SCOTTISH STATUTORY INSTRUMENTS

# 2002 No. 162 (C. 8)

# SOCIAL CARE

## The Regulation of Care (Scotland) Act 2001 (Commencement No. 2 and Transitional Provisions) Order 2002

*Made - - - - 27th March 2002*

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. 2 and Transitional Provisions) Order 2002.

(2) In this Order–

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

"the 1938 Act" means the Nursing Homes Registration (Scotland) Act 1938(**2**);

"the 1951 Act" means the Nurses (Scotland) Act 1951(**3**);

"the 1968 Act" means the Social Work (Scotland) Act 1968(**4**);

"the 1989 Act" means the Children Act 1989(**5**);

"the 1996 regulations" means the Secure Accommodation (Scotland) Regulations 1996(**6**);

"agency for the supply of nurses" has the meaning which it had in the 1951 Act;

"child minder" has the meaning which it had in the 1989 Act;

"commencement date" means 1st April 2002;

"day care for children" has the meaning which it had in the 1989 Act;

"establishment" means a residential or other establishment within the meaning of the 1968 Act;

"Health Board" means a Health Board constituted by order under section 2 of the National Health Service (Scotland) Act 1978(**7**); and

(**1**) 2001 asp 8.
(**2**) 1938 c. 73.
(**3**) 1951 c. 55.
(**4**) 1968 c. 49.
(**5**) 1989 c. 41.
(**6**) S.I.1996/3255.
(**7**) 1978 c. 29.

"nursing home" has the meaning which it had in the 1938 Act.

**Commencement of provisions**

**2.** Subject to the remaining provisions of this Order, the following provisions of the Act shall come into force on the commencement date:–

(a) in section 2, subsections (1)(a) to (h), (l) and (m), (2) to (4), (5)(a) and (b), (6), (9), (17) to (26) and (28);

(b) section 2(5)(c) so far as relating to an independent clinic to which article 4(4) applies;

(c) section 2(7) so far as relating to a child care agency to which article 4(6) applies;

(d) section 2(10) so far as relating to an offender accommodation service to which article 4(8) applies;

(e) sections 3, 5(3), 7, 9 to 23, 24(2) and (3), 25 to 27, 31, 32, 33(1)(c) and (2) to (4), 34 to 42, 44 to 51 and 72;

(f) section 79, so far as relating to the provisions in schedule 3 specified in sub-paragraph (h);

(g) section 80(1), so far as relating to the provisions in schedule 4 which are commenced by sub-paragraph (i);

(h) in schedule 3, paragraphs 1 to 3, 4(1) and (3), 5, 6, 7(11)(b), 8 to 19, 21, 23(1) to (6) and 25; and

(i) schedule 4, except the entries relating to section 94 of and Schedule 2 to the Children (Scotland) Act 1995(**8**).

**Deemed registration of certain services**

**3.**—(1) Where on the commencement date a person provides a care service to which any of the paragraphs of article 4 applies, that care service is to be treated for all purposes as if it had been registered under Part 1 of the Act on that date.

(2) Where a local authority to which paragraph (1) applies makes an application under section 33 of the Act (local authority applications for registration under Part 2)–

(a) section 21 of the Act (offences in relation to registration under Part 1) shall not apply until the application is determined; and

(b) registration under Part 1 of the Act shall cease where the Commission grants the application.

**Services which are deemed to be registered**

**4.**—(1) This paragraph applies to a support service which is provided from premises–

(a) which were or formed part of an establishment in respect of which the person providing the service was immediately before the commencement date registered under the 1968 Act; or

(b) which have at any time been inspected by a person authorised to do so by a local authority as if they were or formed part of an establishment which was required to be registered under that Act.

(2) This paragraph applies to a care home service which provides accommodation wholly or mainly in–

(a) an establishment in respect of which the person providing the care home service was immediately before the commencement date registered under the 1968 Act;

(**8**) 1995 c. 36.

(b) a nursing home in respect of which the person providing the care home service was immediately before the commencement date registered under the 1938 Act;

(c) other premises which have at any time been inspected by a person authorised to do so by–

(i) a local authority as if they were or formed part of an establishment which was required to be registered under the 1968 Act; or

(ii) a Health Board as if they were or formed part of a nursing home which was required to be registered under the 1938 Act.

(3) This paragraph applies to a school care accommodation service which provides accommodation wholly or mainly in an establishment in respect of which the person providing the school care accommodation service was immediately before the commencement date registered under the 1968 Act.

(4) This paragraph applies to an independent health care service being an independent hospital or an independent clinic which is substantially the same as a nursing home in respect of which the person providing the independent health care service was immediately before the commencement date registered under the 1938 Act.

(5) This paragraph applies to a nurse agency which is substantially the same as an agency for the supply of nurses in respect of which the person providing the nurse agency was immediately before the commencement date the holder of a licence under the 1951 Act.

(6) This paragraph applies to a child care agency which is substantially the same as a service in respect of which the person providing the child care agency was immediately before the commencement date registered as a child minder under Part X of the 1989 Act.

(7) This paragraph applies to a secure accommodation service.

(8) This paragraph applies to an offender accommodation service which provides accommodation wholly or mainly in–

(a) an establishment in respect of which the person providing the offender accommodation service was immediately before the commencement date registered under the 1968 Act; or

(b) other premises which have at any time been inspected by a person authorised to do so by a local authority as if they were or formed part of an establishment which was required to be registered under that Act.

(9) This paragraph applies to child minding which is substantially the same as a service in respect of which the person providing the child minding was immediately before the commencement date registered as a child minder under Part X of the 1989 Act.

(10) This paragraph applies to day care of children which is substantially the same as a service–

(a) in respect of which the person providing the day care of children was immediately before the commencement date registered as a provider of day care for children under Part X of the 1989 Act; or

(b) provided immediately before the commencement date by the person providing the day care of children from premises which at any time have been inspected by–

(i) a person authorised to do so by a local authority as if they were premises on which day care for children to which Part X of the 1989 Act applied was provided; or

(ii) a person authorised to do so under section 66 of the Education (Scotland) Act 1980(**9**).

(**9**) 1980 c. 44.

### Approved accommodation

**5.** Where immediately before the commencement date accommodation was approved under regulation 3 of the 1996 regulations (approval by the Secretary of State of secure accommodation), that accommodation is to be treated for all purposes as if it had been approved by the Scottish Ministers under regulation 10(3) of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002(**10**).

### Deemed registration of existing undertakings etc.

**6.**—(1) Subject to paragraph (2), where on the commencement date a person provides a care service to which this article applies, the service is to be treated for all purposes as if it had been registered under Part 1 of the Act on that date.

(2) Registration under paragraph (1) shall cease to have effect–

(a) where the person providing the service has before 1st October 2002 made an application for registration of the service under section 7(1) of the Act, on 1st April 2003; or

(b) in any other case, on 1st October 2002.

(3) This article applies to any care service other than one to which article 4 applies which is substantially the same as a service, activity or undertaking which was provided or carried on by that person immediately before that date.

### Certificates

**7.**—(1) Where a care service is, by virtue of article 3 or 6, to be treated as if it had been registered under the Act, and–

(a) a certificate has been issued to the person who provides the service under–

(i) section 1(3) of the 1938 Act;

(ii) section 62(3) of the 1968 Act; or

(iii) paragraph 6 of Schedule 9 to the 1989 Act, or

(b) a licence has been issued to the person who provides the service under section 28(2) of the 1951 Act,

that certificate or licence shall be treated for the purposes of the Act as if it was the certificate issued under section 9(3) of the Act.

(2) Where no such certificate or licence has been issued as specified in paragraph (1), section 9(4) of the Act shall not apply to the care service until the Commission has issued a certificate of registration under the Act.

### Continuation of existing conditions

**8.** Where a care service is treated as having been registered by virtue of article 3–

(a) any conditions attached to registration of the establishment specified in article 4(1)(a), (2)(a), (3) or (8) or of the nursing home specified in article 4(2)(b) or (4);

(b) any conditions attached to the licence of the agency for the supply of nurses specified in article 4(5);

(c) any requirements imposed on the person specified in article 4(6), (9) or (10)(a); or

(d) any terms or conditions attached to the approval under the 1996 regulations which is specified in article 5,

(**10**) S.S.I. 2002/114.

as the case may be shall, so far as they are capable of being conditions to which registration under the Act is subject, have effect from the commencement date as if they were such conditions which had for the purposes of section 17(1) of the Act been agreed in writing between the Commission and the person providing the care service.

**Notices under the 1938 Act**

**9.**—(1) This article applies where–

(a) a person provides a care service which is–

(i) a care home service to which article 4(2)(b) applies; or

(ii) an independent health care service to which article 4(4) applies;

(b) the Health Board with which the person was immediately before the commencement date registered under the 1938 Act has sent that person notice under section 3 of that Act of its intention to make an order cancelling that registration; and

(c) that order had not come into force before that date.

(2) Where this article applies–

(a) the 1938 Act shall continue in force for the purpose of determining whether the order referred to in paragraph (1) is to come into force; and

(b) where the order comes into force and the person's registration is cancelled, registration under the Act by virtue of this Order of the care service to which paragraph (1) applies shall cease to have effect.

(3) Where a person to whom paragraph (1)(a) applies has before the commencement date applied to the Health Board specified in paragraph (1)(b) in writing to vary a condition of registration under section 1(3F) of the 1938 Act and that application has not been determined before that date, the application shall be treated as an application to the Commission for variation of a condition which was made on that date in accordance with the requirements of section 14 of the Act.

**Proposals under the 1951 Act**

**10.**—(1) This article applies where–

(a) a person provides a nurse agency to which article 4(5) applies;

(b) the Health Board from which the person immediately before the commencement date held a licence under section 28 of the 1951 Act has before that date proposed to revoke that licence; and

(c) before that date either–

(i) the person has appealed to the sheriff as provided for in section 28(4) of the 1951 Act but that appeal has not been determined; or

(ii) the period of 21 days referred to in that subsection has not expired.

(2) Where this article applies–

(a) the 1951 Act shall continue in force for the purpose of determining whether the licence is to be revoked; and

(b) where the licence is so revoked, registration of the nurse agency under the Act by virtue of this Order shall cease to have effect.

**Notices under the 1968 Act**

**11.**—(1) This article applies–