

PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 5 – Social Care and Social Work: Scrutiny and Improvement

Chapter 3 – Care Services

Registration of care services

Section 59 – Registration of care services

104. This section sets out the framework for applications for registration of care services as defined in section 47 and specifies that such registration must be made to SCSWIS and must include details of the person who is to manage the service and such other matters as SCSWIS may reasonably request in addition to such matters as may be prescribed by order.
105. Subsection (4) provides that subsections (1) to (3) do not apply to local authority adoption and fostering services or any other care services registered under section 83(1)(c).

Section 60 – Grant or refusal of registration

106. Registration will only be granted if SCSWIS is satisfied that the applicant has demonstrated that they have complied with or will comply with the relevant standards and other relevant requirements. The burden of proof is with the applicant rather than SCSWIS.
107. Subsections (1) and (2) provide that an application under section 59 can be granted either unconditionally or subject to any conditions SCSWIS sees fit to impose, or refused. Specific conditions may be required to take account of the circumstances in an individual service, for example, a condition that a particular door is kept locked to prevent children from wandering directly onto a busy road, or that a particular ratio or skill mix of staff is needed.
108. Subsection (3) provides that if SCSWIS is satisfied that the applicant is complying with, or will comply with any applicable regulations under section 78, and the requirements of any other legislation that it considers relevant, it should give the applicant notice of its decision to grant registration either unconditionally or with agreed conditions under section 71(1) or subject to conditions to be agreed under section 73(1). Otherwise, it will give notice of its refusal of registration under section 71(2).
109. If SCSWIS grants the application, it must issue a certificate of registration (subsection (4)), which the service provider must display in a prominent position (subsection (5)), either in the premises where the care service is operated from, and if there is a separate management office, in that office too.

Section 61 – Limited registration

- 110. Subsection (1) provides for SCSWIS to register on a limited basis residential accommodation which does not require to be registered as a care service, for the sole purpose of permitting the manager to apply to manage the finances of an adult with incapacity under the provisions of the Adults with Incapacity (Scotland) Act 2000. Applications so granted will be considered limited registrations.
- 111. Subsection (2) provides that the information to be supplied with such an application should be the same as for a care service seeking registration under section 59. Subsections (3) and (4) provide that various registration, inspection and enforcement provisions which apply to care services should also apply to those granted limited registration.

Improvement notices

Section 62 – Improvement notices: care services

- 112. This section gives SCSWIS the power to serve an improvement notice on a care service. Such a notice will specify the improvements required to bring a care service up to the standards required and the timescale for meeting these standards.
- 113. For care services registered under this Chapter, subsection (1)(a) provides for SCSWIS to warn that if the necessary improvements are not made within the time allowed SCSWIS intends to begin procedures under section 64 to cancel a service's registration. Subsection (1)(b) provides for SCSWIS to warn that if improvement notices served on local authority adoption and fostering services and other services registered under Chapter 4 are not complied with SCSWIS intends to make a report to Scottish Ministers under section 91.
- 114. There may be cases where a voluntary or private sector service commissioned by a local authority is essential to the fulfilment of a local authority duty. Subsection (2) therefore provides that when an improvement notice is given to a non-local authority service, the local authority should be informed.

Section 63 – Special provision for certain care services provided by local authorities

- 115. This section adds to the provisions on improvement notices for local authority services registered under this Chapter to cover cases where the local authority considers that withdrawal of registration would place it in breach of a statutory duty.
- 116. Subsection (1) requires such a local authority to inform SCSWIS of its view within 14 days of receiving an improvement notice, giving the reasons. Subsection (2) requires SCSWIS then to copy the improvement notice to Ministers with the local authority's argument and their views on it. Subsection (3) requires Ministers to decide whether the local authority's view is justified. If it is, the care service is deemed to be registered under Chapter 4 and the provisions in that Chapter in relation to enforcement would apply. If it is not, the normal arrangements under Chapter 3 would apply.

Proposals and applications in relation to registered care services

Section 64 – Cancellation of registration

- 117. This section gives SCSWIS the power to cancel the registration of a care service registered under this Chapter that, having been issued with an improvement notice under section 62, 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.
- 118. Subsection (2) provides that relevant offences for the purpose of this section are:

- an offence under this Part - for example, providing a care service while not being registered (section 80(1)(a)), knowingly making a false or misleading statement when applying for registration or variation or removal of a condition (section 80(1)(b)) or failing to display a current certificate of registration (section 80(2));
 - an offence under regulations made under this Part;
 - any other offence which in SCSWIS's view makes it appropriate to cancel a registration.
119. Registration can be formally cancelled 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 SCSWIS will be aware of previous history in dealing with any future applications. Again, SCSWIS must take the standards and outcomes established under section 50 and the Scottish Social Services Council's codes of practice into account in coming to its decisions.
120. 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, SCSWIS will be able to cancel registration.
121. Subsection (4) allows SCSWIS to cancel a registration, without first issuing an improvement notice, where the person providing a registered care services ceases to provide the service.

Section 65 – Emergency cancellation of registration

122. Subsections (1) to (3) enable SCSWIS to apply to the sheriff for an order cancelling the registration of a care service under this chapter. The sheriff may make such an order where he considers that unless the order is made there will be serious risk to the life, health or well-being of users of the service (or other persons). Subsections (4) and (5) require SCSWIS to inform the appropriate local authorities and the provider of the application where an order (or an interim order) is made. Subsection (6) allows the sheriff to determine the application even where the service provider is not present.
123. Subsection (7) provides that the order can come into effect on the day it is made or on some later date decided by the sheriff. An order to cancel a service's registration would have the effect of closing the service. This provision therefore allows a delay if appropriate before closure takes effect in order that the service may be closed down in a proper manner and for instance service users relocated.
124. Subsections (8) and (9) allow an appeal to be made to the sheriff within 14 days of an order being made and for the sheriff principal on hearing such an appeal to confirm, revoke or modify the order. The order remains in force when an appeal is made. No further appeal is allowed.

Section 66 – Condition notices

125. This section gives SCSWIS the power to notify the care service provider by way of a "condition notice" that a condition in force may be varied, removed or added to SCSWIS.

Section 67 – Emergency Condition Notices

126. This section gives SCSWIS the power to give immediate effect to any condition notice which it serves on a registered service. This will only be applied when, in SCSWIS' view, there is serious risk to life, health or wellbeing if the condition is not imposed. The service provider may make representations to SCSWIS to vary or remove

the emergency condition notice. SCSWIS must consider any such representation and inform the provider of the action it proposed to take. Where SCSWIS does not intend to vary or remove the condition, the provider may appeal to the sheriff under section 69(1).

Section 68 – Application of Part to condition notices following emergency condition notices

127. This section disapplies other sections in the Act which outline that 14 days must elapse before a condition notice can be applied, ensuring that immediate action of the emergency conditions notices is allowed within the legislation.

Section 69 – Emergency Condition Notices: Appeals

128. This section gives a right of appeal to the sheriff to any person given an emergency condition notice within 14 days of the imposition of the condition, if they have made not appeal to SCSWIS or have made an appeal and been informed by SCSWIS that the condition notice stands. The sheriff may decide to direct that the condition continues, ceases, is varied or impose additional conditions in relation to the registration.

Section 70 – Applications under Chapter 3 in respect of conditions

129. 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, to apply for the addition of a condition, for example, to limit the type of services which may be provided by a care service, 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 SCSWIS has given notice of intention to, or decided to, cancel registration. Subsection (3) provides that an application shall be accompanied by the appropriate 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 SCSWIS grants an application for a change of conditions it must give notice in writing and issue a new certificate of registration.

Section 71 – Further provision as respects notice of proposals

130. Subsection (1) provides that if SCSWIS proposes to grant an application under section 59 but subject to a condition that has yet to be agreed by the applicant, it must give notice of the proposed condition to the applicant. Subsection (2) requires SCSWIS to give notice if it intends to cancel a registration. Subsection (3) provides that SCSWIS must give notice of a proposal to cancel a registration to the person providing the services; except where the person providing the service has applied to SCSWIS for its cancellation under section 70(1)(b). Subsection (4) provides that SCSWIS must give a person who has applied under section 70(1)(a) for the variation or removal of any condition on their registration, notice of a proposal to refuse that application. Subsection (5) provides that any notice under this section must provide reasons for that proposal.

Section 72 – Right to make representations to SCSWIS as respects proposals under Chapter 3

131. Subsection (1) states that a notice given under section 71, or a condition notice must indicate that the recipient can, if they so wish, make written representations to SCSWIS within a time limit of 14 days. This ensures that the applicant has the opportunity to make their point of view known. Subsection (2) provides that SCSWIS may only implement a proposal that was the subject of a condition notice or a notice under section 71 if it has considered any representations made by the recipient of the notice, the recipient has indicated that they will not make any representations or the 14 day period referred to in subsection (1) has elapsed and subsection (3) provides that if no representation is made, or the 14 day period has elapsed, SCSWIS must implement the proposal unless it would be inappropriate to do so.

Section 73 – Notice of SCSWIS’s decision under Chapter 3

132. Subsection (1) provides that SCSWIS should give notice when granting an application for registration unconditionally or subject to a condition that has been agreed in writing between SCSWIS and the applicant.
133. Subsections (3) to (6) deal with situations where the representations stage has been completed, requiring SCSWIS to serve a notice in writing of their decision on the applicant. The notice must explain the right of appeal conferred by section 75 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 74 – Conditions as to numbers

134. This section provides that SCSWIS 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).
135. The services covered by this section are care homes, school care accommodation, secure accommodation, adult placement services, support services, child minding, day care for children and nurse agencies.
136. 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 75– Appeal against decision to implement proposal

137. This section provides for an appeal against a decision made by SCSWIS under section 73(3), based on a proposal made by SCSWIS under section 71. 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.

Fees

Section 76 – Registration fees

138. This section sets out the fees which are payable to SCSWIS. Subsection (1) gives Scottish Ministers power to prescribe maximum levels of fees which may be imposed (following consultation with those who will or may be affected by the proposals) and to determine whether or not a fee is payable by order. Subsection (2) sets out the activities for which SCSWIS is able to impose fees and subsection (3) provides that SCSWIS consider its reasonable expenses in carrying out functions under Chapter 3 when fixing fees, but may charge a nominal fee or remit the fee altogether where appropriate.

Regulations

Section 77 – Regulations: registers and registration

139. Subsection (1)(a) provides for Scottish Ministers to make regulations about how SCSWIS should maintain registers. Subsection (1)(b) allows regulations to be made about the information that should be provided in an application under Chapter 3 or 4 and what certificates of registration should include, for example the conditions of registration of a care service. Subsection (1)(b)(iii) provides for regulations specifying types of applicants who cannot make certain kinds of applications.
140. Subsections (1)(c) and (d) allow regulations to be made that define the circumstances and conditions, including the payment of a fee, under which SCSWIS should provide access to its registers. Subsection (1)(e) gives Scottish Ministers the power to make regulations conferring additional functions on SCSWIS in relation to registration under the Part.
141. Subsection (2) allows for regulations to be made setting out when fees should not be payable and provides that SCSWIS can give access to the register free of charge.
142. Regulations under this section could, for example, be used to prevent unrestricted access to the names and addresses of service users such as users of children's services, where there might be a consequent risk to children. The regulations could contain a requirement for someone to show they had a legitimate interest before they could be granted access to certain registers.

Section 78 – Regulations: care services

143. This section gives Scottish Ministers the power to make regulations in respect of care services. Such regulations could cover matters such as the way in which care services are conducted and make further provisions in relation to their scrutiny and the protection of users; they could also be used to cover the normal day to day administrative matters required for well run care services such as provision in relation to management, staffing and premises. The regulations may also give SCSWIS additional functions in relation to care services.
144. Subsection (3) provides that regulations made under this section may make it an offence to fail to comply with specific provisions within the regulations, or with a condition of registration. Subsection (4) provides that a person guilty of such an offence would be liable to a fine not exceeding level 5 on the standard scale (£5,000 at present).
145. Subsection (5) requires the Scottish Ministers to consult such persons as they consider appropriate before making regulations under the powers in this section.

Complaints

Section 79 – Complaints about care services

146. Subsection (1) requires SCSWIS to establish suitable procedures for dealing with any complaints made to it about regulated care services by users, their relatives or advocates or staff. Subsection (3) requires that, before establishing such procedures, SCSWIS will be required to consult local authorities, the Scottish Public Services Ombudsman (SPSO) and such other persons or groups of persons it considers appropriate.
147. While local resolution of complaints by the provider will be the norm, subsection (2) makes clear there is no requirement for a user of a service to go through the provider's own system before approaching SCSWIS. Any procedures developed must be kept under review by SCSWIS, who must also ensure that the established procedure is given the appropriate publicity.

Offences

Section 80 – Offences in relation to registration under Chapter 3

148. This section sets out offences under Chapter 3. Subsection (1) makes it an offence for a person to describe any service as a care service for the purposes of this Act when it is not registered as such. This would catch, for example, an hotel owner who tried to pretend their hotel was a care home. If convicted of an offence under this subsection, the person would be liable to a fine not exceeding level 5 on the standard scale or up to three months imprisonment, or both.
149. Subsection (2) makes it an offence not to display a certificate of registration in a prominent place. The penalty on summary conviction is a fine not exceeding level 2 on the standard scale.
150. Subsection (3) provides that an individual or body, other than an adoption agency, making arrangements for the adoption of a child would be prosecuted under section 75 of the [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#) rather than this Act. This will ensure that there is not duplication of powers under this Act and the 2007 Act.

Section 81 – False statements in application under Chapter 3

151. This section makes it an offence to knowingly give information which is false or misleading in a material respect when making an application for registration, or for variation or removal of a condition. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale.

Section 82 – Offences by bodies corporate etc.

152. This section provides that if an offence under Chapter 3 (or regulations made under Chapter 3) is committed with the consent or connivance of an officer of a body corporate, a local authority, a partnership, or an unincorporated association, or if that officer has been complicit or been negligent, then the officer as well as the organisation is guilty of the offence. Individual officers of a body corporate, partners of a partnership, or persons managing or controlling an unincorporated association who are complicit in an offence under this Chapter will not be able to escape prosecution simply because the organisation is liable: both they and it may be liable to prosecution.