

REGULATION OF CARE (SCOTLAND) ACT 2001

EXPLANATORY NOTES

THE ACT

Commentary on sections

Part 3: the Council

Constitution

Section 43: Constitution of Scottish Social Services Council

138. Subsection (1) establishes the Scottish Social Services Council. It is a statutory body corporate which will exercise the functions given to it by or under the Act or other relevant legislation. Subsection (2) provides that the Council must, in the exercise of its functions act in accordance with written directions given to it by, and under the general guidance of, Scottish Ministers, and encourage equal opportunities in exercising its functions under the Act. Subsection (3) gives effect to Schedule 2 which sets out the constitutional arrangements and general provisions for the Council. The Council will be a non-departmental public body.

Registration

Section 44: Register of social workers and of other social service workers

139. This section provides for the Council to establish and maintain a register of social service workers. Subsection (2) provides that there should be separate parts of the register for social workers, for each prescribed description of other social service worker, and for students training to become social workers or prescribed social service workers.
140. The social services workforce is large and diverse: more than 100,000 people with a range of qualifications and experience. It would be impractical to register this many people in one go and it was therefore decided to begin with a limited qualifications based register. The White Paper identified 3 groups of staff which would be registered. The responses of the consultation document urged that these groups should be extended. It was therefore decided that initially, registers should cover social workers and 4 specified groups of other social service workers. A second tranche of 2 other groups of staff would be registered in due course and other staff would be registered as soon as this was practicable. Subsection (3) will enable specific parts of the register to be closed, for example to reflect any changes to the nature of service delivery in future.

Section 45: Applications for registration under Part 3

141. This section provides for the Council to make rules, subject to approval by Scottish Ministers, governing how applications to register shall be made. Subsection (3) makes it an offence to knowingly give information which is false or misleading in a material

respect when making an application for registration. The penalty is a fine not exceeding level 4 on the standard scale (£2500 at present).

Section 46: Grant or refusal of registration under Part 3

142. Subsection (1) provides that applications for registration may be granted either unconditionally or subject to conditions. Subsection (2) lists the conditions an applicant must satisfy in order to be registered with the Council. The Council must be satisfied as to an applicant's good character. Applicants must satisfy any requirements imposed by the Council as to education and training, conduct and competence. Social service workers other than social workers must meet any other requirements that the Council may establish through rules. The Council must refuse an application for registration if it is not satisfied that an applicant meets the conditions. The Council must give notice to an applicant if it proposes to refuse an application or impose conditions. Subsection (3) provides that this notice should set out the Council's reasons for the proposal.
143. Subsections (4)-(7) provide for the Council to recognise, for the purposes of registration, qualifications gained outwith Scotland. The Council can accept professional qualifications of nationals from any EEA state if these are prescribed as having Community equivalence. Such nationals may also have to satisfy other requirements imposed by rules made by the Council. Where the training of applicants from outwith Scotland is not recognised by the Council, additional training can be required, in accordance with Council rules.
144. As each of the UK countries will have its own regulatory body, this section applies to qualifications obtained in England, Wales and Northern Ireland as well as those gained in other EEA states and in other parts of the world.

Section 47: Variation etc. of conditions in relation to registration under Part 3

145. This section allows for the Council to give notice to a person on its register that it intends to vary or remove an existing condition of registration or to impose a new condition. This notice must set out the Council's reasons for the proposal.

Section 48: Right to make representations to Council as respects proposals

146. Subsection (1) gives an applicant or a registered person the right to make written representations to the Council about a proposal to vary or remove an existing condition or impose a condition or an additional condition on registration. It would give the same right to an applicant, where the Council proposes to refuse an application or to grant an application subject to conditions. In all cases, written representations would need to be made within 14 days of the Council giving notice of a proposal. Subsection (2) provides that no action can be taken by the Council in relation to a proposal until the period for representation has elapsed or a representation has been made within that period.
147. This section provides an applicant or a registered person with a first stage of appeal to the Council about its decisions rather than the first stage of appeal being to the sheriff. This should avoid a situation where the courts are burdened with cases that should rightly be considered by the Council in the first instance.

Section 49: Removal etc. from the Council's register

148. This section provides for the Council to make rules, subject to the approval of Scottish Ministers, about the circumstances under which a person can be removed or suspended from any part of the register. It also provides for rules to be made about the circumstances under which a person can be restored to the register or their entry altered. The section explains that the rules will make provision for the procedure to be followed, standard of proof required, and for the rules of evidence in proceedings by which the matter can be determined. The intention is that the burden of proof should be on the balance of probabilities. These proceedings may be held in public.

Section 50: Notice of Council's decision

149. This section requires the Council to give an applicant notice of a decision to grant an application for registration or to implement a proposal to refuse registration or to grant registration subject to conditions. It also requires the Council to give a registered person notice of a decision to remove, suspend, restore or alter an entry in a part of the register or to implement a proposal to vary or remove conditions or impose an additional condition on registration.
150. Subsection (3) provides that the Council would have to explain in the notice the right of appeal against the decision and, where appropriate, any new or varied conditions imposed on registration. The amendment would allow no action to be taken in relation to the decision until the period of appeal (ie 14 days) has elapsed or the appeal, if brought, is finally determined or abandoned.

Section 51: Appeal against decision of the Council

151. This section provides for an applicant or registered person, given notice, following an appeal period or process, of a decision to implement a proposal relating to registration, to appeal that decision to the sheriff within 14 days. People will have the right to appeal against decisions made by the Council in respect of registration, for example, a decision not to register them or to remove them from the register. Access to an appeals procedure is essential because such decisions could affect an individual's ability to secure employment.

Offence

Section 52: Use of title "social worker" etc.

152. This section provides for protection of the title "social worker" by the creation of an offence punishable by a fine up to level 5 on the standard scale (£5000 at present), for a person who is not registered as a social worker (whether in Scotland or elsewhere in the UK) to use that title or hold themselves out as a registered social worker with an intention to deceive. Subsection (1)(b) provides that Scottish Ministers may prescribe by order other job titles to be protected under this section.
153. Registration as a social worker with the Council will in effect grant a license to practise and thereby provide access to work with vulnerable people.

Codes of practice

Section 53: Codes of practice

154. Under section 53 the Council is required to produce codes of practice for social service workers and for employers of such staff. No such nationally agreed codes exist at present. This is a fast developing field, therefore the codes will not be static. The Council will be obliged to gain consent from Scottish Ministers before publishing codes, and to consult the Commission, other bodies, persons and groups of persons that may be prescribed and anyone else, as appropriate. The Council shall keep the codes under review and amend them where it thinks necessary, consulting as above. Adherence to the codes will be taken account of in the work of the Commission.

Training

Section 54: Approval of courses etc.

155. The Council will take over the regulation of professional social work training and related post-qualifying training from the Central Council for Education and Training in Social Work (CCETSW).

156. **Section 54** gives wide powers to the Council to promote education and training and to approve courses with the intention of ensuring the consistency and quality of the education and to secure or provide appropriate training when this is not, in the opinion of the Council, already being made available. The Council will co-operate with relevant regulatory bodies and awarding bodies to ensure that education and training for all social service workers is appropriately provided and regulated.

Section 55: Grants and allowances for social service workers' training

157. This section provides that the Council may make grants and pay allowances to persons resident in Scotland to enable them to undertake education and training, and make grants to organisations providing approved courses. Subsection (2) provides that the Council can only make grants or pay allowances to individuals for purposes specified by Scottish Ministers. Subsection (3) provides that Scottish Ministers may, by direction, specify the terms and conditions under which the Council is able to make such grants and allowances, and subsection (4) allows them to determine which students and which courses may receive grants and the maximum grants payable.

Regulations and rules

Section 56: Regulations relating to the Council

158. Subsection (1)(a) gives Scottish Ministers the power to make regulations conferring additional functions on the Council in relation to workforce regulation and the education and training of those on the Council's register. Regulations might, for example, extend the scope of staffing registers or introduce new regulatory processes, like exams, for certain categories of applicant.
159. Subsection (1)(b) allows regulations to be made that require the Council to provide access to parts of the register. For example, there might be circumstances under which it is not appropriate to make registers, or parts of registers such as home addresses, available. A fee may be charged for access to the register.

Section 57: Power of Council to make rules

160. This section refers to the power of the Council to make rules about the issues in Part 3 of the Act. Rules can only be made with the consent of Scottish Ministers.
161. Subsection (1) deals with the register and registration. Subsection (2) concerns rules about the charging of fees in connection with the Council's functions. For example fees may be charged for registration, approval of courses, provision of training or provision of codes of practice.
162. It is common in many professions eg nursing, for continued registration with a regulatory body to be linked to continuing professional education and development. Subsections (3) and (4) provide that the Council may, having consulted as appropriate, require registered persons to undertake additional education and training. If they do not undertake this education and training, their registration may be suspended or cancelled. Subsection (5) gives wide powers to the Council to make rules about the approval of courses with the intention of ensuring the consistency and quality of the education to be provided for social service workers at pre- and post-qualifying levels.
163. As part of its powers to approve and monitor the effectiveness of individual training courses in social work the Council will need to be able to visit and report on the places delivering this training. Subsections (6)-(8) gives the Council powers to be able to appoint and pay the visitors to undertake this work on its behalf and to visit the places offering training. Provision is made in respect of visits both to higher education institutes, which deliver the academic element of the training, and to social services agencies that provide the practice placements where students can develop their practical skills.

164. Subsection (9) sets out the scope of the Council's rule making powers and provides that rules should be consistent, but should reflect different circumstances as appropriate.

Functions of the Scottish Ministers

Section 58: Functions of the Scottish Ministers under this part

165. This section gives certain functions to Scottish Ministers, who can in turn delegate such functions to the Council.
166. Subsection (1) gives Scottish Ministers responsibility to ascertain the size of the social services workforce that will be needed and its training needs. They are also given responsibility to encourage provision of assistance, and for the drawing up of occupational standards in social services. It will be necessary for the Council to work closely with National Training Organisations in allied fields and awarding bodies.
167. Subsections (2) and (3) establish the promotion of social services training as a function of Scottish Ministers, which they can devolve to the Council. Promotion of social services training is one of the functions currently undertaken by CCETSW. Promotion of training includes publicising training opportunities, attracting potential students to training and providing information for social care staff and recruits enquiring about training.