Regulation of Care (Scotland) Bill
[AS INTRODUCED]

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Regulation of Care (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to establish the Scottish Commission for the Regulation of Care and the Scottish Social Services Council; to make provision for the registration and regulation of care services and for the registration, regulation and training of social service workers; to enable local authorities to make grants in respect of activities relating to child care and family support and to make direct payments to children in respect of certain care services; to enable the Scottish Ministers to delegate a power to make certain grants and loans for social work; to enable local authorities to provide and maintain residential accommodation in which nursing is provided; to amend the definition of “place of safety” in the Children (Scotland) Act 1995; to make further provision as respects the appointment for children of curators ad litem, reporting officers and safeguarders; and for connected purposes.

PART 1
THE COMMISSION AND CARE SERVICES

Constitution of Commission

1 Constitution of Scottish Commission for the Regulation of Care

(1) There shall be a body corporate, to be known as the Scottish Commission for the Regulation of Care (in this Act referred to as “the Commission”), which shall—

(a) exercise the functions conferred on it by this Act or any other enactment; and

(b) have the general duty of furthering improvement in the quality of care services provided in Scotland.

(2) The Commission shall, in the exercise of its functions, act—

(a) in accordance with any directions in writing given to it by the Scottish Ministers; and

(b) under the general guidance of the Scottish Ministers.

(3) Schedule 1 to this Act shall have effect with respect to the Commission.

Care services

2 Care services

(1) A “care service” is any of the following—
(a) a support service;
(b) a care home service;
(c) a school care accommodation service;
(d) an independent health care service;
(e) a nurse agency;
(f) a secure accommodation service;
(g) an offender accommodation service;
(h) child minding;
(i) day care of children; and
(j) a housing support service.

(2) A “support service” is a service provided, by reason of a person’s vulnerability or need (other than vulnerability or need arising by reason only of that person being of a young age), to that person or to someone who cares for that person by—

(a) a local authority;
(b) any person under arrangements made by a local authority;
(c) a health body; or
(d) any person if it includes personal care or personal support,

but the expression does not include a care home service, an independent health care service, a service which provides overnight accommodation or a service excepted from this definition by regulations, paragraphs (c) and (d) above do not apply where the provider is a health body acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978 (c.29) and paragraph (d) above does not apply if the provider is an individual who personally and solely gives the care or support in question.

(3) A “care home service” is a service which provides accommodation, together with nursing, personal care or personal support, for persons by reason of their vulnerability or need; but the expression does not include—

(a) a hospital;
(b) a public, independent or grant-aided school;
(c) an independent health care service; or
(d) a service excepted from this definition by regulations.

(4) A “school care accommodation service” is a service which is provided to a pupil by an education authority or the managers of an independent or grant-aided school, or by any person under arrangements made by any such authority or managers—

(a) for the purpose of the pupil being in attendance at a public, independent or grant-aided school; and
(b) which consists of the provision, in a place in or outwith the school, of residential accommodation, together with personal care or personal support by reason of the pupil’s vulnerability or need.

(5) An “independent health care service” is any of the following—

(a) an independent hospital;
(b) a private psychiatric hospital;
(c) an independent clinic; and
(d) an independent medical agency.

(6) A “nurse agency” is a service which consists of or includes supplying registered nurses, registered midwives or registered health visitors; but a service may be excepted from this definition by regulations.

(7) A “secure accommodation service” is a service which provides such accommodation as is defined as secure accommodation in section 93(1) of the Children (Scotland) Act 1995 (c.36).

(8) An “offender accommodation service” is a service which consists of giving advice, guidance or assistance to persons who have been provided with accommodation under subsection (1)(b) or (c) of section 27 of the Social Work (Scotland) Act 1968 (c.49) (supervision and care of persons put on probation or released from prison etc.); but the expression does not include a support service.

(9) “Child minding” means, subject to subsections (10), (11) and (13)(a) below, looking after one or more children on domestic premises for reward and “act as a child minder” shall be construed accordingly; but a service may be excepted from those definitions by regulations.

(10) For the purposes of subsection (9) above, a person who—
(a) is the parent, or a relative, of a child;
(b) has parental responsibilities (within the meaning given by section 1(3) of the Children (Scotland) Act 1995 (c.36)) relating to the child;
(c) is a foster parent with whom a child is placed by a local authority; or
(d) maintains a foster child (within the meaning of the Foster Children (Scotland) Act 1984 (c.56)),
does not act as a child minder when looking after that child.

(11) For the purposes of subsection (9) above, where a person—
(a) looks after a child for the parents of the child and the work consists of looking after the child wholly or mainly in the parents’ home; or
(b) looks after a child for the parents of the child (the “first parents”) and another child for the different parents of that other child (the “second parents”) and the work consists of looking after the children wholly or mainly in the first parents’ home or in the second parents’ home, or in both those homes,
that work is not child minding.

(12) “Day care of children” means, subject to subsections (13)(b) to (17) below, a service which consists of any form of care or activity, supervised by a responsible person and not excepted from this definition by regulations, provided for children, on premises other than domestic premises, during the day (whether or not it is provided on a regular basis or commences or ends during the hours of daylight).

(13) For the purposes of—
(a) subsection (9) above, a person does not act as a child minder;
(b) subsection (12) above, a person does not provide day care of children,
unless the period, or the total of periods, during which the service is provided exceeds two hours in any day.

(14) Where a person provides a service for children in particular premises on less than six days in any year, that provision is not day care of children for the purposes of subsection (12) above if the person has notified the Commission in writing, before the first occasion on which the service is so provided in that year, of the intention so to provide it.

(15) In subsection (14) above, “year” means the year beginning with the day on which the service is (after the commencement of this section) first provided in the premises concerned; and thereafter any year beginning with the anniversary of that day.

(16) For the purposes of subsection (12) above, a service which consists of looking after children who are patients in a hospital and is provided as part of the medical treatment which they are receiving there is not day care of children.

(17) For the purposes of subsection (12) above, a person does not provide day care of children where—

(a) the children are of school age;

(b) the service is provided—

(i) wholly or mainly in a public, independent or grant-aided school; and

(ii) as part of the school’s activities; and

(c) the person is—

(i) the education authority managing the school

(ii) the person carrying on the school; or

(iii) a person employed to work at the school and authorised to provide the service as part of the school’s activities.

(18) Expressions used in subsection (3)(b), (4) or (17) above have the meanings given by section 135(1) of the Education (Scotland) Act 1980 (c.44).

(19) A “housing support service” is a prescribed housing support service within the meaning of section 81 of the Housing (Scotland) Act 2001 (asp 00).

(20) In this Act, unless the context otherwise requires—

“someone who cares for” (or “a person who cares for”) a person, means someone who, being an individual, provides on a regular basis a substantial amount of care for that person, not having contracted to do so and not doing so for payment or in the course of providing a care service;

“vulnerability or need”, in relation to a person, means vulnerability or need arising by reason of that person—

(a) being affected by infirmity or ageing;

(b) being, or having been, affected by disability, illness or mental disorder;

(c) being, or having been, dependent on alcohol or drugs; or

(d) being of a young age;
“personal care” means care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash); and

“personal support” means counselling, or other help, provided as part of a planned programme of care.

3 **Power to amend the definition of “care service”**

The Scottish Ministers may by order amend the definition of “care service” in section 2(1) of this Act so as to add to the services which that definition comprehends such other service as they think fit; and they may by that order make such incidental or consequential amendments of this Act, or of any other enactment, as they consider necessary or expedient in consequence of that amendment.

4 **Information and advice**

(1) The Commission shall provide information to the public about the availability and quality of care services.

(2) The Commission—

(a) may at any time, and shall when asked to do so, provide advice to the Scottish Ministers; and

(b) shall when asked to do so provide advice to—

(i) persons who provide, seek to provide or may seek to provide care services;

(ii) local authorities; and

(iii) health bodies,

about any matter relevant to the functions of the Commission.

(3) The Commission may charge a reasonable fee determined by it for any advice, forms or documents provided for the assistance of any such person, authority or body as is mentioned in paragraph (b) of subsection (2) above.

5 **National care standards**

(1) The Scottish Ministers may prepare and publish national care standards applicable to care services; and they shall keep the standards so published under review and may publish amended such standards whenever they consider it appropriate to do so.

(2) Before publishing under subsection (1) above any—

(a) standards; or

(b) amended standards which in the opinion of the Scottish Ministers are substantially different from the standards (or amended standards) last so published, they shall consult any person they consider appropriate.
(3) The national care standards and the Council’s codes of practice (that is to say, the codes of practice published by the Council under section 36 of this Act) shall be taken into account—

(a) by the Commission in making any decision under this Part;

(b) in any proceedings for the making of an order under section 16 of this Act;

(c) in any proceedings on an appeal—

(i) under section 17(1) of this Act; or

(ii) against such an order; and

(d) in any proceedings for an offence in relation to registration under this Part.

Complaints

6 Complaints about care services

(1) The Commission shall establish a procedure by which a person, or someone acting on a person’s behalf, may make complaints (or other representations) in relation to the provision to the person of a care service or about the provision of a care service generally.

(2) The procedure must provide for it to be available whether or not procedures established by the provider of the service for making complaints (or other representations) about that service have been or are being pursued.

(3) Before establishing a procedure under subsection (1) above, the Commission shall consult all local authorities and health bodies and such other persons as it considers appropriate on its proposals for such a procedure and shall require to obtain the consent of the Scottish Ministers to those proposals.

(4) The Commission shall keep the procedure under review and shall vary it whenever, after such consultation and with such consent, it considers it appropriate to do so.

(5) The Commission shall give such publicity to the procedure (including the procedure as varied under subsection (4) above) as it considers appropriate and shall give a copy of the procedure to any person who requests it.

Registration

7 Applications for registration

(1) A person who seeks to provide a care service shall make an application to the Commission for registration of the service.

(2) An application shall—

(a) give such information as may be prescribed about prescribed matters;

(b) identify an individual (who may be the applicant) who is to manage the service;

(c) give any other information which the Commission may reasonably require the applicant to give; and

(d) without prejudice to subsection (1)(b) of section 20 of this Act, be accompanied by the fee imposed under subsection (2)(a) of that section.

(3) A person who provides, or seeks to provide, more than one care service must make a separate application in respect of each of them.
(4) The provision, by two or more branches, of services which (but for this subsection) would be one care service, shall, for the purposes of this Act, instead be treated as the provision of two, or as the case may be a number of, separate care services, each by one of those branches.

(5) In subsection (4) above, “branch” means an entity, of whatever description, which is separately carried on or managed; but a branch may provide a care service from two or more premises.

8 Grant or refusal of registration

(1) If the Commission is satisfied, in relation to an application under section 7 of this Act, that the requirements of—

(a) such regulations as are applicable under section 24 of this Act to the care service; and

(b) any other enactment which appears to the Commission to be relevant,

will be complied with in relation to that service, it shall grant the application; otherwise it shall refuse it.

(2) The application may be granted either unconditionally or subject to such conditions as the Commission thinks fit to impose.

(3) Without prejudice to the generality of subsection (2) above or of section 9(1) or 16(1)(c) of this Act, a condition imposed under any of those provisions in relation to a care service may limit the number of persons for whom the service may provide accommodation.

(4) On granting the application the Commission shall issue a certificate of registration to the applicant.

(5) The person for the time being providing the service shall ensure that the certificate (or a copy of it) is, while the certificate is current, kept affixed in a conspicuous place in each of the premises in or from which that service is provided; and, if those premises do not include the principal (or only) office of the service, then in that office also.

9 Improvement notices

(1) The Commission may at any time give notice (in this Act referred to as an “improvement notice”) to the person for the time being providing a service registered under this Act that, unless within such reasonable period as may be specified in the notice, there is a significant improvement, of such nature as may be so specified, in the provision of that service, it intends to make a proposal under section 10 of this Act.

(2) This section is without prejudice to section 16 of this Act.

10 Cancellation of registration

(1) The Commission may, at any time after the expiry of the period specified in an improvement notice given in respect of a care service, propose to cancel the registration, under this Part, of a care service—
(a) on the ground that any person has been convicted of a relevant offence in relation to the service;
(b) on the ground that the service is being, or has at any time been, carried on other than in accordance with the relevant requirements; or
(c) on any other ground which may be prescribed.

(2) For the purposes of—
(a) paragraph (a) of subsection (1) above, the following are relevant offences—
   (i) an offence under this Act;
   (ii) an offence under regulations made under this Act; or
   (iii) an offence which, in the opinion of the Commission, makes it appropriate that the registration should be cancelled; and
(b) paragraph (b) of that subsection, the following are relevant requirements—
   (i) any requirements or conditions imposed by or under this Act; or
   (ii) the requirements of regulations made under this Act.

(3) This section is without prejudice to section 16 of this Act.

11 Condition notices

(1) The Commission may at any time give notice (in this Act referred to as a “condition notice”) to the person for the time being providing a service registered under this Part that it proposes to—

   (a) vary or remove a condition for the time being in force; or
   (b) impose an additional condition,

in relation to the registration.

(2) This section is without prejudice to section 16 of this Act.

12 Applications in respect of a registration

(1) A person providing a service registered under this Part may apply to the Commission—

   (a) for the variation or removal of any condition for the time being in force in relation to the registration; or
   (b) for cancellation of the registration,

but no such application shall be competent in circumstances mentioned in subsection (2) below.

(2) The circumstances are that the Commission has given the person notice—

   (a) under section 13(2) of this Act of its proposal to cancel the registration (unless the Commission has decided not to take that step); or
   (b) under section 15(3) of this Act of its decision to cancel the registration and the time within which an appeal may be brought has not expired or, if an appeal has been brought, that appeal has not been determined.
(3) An application under subsection (1) above shall be made in such manner and state such particulars as may be prescribed; and, without prejudice to subsection (1)(b) of section 20 of this Act, shall be accompanied by the fee imposed under subsection (2)(a) or as the case may be (c) of that section.

(4) If the Commission decides to grant an application under subsection (1)(a) above it shall serve on the applicant notice in writing of its decision (stating, where applicable, the condition varied) and issue a new certificate of registration.

13 Further provision as respects notice of proposals

(1) If an application has been made under section 7 of this Act and the Commission proposes—

(a) to grant that application but to do so subject to a condition which has not been agreed in writing between it and the applicant, it shall give the applicant notice of the proposed condition;

(b) to refuse that application, it shall give such notice of the proposed refusal.

(2) Except where it makes an application under section 16(1) of this Act, the Commission shall give any person who provides a service registered under this Part notice of a proposal to cancel the registration (other than in accordance with an application under subsection (1)(b) of section 12 of this Act).

(3) The Commission shall give an applicant under subsection (1)(a) of section 12 of this Act notice of a proposal to refuse that application.

(4) A notice under this section shall give the Commission’s reasons for its proposal.

14 Right to make representations as respects proposals

(1) A condition notice or a notice under section 13 of this Act shall state that, within fourteen days after service of the notice, the person to whom it is given may make written representations to the Commission concerning any matter which that person wishes to dispute.

(2) Where such a notice has been given, the Commission shall not determine any matter to which that notice relates until (whichever first occurs)—

(a) the person to whom the notice was given makes such representations as are mentioned in subsection (1) above;

(b) that person notifies the Commission in writing that such representations will not be made; or

(c) the period of fourteen days so mentioned elapses.

15 Notice of decision

(1) If the Commission decides to grant unconditionally an application made under section 7 of this Act or to grant such application subject only to a condition which has been agreed in writing between the Commission and the applicant, it shall give the applicant notice of its decision.

(2) A notice under subsection (1) above shall state the agreed condition.
(3) If the Commission decides to implement a proposal in relation to which it has given a person a condition notice or a notice under section 13 of this Act, it shall give that person notice of the decision.

(4) A notice under subsection (3) above shall—

(a) explain the right of appeal conferred by section 17 of this Act; and

(b) in the case of a decision to implement a proposal—

   (i) in relation to which a condition notice has been given, state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed; or

   (ii) of which notice has been given under subsection (1)(a) of section 13 of this Act, state the condition subject to which the application is granted.

(5) Subject to subsection (6) below, a decision to implement a proposal in relation to which a condition notice has been given or of which notice has been given under subsection (1)(a) or (2) of the said section 13 shall not take effect—

(a) if no appeal is brought, until the period of fourteen days referred to in section 17(1) of this Act has elapsed; and

(b) if an appeal is brought, until that appeal is finally determined or is abandoned.

(6) Where the decision is to implement a proposal of which notice has been given under subsection (1)(a) of section 13 of this Act and the applicant notifies the Commission in writing, before the period of fourteen days referred to in section 17(1) of this Act has elapsed, that there will be no appeal, the decision shall take effect on receipt of that notification.

16 Urgent procedures for cancellation of registration etc.

(1) The Commission may make summary application to the sheriff for an order—

(a) cancelling the registration under this Part of a care service;

(b) varying or removing any condition for the time being in force in relation to the registration; or

(c) imposing an additional condition in relation to the registration,

and if it appears to the sheriff that, unless the order is made, there will be a serious risk to some other person’s life, health or well-being the application may be granted.

(2) As soon as practicable after the Commission makes an application under subsection (1) above, it shall so notify the appropriate authorities.

(3) Where the order applied for is made, the Commission shall as soon as practicable thereafter give a copy of it to the person who provides the care service.

(4) For the purposes of this section the appropriate authorities are—

(a) each—

   (i) local authority; and

   (ii) health board,

   within whose area the care service is provided; and

(b) any statutory authority not mentioned in paragraph (a) above whom the Commission thinks it appropriate to notify.
(5) In subsection (4)(b) above, “statutory authority” means a body established by or under an enactment.

17 **Appeal against decision to implement proposal**

(1) A person given notice under section 15(3) of this Act of a decision to implement a proposal may, within fourteen days after that notice is given, appeal to the sheriff against the decision.

(2) The sheriff may, on appeal under subsection (1) above, confirm the decision or direct that it shall not have effect; and where the registration is not to be cancelled may (either or both)—

(a) vary or remove any condition for the time being in force in relation to the registration;

(b) impose an additional condition in relation to the registration.

18 **Offences in relation to registration under this Part**

(1) Any person who—

(a) provides a care service while it is not registered under this Part; or

(b) with intent to deceive, pretends that a care service is registered under this Part, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

(2) Any person who fails to comply with section 8(5) of this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

19 **Offences by bodies corporate etc.**

Where an offence under this Part, or under regulations made under this Part, committed by—

(a) a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(i) is a director, manager or secretary of the body corporate; or

(ii) purports to act in any such capacity;

(b) a firm, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(i) is a partner in the firm; or

(ii) purports to act in that capacity;

(c) an unincorporated association other than a firm, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(i) is concerned in the management or control of the association; or

(ii) purports to act in the capacity of a person so concerned;
the person (as well as the body corporate or as the case may be the firm or association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

**Fees**

20 **Registration fees**

5 (1) The Scottish Ministers may prescribe—

(a) maximum fees which may be imposed by the Commission under this section; and
(b) circumstances in which fees so imposed shall or shall not be payable.

(2) Subject to the provisions of this section, the Commission shall impose fees in respect of—

(a) any application made for registration under this Part or for cancellation of any such registration;
(b) the annual continuation of any such registration;
(c) any application made for the variation or removal of a condition for the time being in force in relation to any such registration;
(d) issuing to a person a new certificate of registration—

(i) at the instance of that person;
(ii) by virtue of any application under this Part by that person; or
(iii) by virtue of any new information provided by that person in pursuance of regulations under this Part.

(3) Without prejudice to subsection (1) above—

(a) the Commission shall, in fixing fees under this section, have regard to its reasonable expenses in carrying out its functions under this Act; but

(b) where it appears to the Commission to be appropriate it may charge a nominal fee, or remit the fee altogether.

**Inspections**

21 **Inspections**

(1) The Commission may at any time require a person providing a care service to supply it with any information relating to the service which it considers necessary or expedient to have for the purposes of its functions under this Act.

(2) A person authorised by the Commission (in this section and in section 22 of this Act referred to as an “authorised person”) may—

(a) inspect any care service; and

(b) may at any time enter and inspect premises which are used, or which the person has reasonable cause to believe are used, for the purpose of providing any such service.

(3) The Commission shall secure, in relation to each service registered under this Part—

(a) that the powers conferred by subsection (2)(a) above are exercised at least once in the period of twelve months which immediately follows registration; and
Part 1—The Commission and care services

(4) The authorised person may—

(a) make any examination into—

(i) the state and management of the service or of such premises; and

(ii) the treatment of persons cared for by the service or cared for or accommodated in such premises, which the authorised person thinks appropriate;

(b) inspect and take copies of any documents or records (other than medical records) which regulations under this Act, section 9 of the Adoption (Scotland) Act 1978 (c.28) or section 1(3) of the Adoption (Intercountry Aspects) Act 1999 (c. 18) require to be kept;

(c) interview in private—

(i) the manager of the service or of such premises;

(ii) the person providing the service;

(iii) any person employed by the service or in such premises; or

(iv) any person who is cared for by the service or cared for or accommodated in such premises and who consents to be interviewed.

(5) An interview is in private for the purposes of subsection (4)(c)(iv) above even if conducted in the presence of—

(a) a guardian, continuing attorney or welfare attorney of the person interviewed; or

(b) provided that the person interviewed so wishes and the authorised person does not object, some other person.

(6) The powers conferred by subsection (4)(b) above include—

(a) power to require—

(i) the manager of the service or of such premises; or

(ii) the person providing the service,


to produce any document or record, wherever kept, for inspection at an office of the service or on those premises; and

(b) in relation to records which are kept by electronic means, power to require a copy of the records to be produced in a form which is legible and can be taken away.

(7) Where the authorised person—

(a) is a medical practitioner or a registered nurse; and
(b) has reasonable cause to believe that a person cared for by the service or accommodated in such premises is not receiving proper care,

the authorised person may (either or both)—

(i) conduct in private a medical examination of, and with the consent of;

(ii) inspect any medical records relating to the treatment, by the service or in the premises, of,

the person so cared for or accommodated.

(8) Where the authorised person—

(a) is a registered dentist (as defined in section 53(1) of the Dentists Act 1984 (c.24)); and

(b) has reasonable cause to believe that a person cared for by the service or accommodated in such premises is not receiving proper dental care,

the authorised person may (either or both)—

(i) conduct in private a dental examination of, and with the consent of;

(ii) inspect any dental records relating to the treatment, by the service or in the premises, of,

the person so cared for or accommodated.

(9) An examination is in private for the purposes of subsection (7)(i) or (8)(i) above even if conducted in the presence of a third party provided that the person examined so wishes and the authorised person does not object.

(10) A person who proposes to exercise any power of entry or inspection conferred by this section shall, if so required, produce some duly authenticated document showing that the Commission has given the requisite authority.

(11) Any person who—

(a) obstructs, intentionally, the exercise of any power conferred by this section or by section 22 of this Act; or

(b) fails, without reasonable excuse, to comply with any requirement imposed under this or that section,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(12) In—

(a) subsection (3)(b)(ii) above, “Her Majesty’s inspectors” has the same meaning as in the Education (Scotland) Act 1980 (c.44); and

(b) subsection (5)(a) above, “guardian”, “continuing attorney” and “welfare attorney” have the same meanings as in section 1(4)(c)(i) of the Adults with Incapacity (Scotland) Act 2000 (asp 4).
22 Further provision as regards inspections

(1) An authorised person who has reasonable grounds to believe that a document or other material or thing found in premises which, under section 21 of this Act, that person is entitled to enter and inspect may be evidence of a failure to comply with any condition or requirement imposed by or under this Act, may seize and remove that document, material or thing.

(2) An authorised person may—
   (a) require any other person to afford such facilities and assistance with respect to matters within that other person’s control as are necessary to enable the authorised person to exercise powers under the said section 21 or this section; and
   (b) take such measurements and photographs and make such recordings as the authorised person considers necessary for the exercise of those powers.

(3) An authorised person is entitled to have access to, and to check the operation of, any computer and any associated apparatus which is or has been in use in connection with records which the authorised person is entitled to inspect.

(4) The reference in section 21 of this Act to a person providing a care service includes, in the case of a service which is provided by a body corporate, a reference to a director, manager, secretary or other similar officer of the body.

(5) Where a care service has been inspected under section 21(2) of this Act, the Commission—
   (a) shall prepare a report on the matters inspected; and
   (b) shall without delay send a copy of that report to the person providing that service.

(6) The Commission shall make copies of any report prepared under subsection (5) above available for inspection at its offices by any person at any reasonable time; and it may take any other steps which it considers appropriate for publicising any such report.

(7) A person who asks the Commission for a copy of any such report shall be entitled to have one on payment of a reasonable fee determined by the Commission; but nothing in this subsection prevents the Commission from providing a copy free of charge if it considers that to do so would be appropriate.

Regulations

23 Regulations relating to the Commission, to registration and to registers

(1) Regulations may—
   (a) confer additional functions on the Commission;
   (b) make provision about the keeping of registers by the Commission;
   (c) make provision about registration under this Part and in particular about—
       (i) the making of applications for such registration;
       (ii) the content of certificates of registration; or
       (iii) categories of applicant who cannot competently make certain applications;
(d) require the Commission to secure that, on such conditions, in such circumstances and, subject to subsection (2) below, on the payment of such fees as may be specified in the regulations, any person shall be afforded access to, and provided with a copy of an entry in or with an extract from, a register kept by the Commission; or

(e) except such part of a register as may be specified in the regulations from any requirement made by virtue of paragraph (d) above.

(2) Regulations under paragraph (d) of subsection (1) above may specify circumstances in which the fees mentioned in that paragraph shall not be payable; and the fees shall in any event not be payable in any case where the Commission considers it appropriate to provide the copy or extract in question free of charge.

Regulations relating to care services

(1) Regulations may impose, in relation to care services, any requirements which the Scottish Ministers think fit for the purposes of this Act and may in particular make any provision such as is mentioned in subsection (2), (7) or (9) below.

(2) Without prejudice to the generality of subsection (1) above, regulations may—

(a) make provision as to the persons who are fit to provide, or act as manager in relation to, a care service;
(b) make provision as to the persons who are fit to be employed in the provision of a care service;
(c) make provision as to the fitness of premises to be used for the provision of a care service;
(d) in relation to child minding, require that no person lives, or is likely to live, at the domestic premises to be used for the provision of the service who is not fit to be in the proximity of children under the age of eight;
(e) make provision for securing the welfare of persons provided with a care service;
(f) make provision as to the management and control of operations carried out in the course of providing a care service;
(g) make provision as to the numbers of persons, or persons of any particular category, working at premises where a care service is provided or for the purposes of an agency providing such a service;
(h) make provision as to the management and training of such persons as are mentioned in paragraph (g) above;
(i) impose requirements as to the financial position of a provider of care services;
(j) require that a person acting as a medical practitioner, or in such other professional capacity as may be specified in the regulations, for persons provided with a care service shall not have a financial interest in that service;
(k) require the provider of a care service to appoint a manager in such circumstances as may be specified in the regulations; or
(l) require any person to whom subsection (3) below applies—

(i) to notify the Commission accordingly; and

(ii) to appoint a person to manage the care service in question.
(3) This subsection applies to any person appointed as—

(a) a receiver of the property of a company which is a person providing a service registered under this Part;

(b) the liquidator or provisional liquidator of such a company;

(c) the supervisor of a voluntary arrangement of such a company under Part I of the Insolvency Act 1986 (c.45) or the administrator of such a company appointed under Part II of that Act; or

(d) the permanent trustee or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c.66)) appointed in respect of a person providing a service registered under this Part.

(4) Regulations under paragraph (a) of subsection (2) above may, in particular, make provision for prohibiting a person from acting as manager unless registered in, or in a particular part of, a register maintained by the Scottish Social Services Council.

(5) Regulations under paragraph (b) of that subsection may, in particular, make provision for prohibiting a person from working, in the provision of a care service, in any such position as may be specified in the regulations unless registered as is mentioned in subsection (4) above.

(6) Regulations under paragraph (e) of that subsection may, in particular, make provision—

(a) as to—

(i) the promotion; and

(ii) the protection,

of the health of the persons in question; and

(b) as to the control and restraint of persons attending at, or residing in, an establishment.

(7) Regulations may make provision as to how the provision of care services is to be conducted, and such regulations may in particular—

(a) make provision as to facilities and particular services to be provided;

(b) make provision as to the keeping of accounts;

(c) make provision as to the keeping of documents and records;

(d) require a person providing a care service to make returns to the Commission at such intervals as may be specified in the regulations;

(e) make provision as to the contents of a return made by virtue of paragraph (d) above and the period in respect of which and date by which the return is to be made;

(f) make provision as to the notification of any event—

(i) arising out of or in the course of; or

(ii) occurring in relation to,

the provision of a care service;

(g) require the giving of notice by the person providing a care service of any period during which the manager of the service proposes to be absent;
(h) specify the information to be supplied in giving such notice as is mentioned in paragraph (g) above;

(i) provide for the making of adequate arrangements for the running of a care service during any period when the manager is absent;

(j) require the person providing a care service to give notice of any change in the identity of the manager;

(k) without prejudice to paragraph (m) below, require—

   (i) the person providing a care service to give notice of any intended change which will result in the service being provided, instead, by a different person; or

   (ii) where an unforeseen change has had the result mentioned in sub-paragraph (i) above, the person who in consequence of that change is providing a care service to give notice accordingly;

(l) where an individual who has been providing a care service dies and no other person is providing the service, require the personal representatives of the individual to give notice of the death;

(m) require the person providing a care service, if that person is—

   (i) a body corporate, to give notice of any change in the ownership of the body or of the identity of its officers; or

   (ii) a firm, to give notice of any change in the identity of the persons who are its partners;

(n) require—

   (i) arrangements to be made, by the person providing, or managing the provision of, a care service, for dealing with complaints made by or on behalf of those provided with, or seeking to be provided with, that service; and

   (ii) that person to take steps to publicise such arrangements; or

(o) require a person who provides, or manages, an independent health care service, to make arrangements for securing that—

   (i) any medical or psychiatric treatments; or

   (ii) services such as are mentioned in subsection (8) below, provided in or for the purposes of the hospital or clinic or (as the case may be) for the purposes of the agency, are of appropriate quality and meet appropriate standards.

(8) For the purposes of subsection (7)(o)(ii) above, the services are—

   (a) medical treatment under—

      (i) anaesthesia; or

      (ii) sedation;

   (b) dental treatment under—

      (i) general anaesthesia; or

      (ii) sedation;
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(c) obstetric services and, in connection with childbirth, medical services;
(d) termination of pregnancies;
(e) cosmetic surgery; and
(f) treatment using such—
   (i) techniques; or
   (ii) technology,
as may be specified in the regulations.

(9) Regulations may make provision—
   (a) requiring the approval of the Scottish Ministers for the provision and use of
       accommodation for the purpose of restricting the liberty of children in residential
       premises where care services are provided; and
   (b) imposing other requirements as to the placing of a child in accommodation
       provided for the purpose mentioned in paragraph (a) above, including a
       requirement to obtain the permission of any local authority who are looking after
       the child (“looking after” being construed in accordance with section 17(6) of the
       Children (Scotland) Act 1995 (c.36)).

(10) Before the Scottish Ministers make regulations under any of subsections (1), (2), (7) and
     (9) above (except regulations which amend other regulations made under any of those
     subsections and do not, in their opinion, effect any substantial change in the provision
     made by those other regulations), they shall consult any other person they consider
     appropriate.

Transfer of staff

(1) The Scottish Ministers may by order make a scheme for the transfer to the Commission
     of persons who are employed, under a contract of employment with a local authority or
     Health Board, on work which would have continued but for the provisions of this Part.

(2) Such a scheme may apply to all, or any description of, such employees or to any
     individual such employee.

(3) Such a scheme may be made only if any prescribed requirements about consultation
     have been complied with in relation to each of the employees to be transferred under it.

(4) The contract of employment of an employee transferred under such a scheme—
     (a) is not terminated by the transfer; and
     (b) has effect from the date of transfer as if originally made between the employee
         and the Commission.

(5) Without prejudice to the generality of subsection (4) above, where an employee is
     transferred under such a scheme—
     (a) all the rights, powers, duties and liabilities of the transferor under or in connection
         with the employee’s contract of employment are by virtue of this subsection
         transferred to the Commission on the date of transfer; and
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(b) anything done before that date by, or in relation to, the transferor in respect of that contract or the employee is to be treated from that date as having been done by, or in relation to, the Commission.

(6) Subsections (4) and (5) above do not transfer an employee’s contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if the employee objects to the transfer and so informs the transferor or the Commission.

(7) Where an employee objects as mentioned in subsection (6), the contract of employment with the transferor is terminated immediately before the date of transfer; but the employee is not to be treated, for any purposes, as having been dismissed by the transferor.

(8) This section does not prejudice any right of an employee to terminate the contract of employment if a substantial detrimental change in the employee’s working conditions is made; but no right to terminate that contract arises by reason only that, by virtue of this section, the identity of the employer changes unless it is shown that, in all the circumstances, the change is both—

(a) significant; and

(b) detrimental,

to the employee.

(9) In this section—

“date of transfer” means the date of transfer determined under the scheme in relation to the employee;

“Health Board” means a Health Board constituted by order under section 2 of the National Health Service (Scotland) Act 1978 (c.29); and

“transferor” means the local authority, or as the case may be the Health Board, from whom the employee is or would be transferred under the scheme.

Miscellaneous

Arrangements entered into by local authority or health body: services to be registered

Where, in the performance of their functions—

(a) a local authority; or

(b) a health body,

make arrangements with any person for that person to provide a care service, they shall ensure that the service, when provided, is registered under this Part.

Giving of notice

(1) In this Part, any reference to a notice being given to a person providing, or seeking to provide, a care service shall be construed as a reference to its being—

(a) delivered, where the person is—

(i) an individual, to that individual;

(ii) a body corporate, to the secretary or clerk of that body; or

(iii) a firm, to a partner of that firm; or
(b) sent by post, properly addressed to the person, in a registered letter or by the recorded delivery service,
but a notice sent by post shall be deemed not given until the third day after the day of posting.

(2) For the purposes of subsection (1) above, a letter is properly addressed to—
(a) a body corporate, if addressed to the body at its registered or principal office;
(b) a firm, if addressed to the firm at its principal office; or
(c) any other person, if addressed to the person at the address last known.

PART 2
THE COUNCIL

Constitution

28 Constitution of Scottish Social Services Council

(1) There shall be a body corporate, to be known as the Scottish Social Services Council (in the following provisions of this Act referred to as “the Council”), which—
(a) shall exercise the functions conferred on it by this Act or any other enactment; and
(b) shall have the general duty of promoting high standards—
(i) of conduct and practice among social service workers; and
(ii) in their education and training.

(2) The Council shall, in the exercise of its functions, act—
(a) in accordance with any directions in writing given to it by the Scottish Ministers; and
(b) under the general guidance of the Scottish Ministers.

(3) Schedule 2 to this Act shall have effect with respect to the Council.

Registration

29 Register of social workers and of other social service workers

(1) The Council shall maintain a register of—
(a) social workers;
(b) social service workers of any other description prescribed; and
(c) persons—
(i) participating in a course, approved by it under section 37(1) of this Act, for those wishing to become; or
(ii) employed in positions probationary to their becoming, social workers or social service workers of such other description.

(2) There shall be a separate part of the register for social workers, for each description of social service workers prescribed by virtue of paragraph (b) of subsection (1) above and for such persons as are mentioned in paragraph (c) of that subsection.
(3) It may be prescribed that as from a specified date a specified part of the register shall be closed, so that on and after that date no further persons shall be registered in that part.

(4) The Scottish Ministers shall consult the Council before making, varying or revoking an order by virtue of this section.

30 **Applications for registration**

(1) An application for registration under this Part shall be made to the Council in accordance with rules made by the Council.

(2) An application under subsection (1) above shall specify—

(a) in relation to the register, each part of it in which registration is sought; and

(b) such other matters as may be required by the rules.

31 **Grant or refusal of registration**

(1) If the Council is satisfied that an applicant for registration under this Part—

(a) is of good character;

(b) satisfies such requirements as to competence or conduct as the Council may by rules impose; and

(c) except where subsection (2) below applies, either—

(i) satisfies such requirements as to education as the Council may by rules impose and has successfully completed a course of training, approved by the Council, for persons wishing to become social workers or, as the case may be, for persons wishing to become social service workers of the description in relation to which registration is sought; or

(ii) in the case of an application for registration as a social service worker other than a social worker, satisfies such requirements as the Council may by rules impose in relation to social service workers of the description in relation to which registration is sought,

it shall grant the application, either unconditionally or subject to such conditions as it thinks fit; otherwise it shall refuse the application.

(2) This subsection applies where the applicant—

(a) is a national of any EEA State who—

(i) has obtained, in an EEA State other than the United Kingdom, professional qualifications which are prescribed as having Community equivalence for the purposes of registration in the part of the register specified in the application; and

(ii) satisfies any other requirements which the Council may by rules impose; or

(b) has, outwith Scotland, undergone training which—

(i) is recognised by the Council as being to a standard sufficient for the applicant to be registered in the part of the register so specified; or

(ii) is not so recognised provided that the applicant has also undergone, in Scotland or elsewhere, such additional training as the Council may by rules require.
An order made by virtue of sub-paragraph (i) of subsection (2)(a) above may provide that a professional qualification designated by the order is to be regarded as having Community equivalence for the purposes mentioned in that sub-paragraph only if prescribed conditions required by a directive issued by the Council of the European Communities are fulfilled; and different conditions may be prescribed with respect to the same qualification for different circumstances.

A person who—

(a) is not a national of an EEA State; but

(b) is, by virtue of a right conferred by Article 11 of Council Regulation (EEC) No. 1612/68 (on freedom of movement for workers within the Community) or any other enforceable Community right, entitled to be treated, as regards the right to engage in the work of social service workers of the description in relation to which registration is sought, no less favourably than a national of such a State,

shall be treated, for the purposes of subsection (2)(a) above, as if he were such a national.

In this section—

“EEA State” means a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as adjusted by the Protocol signed at Brussels on 17th March 1993); and

“national”, in relation to such a State, means the same as it does for the purposes of the Community Treaties.

The Council may at any time give notice to a person registered under this Part that it proposes to—

(a) vary or remove a condition for the time being in force; or

(b) impose an additional condition,

in relation to the registration.

The Council shall, by rules made with the consent of the Scottish Ministers, make provision as to the procedure which shall be followed before a proposal of which notice has been given under subsection (1) above is implemented; and such rules shall in particular permit the person to make written representations to it concerning that proposal.

The Council shall, by rules made with the consent of the Scottish Ministers, determine circumstances in which, and the means by which—

(a) an entry relating to a person in the register maintained by the Council may be removed from a part in which it appears;

(b) an entry removed by virtue of paragraph (a) above may be restored to the part in question;
(c) a person’s registration in a part of that register may be suspended (and that person treated as not being registered in that part notwithstanding that the relevant entry still appears in it) for such period as the Council may specify in the case in question;

(d) a suspension by virtue of paragraph (c) above may be terminated; and

(e) an entry in a part of that register may be altered (other than in implementation of a proposal of which notice is given under section 32(1) of this Act).

(2) Rules under subsection (1) above shall—

(a) make provision as to—

(i) the procedure to be followed;
(ii) the standard of proof; and
(iii) the rules of evidence to be observed,

in proceedings brought (whether before the Council or before any committee of the Council) for the purposes of the rules; and

(b) provide for such proceedings to be in public except in such cases (if any) as the rules may specify.

(3) The Council shall maintain a register of persons who have been registered in the register maintained under section 29(1) of this Act but who, by virtue of paragraph (a) of subsection (1) above, are for the time being not so registered; and where an entry relating to a person is, by virtue of paragraph (b) of that subsection, restored, the entry relating to that person in the register maintained under this subsection shall be removed.

Appeal

34 Appeal against decision of Council

(1) A person may appeal to the sheriff against any decision of the Council which relates to that person’s registration (or right to be registered) under this Part.

(2) On such an appeal the sheriff may—

(a) confirm the decision; or
(b) direct that it shall not have effect.

(3) The sheriff shall also have power, on such an appeal—

(a) to vary any condition which, by virtue of section 31 of this Act, is in force in respect of the person;
(b) to direct that any such condition shall cease to have effect; or
(c) to direct that a condition which the sheriff thinks fit to impose shall have effect in respect of the person.

Offence

35 Use of title “social worker” etc.

(1) Any person who, with intent to deceive, while not registered in any relevant register as—
(a) a social worker, takes or uses the title of social worker, or purports in any other way to be a social worker; or

(b) a social service worker of such other description as may be prescribed, takes or uses the title of that description of social service worker, or purports in any other way to be a social service worker of that description,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) For the purposes of subsection (1) above, a register is a relevant register if it is—

(a) the register maintained by the Council under this Part; or

(b) such register as may be prescribed, being a register maintained under a provision of the law of England and Wales or of Northern Ireland which appears to the Scottish Ministers to correspond to section 29(1) of this Act.

**Codes of practice**

36 **Codes of practice**

(1) The Council shall prepare, and from time to time publish, codes of practice laying down standards of conduct and practice expected—

(a) of social service workers; or

(b) in relation to social service workers, of persons employing or seeking to employ such workers.

(2) Before publishing a code, the Council shall—

(a) obtain the consent of the Scottish Ministers to the provisions of that code; and

(b) consult the Commission, any person prescribed by the Scottish Ministers and any other person the Council considers it appropriate to consult.

(3) The Council shall keep the codes under review and shall vary the provisions of a code whenever, after such consultation, it considers it appropriate to do so.

(4) The employer of a social service worker shall, in making any decision which relates to the conduct of that worker, take into account any code published under subsection (1) above by the Council.

(5) The Council shall give a copy of a code so published to any person who requests such copy.

**Training**

37 **Approval of courses etc.**

(1) The Council shall promote education and training for persons who are, or wish to become—

(a) social workers; or

(b) social service workers of any other description specified in the rules,

and in particular may, in accordance with rules made by it, approve courses for such persons.
(2) An approval given under subsection (1) above may be either unconditional or subject to such conditions as the Council thinks fit.

(3) If it appears to the Council that adequate provision is not being made for further education or training for persons registered in any part of the register maintained by it, the Council shall provide, or secure the provision of, courses for such further education or training.

(4) The Council may—

(a) conduct, or make arrangements for the conduct of, examinations or assessments in connection with such courses as are mentioned in this section; and

(b) carry out, or assist other persons in carrying out, research into matters relevant to such education or training (or further education or training) as is so mentioned.

38 Grants and allowances for social service workers’ training

(1) Subject to subsections (2) to (4) below, the Council may, upon such terms and subject to such conditions as it considers appropriate—

(a) make grants; and

(b) pay travelling and other allowances,

to persons resident in Scotland, in order to secure their education or training in, or education for training in, the work of social service workers.

(2) The Council shall not make grants or pay allowances under subsection (1) above except for such purposes as the Scottish Ministers may direct.

(3) The Scottish Ministers may by directions specify terms and conditions subject to which the Council is to make such grants or pay such allowances.

(4) Without prejudice to the generality of subsections (2) and (3) above, directions under those subsections may specify—

(a) the courses for which, and the categories of students to whom, under subsection (1) above, grants may be made and allowances paid;

(b) maximum amounts to be spent—

(i) on such grants and allowances; and

(ii) on such grants and allowances to any individual; and

(c) the procedures for accounting for expenditure on such grants and allowances.

(5) The Council may make grants to organisations providing such courses as are approved by it under section 37(1) of this Act.

Regulations and rules

39 Regulations relating to the Council

Regulations may—

(a) confer additional functions on the Council in relation to—

(i) the regulation of persons employed in the provision of care services; or

(ii) the education or training of persons in respect of whom it maintains a register under section 29(1) of this Act; and
(b) require the Council to secure that, on such conditions, in such circumstances and on the payment of such fees as may be specified in the regulations, any person shall be afforded access to, and provided with a copy of an entry in or with an extract from, a register kept by the Council.

40 Power of Council to make rules

(1) With the consent of the Scottish Ministers, the Council may by rules make provision about the registration of persons under this Part and, in particular—

(a) as to the keeping of the register maintained by it;

(b) as to the documentary and other evidence to be produced by a person applying for—

(i) registration;

(ii) additional qualifications to be recorded; or

(iii) an entry in that register to be altered or restored; or

(c) subject to any rules made under section 33 of this Act, for a person’s registration to remain effective without limitation of time or—

(i) to lapse after such period, or in such a case; or

(ii) to be subject to renewal in such manner and at such time, as the rules may provide.

(2) With the consent of the Scottish Ministers and subject to any regulations made under section 39(b) of this Act, the Council may by rules make provision for the payment of reasonable fees to it in connection with the discharge of its functions; and without prejudice to that generality the rules may in particular make provision—

(a) for the payment of such fees in connection with—

(i) registration under this Part (including applications for registration or for amendment of the register maintained by it);

(ii) the approval by it, under this Part, of courses of education or training;

(iii) the provision of education or training; and

(iv) the provision of copies of codes published by it or copies of entries in, or of extracts from, that register; and

(b) requiring persons registered under this Part to pay a periodic fee to it of such amount, and at such time, as the rules may specify.

(3) With the consent of the Scottish Ministers, the Council may by rules require persons registered in any part of the register maintained by it to attend a course of education or undertake further training and may in particular make provision with respect to persons who fail to comply with any requirement of such rules, including provision for their registration to cease or be suspended.

(4) Before making, or varying, any rules by virtue of subsection (3) above, the Council shall take such steps as are reasonably practicable to consult the persons who are registered in the relevant part of the register and such other persons as the Council considers appropriate.

(5) With the consent of the Scottish Ministers, the Council may by rules make provision—
(a) about the content of, and methods of completing, courses approved by it under section 37(1) of this Act;

(b) as to the lapse, renewal and withdrawal of such approvals;

(c) as to the provision to the Council of information about such courses;

(d) as to the persons who may participate in such courses, or in such parts of those courses as are specified in the rules;

(e) as to the number of persons who may participate in such courses or parts of courses; and

(f) for the award by the Council of certificates of the successful completion of such courses.

(6) With the consent of the Scottish Ministers, the Council may by rules make provision for the visiting of places at which or institutions by which or under whose direction—

(a) any relevant course (or part of such course) is, or is proposed to be, given; or

(b) any examination is, or is proposed to be, held in connection with any such course.

(7) Without prejudice to the generality of subsection (6) above, rules under that subsection may make provision for—

(a) the appointment of visitors; and

(b) reports to be made by visitors on—

(i) the nature and quality of the instruction given, or to be given; and

(ii) the facilities provided, or to be provided,

at the place, or by the institution, visited.

(8) In subsection (6)(a) above, “relevant course” means—

(a) any course for which approval by the Council has been given, or is being sought, under section 37(1) of this Act; or

(b) any course of education or further training provided for persons registered in any part of the register maintained by the Council.

(9) The power of the Council to make rules under this Part may be exercised—

(a) in relation to—

(i) all cases to which the power extends;

(ii) all except such cases as are specified in the rules; or

(iii) any specified cases or class of case; and

(b) so as to make, as respects the cases in relation to which it is exercised—

(i) the same provision for all;

(ii) different provision for different cases or classes of case; or

(iii) as respects the same case or class of case, different provision for different purposes.
Functions of the Scottish Ministers under this Part

(1) The Scottish Ministers shall have the functions of—

(a) ascertaining what numbers of—

   (i) social workers; and

   (ii) social service workers of other descriptions, are required within Scotland;

(b) ascertaining what education or training is required by persons who are, or wish to become, social service workers;

(c) ascertaining what financial and other assistance is required for promoting such training;

(d) encouraging the provision of such assistance; and

(e) drawing up occupational standards for such workers.

(2) The Scottish Ministers shall encourage persons to take part—

(a) in courses approved under section 37(1) of this Act by the Council; and

(b) in other courses relevant to the education or training of persons who are, or wish to become, social service workers.

(3) The Scottish Ministers may, if it appears to them that adequate provision is not being made for the education or training of persons who are, or wish to become, social service workers, provide, or secure the provision of, courses for that purpose.

(4) Any function of the Scottish Ministers under this section—

(a) may be delegated by them to the Council; or

(b) may be exercised by any person, or by employees of any person, authorised to do so by the Scottish Ministers.

(5) For the purpose of determining—

(a) the terms and effect of an authorisation under subsection (4)(b) above; and

(b) the effect of so much of any contract made between the Scottish Ministers and the authorised person as relates to the exercise of the function,

Part II of the Deregulation and Contracting Out Act 1994 (c.40) shall have effect as if the authorisation were given by virtue of an order under section 69 of that Act.

(6) In subsection (4)(b) above, “employee” has the same meaning as in the said Part II.

PART 3

PROVISIONS COMMON TO COMMISSION AND COUNCIL

Grants and guarantees

Grants

(1) The Scottish Ministers may make grants to the Commission or to the Council towards expenses incurred, or to be incurred, by it in connection with—
(a) the initial establishment of the body in question; and
(b) the discharge by that body of its functions.

(2) Any grant made under subsection (1) above may be made on such terms and subject to such conditions (including conditions as to repayment) as the Scottish Ministers think fit; and the Scottish Ministers may from time to time after the grant is made vary such terms and conditions.

43 Guarantee

(1) The Scottish Ministers may guarantee, in such manner and on such conditions as they think fit, the discharge of any financial obligation in connection with any sum which the Commission or the Council borrows from any person.

(2) Where the Scottish Ministers give a guarantee under this section they shall forthwith lay a statement of the guarantee before the Parliament.

(3) Where any sum is paid out in fulfilment of a guarantee under this section, the Scottish Ministers shall, as soon as reasonably practicable after the end of each financial year (beginning with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged), lay before the Parliament a statement relating to that sum.

(4) Where any sum is paid out in fulfilment of a guarantee under this section, the Commission, or as the case may be the Council, shall make to the Scottish Ministers, at such times and in such manner as they may from time to time direct—

(a) payments of such amounts as they may so direct in or towards repayment of the sum so paid out; and
(b) payment of interest, at such rate as they may so direct, on what is outstanding for the time being in respect of that sum.

Duty to consult

44 Duty of Commission and Council to consult each other

The Commission and the Council shall each, in the exercise of its functions, consult the other in every case in which it appears to the body exercising the function appropriate that there should be such consultation.

Complaints, inquiries and maladministration

45 Complaints procedure

(1) The Commission and the Council shall each establish a procedure by which a person, or someone acting on a person’s behalf, may make complaints (or other representations) in relation to the exercise by the body in question of, or failure by it to exercise, any of its functions under this Act in respect of the person.

(2) Before establishing a procedure under subsection (1) above, the body in question shall consult the Scottish Ministers on its proposals for such a procedure and shall require to obtain their consent to those proposals.

(3) The body in question shall keep the procedure so established by it under review and shall vary that procedure whenever, with such consent, it considers it appropriate to do so.
(4) The body in question shall give such publicity to that procedure (including that procedure as varied under subsection (3) above) as it considers appropriate and shall give a copy of the procedure to any person who requests it.

46 Inquiries

(1) The Scottish Ministers may cause an inquiry to be held into any matter connected with—
   (a) the exercise by the Commission or by the Council of its functions; or
   (b) the provision of a care service.

(2) The Commission may cause an inquiry to be held into any matter connected with—
   (a) the exercise of its functions; or
   (b) the provision of a care service.

(3) The Council may cause an inquiry to be held into any matter connected with the exercise of its functions.

(4) Before there is commenced an inquiry—
   (a) under subsection (1) above, the Scottish Ministers;
   (b) under subsection (2) above, the Commission; or
   (c) under subsection (3) above, the Council,
may direct that it be held in private; but where no such direction has been given the person holding the inquiry may if that person thinks fit hold it, or any part of it, in private.

(5) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c.65) (provisions relating to local inquiries) shall apply in relation to an inquiry under subsection (1) above as they apply in relation to a local inquiry under that section.

(6) Subsections (2) to (6) of that section shall apply in relation to an inquiry under subsection (2) or (3) above as they apply in relation to such a local inquiry; except that, for the purposes of an inquiry under—
   (a) subsection (2) above, any reference in those subsections which, by virtue of the Scotland Act 1998 (c.46), falls to be construed as a reference to—
      (i) the Scottish Ministers, shall be construed as a reference to the Commission; and
      (ii) a member of the staff of the Scottish Ministers, as a reference to an officer of the Commission; or
   (b) subsection (3) above, any such reference in those subsections shall be construed as a reference to the Council or, as the case may be, to an officer of the Council.

(7) The expenses incurred by the Commission or by the Council in relation to an inquiry under subsection (2), or as the case may be (3), above (including such reasonable sum as the body in question may determine for the services of any of its officers engaged in the inquiry) shall, unless that body is of the opinion that those expenses should be defrayed in whole or in part by it, be paid by such party to the inquiry as it may direct; and the body may certify the amount of the expenses so incurred.
(8) Any sum certified under subsection (7) above and to be defrayed in accordance with a
direction under that subsection shall be a debt due by the party directed and shall be
recoverable accordingly.

(9) In relation to an inquiry under—

(a) subsection (2) above, the Commission; or

(b) subsection (3) above, the Council,

may make an award as to the expenses of the parties and as to the parties by whom such
expenses shall be paid.

47 Maladministration

The Commission and the Council shall each be subject to investigation by the Scottish
Parliamentary Commissioner for Administration appointed in accordance with article 4
of the Scotland Act 1998 (Transitory and Transitional Provisions) (Complaints of
Maladministration) Order 1999 (S.I. 1999/1351); and accordingly, in Schedule 1 to that
Order (Scottish public authorities subject to investigation by the Scottish
Commissioner), at the appropriate places there shall be inserted the words “Scottish
Commission for the Regulation of Care” and “Scottish Social Services Council”.

PART 4

MISCELLANEOUS

Central Council for Education and Training in Social Work: cessation of Scottish functions

48 Cessation of exercise of certain functions by Central Council for Education and
Training in Social Work

The Central Council for Education and Training in Social Work shall cease to exercise
in relation to Scotland the functions conferred on it by or under section 10 of the Health
and Social Services and Social Security Adjudications Act 1983 (c.41).

Grants, loans and other payments

49 Grants in respect of activities relating to child care and family support

(1) The Scottish Ministers may make grants to persons who—

(a) to any extent, undertake or engage in activities which relate to—

(i) the protection or care, under or by virtue of the Social Work (Scotland) Act
1968 (c. 49) or the Children (Scotland) Act 1995 (c.36), of children; or

(ii) the provision of support, under or by virtue of either of those Acts, to
families; or

(b) propose to undertake or engage in such activities to any extent.

(2) The Scottish Ministers may make the payment of a grant in pursuance of subsection (1)
above subject to such conditions and requirements (including a requirement that the
whole or any part of the grant be repaid) as they think fit.
50 Amendment of Social Work (Scotland) Act 1968: delegation of power to make grants and loans to certain voluntary organisations etc.

In section 10 of the Social Work (Scotland) Act 1968 (c.49) (financial and other assistance to voluntary organisations etc. for social work)—

(a) after subsection (1) there is inserted—

“(1A) The Scottish Ministers may make grants and loans of such amounts, and subject to such conditions, as they may determine to a voluntary organisation engaged as is mentioned in subsection (1) above to enable that organisation (in this section referred to as the “primary organisation”) to make grants and loans (in this section referred to as “secondary grants and loans”) to other voluntary organisations, or other persons, so engaged, in circumstances where it appears to the primary organisation that the secondary grants and loans should be made; and the Scottish Ministers may require that any secondary grant be subject to such conditions (including conditions for securing the repayment in whole or in part of that grant) as they may specify.”; and

(b) in subsection (2), for the words “under the foregoing subsection” there is substituted “by the Scottish Ministers under subsection (1) or (1A) above”.

51 Amendment of Social Work (Scotland) Act 1968: direct payments to children for care services

In section 12B of the Social Work (Scotland) Act 1968 (c.49) (direct payments in respect of community care services)—

(a) in subsection (1)(a)—

(i) the words from “have decided” to “care service” become sub-paragraph (i); and

(ii) for the words “within the meaning of section 5A of this Act,” there is substituted the word “; or” and the following sub-paragraph—

“(ii) have a duty to provide a service to him under section 22(1) of the Children (Scotland) Act 1995 (c.36) (promotion of welfare of children in need) other than a service which comprises giving assistance in cash;”; and

(b) at the end there is added—

“(7) The definition of “community care service” in section 5A of this Act shall, with the modification mentioned in subsection (8) below, apply for the purposes of this section as that definition applies for the purposes of that section.

(8) The modification is that the words “, other than services for children,” in the definition shall be disregarded.”.

Nursing in local authority residential accommodation

52 Provision by local authorities of residential accommodation in which nursing is provided

A local authority shall have power to provide and maintain such accommodation as is mentioned in subsection (1) of section 13A of the Social Work (Scotland) Act 1968 (c.49) (residential accommodation with nursing); and accordingly—
(a) in that subsection—

(i) after the word “shall” there is inserted the following paragraph—

“(a) provide and maintain;”;

(ii) after that paragraph there is inserted the word “or”; and

(iii) the existing words “make such arrangements as they consider appropriate and adequate for the provision of” become paragraph (b);

(b) in subsection (2) of that section, the word “The”, where it first occurs, is repealed; and

(c) in section 59(1) of that Act (provision of residential and other establishments by local authorities etc.), for the words “Subject to” there are substituted the words “Without prejudice to their duties under”.

Place of safety

53 Amendment of Children (Scotland) Act 1995: “place of safety”

In section 93(1) of the Children (Scotland) Act 1995 (c.36) (interpretation), in the definition of “place of safety”, for paragraph (d) (and the word “or” which immediately precedes that paragraph) there is substituted—

“(d) a hospital, or surgery, the person or body of persons responsible for the management of which is willing temporarily to receive the child;

e) the dwelling-house of a suitable person who is so willing; or

(f) any other suitable place the occupier of which is so willing.”.

Panels

54 Panels for curators ad litem, reporting officers and safeguarders

In section 101 of the Children (Scotland) Act 1995 (c.36) (establishment of a panel of persons from whom curators ad litem, reporting officers and safeguarders may be appointed)—

(a) for subsection (1) there is substituted—

“(1) The Scottish Ministers may by regulations make provision for the establishment of one or more of each of the following—

(a) a panel of persons from which curators ad litem may be appointed under section 58 of the Adoption (Scotland) Act 1978 or under section 87(4) of this Act;

(b) a panel of persons from which reporting officers may be appointed under either of those sections; and

(c) a panel of persons from which appointments may be made under section 41(1) of this Act.”;

(b) in subsection (2), in each of paragraphs (a) and (b), for the words “the panel” there is substituted “those panels”; and

(c) for subsection (3) there is substituted—

“(3) Regulations under subsection (1) above may provide—
(a) for the defrayment by local authorities of expenses incurred by members of any panel established by virtue of that subsection; and

(b) for the payment by local authorities of fees and allowances for such members.

(4) Paragraphs 9 and 10(b) of Schedule 1 to this Act shall apply in relation to any panel established by virtue of subsection (1)(c) above as they apply in relation to children’s panels.”.

PART 5
GENERAL

10 Interpretation

(1) In this Act, unless the context otherwise requires—

“act as a child minder” has the meaning given by subsection (9) of section 2 of this Act;

“care home service” has the meaning given by subsection (3) of that section;

“care service” has the meaning given by subsection (1) of that section;

“child” means a person under the age of sixteen years;

“child minding” has the meaning given by section 2(9) of this Act;

“the Commission” means the Scottish Commission for the Regulation of Care (which is constituted under section 1 of this Act);

“condition notice” has the meaning given by section 11 of this Act;

“the Council” means the Scottish Social Services Council (which is constituted under section 28 of this Act);

“day care of children” has the meaning given by section 2(12) of this Act;

“domestic premises” means any premises which are wholly or mainly used as a private dwelling;

“enactment” has the meaning given by section 126(1) of the Scotland Act 1988 (c. 46);

“health body” means a National Health Service Trust established by order under section 12A of the National Health Service (Scotland) Act 1978 (c.29) or a Health Board or Special Health Board constituted by order under section 2 of that Act;

“health service hospital” has the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978 (c.29);

“hospital” has the meaning given by that section;

“improvement notice” has the meaning given by section 9 of this Act;

“independent clinic” means a clinic which is not comprised in a hospital and in or from which services are provided, other than in pursuance of the National Health Service (Scotland) Act 1978 (c.29), by a registered medical practitioner or registered dentist;

“independent health care service” has the meaning given by section 2(5) of this Act;
“independent hospital” means a hospital which is neither, subject to subsection (2) below, a health service hospital nor a private psychiatric hospital;

“independent medical agency” means an undertaking which is neither an independent clinic nor an undertaking comprised in a hospital and which consists of or includes the provision of services, other than in pursuance of that Act, by a registered medical practitioner;

“local authority” means a council constituted under section 2 of the Local Government (Scotland) Act 1994 (c.39);

“medical records” means records relating to the physical or mental health of an individual which have been prepared by a medical practitioner who is, or has been, responsible for the clinical care of the individual;

“mental disorder” has the same meaning as in the Mental Health (Scotland) Act 1984 (c.36);

“nurse agency” has the meaning given by subsection (6) of section 2 of this Act;

“offender accommodation service” has the meaning given by subsection (8) of that section;

“personal care” has the meaning given by subsection (20) of that section;

“personal support” has the meaning given by that subsection;

“prescribed” means prescribed by order made by the Scottish Ministers;

“premises” includes any vehicle;

“private psychiatric hospital” means a private hospital as defined in section 12(2) of the Mental Health (Scotland) Act 1984 (c. 36);

“provide”, in relation to a care service, means to carry on or manage such a service;

“regulations” means regulations made by the Scottish Ministers;

“registered dentist” has the meaning given by section 53(1) of the Dentists Act 1984 (c.24);

“registered medical practitioner” shall be construed in accordance with section 2 of the Medical Act 1983 (c.54);

“relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by affinity) or step-parent;

“school care accommodation service” has the meaning given by subsection (4) of section 2 this Act;

“secure accommodation service” has the meaning given by subsection (7) of that section;

“social service worker” means a person, other than a person excepted from this definition by regulations, who—

(a) engages in social work which is required in connection with any care service, or health or

(b) not being a person mentioned in paragraph (a) above, is employed in the provision of (or in managing the provision of) a care service; or
(c) being an employee of the Commission, is an authorised person within the meaning of sections 21 and 22 of this Act;

“social worker” means a person described in paragraph (a) of the definition, above, of “social service worker”;

“someone who cares for” (or “a person who cares for”) a person has the meaning given by subsection (20) of section 2 of this Act;

“support service” has the meaning given by subsection (2) of that section; and

“vulnerability or need”, in relation to a person, has the meaning given by subsection (20) of that section.

(2) A part of a health service hospital is an independent hospital if (not being a private psychiatric hospital)—

(a) it is carried on as a separate unit;

(b) it does not provide treatment or nursing in pursuance of the National Health Service (Scotland) Act 1978 (c.29); and

(c) no part of it is contained within the same building as any such part which does provide treatment or nursing in pursuance of that Act.

56 Orders and regulations

Any order or regulations made under this Act shall be made by statutory instrument; and a statutory instrument containing any such order or regulations shall be subject to annulment in pursuance of a resolution of the Parliament.

57 Minor and consequential amendments

Schedule 3 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, has effect.

58 Repeals and power to amend or repeal enactments

(1) The enactments mentioned in schedule 4 to this Act are repealed to the extent mentioned in the second column of that schedule.

(2) The Scottish Ministers may by order make such amendments or repeals, in such enactments as may be specified in the order, as appear to them to be necessary or expedient in consequence of any provision of this Act other than section 3.

59 Short title and commencement

(1) This Act may be cited as the Regulation of Care (Scotland) Act 2001.

(2) There shall come into force at the end of the period of fourteen days beginning with the day of Royal Assent sections 1, 4, 23, 28, 39, 41 to 43, 47, 49 to 56 and 58(2) of, and schedules 1 and 2 to, this Act; and the other provisions of this Act, except this section, shall come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(3) Different days may be so appointed for different provisions and for different purposes.

(4) An order under subsection (2) above may contain such transitional provisions and such savings as the Scottish Ministers think fit.
SCHEDULE 1
(introduced by section 1(3))

THE SCOTTISH COMMISSION FOR THE REGULATION OF CARE

Status

1 The Commission shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Commission’s property shall not be regarded as property of, or property held on behalf of, the Crown.

Membership

2 The Commission shall consist of a convener and other members appointed by the Scottish Ministers on such terms and conditions as appear to the Scottish Ministers to be appropriate.

3 In making appointments under paragraph 2 above, the Scottish Ministers shall have regard to the desirability of securing that, so far as is reasonably practicable, the composition of the Commission is such as to provide a proper balance between the interests of—

(a) persons who use, or are eligible to use, care services;
(b) persons who care for such persons as are mentioned in head (a) above;
(c) persons who provide care services;
(d) local authorities which do not themselves provide care services but make arrangements for the provision of such services; and
(e) persons who are employed in the provision of care services.

General powers

4 Subject to any directions given by the Scottish Ministers, the Commission may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions; and without prejudice to that generality—

(a) co-operate with other persons in matters relevant to the exercise of its functions;
(b) acquire and dispose of land and other property;
(c) enter into contracts; and
(d) with the consent of the Scottish Ministers, borrow sums in sterling by way of overdraft for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.

Regulations as to appointments, procedure etc.

5 The Scottish Ministers may by regulations make provision as to—

(a) the appointment of the convener (including any conditions to be fulfilled for appointment);
(b) the appointment of the other members (including the number, or limits on the number, of those who may be appointed and any conditions to be fulfilled for appointment);

(c) the tenure of office of the convener and other members (including the circumstances in which they shall cease to hold office or may be removed or suspended from office);

(d) the appointment of, constitution of and exercise of functions by committees and sub-committees (including committees and sub-committees which consist of or include persons who are not members of the Commission);

(e) the procedure of the Commission and of any of its committees or sub-committees (including the validation of proceedings in the event of vacancies or of defects in appointment);

(f) the payment by the Commission to its convener and members (and to the members of its committees and sub-committees who are not members of the Commission) of such remuneration and allowances—

   (i) on such terms; and
   (ii) subject to such conditions,

   as the Scottish Ministers think fit;

(g) the payment by the Commission to, or in respect of, persons who have been its convener or members (or such members of committees and sub-committees as are mentioned in head (f) above) of such pensions, allowances and gratuities—

   (i) on such terms; and
   (ii) subject to such conditions,

   as the Scottish Ministers think fit;

(h) the payment by the Commission of compensation to any person who, other than on the expiry of a term of office, ceases to be its convener or to be a member of it; and

   (i) the delegation by the Commission of any of its functions to any of its committees, sub-committees, members or employees.

Staff

6 (1) Subject to sub-paragraph (2) below, the Commission may appoint as employees such persons (other than its convener or members) as it considers appropriate.

(2) The Commission shall have, as a member of its staff, a chief officer who shall be responsible to the Commission for the general exercise of its functions; and the appointment of that officer shall be subject to the approval of the Scottish Ministers.

(3) The remuneration and conditions of service of a chief officer appointed under this paragraph shall be such as the Commission, with the consent of the Scottish Ministers, may determine.

Accounts

7 (1) The Commission shall—

   (a) keep accounts; and
(b) prepare annual accounts in respect of each financial year, in accordance with such directions as the Scottish Ministers may give it.

(3) The Commission shall send a copy of the annual accounts to the Auditor General for Scotland for auditing.

(4) The financial year of the Commission is—

(a) the period beginning with the date on which the Commission is established and ending with 31st March next following that date; and

(b) each successive period of twelve months ending with 31st March.

(5) If requested by any person, the Commission shall make available at any reasonable time, without charge, in printed or in electronic form, its audited accounts, so that they may be inspected by that person.

Reports

8 (1) As soon as possible after the end of each financial year of the Commission, it shall make a report to the Scottish Ministers on the exercise of its functions during that year; and they shall lay before the Parliament a copy of that report.

(2) The Commission shall provide the Scottish Ministers with such reports and information relating to the exercise of its functions as they may from time to time require.

SCHEDULE 2
(introduced by section 28(3))

THE SCOTTISH SOCIAL SERVICES COUNCIL

Status

1 The Council shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Council’s property shall not be regarded as property of, or property held on behalf of, the Crown.

Membership

2 The Council shall consist of a convener and other members appointed by the Scottish Ministers on such terms and conditions as appear to the Scottish Ministers to be appropriate.

3 In making appointments under paragraph 2 above, the Scottish Ministers shall have regard to the desirability of securing that, so far as is reasonably practicable, the composition of the Council is such as to provide a proper balance between the interests of—

(a) persons who use, or are eligible to use, care services;

(b) persons who care for such persons as are mentioned in head (a) above;

(c) persons who provide care services;

(d) persons who are employed in the provision of care services; and

(e) persons who provide education or training for those so employed.
General powers

4 Subject to any directions given by the Scottish Ministers, the Council may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions; and without prejudice to that generality the Council may in particular—

(a) co-operate with other persons in matters relevant to the exercise of its functions;
(b) acquire and dispose of land and other property;
(c) enter into contracts; and
(d) with the consent of the Scottish Ministers, borrow sums in sterling by way of overdraft for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.

Regulations as to appointments, procedure etc.

5 The Scottish Ministers may by regulations make provision as to—

(a) the appointment of the convener (including any conditions to be fulfilled for appointment);
(b) the appointment of the other members (including the number, or limits on the number, of those who may be appointed and any conditions to be fulfilled for appointment);
(c) the tenure of office of the convener and other members (including the circumstances in which they shall cease to hold office or may be removed or suspended from office);
(d) the appointment of, constitution of and exercise of functions by committees and sub-committees (including committees and sub-committees which consist of or include persons who are not members of the Council);
(e) the procedure of the Council and of any of its committees or sub-committees (including the validation of proceedings in the event of vacancies or of defects in appointment);
(f) the payment by the Council to its convener and members (and to the members of its committees and sub-committees who are not members of the Council) of such remuneration and allowances—

(i) on such terms; and
(ii) subject to such conditions,
as the Scottish Ministers think fit;
(g) the payment by the Council to, or in respect of, persons who have been its convener or members (or such members of committees and sub-committees as are mentioned in head (f) above) of such pensions, allowances and gratuities—

(i) on such terms; and
(ii) subject to such conditions,
as the Scottish Ministers think fit;
(h) the payment by the Council of compensation to any person who, other than on the expiry of a term of office, ceases to be its convener or to be a member of it; and

(i) the delegation by the Council of any of its functions to any of its committees, sub-committees, members or employees.

5 Staff

6 (1) Subject to sub-paragraph (2) below, the Council may appoint as employees such persons (other than its convener or members) as it considers appropriate.

(2) The Council shall have, as a member of its staff, a chief officer who shall be responsible to the Council for the general exercise of its functions; and the appointment of that officer shall be subject to the approval of the Scottish Ministers.

(3) The remuneration and conditions of service of a chief officer appointed under this paragraph shall be such as the Council, with the consent of the Scottish Ministers, may determine.

Accounts

7 (1) The Council shall—

(a) keep accounts; and

(b) prepare annual accounts in respect of each financial year, in accordance with such directions as the Scottish Ministers may give it.

(2) The Council shall send a copy of the annual accounts to the Auditor General for Scotland for auditing.

(3) The financial year of the Council is—

(a) the period beginning with the date on which the Council is established and ending with 31st March next following that date; and

(b) each successive period of twelve months ending with 31st March.

(4) If requested by any person, the Council shall make available at any reasonable time, without charge, in printed or in electronic form, its audited accounts, so that they may be inspected by that person.

Reports

8 (1) As soon as possible after the end of each financial year of the Council, it shall make a report to the Scottish Ministers on the exercise of its functions during that year; and they shall lay before the Parliament a copy of that report.

(2) The Council shall provide the Scottish Ministers with such reports and information relating to the exercise of its functions as they may from time to time require.
SCHEDULE 3
(introduced by section 57)

MINOR AND CONSEQUENTIAL AMENDMENTS

Mental Health (Scotland) Act 1984 (c.36)

1 (1) The Mental Health (Scotland) Act 1984 is amended as follows.

(2) After section 5 there is inserted the following section—

"5A Duties in relation to private hospitals

Any person providing a private hospital shall afford to the Mental Welfare Commission all facilities necessary to enable them to carry out their functions in respect of any patient in the hospital."

(3) In section 125(1) (interpretation), in the definition of "private hospital", for the words "Part IV" there is substituted "section 12(2)".

Children Act 1989 (c.41)

2 (1) The Children Act 1989 is amended as follows.

(2) In section 19 (review of provision for day care, child minding etc.)—

(a) in subsection (3), for paragraph (a) there is substituted—

"(a) the provision made within their area for day care of children under the age of eight by that authority and by other persons required to register under Part 1 of the Regulation of Care (Scotland) Act 2001 (asp 00); and"

(b) in subsection (4), the words "or, in Scotland, the authority" are repealed;

(c) after subsection (4), there is inserted—

“(4A) In conducting any review under subsection (3), a local authority shall have regard to the provision made within their area with respect to children under the age of eight by services which, by virtue of—

(a) regulations made under subsection (12) (definition of “day care of children”) of section 2 of that Act; or

(b) subsection (17) (exception as respects school activities etc.) of that section,

do not require to be registered under Part 1 of the Regulation of Care (Scotland) Act 2001.”;

(d) in subsection (5), paragraph (a) (and the word “and” which immediately follows that paragraph) are repealed; and

(e) in subsection (8), for the words “‘day care” has the same meaning as in section 79” there is substituted “‘day care of children” has the same meaning as in the Regulation of Care (Scotland) Act 2001”.

(3) In section 80 (inspection of children’s homes etc. by persons authorised by Secretary of State)—

(a) in paragraph (i) of subsection (1), the words “with respect to which a person is registered under section 71(1)(b) or” are repealed;
(b) after that paragraph, there is inserted the following paragraph—

“(ii) premises in which a person is providing day care of children
within the meaning of the Regulation of Care (Scotland) Act 2001
(asp 00);”;

(c) in subsection (4)(a), for the words “subsection (1)(h) or (i) applies” there is
substituted “subsection (1)(h) or (ii) applies”; and

(d) in subsection (5), for paragraph (h) there is substituted—

“(h) person who is the occupier of any premises in which any person acts as a
child minder or provides day care of children (“acts as a child minder”
and “day care of children” having the same meaning as in the Regulation
of Care (Scotland) Act 2001);”.

(4) In section 105 (interpretation)—

(a) in subsection (5A), paragraph (a) is repealed; and

(b) after subsection (5A), there is inserted—

“(5B) References in this Act to acting as a child minder and to a child minder shall be
construed, in relation to Scotland, in accordance with section 2(9) of the
Regulation of Care (Scotland) Act 2001 (asp 00).”.

SCHEDULE 4
(introduced by section 58(1))

REPEALS

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Regulation of Care (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to establish the Scottish Commission for the Regulation of Care and the Scottish Social Services Council; to make provision for the registration and regulation of care services and for the registration, regulation and training of social service workers; to enable local authorities to make grants in respect of activities relating to child care and family support and to make direct payments to children in respect of certain care services; to enable the Scottish Ministers to delegate a power to make certain grants and loans for social work; to enable local authorities to provide and maintain residential accommodation in which nursing is provided; to amend the definition of “place of safety” in the Children (Scotland) Act 1995; to make further provision as respects the appointment for children of curators ad litem, reporting officers and safeguarders; and for connected purposes.

Introduced by: Susan Deacon
On: 20 December 2000
Supported by: Ms Wendy Alexander, Malcolm Chisholm, Nicol Stephen
Bill type: Executive Bill

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