

2011 No. 121

SOCIAL CARE

PUBLIC HEALTH

The Public Services Reform (Scotland) Act 2010 (Health and Social Care) Savings and Transitional Provisions Order 2011

Made - - - - *18th February 2011*
Laid before the Scottish Parliament *22nd February 2011*
Coming into force - - *1st April 2011*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 132 and 133(1)(c) of the Public Services Reform (Scotland) Act 2010(a) and all other powers enabling them to do so.

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Public Services Reform (Scotland) Act 2010 (Health and Social Care) Savings and Transitional Provisions Order 2011 and comes into force on 1st April 2011.

(2) In this Order—

“the appointed day” is 1st April 2011;

“care service” has the meaning given by section 47(1) of the 2010 Act;

“independent health care service” has the meaning given by section 10F of the NHS Act(b);

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

“the 2006 Act” means the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006(d);

“the 2010 Act” means the Public Services Reform (Scotland) Act 2010;

“the NHS Act” means the National Health Service (Scotland) Act 1978;

(a) 2010 asp 8.

(b) 1978 c.29. Sections 10A to 10Z19 were inserted by the Public Services Reform (Scotland) Act 2010 (asp 8), section 108.

(c) 2001 asp 8.

(d) 2006 asp 3.

“the Commission” means the Scottish Commission for the Regulation of Care(a);

“HIS” means Healthcare Improvement Scotland(b); and

“SCSWIS” means Social Care and Social Work Improvement Scotland(c).

PART II

CARE SERVICES

TRANSITIONAL PROVISIONS

Registration

2.—(1) Where on the appointed day, a person provides a care service which immediately before that day was registered under Part 1 or 2 of the 2001 Act, that care service is to be treated for all purposes as if it had been registered under Part 5 of the 2010 Act on that day and is subject to the same conditions as the registration under Part 1 or 2 of the 2001 Act was subject.

(2) Paragraph 1 does not apply to a registration to which article 18(1) applies.

Improvement notices

3.—(1) Where prior to the appointed day an improvement notice has been given under section 10 of the 2001 Act, that notice is to be treated for all purposes as if it had been given by SCSWIS under section 62 of the 2010 Act.

(2) Any reference in that notice to section 2, 12, 14, 41 or Part 2 of the 2001 Act is to be treated as a reference to section 64, 70, 91, Chapter 4 or schedule 12 of the 2010 Act as appropriate.

Cancellation notices

4. Where prior to the appointed day, the Commission has proposed under section 12 of the 2001 Act, to cancel the registration of a care service, that proposal is to be treated for all purposes as if it had been made by SCSWIS under section 64(1) of the 2010 Act, and as if any reference to a relevant offence or to a relevant requirement in that section were to a relevant offence or relevant requirement as defined in section 12 of the 2001 Act.

Condition notices

5. Where prior to the appointed day, a person providing a care service is given a condition notice under section 13 of the 2001 Act, that notice is to be treated for all purposes as if it had been given by SCSWIS under section 66 of the 2010 Act.

Applications in respect of conditions

6. Where prior to the appointed day a person providing a care service registered under Part 1 of the 2001 Act has applied to the Commission for the variation or removal of a condition in force in relation to the registration, or for cancellation of the registration, in accordance with section 14 of the 2001 Act, and that application has not been granted or refused prior to the appointed day, that application is to be treated for all purposes as if it were an application made to SCSWIS in

(a) The Scottish Commission for the Regulation of Care was established by section 1 of the Regulation of Care (Scotland) Act 2001 (asp 8).

(b) Healthcare Improvement Scotland was established by section 10A of the National Health Service (Scotland) Act 1978 (c.29).

(c) Social Care and Social Work Improvement Scotland was established by section 44 of the Public Services Reform (Scotland) Act 2010 (asp 8).

accordance with section 70 of the 2010 Act by a person providing a care service registered under Part 5 of that Act.

Registration of authorised persons

7. Where prior to the appointed day a person is registered in the register maintained by the Scottish Social Services Council under section 44(1)(b) of the 2001 Act, as an employee of the Commission who is also an authorised person within the meaning of sections 25 and 27 of the Act(a), that person is to be treated for all purposes as an authorised person in terms of section 56 of the 2010 Act.

National Care Standards

8. From the appointed day, the national care standards published by the Scottish Ministers under section 5 of the 2001 Act are to be treated for all purposes as if they were standards applicable to care services published under section 50 of the 2010 Act or standards applicable to independent health care services under section 10H of the NHS Act.

Complaints

9. Where immediately before the appointed day, the Commission has received a complaint relating to—

- (a) the Commission;
- (b) a care service; or
- (c) an independent health care service,

and investigation of that complaint has not concluded, the investigation of that complaint is to be carried out by SCSWIS.

PART III

INDEPENDENT HEALTH CARE SERVICES

TRANSITIONAL PROVISIONS

Registration

10.—(1) Where on the appointed day, a person provides an independent health care service which immediately before the appointed day was registered under Part 1 of the 2001 Act, that independent health care service is to be treated for all purposes as if it had been registered under section 10P(b) of the NHS Act and is subject to the same conditions as the registration under the 2001 Act was subject.

(2) Paragraph (1) does not apply to a registration to which article 18(1) applies.

Improvement notices

11. Where prior to the appointed day, an improvement notice has been given under section 10 of the 2001 Act to a person providing an independent health care service, that notice is to be treated for all purposes as if it had been given by HIS under section 10R of the NHS Act, and any reference to section 12 of the 2001 Act in that notice is to be treated as a reference to section 10S of the NHS Act.

(a) The Regulation of Care (Social Service Workers) (Scotland) Order (S.S.I. 2005/318) prescribes as amended by S.S.I. 2010/442 employees of the Commission for the purposes of section 44(1)(b) of the 2001 Act.

(b) Section 10A to 10Z19 was inserted by section 108 of the 2010 Act.

Cancellation notice

12. Where prior to the appointed day the Commission has proposed under section 12 of the 2001 Act to cancel the registration of an independent health care service, that proposal is to be treated for all purposes as if it had been made by HIS under section 10S of the NHS Act and as if any reference to a relevant offence or a relevant requirement in that section were to a relevant offence or relevant requirement as defined in section 12 of the 2001 Act.

Condition notices

13. Where prior to the appointed day, a person providing an independent health care service is given a condition notice by the Commission under section 13 of the 2001 Act, that notice is to be treated for all purposes as if it had been given by HIS under section 10U of the NHS Act.

Applications in respect of conditions

14. Where prior to the appointed day a person providing an independent healthcare service registered in accordance with Part 1 of the 2001 Act has applied to the Commission in accordance with section 14 of the 2001 Act for the variation or removal of a condition in force in relation to the registration, or for cancellation of the registration, and that application has not been granted or refused prior to the appointed day, that application is to be treated for all purposes as if it were an application made to HIS under section 10Y of the NHS Act by a person providing a independent healthcare service registered under section 10P of that Act.

PART IV

SAVINGS PROVISIONS

Applications

15.—(1) Subject to paragraphs (2) and (3), where a person who seeks to provide a care service or an independent healthcare service has made an application to the Commission in accordance with section 7 or 8 of the 2001 Act in respect of that service, and that application has not been determined by the Commission before the appointed day, that application is to continue to be dealt with under those provisions, and sections 9 and 15 of the 2001 Act remain in force for that purpose.

(2) Where paragraph (1) applies—

- (a) if the application relates to a care service all references to the Commission are to read as references to SCSWIS; and
- (b) if the application relates to an independent health care service all references to the Commission are to read as references to HIS.

(3) Where SCSWIS or HIS determine that such an application should be granted, SCSWIS or HIS, as the case may be, must grant registration under section 60 of the 2010 Act or section 10Q of the NHS Act, as the case may be, subject to such conditions as they think fit.

Care Commission inspections

16. Where prior to the appointed day the Commission has commenced an inspection of a care service or an independent health care service under section 25 of the 2001 Act, which has not concluded by the appointed day, that section and section 27 of the 2001 Act will continue in force for the purposes of that inspection.

Integrated inspections

17. Where before the appointed day the Commission and Her Majesty's inspectors have commenced an integrated inspection under section 26 of the 2001 Act, which has not concluded by the appointed day, that section will continue in force for the purposes of that inspection.

Urgent cancellation proceedings

18.—(1) Where prior to the appointed day the Commission has made a summary application to the sheriff for an order under section 18 of the 2001 Act, Part 1 of the 2001 Act continues to apply for the purposes of the service which is the subject of that application, until the final determination of that application.

(2) Where the registration of the service is not cancelled—

- (a) if the service is a care service, it is to be treated for all purposes as if it had been registered under Part 5 of the 2010 Act;
- (b) if the service is an independent health care service it is to be treated for all purposes as if it had been registered under section 10P of the NHS Act,

immediately following determination of the application.

Appeal proceedings

19. Where a person has been given notice within 14 days prior to the appointed day under section 17(3) of the 2001 Act, from the appointed day any right of appeal under section 20 of the 2001 Act is to be treated as arising under section 75 of the 2010 Act and any appeal taken under section 20 of the 2001 Act is to be treated as taken under section 75 of the 2010 Act.

Offences

20.—(1) Where prior to the appointed day criminal proceedings are ongoing in respect of an offence under section 21, 22, 23 or 40 of the 2001 Act, those sections continue in force for the purposes of those proceedings.

(2) Any offence committed under section 21, 22, 23 or 40 of the 2001 Act before the appointed day may be prosecuted after that day as if Part 1 of the 2001 Act had not been repealed.

Regulations

21. Despite the repeal of section 29 of the 2001 Act^(a), the following regulations continue in force—

- (a) the Regulation of Care (Fitness of Employees in relation to Care Services) (Scotland) (No. 2) Regulations 2009^(b);
- (b) regulations 19 to 24 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002^(c) and such other provisions of those Regulations as are necessary for the purposes of regulations 19 to 24.

(a) Section 29 of the Regulation of Care (Scotland) Act 2001 was repealed by the Public Services Reform (Scotland) Act 2010 (asp 8), schedule 14.

(b) S.S.I. 2009/118 as amended by 2009/349, 2010/413.

(c) S.S.I. 2002/114 as amended by 2003/149, 2003/572, 2004/94, 2006/274.

PART V
INSPECTIONS UNDER THE 2006 ACT
SAVINGS PROVISIONS

Inspections

22.—(1) Where immediately prior to the appointed day an inspection is being carried out under Part 1 of the 2006 Act, Part 1 of that Act continues in force for the purposes of that inspection.

(2) Where immediately prior to the appointed day an inspection is being carried under Part 2 of the 2006 Act, Part 2 of that Act continues in force for the purposes of that inspection.

(3) Part 3 of that Act continues in force insofar as necessary for the purposes of Parts 1 and 2 and those inspections.

S ROBISON
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
18th February 2011

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitional and savings provisions in respect of Social Care and Social Work Improvement Scotland (SCSWIS) and Healthcare Improvement Scotland (HIS) required as a result of the repeal of Part 1 of the Regulation of Care (Scotland) Act 2001 and the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006 by the Public Services Reform (Scotland) Act 2010 ("the 2010 Act"). These 2 bodies were established by the 2010 Act and come into operation on 1st April 2011 which is the appointed day for the purposes of this Order.

Articles 2 and 10 provide that where on the appointed day a person provides a care service or an independent health care service which had been registered under Part 1 of the Regulation of Care (Scotland) Act 2001 ("the 2001 Act"), this will now be treated for all purposes as if it had been registered under Part 5 of the Act or section 10P of the National Health (Scotland) Act 1978 ("the NHS Act") that is as if the body had been registered by either SCSWIS or HIS respectively.

Articles 3 and 11 provide that if a care service is subject to an improvement notice issued under the 2001 Act on the appointed day this is to be treated for all purposes as if it had been issued by SCSWIS in respect of a care service or HIS in respect of an independent care service under either the 2010 Act or the NHS Act.

Articles 4 and 12 provide that cancellation notices issued prior to the appointed day by the Care Commission are to be treated for all purposes as if they were cancellation notices issued by SCSWIS if the matter relates to a care service or HIS if the matter relates to an independent health care service. Similarly, articles 5 and 13 apply the same principle to condition notices and articles 6 and 14 apply the same principle to applications in respect of conditions.

Article 7 relates to the registration of authorised persons and provides that where immediately before the appointed day a person is registered by the Scottish Social Services Council as an employee of the Commission who is also an authorised person within the meaning of the 2001 Act, that person is to be treated for all purposes as if that person an authorised person, under section 50 of the 2010 Act.

Article 9 provides that any outstanding complaints in relation to the Commission, a care service or an independent health care service will be dealt with by SCSWIS.

The remainder of the Order relates to savings provisions. Article 15 provides that in respect of applications for registration of a care service which have not concluded by the appointed day sections 7 and 8 of the 2001 Act will continue in force until those applications are concluded at which point SCSWIS or HIS shall grant the registration in terms of either section 60 of the 2010 Act or section 10P of the NHS Act.

Article 16 provides that if an inspection by the Commission in relation to a care service or independent health care service has not concluded by the appointed day, section 25 of the 2001 Act shall continue in force for the purposes of that inspection.

Article 17 relates to integrated inspections under the 2001 Act. If an inspection carried out under section 26 of the 2001 Act has not concluded by the appointed day, section 26 is to continue until the inspection is concluded. Article 18 concerns urgent cancellation proceedings of registration of a care service or an independent health care service and provides that if an application for cancellation is ongoing on the appointed day, Part 1 of the 2001 Act shall continue in force until the conclusion of proceedings arising from that application for the purposes of any care services (whether they are a care service or an independent health care service) that may be subject to ongoing proceedings under section 18 of the 2001 Act on the appointed day.

Article 19 provides where within the 14 days prior to the appointed day a person has been given notice under section 17(3) of the 2001 Act, from the appointed day any right of appeal is to be treated as a right of appeal under the 2010 Act.

Article 20 provides that if any criminal proceedings are ongoing in respect of an offence under sections 21, 22, 23 or 40 of the 2001 Act, those sections shall continue in force until the conclusion of those proceedings and any offence committed under those sections before the appointed day may be prosecuted after that day as if Part 1 of the 2001 Act had not been repealed.

Article 21 concerns the savings of certain sections for the purposes of Regulations. Sections 2 and 29 of the 2001 Act are to continue in force for the purposes of the Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) (No. 2) Regulations 2009 and subsequent amending regulations and section 29 is also to continue in force for the purposes of regulations 19 to 24 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002.

Article 22 relates to inspections currently carried out under the Joint Inspections of Childrens Services and Inspection of Social Work Services (Scotland) Act 2006 and provides that if before the appointed day, a joint inspection under Part 1 of the 2006 or a social work inspection under Part 2 of the 2006 Act is not concluded, Parts 1 and 2 of the 2006 Act will continue in force until such inspections are finished.

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