



SCOTTISH EXECUTIVE

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6 December 2002

Dear Colleague

**THE REGULATION OF CARE (SCOTLAND) ACT 2001
COMMENCEMENT OF REGULATION OF HOUSING SUPPORT SERVICES, CHILD
CARE AGENCIES, AND THE MANAGEMENT OF FUNDS FOR THOSE ADULTS WITH
INCAPACITY; AND TRANSITIONAL ARRANGEMENTS FOR REGISTRATION**

1. I am writing to invite you to comment **no later than 28 February 2003** on the draft Commencement and Transitional Arrangements Order explained in and attached to the consultation paper enclosed. The Order is to be made under the Regulation of Care (Scotland) Act 2001, which can be viewed on the Parliament website at www.scottish.parliament.uk.
2. This is the third Commencement Order to be made under the Act. It effects the commencement, from 1 April 2003, of the regulation by the Scottish Commission for the Regulation of Care (the Care Commission) of housing support services, those child care agencies currently unregulated, and services limited to the management of funds for adults with incapacity. The draft Order also sets out the transitional arrangements from 1 April 2003 for registration of these services by the Care Commission, and these are also explained in the body of the consultation paper.
3. Further commencement orders will, through time, effect the commencement of the rest of the services defined in the Act but not yet regulated by the Care Commission.
4. Once all the responses to this consultation have been considered, the order will be amended as necessary and laid before the Scottish Parliament.
5. Please submit any comments on the draft order **no later than 28 February 2003** to Blythe Robertson, Care Standards and Sponsorship Branch, Scottish Executive Health Department, 2-E(S),



St Andrew's House, Regent Road, Edinburgh EH1 3DG. Electronic responses should be sent to standardsandsponsorship@scotland.gsi.gov.uk. Tel: 0131 244 5492.

Yours sincerely

A handwritten signature in black ink that reads "Linda Gregson". The signature is written in a cursive style with a large, stylized initial 'L'.

MRS LINDA GREGSON
Head of Care Standards and Sponsorship Branch



Commencement of
Regulation by the Care
Commission of Housing
Support Services, Child
Care Agencies and the
Management of Funds for
those Adults with
Incapacity, and related
Transitional
Arrangements for
Registration

Consultation Paper

REGULATION OF CARE (SCOTLAND) ACT 2001

COMMENCEMENT OF REGULATION BY THE CARE COMMISSION OF HOUSING SUPPORT SERVICES, CHILD CARE AGENCIES AND THE MANAGEMENT OF FUNDS FOR THOSE ADULTS WITH INCAPACITY, AND RELATED TRANSITIONAL ARRANGEMENTS FOR REGISTRATION

Purpose

1. This paper proposes the commencement of the sections of the Regulation of Care (Scotland) Act 2001 (the Act) which will allow the following services to be regulated by the Scottish Commission for the Regulation of Care (the Care Commission) from 1 April 2003:

- child care agencies (sections 2(7) and 2(8))
- housing support services (section 2(1)(n) and (27))
- adults with incapacity limited registrations (section 8)

2. The paper also sets out the transitional arrangements we propose to set in place on the commencement date. A draft Commencement and Transitional Provisions Order is attached at **Annex A**.

3. **Comments on the contents of this paper and on the draft at Annex A are invited by 28 February 2003. All responses should be sent to Blythe Robertson, Care Standards and Sponsorship Branch, Scottish Executive Health Department, 2- E(S), St Andrew's House, Regent Road, Edinburgh EH1 3DG. Electronic responses may be sent to standardsandsponsorship@scotland.gsi.gov.uk.**

Introduction

4. The Care Commission was established by the Regulation of Care (Scotland) Act 2001 to regulate a wide range of care services defined in section 2 of the Act. The Care Commission has, since 1 April 2002, been regulating those care services in Section 2 of the Act that were regulated in some way immediately before that date by the local authority and health board inspection teams. The regulation of the remaining services at Section 2 of the Act that are new to regulation is to be phased and this will be achieved by a series of commencement orders.

5. In addition, section 8 of the Act provides, for the purposes of Part 4 of the Adults with Incapacity (Scotland) Act 2000 (management of resident's finances), for applications for registration of services from persons who provide, or seek to provide, them in accommodation which is not a care service. Neither this section nor Part 4 of the Adults with Incapacity (Scotland) Act has yet been commenced.

Proposals

6. It is proposed that housing support services, child care agencies not already regulated, and residential accommodation services not otherwise registered as a care service who wish to manage the finances of resident adults with incapacity, should be regulated by the Care Commission from 1 April 2003.

Housing support services

7. In the case of housing support services, commencing regulation from April will tie in with associated legislation relevant to the Supporting People initiative. This will ensure access to the relevant funding.

Child care agencies

8. Commencement of Section 2(1)(f) of the Regulation of Care (Scotland) Act 2001 and Article 4(6) of the Regulation of Care (Scotland) Act 2001 (Commencement No 2 and Transitional Provisions) Order 2002 allowed those child care agencies which were regulated by local authorities under the old regulatory framework to be regulated by the Care Commission from April 2002. We now propose that all child care agencies be regulated from April 2003. Ensuring that the services they are providing are registered with the Care Commission from then will allow individuals using these child care services to access child care tax credit. This will contribute towards the Scottish Executive's social inclusion agenda in helping parents back to work or to access training. It will also reinforce the commitment in the Childcare Strategy to making childcare more accessible and affordable to parents.

Adults with incapacity limited registrations

9. The Act provides for the Care Commission to register, on a limited basis, residential accommodation which does not require to be registered as a care service. The registration will only be for the purpose of permitting the manager to apply to manage the finances of an adult with incapacity under the provisions of Part 4 of the Adults with Incapacity (Scotland) Act 2000. Part 4 is due to be commenced on 1 April 2003, so we propose to commence the related Regulation of Care Act provision at the same time.

Transitional arrangements

10. The Transitional Issues paper widely circulated in October 2001 by the Regulation of Care Project Team stated that services new to regulation would be brought into the regulatory regime as the relevant sections of the Act were commenced. It confirmed that the dates by which services would require to apply for registration would be set out and publicised in advance, and services would be required to apply by a cut off date.

11. The proposal for the care services to be regulated for the first time from 1 April 2003 is that they be deemed registered until 30 September 2003. An application for registration will have to be made by that date, otherwise they will no longer be registered and will be committing an offence under Section 21 of the Act if they continue to provide a care service. The Care Commission will have until 31 March 2004 to consider and make a decision on the applications received.

Related legislation

12. Further consultation papers will be issued shortly on proposed maximum fees from 1 April 2003, both for services currently being regulated and those being proposed here, and on proposed changes to associated subordinate legislation which take account of the services new to regulation from that date.

Summary

13. **Views on these proposals and on the draft Order at Annex A are invited by 28 February, and should be sent to Blythe Robertson or E-mailed, as detailed in paragraph 3.** We will not be able to reply to you personally, but will consider all comments in reaching any decisions on the legislation.

14. Please note that, as is normal practice, we will make your response publicly available through the Scottish Executive library unless you ask us not to do so.

Care Standards and Sponsorship Branch
Scottish Executive Health Department
December 2002

DRAFT COMMENCEMENT AND TRANSITIONAL PROVISIONS ORDER

S C O T T I S H S T A T U T O R Y I N S T R U M E N T S

2003 No.**SOCIAL CARE****The Regulation of Care (Scotland) Act 2001 (Commencement No. 3
and Transitional Provisions) Order 2003***Made*

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. 3 and Transitional Provisions) Order 2003.

(2) In this Order—

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

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)(n), (7), (8) and (27);
- (b) section 8.

Deemed registration of existing undertakings etc.

3.—(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 2003 made an application for registration of the service under section 7(1) of the Act, on 1st April 2004; or
- (b) in any other case, on 1st October 2003.

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

⁽¹⁾ 2001 asp 8.

St Andrew's House,
Edinburgh
2003

Authorised to sign by the Scottish Ministers