

PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 5 – Social Care and Social Work: Scrutiny and Improvement

Chapter 4 – Local Authority Adoption and Fostering Services etc.

Section 83 – Local authority applications for registration under Chapter 4

153. Local authorities are under a statutory duty to provide adoption and fostering services which means that, unlike most care services, SCSWIS will not be able to take direct enforcement action against authorities. It would not be appropriate for SCSWIS to de-register a local authority's adoption service, for example, since that would prevent the authority from fulfilling its statutory duty. There may also be some other individual care services where non-registration or cancellation of registration would result in a local authority being in breach of a statutory duty. Instead SCSWIS will prepare a report to Ministers who will then decide what action should be taken against the local authority.
154. These services cannot therefore be covered by the registration and enforcement provisions in Chapter 3 of the Act. This Chapter therefore provides similar requirements and rights that will apply to local authorities providing adoption and fostering services and other services needed so as to fulfil a statutory duty. The substantive difference is the role of Scottish Ministers in being informed of improvement notices and being empowered to take default action where they consider that the provision of these services is unsatisfactory.
155. Subsection (1)(a) and (b) require a local authority to apply to SCSWIS to register its adoption and fostering services (as set out in paragraph 8(1)(a) and 9(a) and (c) to schedule 12 respectively) and subsection (1)(c) extends this requirement to register any other care service which a local authority determines they must provide in order to fulfil a statutory duty. Subsection (2) empowers Ministers to prescribe the manner and content of applications and that a fee should be payable.
156. Subsection (3) makes provision for SCSWIS to disagree with the local authority's determination in (1)(c) and refer the matter to Ministers, giving its reasons. Ministers must then decide (subsection (4)) whether the local authority's determination is justified. If it considers that it is not, then subsection (5) provides that the application for registration is deemed to have been under the Chapter 3 provisions.

Section 84 – Grant of local authority application under Chapter 4

157. Subsection (1) provides for SCSWIS to grant registration applications, with or without conditions, from a local authority service applying for registration under section 83(1) and to give the authority notice of its decision. Subsection (2) provides that on granting

registration, SCSWIS should issue a certificate of registration, and subsection (3) requires authorities to display such certificates.

Section 85 – Condition notices: services registered under Chapter 4

158. This section provides that condition notices can be served on local authority care services registered under Chapter 4 in the same way as for other care services.

Section 86 – Applications under Chapter 4 in respect of conditions

159. This section gives local authorities the power to apply to SCSWIS for the variation or removal of any condition. Applications must comply with the manner and content of applications, including a fee if appropriate, as for applications under section 76. If SCSWIS decides to grant or refuse the application, it must notify the authority and issue a new certificate of registration if appropriate.

Section 87 – Right to make representations to SCSWIS under Chapter 4 as respects conditions

160. This section gives a local authority the right to make, within 14 days after receiving a notice to which the section applies, written representations to SCSWIS about any matter which they may wish to dispute. The notices in question are: any notice of a proposal to grant an application for registration but to do so subject to conditions, any notice of a proposal to vary, remove or impose a condition in relation to an existing registration and any notice of a proposal to refuse such an application.

161. Subsection (2) provides that SCSWIS may not implement the terms of the notice until the 14 day period has ended unless they receive representations during the 14 day period or the authority notifies SCSWIS that it will not be making representations. Subsection (3) provides that where notice to take an action has been given, SCSWIS may only take such action if it has considered any representations made, the authority has notified SCSWIS that no action shall be taken, or a period of 14 days has elapsed.

Section 88 – Notice of SCSWIS’s decision under Chapter 4

162. This section provides that if SCSWIS has decided to implement a notice to which section 87 applies, it must give the local authority to which the notice applies, written notice of its decision.

163. Subsections (2) to (4) deal with situations where the representations stage has been completed, requiring SCSWIS to serve a notice in writing of their decision on the authority. The notice must explain the right of appeal conferred by section 89 and in the case of a decision to grant an application subject to conditions or to vary conditions, set out those conditions. A decision to implement a notice will take effect only after the outcome of any appeal has been determined, or after 14 days if no appeal is brought. If an authority decides not to pursue its appeal the decision will take effect immediately.

Section 89 – Appeal against decision under Chapter 4

164. This section provides that local authorities may appeal to a sheriff against a decision made by SCSWIS under Chapter 4 within 14 days after a notice, under section 88 is given. The sheriff may determine the appeal in the same manner as appeals for other non-local authority care services..

Section 90 – Offences under Chapter 4

165. This section provides that the offence provisions in sections 80(1) and (3) and 82 shall apply to local authority care services registered under Chapter 4, in the same way as they apply to services registered under Chapter 3, and further that a failure to comply

with section 84(3) can lead on summary conviction to a fine not exceeding level 2 on the standard scale.

Section 91 – Report to Scottish Ministers

166. Subsection (1) provides that SCSWIS shall report to Scottish Ministers if an improvement notice is imposed on a local authority service registered under Chapter 4, and provide them with a copy of that notice. Subsection (2) requires SCSWIS to inform Scottish Ministers (within 14 days) as to whether a notice has been complied with within the specified timescale. Subsection (3) requires SCSWIS to report to Ministers if any person is convicted of an offence in relation to these services, or if it appears to SCSWIS that a service is being carried on other than in accordance with the relevant requirements. Subsection (4) defines a relevant offence for the purposes of this section (they are the same as for section 64). Subsection (5) defines relevant requirement for this section and for section 92 as the same as those for section 64, however with the addition that they will also include any requirement or condition imposed by, under or by virtue of an Act as may be prescribed by an order made by the Scottish Ministers.
167. Subsection (6) requires SCSWIS to report to Scottish Ministers and provide them with information about any issues in relation to a care service registered under Chapter 4 that may be prescribed by order by the Scottish Ministers.

Section 92 – Default powers of Scottish Ministers

168. Subsection (1) provides that Scottish Ministers (having received a report under section 91 or otherwise) may take certain actions if they are satisfied that a local authority providing a service registered under Chapter 4 is, without reasonable excuse, failing to comply with an improvement notice or carrying on the service not in accordance with relevant requirements.
169. Subsection (2) sets out what those actions are, either to make an order to declare an authority in default or to make a direction setting out the steps that should be taken to remedy the matter. Subsection (3)(a) provides that if an authority fails to comply with that direction Scottish Ministers can take the necessary action themselves or make arrangements for someone to do it on their behalf. Subsection (3)(b) provides that the Court of Session may order specific performance of those steps on application from the Scottish Ministers.