

REGULATION OF CARE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Commentary on sections

Part 1: the Commission and Care Services

Inspections

Section 25: Inspections

87. Subsection (1) provides that the Commission may require a person who provides a care service registered under the Act to supply it with any information to enable the Commission to discharge its functions. This may include such aspects as pre-inspection questionnaires or other information.
88. Subsection (2) enables inspection at any time of a care service and in particular allows an inspector authorised by the Commission to enter and inspect premises at any time if they are used or are believed to be used in connection with a care service. These powers are necessary to ensure compliance with the regulatory framework. However, inspectors are not authorised to enter the home of a person receiving a support service in their own home.
89. Subsections (3) and (4) provide that all care services offering 24 hour care away from home should be subject to a minimum of two inspections per year, and that one (or both) of these inspections should be unannounced. Unannounced inspections are an important part of the current regulatory system. The services subject to two inspections per year are care homes, school care accommodation, secure accommodation and those independent health care services which offer 24 hour care.
90. Subsection (5) requires the Commission to ensure that all other care services are subject to a minimum of one inspection every twelve months. It is likely that the Commission will inspect new services and services about which there are concerns more frequently. Inspections by the Commission can be planned in advance with the provider or carried out unannounced at any time.
91. Subsections (6), (7) and (8) provide that inspectors may also require relevant records or other documents to be produced for inspection on the premises wherever they may be kept. Where they are stored on computer they should be produced in a legible, not encrypted, form. Inspectors will be able to conduct any interviews about the running of a service or the treatment of service users as they consider appropriate. They will also be able to copy or remove relevant records (other than medical records), and will be able to interview, in private, the manager, employees, or any persons accommodated or cared for by the service who consent to be interviewed, including with family, carers or other representative where appropriate.
92. Subsection (9) allows an inspector who is a medical practitioner or registered nurse to examine in private, with their consent, a patient or resident, or their medical records,

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

where they believe that the person may not be receiving proper care. Subsection (10) makes the same provision in respect of dentists. When any other inspector has such concerns, they would arrange for a medical practitioner, nurse or dentist to examine the individual as appropriate. The person may choose to be examined in the presence of, say, a friend or member of their family where appropriate. Subsection (11) defines an appropriate examination and consent for the purposes of these sections.

93. Subsection (13) makes it an offence for a person to intentionally obstruct an inspection under this section or section 27. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale (£2500 at present).