



# Regulation of Care (Scotland) Act 2001

## 2001 asp 8

### PART 2

#### LOCAL AUTHORITY ADOPTION AND FOSTERING SERVICES ETC.

#### **33 Local authority applications for registration under Part 2**

- (1) A local authority who seek to provide—
  - (a) an adoption service mentioned in subsection (11)(a) of section 2 of this Act;
  - (b) a fostering service mentioned in subsection (14)(a) or (c) of that section; or
  - (c) any other care service if it is a service which the authority determine they must provide in order to fulfil a statutory duty,shall make an application to the Commission for registration of the service.
- (2) An application shall be made in such manner and give such information as may be prescribed; and, without prejudice to subsection (1)(b) of section 24 of this Act, shall be accompanied by the fee imposed under subsection (2)(a) of that section.
- (3) Where in relation to an application under subsection (1)(c) above the Commission does not agree with the determination made by the authority, it shall so notify the authority and the Scottish Ministers, giving its reason for not so agreeing.
- (4) On receiving notification under subsection (3) above, the Scottish Ministers shall state whether or not, in their opinion, the determination of the authority is justified; and if their statement is that the determination is not justified, the application shall be taken to have been duly made not under this section but under section 7 of this Act and shall be dealt with accordingly.

#### **Commencement Information**

**II** S. 33(1)(c)(2)(3)(4) in force at 1.4.2002 by [S.S.I. 2002/162](#), [art. 2\(e\)](#) (subject to [arts. 3-13](#))

#### **34 Grant of local authority application under Part 2**

- (1) Subject to subsection (4) of section 33 of this Act, the Commission—

*Status: Point in time view as at 01/04/2002.*

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- (a) shall grant an application made under subsection (1) of that section unconditionally or subject to such conditions as the Commission thinks fit to impose; or
  - (b) shall propose to grant it subject to such conditions as the Commission thinks fit to impose,
- and shall give the authority notice—
- (i) that it has been granted; or
  - (ii) as the case may be, of the conditions subject to which it is proposed (under paragraph (b) above) that it should be granted.
- (2) On granting the application, the Commission shall issue a certificate of registration to the authority.
- (3) Subsection (4) of section 9 of this Act shall have effect in relation to a certificate issued under subsection (2) above as it has in relation to a certificate issued under subsection (3) of that section.

**Commencement Information**

**I2** S. 34 wholly in force at 1.4.2002, see s. 81(2)-(4) and [S.S.I. 2002/162](#), [art. 2\(e\)](#) (subject to [arts. 3-13](#))

**35 Condition notices: services registered under Part 2**

Section 13(1) of this Act shall apply to a local authority providing a care service registered under this Part as that section applies to a person providing a care service registered under Part 1 of this Act.

**Commencement Information**

**I3** S. 35 wholly in force at 1.4.2002, see s. 81(2)-(4) and [S.S.I. 2002/162](#), [art. 2\(e\)](#) (subject to [arts. 3-13](#))

**36 Applications under Part 2 in respect of conditions**

- (1) A local authority providing a care service registered under this Part may apply to the Commission for the variation or removal of any condition for the time being in force in relation to the registration.
- (2) Subsection (2) of section 33 of this Act shall apply to an application under subsection (1) above as it applies in relation to an application under subsection (1) of that section.
- (3) If the Commission—
  - (a) decides to grant an application under subsection (1) above, it shall give the authority notice of its decision, stating the condition varied or removed, and issue a new certificate of registration; or
  - (b) proposes to refuse such an application, it shall give the authority notice of, and a statement of the reasons for, that proposal.

*Status: Point in time view as at 01/04/2002.*

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#### Commencement Information

**I4** S. 36 wholly in force at 1.4.2002, see s. 81(2)-(4) and [S.S.I. 2002/162](#), [art. 2\(e\)](#) (subject to [arts. 3-13](#))

### 37 Right to make representations to Commission under Part 2 as respects conditions

- (1) A notice to which this section applies shall state that, within fourteen days after service of the notice, the local authority to whom it is given may make written representations to the Commission concerning any matter which they wish to dispute.
- (2) Where a notice to which this section applies has been given, the Commission shall do the thing proposed only after (whichever first occurs)—
  - (a) the authority make such representations as are mentioned in subsection (1) above;
  - (b) the authority notify the Commission in writing that such representations will not be made; or
  - (c) the period of fourteen days so mentioned elapses.
- (3) This section applies to—
  - (a) a notice under section 34(1)(ii) of this Act;
  - (b) a condition notice under section 13(1) of this Act, as applied by section 35; and
  - (c) a notice under section 36(3)(b) of this Act.

#### Commencement Information

**I5** S. 37 wholly in force at 1.4.2002, see s. 81(2)-(4) and [S.S.I. 2002/162](#), [art. 2\(e\)](#) (subject to [arts. 3-13](#))

### 38 Notice of Commission's decision under Part 2

- (1) If the Commission decides to implement a notice to which section 37 of this Act applies, it shall give the local authority to which that notice was given notice of its decision.
- (2) A notice under subsection (1) above shall—
  - (a) explain the right of appeal conferred by section 39 of this Act; and
  - (b) in the case of a decision—
    - (i) to grant an application in respect of which there has been a proposal under section 34(1)(b); or
    - (ii) to vary or remove a condition or to impose an additional condition, state the condition or additional condition imposed, or the condition varied or removed, as the case may be.
- (3) Subject to subsection (4) below, a decision to implement a notice to which section 37 of this Act applies shall not take effect—
  - (a) if no appeal is brought, until the period of fourteen days referred to in section 39(1) of this Act has elapsed; and
  - (b) if an appeal is brought, until that appeal is finally determined or abandoned.

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- (4) Where the authority notify the Commission in writing, before the period of fourteen days referred to in section 39(1) of this Act has elapsed, that there will be no appeal against a notice under section 34(1)(ii), that notice shall take effect on receipt of such notification by the authority.

**Commencement Information**

**I6** S. 38 wholly in force at 1.4.2002, see s. 81(2)-(4) and [S.S.I. 2002/162](#), [art. 2\(e\)](#) (subject to [arts. 3-13](#))

**39 Appeal against decision under Part 2**

- (1) A local authority given notice of a decision under section 38(1) may, within fourteen days after that notice is given, appeal to the sheriff against the decision.
- (2) Subsection (2) of section 20 of this Act shall apply to an appeal under subsection (1) above as it applies to an appeal under subsection (1) of that section.

**Commencement Information**

**I7** S. 39 wholly in force at 1.4.2002, see s. 81(2)-(4) and [S.S.I. 2002/162](#), [art. 2\(e\)](#) (subject to [arts. 3-13](#))

**40 Offences under Part 2**

- (1) Sections 21(1) and (3) and 23 of this Act shall apply in relation to a care service registered under this Part as they apply in relation to such a service registered under Part 1 of this Act; and section 21(2) shall apply for the purposes of this Part as if the reference in that section to section 9(4) of this Act were a reference to section 9(4) as applied by section 34(3) of this Act.
- (2) Section 22 of this Act shall apply to a person who makes—
- (a) an application for registration under this Part; or
  - (b) an application for variation or removal of a condition in force in relation to a registration under this Part,
- as it applies to a person who makes an application mentioned in paragraph (a) or (b) of that section.

**Commencement Information**

**I8** S. 40 wholly in force at 1.4.2002, see s. 81(2)-(4) and [S.S.I. 2002/162](#), [art. 2\(e\)](#) (subject to [arts. 3-13](#))

**41 Report to Scottish Ministers**

- (1) Where the Commission has given an improvement notice to a local authority in respect of a care service provided by them and registered under this Part, the Commission shall forthwith—
- (a) report that fact; and
  - (b) give a copy of the improvement notice,
- to the Scottish Ministers.

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- (2) Within fourteen days after the expiry of the period specified in the improvement notice, the Commission shall report to the Scottish Ministers—
- (a) where the improvement notice has been complied with, that it has been; or
  - (b) where the improvement notice has not been complied with, the respect in which it has not been,
- and shall give to the Scottish Ministers such other information as they may reasonably require in relation to the compliance or failure to comply, as the case may be.
- (3) Without prejudice to subsection (1) above, in a case where—
- (a) any person has been convicted of a relevant offence in relation to the service provided by the authority; or
  - (b) it appears to the Commission that that service is being, or has at any time been, carried on other than in accordance with the relevant requirements,
- the Commission shall report that matter to the Scottish Ministers and give them such other information as they may reasonably require in relation to the matter.
- (4) For the purposes of—
- (a) paragraph (a) of subsection (3) above, the following are relevant offences—
    - (i) an offence under this Act;
    - (ii) an offence under regulations made under this Act; or
    - (iii) an offence which, in the opinion of the Commission, makes it appropriate that there should be a report to the Scottish Ministers under that subsection; and
  - (b) paragraph (b) of that subsection and section 42 of this Act, the following are relevant requirements—
    - (i) any requirements (or conditions) imposed by or under this Act;
    - (ii) the requirements of regulations made under this Act; or
    - (iii) any requirements (or conditions) imposed by, under or by virtue of such other Act as may be prescribed.
- (5) The Commission shall report and provide information to the Scottish Ministers on such other matters in relation to a care service registered under this Part as may be prescribed.

#### **Commencement Information**

**19** S. 41 wholly in force at 1.4.2002, see s. 81(2)-(4) and [S.S.I. 2002/162](#), [art. 2\(e\)](#) (subject to [arts. 3-13](#))

## **42 Default powers of Scottish Ministers**

- (1) If the Scottish Ministers (having received a report under section 41 of this Act or otherwise) are satisfied that a local authority providing a care service registered under this Part are, without reasonable excuse—
- (a) failing to comply with an improvement notice; or
  - (b) carrying on the service other than in accordance with the relevant requirements,
- they may take the action mentioned in subsection (2) below in respect of the matter.
- (2) The action is—

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- (a) to make an order declaring the authority to be in default; and
  - (b) to take such steps to remedy the matter as may be specified in the direction within such reasonable period as may be so specified.
- (3) If the authority fail to comply with a direction under subsection (2) above—
- (a) the Scottish Ministers may—
    - (i) take the steps specified in the direction themselves; or
    - (ii) make arrangements for any other person to take those steps on their behalf; or
  - (b) the Court of Session may, on the application of the Lord Advocate, order specific performance of those steps.
- (4) All expenses of the Scottish Ministers under subsection (3) above shall be recoverable as a debt due by the authority to them.

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**Commencement Information**

**I10** S. 42 wholly in force at 1.4.2002, see s. 81(2)-(4) and [S.S.I. 2002/162](#), [art. 2\(e\)](#) (subject to [arts. 3-13](#))

**Status:**

Point in time view as at 01/04/2002.

**Changes to legislation:**

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