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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force certain provisions of the Regulation of Care (Scotland) Act 2001 (“the Act”) and makes consequential transitional provision.

Article 2 sets out the provisions of the Act which are to come into force on 1st April 2002. These include the definitions of those care services to which the Act will apply from that date, in article 2(a) to (d). Apart from certain minor exceptions, the Order also brings into force those provisions of Parts 1 and 2 of the Act which have not previously been commenced. The remaining provisions which are uncommenced are section 8 (limited registration for the purposes of the Adults with Incapacity (Scotland) Act 2001(1)) and section 33 so far as relating to adoption and fostering services provided by local authorities.

The Order also brings into force those provisions of Part 3 of the Act which have not previously been commenced, other than section 52 (use of title “social worker” etc.); section 72 (provision by local authorities of residential accommodation in which nursing is provided); and the amendments and repeals in Schedules 3 and 4 which are specified in article 2(f) to (i) of the Order.

The remainder of the Order contains transitional provisions.

Article 3 provides for certain existing services, which are either registered under the pre-commencement statutory regime or treated by the inspecting authorities as if that regime applied, to be treated as already registered under Part 1 of the Act. Article 3(2) makes provision for local authorities to seek registration under Part 2 of the Act and for disapplication of registration under Part 1 where that is granted. The services which are to be deemed to be registered are specified in article 4.

Article 5 provides for accommodation which was approved under the Secure Accommodation (Scotland) Regulations 1996 to be treated as approved under the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002.

Article 6 provides for other existing services which are not covered by Article 3 to be treated as already registered under Part 1 of the Act. In this case that deemed registration is to last for six months or, where the provider has applied to the Commission within that period for registration under the Act, for a further six months.

Under article 7, where a service is deemed to have been registered under the Act by virtue of this Order, any existing certificate of registration or licence to carry on an agency for the supply of nurses is to be treated as if it were the certificate of registration issued under section 9(3) of the Act. Where there is no such certificate or licence the provisions of the Act requiring the provider of a service to display a certificate of registration are disapplied until a certificate is issued.

Where a service is deemed to have been registered by virtue of this Order, article 8 provides that any existing conditions of registration are to be treated as if they were agreed conditions of registration under the Act.

Articles 9 to 12 deal with the situation where a service is deemed to be registered under the Act but the original registration or licensing authority has proposed to cancel the registration or in some cases to impose or vary a condition of registration. In such a case the pre-commencement law is preserved for the purpose of determining whether the proposed action is to be taken and, where it is, the outcome is to be treated as if it had been reached by the Commission under the Act.

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(1) 2000 asp 4.

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Article 13 preserves the pre-commencement law for the purpose of determining applications for registration under that law which have not been dealt with before 1st April 2002. Once these have been determined by the original authorities the result is to be treated as if the decision had been made by the Commission.