

2004 No. 100 (C. 7)

SOCIAL CARE

**The Regulation of Care (Scotland) Act 2001 (Commencement
No. 5 and Transitional Provisions) Order 2004**

Made - - - -

8th March 2004

The Scottish Ministers, in exercise of the powers conferred by sections 81(2), (3) and (4) of the Regulation of Care (Scotland) Act 2001(a), hereby make the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Regulation of Care (Scotland) Act 2001 (Commencement No. 5 and Transitional Provisions) Order 2004.

(2) In this Order—

“approved adoption society” has the same meaning as in section 65(1) of the 1978 Act;

“the Act” means the Regulation of Care (Scotland) Act 2001;

“the 1978 Act” means the Adoption (Scotland) Act 1978(b); and

“the 2002 Order” means the Regulation of Care (Scotland) Act 2001 (Commencement No. 2 and Transitional Provisions) Order 2002(c).

Commencement of provisions of the Act

2. The following provisions of the Act shall come into force on 1st April 2004:—

- (a) section 2, subsections (1)(i), and (j), (10) (so far as not already in force)(d) and (11) to (15);
- (b) section 5, subsection (4);
- (c) section 33, subsection (1) (so far as not already in force)(e);
- (d) section 79, so far as relating to the provisions in Schedule 3 specified in sub-paragraph (e) below;
- (e) in Schedule 3, paragraph 4(2), 7(1) to (10), (11) (so far as not already in force)(f) and paragraph 22(b) and (c);
- (f) Section 80, subsection (1), so far as relating to the provisions in Schedule 4 specified in sub-paragraph (g) below; and

(a) 2001 asp 8.

(b) 1978 c.28.

(c) S.S.I. 2002/162.

(d) Section 2(10) was brought partially into force on 1st April 2002 by S.S.I. 2002/162.

(e) Section 33(1)(c) was brought into force on 1st April 2002 by S.S.I. 2002/162.

(f) Paragraph 7(11) (b) of Schedule 3 was brought into force on 1st April 2002 by S.S.I. 2002/162.

- (g) in Schedule 4, the entries relating to section 94 of, and Schedule 2 to, the Children (Scotland) Act 1995^(a).

Transitional provisions

3.—(1) Subject to paragraph (2), where, immediately before 1st April 2004, a person provided a service to which this article applies and continues to provide it on and after the date, the service shall be treated, on and after that date, for all purposes as if it had been registered under Part 1, or as the case may be, Part 2, of the Act on that date.

(2) Paragraph (1) shall cease to apply—

- (a) where the person providing the service has before 1st October 2004 made an application for registration of the service under section 7(1), or as the case may be, section 33(1)(a) or (b) of the Act, on 1st April 2005; or
- (b) in any other case, on 1st October 2004.

(3) This article applies to the following services which fall within the definition of a care service on 1st April 2004—

- (a) an adoption service mentioned in subsection (11)(a) of section 2 of the Act;
- (b) an adoption service mentioned in subsection (11)(b) of that section which is provided by a body which was, immediately before 1st April 2004, an approved adoption society;
- (c) a fostering service;
- (d) an offender accommodation service, other than one to which article 4(8) of the 2002 Order applies.

4. Where before 1st April 2004, a body has applied to the Scottish Ministers for approval as an approved adoption society under section 3 of the 1978 Act and that application has not either been approved or refused by them by that date—

- (a) the provisions of that section and section 5 of that Act shall, notwithstanding their repeal by virtue of this Order, continue to apply on and after that date for the purpose of determining that application; and
- (b) if the application is approved, the adoption service provided by that body shall be treated, on and after the date on which the approval operates under section 3(2A) of the 1978 Act^(b), for all purposes as if it had been registered under Part 1 of the Act on that date until—
- (i) where the body providing the service has before 1st October 2004 made an application for registration of the service under section 7(1) of the Act, 1st April 2005; or
- (ii) in any other case, 1st October 2004.

TOM McCABE

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
8th March 2004

^(a) 1995 c.36.

^(b) Section 3(2A) was inserted into the 1978 Act by the Children (Scotland) Act 1995 (c.36), section 94(1).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings certain provisions of the Regulation of Care (Scotland) Act 2001 (“the Act”) into force on 1st April 2004 and makes transitional provisions.

Article 2(a) brings into force the definitions of those care services to which the Act will apply from that date, namely adoption services, fostering services and, in so far as not already commenced, offender accommodation services. The Act requires, in particular, persons providing such services to be registered under Part 1 of the Act with the Scottish Commission for the Regulation of Care (“the Commission”) (section 7) and those adopting and fostering services which are provided by a local authority to be registered under Part 2 of that Act (section 33).

Article 2(b) to (g) brings into force related provisions in the Act. Article 2(b) of the Order also has the effect of bringing into force section 5(4) of the Act in relation to other care services provided by a local authority and registered under Part 2 of the Act. Section 5(4) requires the national care standards and the Scottish Social Services Council’s codes of practice to be taken into account in various circumstances.

Articles 3 and 4 contain transitional provisions.

Article 3 deals with the case where, immediately before 1st April 2004, a person has provided a service mentioned in article 3(3) and continues to do so on and after that date. The services mentioned in article 3(3) are any adoption service maintained by a local authority under section 1(1) of the Adoption (Scotland) Act 1978 (“the 1978 Act) or by an approved adoption society, a fostering service or an offender accommodation service (other than one already within the definition of a care service). The person providing such a service is deemed to have registered that service under Part I, or as the case may be, Part 2, of the Act on 1st April 2004. Article 3(2) provides the circumstances in which a service will cease to be deemed to be registered. Deemed registration is to last until 1st October 2004 or, where the provider has applied to the Commission for registration before that date, for a further six months until 1st April 2005.

Article 4 deals with the case where, before 1st April 2004, a body has applied to the Scottish Ministers for approval as an approved adoption society under section 3 of the 1978 Act but the application has not been determined by that date. Article 4(a) provides that sections 3 and 5 of that Act shall, notwithstanding their repeal by virtue of this Order, continue to apply for the purpose of enabling the Scottish Ministers to determine that application. If the application is approved, the body is deemed to have registered that service under Part I on the date that the approval becomes operative. There is a similar provision as in Article 3 providing that deemed registration is to last until 1st October 2004 or, where the provider has applied to the Commission for registration before that date, for a further six months until 1st April 2005.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

1. The following provisions of the Act have been brought into force by the Regulation of Care (Scotland) Act 2001 (Commencement No. 1) Order 2001 (S.S.I. 2001/304):–

<i>Provision</i>	<i>Date of commencement</i>
Sections 5(1) and (2), 6, 24(1), 29, 30, 53 to 55, 63 to 65, 67, 71, 79 (partially), 80(3) and (4), and paragraphs 20 and 23(7) of schedule 3	1st October 2001
Section 70	20th December 2001

2. The following provisions of the Act have been brought into force by the Regulation of Care (Scotland) Act 2001 (Commencement No.2 and Transitional Provisions) Order 2001 (S.S.I. 2002/162):-

<i>Provision</i>	<i>Date of commencement</i>
Sections 2 subsections (1)(a) to (h), (l) and (m), (2) to (4), 5(a) and (b), (6), (9), (17) to (26) and (28)	1st April 2002
Section 2(5)(c) (partially)	
Section 2(7) (partially)	
Section 2(10) (partially)	
Sections 3, 5(3), 7, 9 to 23, 24(2) and (3), 25 to 27, 31, 32, 33(1)(c) and (2) to (4), 34 to 42, 44 to 51 and 72	
Section 79 (partially)	
Section 80(i) (partially)	
Paragraphs 1 to 3, 4(1) and (3), 5, 6, 7(11)(b), 8 to 19, 21, 23(1) to (6) and 25 of Schedule 3	
Schedule 4 (partially)	

3. The following provisions of the Act have been brought into force by the Regulation of Care (Scotland) Act 2001 (Commencement No.3 and Transitional Provisions) Order 2003 (S.S.I. 2003/205):-

<i>Provision</i>	<i>Date of commencement</i>
Sections 2(1)(n)	1st April 2003
Section 2(7) so far as not already in force	
Section 2(8)	
Section 2(27)	
Section 8	

4. The following provisions of the Act have been brought into force by the Regulation of Care (Scotland) Act 2001 (Commencement No. 4) Order 2003 (S.S.I. 2003/596):–

<i>Provision</i>	<i>Date of commencement</i>
Sections 73(1)(a)	5th December 2003
Section 73(2)	
Section 73(3)	
Section 73(4)	
Section 73(1)(b)	1st April 2004

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