

PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

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

Chapter 4 – Local Authority Adoption and Fostering Services etc.

Section 83 – Local authority applications for registration under Chapter 4

153. Local authorities are under a statutory duty to provide adoption and fostering services which means that, unlike most care services, SCSWIS will not be able to take direct enforcement action against authorities. It would not be appropriate for SCSWIS to de-register a local authority's adoption service, for example, since that would prevent the authority from fulfilling its statutory duty. There may also be some other individual care services where non-registration or cancellation of registration would result in a local authority being in breach of a statutory duty. Instead SCSWIS will prepare a report to Ministers who will then decide what action should be taken against the local authority.
154. These services cannot therefore be covered by the registration and enforcement provisions in Chapter 3 of the Act. This Chapter therefore provides similar requirements and rights that will apply to local authorities providing adoption and fostering services and other services needed so as to fulfil a statutory duty. The substantive difference is the role of Scottish Ministers in being informed of improvement notices and being empowered to take default action where they consider that the provision of these services is unsatisfactory.
155. Subsection (1)(a) and (b) require a local authority to apply to SCSWIS to register its adoption and fostering services (as set out in paragraph 8(1)(a) and 9(a) and (c) to schedule 12 respectively) and subsection (1)(c) extends this requirement to register any other care service which a local authority determines they must provide in order to fulfil a statutory duty. Subsection (2) empowers Ministers to prescribe the manner and content of applications and that a fee should be payable.
156. Subsection (3) makes provision for SCSWIS to disagree with the local authority's determination in (1)(c) and refer the matter to Ministers, giving its reasons. Ministers must then decide (subsection (4)) whether the local authority's determination is justified. If it considers that it is not, then subsection (5) provides that the application for registration is deemed to have been under the Chapter 3 provisions.