

SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005

EXPLANATORY NOTES

AMENDMENT OF REGULATION OF CARE (SCOTLAND) ACT 2001

Section 29 – Independent health care services

137. Under the Regulation of Care (Scotland) Act 2001 (the 2001 Act) the Scottish Commission for the Regulation of Care (the Care Commission) registers and inspects a range of care services, deals with complaints and, where necessary, takes enforcement action. Section 2 of the 2001 Act lists and defines care services which are regulated by the Care Commission. This section of the Act amends section 2(5) of the 2001 Act which defines “an independent healthcare service” as: an independent hospital; a private psychiatric hospital; an independent clinic; and an independent medical agency. This amendment gives Scottish Ministers the power to except services from this definition by regulations, bringing it into line with other relevant care service definitions.

Section 30 – Implementation of certain decisions under the 2001 Act

138. This section amends sections 16(2), 37(2), 48(2) and 51(1) of the 2001 Act.
139. The Care Commission has powers under Part 1 (the Care Commission and Care Services) and Part 2 (Local Authority Adoption and Fostering Services etc.) of the 2001 Act to issue a condition notice to service providers already registered and those applying to register as providers of care services (for example to require a care home provider to keep a door closed at all times to prevent residents from having access to a busy road). When such a notice is issued the 2001 Act allows a person receiving the notice to make representation to the Care Commission. Subsection (2) and (3) respectively amend section 16(2) and 37(2) of the 2001 Act to make further provision regarding representations. In particular it requires that where representations are made to the Care Commission about a notice given under either 16(2)(a) or 37(2)(a) these will be considered by the Care Commission before it decides whether or not to do the thing proposed in the notice.
140. The Scottish Social Services Council (the Council) has the power under section 46 of the 2001 Act to grant registration to a social service worker either unconditionally or give notice to the worker that registration will be granted subject to certain conditions (for example to require a worker to complete a specific training requirement within a specified period of time). Section 48 allows the person who has received notice to make representations to the Council. Subsection (4) amends section 48 to make further provision about representations. In particular it requires that where representations are made these will be considered by the Council in deciding whether or not to do the thing proposed.
141. Subsection (5) amends section 51 to ensure that there is a right of appeal against all decisions of the Council and not just an appeal against the implementation of a proposal.

Section 31 – Frequency of inspection of care services under the 2001 Act

142. This section inserts a new section 25(5A) and (5B) into the 2001 Act and amends section 78(2)(b) of that Act.
143. The Care Commission is required by section 25 of the 2001 Act to inspect all care services at least once every 12 months (or twice every 12 months, in the case of certain services). In respect of inspections section 25 distinguishes between the first 12 months after registration with the Care Commission and subsequent 12 month periods.
144. Subsection (2) of the new provision gives the Scottish Ministers the power, after consulting the Care Commission and other appropriate persons, to amend by Order either or both sections 25(3)(a)(i) and (ii) and either or both sections 25(5)(a) and (b) of the 2001 Act to increase (but not decrease) the length of the periods specified in those sections, and therefore reduce the minimum frequency of mandatory inspections. The power is capable of being exercised in different ways in respect of different care services.
145. Subsection (3) of the new provision amends section 78(2)(b) of the 2001 Act to provide that an Order made under the new section 25(5A) is subject to affirmative resolution procedure.

Section 32 – Provision of information to the Scottish Social Services Council

146. This section inserts new sections 57A and 57B into the Regulation of Care (Scotland) Act 2001.
147. The new section 57A requires the employer of a social service worker to inform the Scottish Social Services Council where the social service worker has been dismissed on grounds of misconduct or has resigned or abandoned their position in circumstances where there would have been grounds for their dismissal. The employer must also provide the Council with an account of the circumstances.
148. The new section 57B requires that the employer of a social service worker will provide to the Council any information as respects that worker that the Council requires in the pursuit of its functions.