

REGULATION OF CARE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Commentary on sections

Part 1: the Commission and Care Services

Proposals and applications in relation to registered care services

Section 12: Cancellation of registration

62. This section gives the Commission the power to cancel the registration of a care service registered under Part 1 that, having been issued with an improvement notice under section 10, is still not meeting the relevant requirements. This could be concern about how effectively the care standards are being taken into account or that a condition of registration has been breached or where a relevant offence has been committed. Further grounds for cancelling registration may be prescribed by order.
63. Subsection (2)(a) provides that relevant offences for the purpose of section 12 are:
- an offence under this Act – for example, providing a care service while not being registered (section 21(1)(a)), knowingly making a false or misleading statement when applying for registration or variation or removal of a condition (21(1)(b)), failing to display a current certificate of registration (21(2)) or obstructing an inspector (section 25(13));
 - an offence under regulations made under this Act (section 29(11)); or
 - any other offence which in the Commission’s view makes it appropriate to cancel a registration.
64. Registration can be formally cancelled even if a provider closes a care service before the cancellation process is complete. This will ensure that the provider’s record accurately reflects the situation and the Commission will be aware of previous history in dealing with any future applications. Again, the Commission must take the national care standards and the Council’s codes of practice into account in coming to its decisions.
65. Cancellation of registration would not normally be the first step in a formal enforcement action. It is only likely to be used where the service has not met conditions of registration over time and has ignored the serving of an improvement notice. If a care service provider is convicted of a relevant offence, such as obstructing an inspection and fails to remedy matters at fault, the Commission will be able to cancel registration. These cancellation of registration procedures are not part of the urgent cancellation procedure set out in section 18.

Section 13: Condition notices

66. This section empowers the Commission to impose a “condition notice” on a care service. This notice indicates an intention to vary or remove a condition of registration

or impose an additional condition. Condition notices do not form part of the urgent cancellation procedure set out in section 18.

Section 14: Applications under Part 1 in respect of conditions

67. Subsection (1) enables a provider of a care service to apply for a change to their conditions of registration, for example to change the maximum number of people accommodated in a care home, or to apply voluntarily for the cancellation of registration, for example, if they plan to close or sell the business. Subsection (2) prevents a person voluntarily cancelling their registration if the Commission has given notice of intention to, or decided to, cancel registration. Subsection (3) provides that an application shall be accompanied by the fee and that regulations shall say how the application is to be made and what particulars are to be stated in it. Subsection (4) provides that if the Commission grants an application for a change of conditions it must give notice in writing and issue a new certificate of registration.

Section 15: Further provision as respects notice of proposals

68. Subsection (1) provides for the Commission to give notice of decisions it intends to take, in respect of applications for registration made under section 7, if it intends to grant an application subject to conditions or refuse it. For example, in the case of a person applying for registration for the first time, the notice of proposal will state the conditions subject to which the Commission proposes to grant the application.
69. Subsection (2) requires the Commission to give notice if it intends to cancel a registration other than under the emergency procedures set out in section 18(1). Subsection (3) requires the Commission to give notice if it decides to refuse an application for a variation of conditions made under section 14. Such notice must set out the reasons (subsection (4)). Section 15 does not apply where the Commission decides to grant an application for registration unconditionally, or subject to agreed conditions.

Section 16: Right to make representations to Commission as respects proposals under Part 1

70. This section states that a notice given under section 15 must indicate that the person can, if they so wish, make written representations to the Commission within a time limit of 14 days (subsection (1)). This ensures that the applicant has the opportunity to make their point of view known. Subsection (2) provides that the Commission 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 person notifies the Commission that they will not be making representations. Subsection (3) provides that this section does not apply in respect of condition notices given under section 35.

Section 17: Notice of Commission's decision under Part 1

71. Subsection (1) provides that the Commission should give notice when granting an application for registration unconditionally or subject to a condition that has been agreed in writing between the Commission and the applicant.
72. Subsections (3)-(6) deal with situations where the representations stage has been completed, requiring the Commission to serve a notice in writing of their decision on the applicant. The notice must explain the right of appeal conferred by section 20 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 cancel registration, to grant an application subject to conditions which are not agreed, or to change conditions will take effect only after the outcome of any appeal has been determined, or after 14 days if no appeal is brought. In the case of a decision to grant an application subject to conditions which are not agreed, if the applicant decides not to pursue an appeal the decision will take effect immediately.

Section 18: Urgent procedures for cancellation of registration etc.

73. This section provides that the Commission may apply to a sheriff for the immediate cancellation of registration or change in the conditions of registration of a care service. The sheriff may only make the order where it appears that unless the order is made there is a serious risk to a person's life, health or well-being. The conditions might include that no new clients are taken on by the service, or that the manager or a particular member of staff is replaced.
74. Subsection (2) requires the Commission to notify the local authority and health board as well as any other statutory authority it considers appropriate, of the making of an urgent application. This is necessary so that the local authority can comply with their statutory duties as required, for example to provide or arrange alternative care for the service users in accordance with their duties under section 12A of the Social Work (Scotland) Act 1968, and that the health board may consider whether to make provision for NHS services.
75. The Commission will be expected to inform such bodies as soon as possible in order that necessary arrangements can be made. The Commission will be expected to have agreed protocols with the Convention of Scottish Local Authorities (COSLA) and the NHS to deal with such situations should they arise. Subsection (5) defines a statutory authority for this purpose.

Section 19: Conditions as to numbers

76. This section provides that the Commission can limit the number of people using certain services or to whom certain services are provided either on initial registration, through a subsequent condition notice or in association with an improvement notice. For example it may be appropriate for a new provider to be restricted on numbers until they get fully established, or where a care provider is causing concern the power could be used as an alternative to enforcement action (i.e. withdrawing registration).
77. The services covered by this section are care homes, school care accommodation, secure accommodation, adult placement services, support services, independent health care, child minding, day care for children and nurse agencies
78. It is not appropriate to apply this condition where there is a statutory duty on the local authority to provide the service. This is why adoption and fostering services are not covered by this provision. Offender accommodation services and housing support services are also not covered by the provision. These are examples of where imposing a limit on numbers would mean there had to be a parallel limit on the local authorities' duty to provide such services.

Section 20: Appeal against decision to implement proposal

79. This section provides for an appeal against a decision on registration made by the Commission under section 17. The appeal must be made to a sheriff within 14 days of the notice of decision. Subsection (2) provides for the sheriff's powers on considering an appeal.