SCOTTISH STATUTORY INSTRUMENTS

2004 No. 100 (C. 7)

SOCIAL CARE

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

Made - - - - 8th March 2004

The Scottish Ministers, in exercise of the powers conferred by sections 81(2), (3) and (4) of the Regulation of Care (Scotland) Act 2001(**1**), hereby make the following Order:

Citation and interpretation

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

(2) In this Order–

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

"the Act" means the Regulation of Care (Scotland) Act 2001;

"the 1978 Act" means the Adoption (Scotland) Act 1978(**2**); and

"the 2002 Order" means the Regulation of Care (Scotland) Act 2001 (Commencement No. 2 and Transitional Provisions) Order 2002(**3**).

Commencement of provisions of the Act

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

(a) section 2, subsections (1)(i), and (j), (10) (so far as not already in force)(**4**) and (11) to (15);

(b) section 5, subsection (4);

(c) section 33, subsection (1) (so far as not already in force)(**5**);

(d) section 79, so far as relating to the provisions in Schedule 3 specified in sub paragraph (e) below;

(**1**) 2001 asp 8.
(**2**) 1978 c. 28.
(**3**) S.S.I. 2002/162.
(**4**) Section 2(10) was brought partially into force on 1st April 2002 by S.S.I. 2002/162.
(**5**) Section 33(1)(c) was brought into force on 1st April 2002 by S.S.I. 2002/162.

(e) in Schedule 3, paragraph 4(2), 7(1) to (10), (11) (so far as not already in force)(**6**) and paragraph 22(b) and (c);

(f) Section 80, subsection (1), so far as relating to the provisions in Schedule 4 specified in sub-paragraph (g) below; and

(g) in Schedule 4, the entries relating to section 94 of, and Schedule 2 to, the Children (Scotland) Act 1995(**7**).

Transitional provisions

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

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

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

(b) in any other case, on 1st October 2004.

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

(a) an adoption service mentioned in subsection (11)(a) of section 2 of the Act;

(b) an adoption service mentioned in subsection (11)(b) of that section which is provided by a body which was, immediately before 1st April 2004, an approved adoption society;

(c) a fostering service;

(d) an offender accommodation service, other than one to which article 4(8) of the 2002 Order applies.

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

(a) the provisions of that section and section 5 of that Act shall, notwithstanding their repeal by virtue of this Order, continue to apply on and after that date for the purpose of determining that application; and

(b) if the application is approved, the adoption service provided by that body shall be treated, on and after the date on which the approval operates under section 3(2A) of the 1978 Act(**8**), for all purposes as if it had been registered under Part 1 of the Act on that date until–

(i) where the body providing the service has before 1st October 2004 made an application for registration of the service under section 7(1) of the Act, 1st April 2005; or

(ii) in any other case, 1st October 2004.

(**6**) Paragraph 7(11) (b) of Schedule 3 was brought into force on 1st April 2002 by S.S.I. 2002/162.
(**7**) 1995 c. 36.
(**8**) Section 3(2A) was inserted into the 1978 Act by the Children (Scotland) Act 1995 (c. 36), section 94(1).

St Andrew's House, Edinburgh
8th March 2004

TOM McCABE
Authorised to sign by the Scottish Ministers