraph 4, for the words “Auditor General and the Chairman, acting jointly,” substitute “ Scottish Commission for Public Audit ”,

(e) in paragraph 7—

(i) in sub-paragraph (2), paragraph (b) is repealed,

(ii) after that sub-paragraph add—

“(3) The Scottish Commission for Public Audit must appoint one of the members of Audit Scotland appointed under section 10(2)(c) to preside at the meetings of Audit Scotland.

(4) Audit Scotland must appoint one of its other members appointed under section 10(2)(c) to preside at its meetings where the member mentioned in sub-paragraph (3) is not present.”.

(9) In schedule 3 (Scottish Commission for Public Audit: further provisions)—

(a) in paragraph 1, immediately before the word “Audit”, where it occurs for the second time, insert “ Public ”,

(b) after paragraph 7 add—

“8

For the purposes of the law of defamation, the following are absolutely privileged—

(a) any statement made in proceedings of the Commission,

(b) the publication under the authority of the Commission of any statement, and

(c) any report to the Parliament under section 12(4).

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In paragraph 8, “statement” has the same meaning as in the Defamation Act 1996 (c. 31).”.

### *Complaints handling procedures*

## 119 **Complaints handling procedures** **S**

In the Scottish Public Services Ombudsman Act 2002 (asp 11), after section 16 insert—

### *“Listed authorities: complaints handling procedures*

#### **16A Statement of principles**

- (1) The Ombudsman must publish a statement of principles (referred to in this Act as “the statement of principles”) concerning complaints handling procedures of listed authorities.
- (2) A listed authority must ensure—
  - (a) it has a complaints handling procedure in respect of action taken by the listed authority, and
  - (b) any such procedure complies with the statement of principles.
- (3) A listed authority which is responsible, by virtue of any enactment, for a complaints handling procedure—
  - (a) in relation to, or
  - (b) operated by,
 another listed authority, must ensure the procedure complies with the statement of principles.
- (4) The first statement of principles under subsection (1) is not to be published unless a draft of the statement has been laid before, and approved by a resolution of, the Parliament.
- (5) Where a draft is laid in accordance with subsection (4), the Parliament may approve the draft no later than 2 months after being laid.
- (6) In calculating any period of 2 months for the purposes of subsection (5), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
- (7) Before laying a draft statement of principles before the Parliament in accordance with subsection (4) the Ombudsman must consult—
  - (a) the Scottish Ministers, and
  - (b) such listed authorities and other persons as the Ombudsman thinks fit.
- (8) The Ombudsman must, in preparing the draft statement of principles to be laid before the Parliament in accordance with subsection (4), have regard to any representations made during the consultation mentioned in subsection (7).

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- (9) The statement of principles comes into force when it is published by the Ombudsman.
- (10) The Ombudsman may from time to time revise and re-publish the statement of principles.
- (11) Where the Ombudsman considers that any revision of the statement of principles under subsection (10) is material, subsections (4) to (8) apply to that statement of principles as they do to the first statement of principles.
- (12) In this section and sections 16B to 16E, “complaints handling procedures” means procedures of listed authorities which examine complaints or review decisions in respect of action taken by a listed authority where the matter in question is one in respect of which a complaint to the Ombudsman can be made and investigated under this Act.

### **16B Model complaints handling procedures**

- (1) The Ombudsman may publish model complaints handling procedures for listed authorities.
- (2) A model complaints handling procedure (referred to in this Act as a “model CHP”) must comply with the statement of principles.
- (3) The Ombudsman may publish different model CHPs for different purposes.
- (4) Before publishing a model CHP the Ombudsman must consult such listed authorities or groups of listed authorities as the Ombudsman thinks fit.
- (5) The Ombudsman may from time to time revise and re-publish any model CHP; and in doing so subsection (4) applies.
- (6) Where a model CHP is revised and re-published by virtue of subsection (5), section 16C has effect with the following modifications—
  - (a) any specification under subsection (1) of that section in relation to the model CHP continues in effect as a specification in relation to the revised and re-published model CHP,
  - (b) any other reference to a model CHP is to the model CHP as revised and re-published,
  - (c) subsection (3) of that section is omitted.
- (7) The Ombudsman may withdraw any model CHP at any time; and any specification under section 16C(1) in relation to the model CHP ceases to have effect.

### **16C Model complaints handling procedures: specification of listed authorities**

- (1) The Ombudsman may specify any listed authority to which a model CHP is relevant; and must notify the authority accordingly.
- (2) Where a model CHP is relevant to a listed authority by virtue of a specification under subsection (1), the authority must ensure there is a complaints handling procedure which complies with the model CHP for the purposes of the specification.

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- (3) Where subsection (2) applies the authority must submit a description of the complaints handling procedure, having taken account of the relevant model CHP, within 6 months of the specification mentioned in that subsection.
- (4) A listed authority may, with the consent of the Ombudsman, modify the application of the model CHP which is relevant to it but only to the extent that is necessary for the effective operation of the procedure by the authority.
- (5) The Ombudsman may revoke any specification under subsection (1) at any time.

### **16D Declarations of non-compliance**

- (1) Where a model CHP is relevant to a listed authority by virtue of a specification under section 16C(1) the Ombudsman may declare that the complaints handling procedure of the authority, a description of which was submitted by the authority under section 16C(3) or otherwise, does not comply with the model CHP.
- (2) Where there is no specification under section 16C(1) in relation to a listed authority the Ombudsman may declare that the complaints handling procedure of the authority, a description of which was submitted by the authority under section 16E or otherwise, does not comply with the statement of principles.
- (3) Where a declaration is made under subsection (1) or (2) the Ombudsman—
  - (a) must give reasons in writing,
  - (b) may specify such modifications to the complaints handling procedure as would result in the declaration being withdrawn.
- (4) Where a declaration is made under subsection (1) or (2) the listed authority must submit a description of its complaints handling procedure, having taken account of the reasons given under subsection (3)(a) and any modifications specified in subsection (3)(b), within 2 months of the declaration.
- (5) The Ombudsman may withdraw a declaration of non-compliance made under subsection (1) or (2) at any time if the Ombudsman thinks fit.

### **16E Submission of description of complaints handling procedure: general**

- (1) A listed authority must submit a description of its complaints handling procedure if the Ombudsman so directs; and must do so within 3 months of being so directed or such other period as the Ombudsman may direct.
- (2) Sections 16C(3) and 16D(4) are subject to any direction given under this section.
- (3) Where a listed authority has submitted a description of its complaints handling procedure to the Ombudsman under this Act or otherwise, the authority must provide such additional information in relation to that procedure as the Ombudsman may reasonably request; and must do so within such period as the Ombudsman directs.



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### **16F Complaints handling procedures: application of other enactments**

The duties in sections 16A(2) and (3) and 16C(2) do not apply to the extent that—

- (a) the listed authority lacks the necessary powers (other than by virtue of this Act) to ensure compliance with the duties, or
- (b) the duties are inconsistent with any other enactment.

*Complaints handling procedures: promotion of best practice etc.*

### **16G Complaints handling procedures: promotion of best practice etc.**

- (1) The Ombudsman must—
  - (a) monitor practice and identify any trends in practice as respects the way in which listed authorities handle complaints,
  - (b) promote best practice in relation to such complaints handling,
  - (c) encourage co-operation and the sharing of best practice among listed authorities in relation to complaints handling.
- (2) A listed authority must co-operate with the Ombudsman in the exercise of the function in subsection (1).
- (3) The duty in subsection (2) does not apply to the extent that—
  - (a) the listed authority lacks the necessary powers (other than by virtue of this Act) to ensure compliance with the duty, or
  - (b) the duty is inconsistent with any other enactment.”.

#### **Commencement Information**

**142** S. 119 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

## **PART 9 S**

### CHARITIES

#### **120 Information to appear on charity websites S**

- (1) In section 15 of the 2005 Act (references in documents), after subsection (2) insert—
  - “(3) For the purposes of this section, a reference to a document issued or signed on behalf of the charity includes a reference to a web page on a website operated by or on behalf of the charity.”.
- (2) In section 52 of that Act (name and status of Scottish charitable incorporated organisations), after subsection (4) insert—
  - “(5) For the purposes of this section, a reference to a document—
    - (a) issued by or on behalf of the SCIO, or
    - (b) signed by or on behalf of the SCIO,

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includes a reference to a web page on a website operated by or on behalf of the SCIO.”.

#### Commencement Information

**I43** S. 120 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

### 121 Variation, revocation and review of directions **S**

(1) In section 30 of the 2005 Act (removal from Register of charity which no longer meets charity test), after subsection (2) insert—

“(2A) The power of OSCR to give a direction under subsection (1)(a) includes the power to—

- (a) vary the direction, but only by—
  - (i) extending the time period specified in the direction, or
  - (ii) removing steps which the charity is required to take, or
- (b) revoke such a direction.”.

(2) In section 71 of that Act (decisions), after paragraph (i) insert—

“(ia) give a direction under section 30(1)(a).”.

(3) In section 73(2) of that Act (effect of decisions), after “(i),” insert “ (ia), ”.

#### Commencement Information

**I44** S. 121 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

### 122 Powers of Court of Session: deemed removal of persons **S**

In section 34(5) of the 2005 Act (powers of Court of Session), after paragraph (e) insert—

“(ea) make an order declaring that any person who was concerned in the management or control of a charity or body is to be treated, for the purpose of section 69(2)(c) (disqualification from being charity trustee) as having been removed from being concerned in the management or control of the charity or body, notwithstanding that—

- (i) the person is no longer concerned in the management or control of the charity or body,
- (ii) the body is no longer a charity,
- (iii) the body is no longer controlled by a charity (or charities), or
- (iv) the charity or body has ceased to exist.”.

#### Commencement Information

**I45** S. 122 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

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## 123 Delegation of functions **S**

In section 38(1) of the 2005 Act (exercise of OSCR functions by Scottish Ministers), after “section 30” insert “ and section 70A ”.

### Commencement Information

**I46** S. 123 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

## 124 Reorganisation of charities **S**

- (1) In section 39 of the 2005 Act (reorganisation of charities: applications by charity)—
- in subsection (1)(b)(ii), after “paragraph (c)” insert “ or (d) ”,
  - after subsection (1) insert—

“(1A) But OSCR must not approve a reorganisation scheme where—

- the reorganisation condition satisfied is that set out in section 42(2)(d), and
- the proposed provision would enable the charity to make amendments to its constitution which would not be consistent with the spirit of the constitution.”.

- (2) In section 40 of that Act (reorganisation of charities: applications by OSCR)—

- in subsection (1)(b)(ii), after “paragraph (c)” insert “ or (d) ”,
- after subsection (2) insert—

“(2A) But the Court of Session must not approve a reorganisation scheme where—

- the reorganisation condition satisfied is that set out in section 42(2)(d), and
- the proposed provision would enable the charity to make amendments to its constitution which would not be consistent with the spirit of the constitution.”.

- (3) In section 42(2) of that Act (reorganisation: supplementary)—

- the word “and” immediately following paragraph (b) is repealed, and
- after paragraph (c) insert “, and
- that it is desirable to introduce a provision (other than a provision setting out a new purpose) to a charity's constitution.”.

### Commencement Information

**I47** S. 124 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

VALID FROM 01/10/2010

## 125 Reorganisation of restricted funds **S**

- (1) After section 43 of the 2005 Act insert—

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## “CHAPTER 5A S

### REORGANISATION OF RESTRICTED FUNDS

#### 43A Reorganisation of restricted funds: applications by charity

- (1) OSCR may, on the application of a charity, approve a restricted funds reorganisation scheme proposed by the charity if—
  - (a) it considers—
    - (i) that any of the conditions specified in subsection (2) is satisfied in relation to the restricted funds, and
    - (ii) that the proposed reorganisation will enable the resources of the restricted funds to be applied to better effect for charitable purposes consistently with the charity's constitution, and
  - (b) it is satisfied that the charity is unable to ascertain the wishes of the donor.
- (2) The conditions are—
  - (a) that some or all of the purposes of the restricted funds—
    - (i) have been fulfilled as far as possible or adequately provided for by other means,
    - (ii) can no longer be given effect to (whether or not in accordance with the directions or spirit of the restricted funds' purposes),
    - (iii) have ceased to be charitable purposes,
    - (iv) have ceased in any other way to provide a suitable and effective method of using the funds, having regard to the spirit of the restricted funds' purposes,
  - (b) that the purposes of the restricted funds provide a use for only part of its property.
- (3) The Scottish Ministers may by regulations make such provision as they think fit in relation to making and determining applications under this section.
- (4) Such regulations may in particular make provision about—
  - (a) the form and manner in which applications must be made,
  - (b) the period within which OSCR must make a decision on an application,
  - (c) publication of proposed restricted funds reorganisation schemes,
  - (d) the action a charity may take in order to satisfy OSCR of the matters described in subsection (1)(b),
 and may make different provision in relation to different types of charity.

#### 43B Reorganisations of restricted funds: applications by OSCR

- (1) Where OSCR—
  - (a) considers—

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- (i) that any of the conditions specified in section 43A(2) is satisfied in relation to a charity, and
  - (ii) that a restricted funds reorganisation scheme proposed by it or by the charity trustees of the charity will enable the resources of the restricted funds to be applied to better effect for charitable purposes consistently with the charity's constitution, and
- (b) is satisfied that it is not possible to ascertain the wishes of the donor, OSCR may, of its own accord or on the application of the charity trustees of the charity, apply to the Court of Session for approval of the scheme.
- (2) The Court of Session may, on an application under subsection (1), approve the proposed restricted funds reorganisation scheme if it considers that the matters set out in paragraphs (a) and (b) of that subsection are satisfied in relation to the restricted funds to which the application relates.
- (3) The charity trustees of a charity may enter appearance as a party in proceedings on an application under subsection (1) in relation to the charity.
- (4) OSCR must, not less than 28 days before making an application under subsection (1), notify the charity in question of its intention to do so.
- (5) The Scottish Ministers may by regulations make such provision as they think fit in relation to action which may be taken to satisfy OSCR of the matter described in subsection (1)(b).
- (6) Nothing in this section affects the power of the Court of Session to approve a cy prè scheme in relation to a charity.

### **43C Approved restricted funds reorganisation schemes**

A charity may, despite any condition relating to restricted funds having contrary effect, use the restricted funds in such manner as permitted by an approved restricted funds reorganisation scheme.

### **43D Restricted funds reorganisations: supplementary**

In this chapter—

“donor” means such person or body who may vary the purpose of, or any conditions imposed in relation to, restricted funds as may be specified by regulations made by the Scottish Ministers as they think fit,

“restricted funds” means property (including money) given to a charity for a specific purpose and in respect of which conditions have been imposed as to its use,

a “restricted funds reorganisation scheme” is a scheme for—

- (a) the variation of the purpose for which restricted funds may be used,
- (b) the variation or removal of any condition imposed on the charity in relation to the use of restricted funds.”.

- (2) In section 71 of that Act (decisions), after paragraph (m) insert—

“(ma) refuse an application made for the purposes of section 43A.”.

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(3) In section 106 of that Act (general interpretation), after the entry for “reorganisation scheme” insert—

““restricted funds reorganisation scheme” has the meaning given in section 43D and references to “approved restricted funds reorganisation schemes” are references to schemes approved under section 43A or 43B.”.

## 126 Appointment of charity trustees **S**

After section 70 of the 2005 Act, insert—

### “Appointment

#### 70A Appointment of charity trustees

- (1) Subsection (2) applies where—
  - (a) a charity has an insufficient number of charity trustees to be able to appoint a charity trustee under its constitution, and
  - (b) the constitution does not provide a mechanism for appointing a charity trustee in such circumstances.
- (2) OSCR may, upon the request of—
  - (a) the majority of the charity trustees of a charity,
  - (b) if there are only two charity trustees, either of them,
 appoint a person as an acting charity trustee for the charity.
- (3) OSCR may appoint more than one acting charity trustee under subsection (2), but only as many as is necessary for the charity to be able to appoint charity trustees under its constitution.
- (4) A person appointed as an acting charity trustee under subsection (2)—
  - (a) is appointed for the period of 12 months (or such shorter period as OSCR thinks fit) starting with the date of appointment, and
  - (b) has the same functions as a charity trustee appointed under the charity's constitution.
- (5) Despite subsection (4)(a), if—
  - (a) at the end of the period mentioned in that subsection, the charity is still not (but for the acting charity trustee) able to appoint a charity trustee under its constitution, and
  - (b) OSCR, the majority of the charity trustees (or if only two trustees, either of them) and the acting charity trustee agree to an extension,
 an acting charity trustee's period of appointment may be extended by one period of up to three months starting with the expiry of the original period of appointment.
- (6) Nothing in subsections (1) to (5) prevents a person appointed as an acting charity trustee by OSCR under subsection (2) from being appointed as a charity trustee by the charity under its constitution.

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- (7) But the acting charity trustee may not vote on whether to make such an appointment.
- (8) Where an acting charity trustee is appointed as a charity trustee under the charity's constitution, the person's appointment as an acting charity trustee comes to an end on the date of that subsequent appointment.”.

#### Commencement Information

**I48** S. 126 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

### 127 Charity trustees' indemnity insurance **S**

- (1) In section 67(5)(c) of the 2005 Act (remuneration for services), for “any” substitute “this Act or any other”.
- (2) After section 68 of that Act insert—

#### “68A Charity trustees' indemnity insurance

- (1) The charity trustees of a charity may arrange for the purchase, from the charity's funds, of insurance designed to indemnify the charity trustees against personal liability in respect of any negligence, default or breach of duty committed by them in their capacity as—
- (a) charity trustees, or
  - (b) directors or officers of any body corporate carrying on any activities on behalf of the charity.
- (2) The terms of such insurance must, however, be framed to exclude the provision of any indemnity for a charity trustee in respect of any liability incurred by the charity trustee—
- (a) to pay—
    - (i) a fine imposed in criminal proceedings,
    - (ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature,
  - (b) in respect of representation in any criminal proceedings in which the charity trustee is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct, by the charity trustee,
  - (c) to the charity that arises out of any conduct which the charity trustee knew (or must reasonably be assumed to have known) was not in the interests of the charity or in the case of which the charity trustee did not care whether it was in the interests of the charity or not.
- (3) For the purposes of subsection (2)(b) the reference to conviction does not include a conviction—
- (a) quashed by an order under section 118(1)(b) or 183(1)(c) of the Criminal Procedure (Scotland) Act 1995 (c. 46),
  - (b) quashed by an order under section 118(1)(c) of that Act and which order has the effect of an acquittal by virtue of section 119(9) of that Act or otherwise,

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(c) in relation to which the verdict is set aside by an order under section 183(1)(d) of that Act and which order has the effect of an acquittal by virtue of section 185(9) of that Act or otherwise.

(4) This section—

- (a) does not authorise the purchase of any insurance whose purchase is expressly prohibited by the charity's constitution,
- (b) has effect despite any provision prohibiting the charity trustees receiving any personal benefit from the charity's funds.”.

**Commencement Information**

**I49** S. 127 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

**128 Interpretation of Part 9** **S**

For the purposes of this Part, the “2005 Act” is the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

**Commencement Information**

**I50** S. 128 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

**PART 10** **S**

MISCELLANEOUS AND GENERAL

*Miscellaneous*

**129 Local Government (Scotland) Act 1973: minor amendment** **S**

In section 102(2A) of the Local Government (Scotland) Act 1973 (c. 65) (reports to Accounts Commission for Scotland by Controller of Audit), the words “(1) or” are repealed.

**Commencement Information**

**I51** S. 129 in force at 1.8.2010 by S.S.I. 2010/221, art. 3(2), Sch.

VALID FROM 15/08/2011

**130 Consultation by water and sewerage services providers** **S**

(1) The Water Industry (Scotland) Act 2002 (asp 3) is amended in accordance with this section (but see also schedule 2 which makes other amendments to that Act).

(2) In section 27 (approval of customer standards code)—



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- (a) in subsection (1), after “consulting” insert “ every water services provider and sewerage services provider and ”,
  - (b) in subsection (4), after “consulting” insert “ every water services provider and sewerage services provider and ”.
- (3) In section 28 (consultation code), in subsection (3)(a)—
- (a) after “consult” insert “ every water services provider and sewerage services provider and ”,
  - (b) after “by” insert “ any such provider or ”.
- (4) In section 29B (determination of maximum charges), in subsection (4)(a)—
- (a) the word “and” immediately following sub-paragraph (ii) is repealed,
  - (b) after sub-paragraph (ii) insert—
    - “(ia) every water services provider and sewerage services provider, and”.
- (5) In section 29D(5) (statements regarding charges), after paragraph (a) insert—  
“(aa) every water services provider and sewerage services provider.”
- (6) In section 56A(4) (directions may set objectives), after “consult” insert “ every water services provider and sewerage services provider and ”.
- (7) In section 57(6) (information and reports), after “Commission” insert “ , every water services provider and sewerage services provider ”.
- (8) In section 70 (interpretation), after the entry for “the Parliament” insert—  
““sewerage services provider” has the meaning given in section 6(4) of Water Services etc. (Scotland) Act 2005 (asp 3),  
“water services provider” has the meaning given in section 6(2) of the Water Services etc. (Scotland) Act 2005.”.

VALID FROM 15/08/2011

## 131 **Complaints about water services and sewerage services providers** **S**

In the Water Services etc. (Scotland) Act 2005 (asp 3), after section 11 insert—

### “11A Complaints about licensed providers

- (1) Subsections (2) to (4) apply where a water services provider or, as the case may be, a sewerage services provider (“the provider”) has requested (in writing) that the Scottish Public Services Ombudsman (“the Ombudsman”) investigate complaints made about the provider by occupiers of premises served by the provider.
- (2) Subject to subsection (4), the Scottish Public Services Ombudsman Act 2002 applies to such complaints as it applies to complaints made under that Act about a listed authority.
- (3) For the purposes of subsection (2), the provider is to be treated as a listed authority and the complainer as the person aggrieved.

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- (4) Paragraph 7 of schedule 4 to the Scottish Public Services Ombudsman Act 2002 (Ombudsman not to investigate contractual or commercial transactions relating to a listed authority) does not apply.
- (5) Subsections (6) to (9) apply where—
- (a) the provider has—
    - (i) requested (in writing) that the Ombudsman may not investigate any new complaints relating to the provider,
    - (ii) sent a copy of that request to the Commission, and
  - (b) the Commission has agreed to that request and notified the Ombudsman accordingly.
- (6) The Ombudsman may not investigate any new complaints relating to the provider from the date that the Ombudsman receives notification under subsection (5)(b).
- (7) The Ombudsman is to continue investigating any undetermined complaints about the provider which have been made to the Ombudsman prior to the Ombudsman's receipt of notification under subsection (5)(b).
- (8) For the purpose of enabling an undetermined complaint to continue to be dealt with, subsections (2) and (3) continue to apply and have effect as they applied and had effect immediately before the Ombudsman received notification under subsection (5)(b).
- (9) For the purpose of subsection (7), a complaint is determined by the Ombudsman if the Ombudsman—
- (a) has decided to conduct an investigation in relation to the complaint and that investigation is concluded, or
  - (b) has decided not to conduct an investigation in relation to the complaint.”.

### General

#### 132 Ancillary provision **S**

- (1) The Scottish Ministers may by order make such consequential, supplemental, incidental, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for the purposes of giving full effect to, any provision of this Act.
- (2) An order under this section may modify any enactment, instrument or document.

#### 133 Orders and regulations: Parts 8 and 10 **S**

- (1) Any power conferred by Part 8 or this Part on the Scottish Ministers to make an order or regulations—
  - (a) must be exercised by statutory instrument,
  - (b) except an order under section 134(7), includes power to make such consequential, supplemental, incidental, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,

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- (c) may be exercised so as to make different provision for different purposes.
- (2) No—
- (a) order is to be made under section 115(9),
  - (b) regulations are to be made under section 117,
  - (c) order is to be made under section 132 containing provisions which add to, omit or replace any part of the text of an Act,
  - (d) order is to be made under section 134(4),
- unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by resolution of, the Parliament.
- (3) Any other statutory instrument containing an order under Part 8 or this Part (except an order under section 134(7)) is subject to annulment in pursuance of a resolution of the Parliament.

### 134 Short title and commencement **S**

- (1) This Act may be cited as the Public Services Reform (Scotland) Act 2010.
- (2) Sections 103, 109, 132 and 133 and this section come into force on Royal Assent.
- (3) Sections 14 to 30 and schedules 5, 6 and 7 cease to have effect 5 years after the date on which those sections and schedules (or the last of them) come into force.
- (4) But the Scottish Ministers may by order extend, or (on one or more occasion) further extend, the period for which those sections and schedules have effect.
- (5) An order made under subsection (4)—
  - (a) must be made before the end of the period referred to in that subsection, and
  - (b) has the effect of extending, or further extending, that period for the period of 5 years beginning with the day the order is made.
- (6) Where, by virtue of subsection (3) (or that subsection read with subsection (4)) sections 14 to 30 and schedules 5 to 7 cease to have effect, that repeal does not affect any order made under section 14 or 17(1).
- (7) The remaining provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (8) An order bringing into force section 3, 130 or 131 or schedule 2 or 3 may not be made before the expiry of the period of 12 months beginning with Royal Assent.

**Status:**

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