

REGULATION OF CARE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

SUMMARY

3. A consultation paper on Workforce Regulation and Education was published in November 1998. In March 1999 the Government published a White Paper on its proposals to modernise social work services in Scotland. Detailed proposals for new regulatory arrangements for care services and for the social services workforce were set out in a consultation paper published in December 1999. Following this consultation a policy position paper was published in July 2000 setting out proposals for legislation. Separate consultations were also carried out on the regulation of early education and childcare and private and voluntary healthcare.
4. Consultation papers on the first and second tranches of Draft National Care Standards were published in June 2000 and April 2001 respectively. The first set out proposals on care standards for older people, people with mental health problems and for children and young people; the second covered care at home, residential accommodation for people with learning disabilities, physical and sensory impairment and drug and alcohol problems, and in a separate paper – early education and childcare. A consultation paper on the future of care homes under the new legislative arrangements was published in April 2001.
5. The relevant documents are listed below:
 - Modernising Social Work Services: A Consultation Paper on Workforce Regulation and Education, published in November 1998;
 - Aiming for Excellence: Modernising Social Work Services in Scotland (Cm 4288), published in March 1999;
 - Regulation of Early Education and Childcare, published in June 1999;
 - Regulating Care and the Social Services Workforce: A Consultation Paper, published in December 1999;
 - Regulating Private and Voluntary Healthcare, published in March 2000;
 - Regulation of Early Education and Childcare: The Way Ahead, published in May 2000;
 - Draft National Care Standards: First Tranche, published in June 2000;
 - The Way Forward For Care, a policy position paper, published in July 2000;
 - Regulating the Independent Healthcare Sector, a policy position paper, published in November 2000;
 - Draft National Care Standards: Second Tranche, published in April 2001;
 - The Future for Care Homes in Scotland: A Consultation Paper, published in April 2001;

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

- Early education and childcare: Draft National Care Standards consultation paper, published in June 2001.

All these publications are available on the Scottish Executive's Regulation of Care Project website www.scotland.gov.uk/government/rcp

6. In summary this Act:
 - establishes a new independent body to regulate care services in Scotland to be known as the Scottish Commission for the Regulation of Care ("The Commission");
 - establishes a system of care regulation, encompassing the registration and inspection of care services against a set of national care standards and the taking of any enforcement action;
 - establishes a new independent body, to be known as the Scottish Social Services Council ("The Council") to regulate social service workers and to promote and regulate their education and training; and
 - makes a number of amendments and minor changes in related areas and legislation.

Regulation of care services

7. Regulation of care services is patchy at present. Many services are regulated under a range of legislation that is now largely outdated and some services are not regulated at all. The Act is intended to modernise and standardise the regulation of care services. Effective regulation of these services is essential if people using them and their families are to be confident that the services they receive are of high quality and are appropriate to their needs.
8. The Act will reform the regulatory system for care services in Scotland. Care services include care homes for adults, residential care for children, children's early education, day care and childminding, adoption and fostering services, adult placement services, agencies providing care at home (including care for children), nurse agencies, independent healthcare services, day care services for adults, housing support services, care and welfare in boarding schools and school hostels and care and welfare in accommodation for offenders.
9. The Act provides for an independent Scottish Commission for the Regulation of Care to undertake this regulatory function. The Commission will register and inspect all care services against national care standards. These standards will be taken into account when the Commission makes any decisions about registering and inspecting services and in considering whether, and at what level, enforcement action should be taken. For the first time, all local authority care services will be required to register and to meet the same standards as independent sector providers.
10. The current system of care service regulation is principally embodied in the Nursing Homes Registration (Scotland) Act 1938, the Nurses (Scotland) Act 1951, the Social Work (Scotland) Act 1968, and the Children Act 1989, together with various regulations, circulars and guidance notes. The new legislation will replace the entire 1938 and 1951 Acts, sections 60-68 of the 1968 Act and Part X and schedule 9 of the 1989 Act, insofar as it applies to Scotland. A number of other minor and consequential changes and repeals will also be made.
11. It is intended that the Commission should fulfil the recommendation of the Royal Commission on Long Term Care that there should be a National Care Commission to take a strategic overview of the care system and its funding and to steward the interests of older people. This role will not be limited to older people. The Commission will therefore have a statutory power to advise Scottish Ministers on trends in care provision generally.

Regulation of the workforce

12. There is no comprehensive regulation of the social services workforce at present. Nor is an appropriate framework in place to support and enhance the professionalism of the workforce.
13. The Act provides for the regulation of the social services workforce, by establishing the Scottish Social Services Council. The Council will regulate the education and training of social service workers and raise standards through the publication of codes of conduct and practice. For the first time a national register of social services staff will be set up and maintained by the Council. The Act also provides for the Central Council for Education and Training in Social Work (CCETSW) to cease its functions in Scotland. It currently regulates education and training in social work throughout the UK. CCETSW's functions will transfer to the Council, as will the functions of the Scottish arm of the National Training Organisation, the Training Organisation for the Personal Social Services.
14. The Act sets out the functions and powers of the Council. The Council's main functions will be to publish codes of practice and conduct, establish registers of particular groups in the workforce and to regulate their conduct, education and training.

Other provisions

15. Other provisions in the Act include:
 - powers to enable local authorities to make grants in respect of child care and family support and in some care services, make direct payments to children;
 - a power to enable local authorities in Scotland to employ nurses to provide nursing care in any residential accommodation they may provide;
 - a power to enable Scottish Ministers to delegate a power to make grants and loans for social work;
 - an amendment to section 29 of the Children (Scotland) Act 1995 dealing with local authority provision of after-care for children formerly looked after by local authorities;
 - an increase to the age limit of children for whom local authorities may pay discretionary maintenance allowance to relatives or friends who look after them;
 - a power to put beyond doubt that under a Child Protection Order granted under section 57 of the Children (Scotland) Act a child may be removed to a suitable place that is not medical premises; and
 - powers dealing with the appointment and payment of fees and expenses for safeguarders and training for safeguarders and Children's Panel Advisory Committee members.