Subordinate legislation relevant to the Commencement of Regulation by the Care Commission of Offender Accommodation services under the Regulation of Care (Scotland) Act 2001

Consultation Paper
REGULATION OF CARE (SCOTLAND) ACT 2001

COMMENCEMENT OF REGULATION OF OFFENDER ACCOMMODATION SERVICES FROM APRIL 2004

DRAFT SUBORDINATE LEGISLATION

Purpose

1. This paper seeks views on proposals for the Care Commission to regulate all offender accommodation services in Scotland under the Regulation of Care (Scotland) Act 2001 from 1 April 2004. It also seeks views on the proposed transitional provisions for registration from that date.

Introduction

2. The Care Commission was established from 1 April 2002 under the Regulation of Care (Scotland) Act 2001 (the Act) to regulate the wide range of care services defined in section 2 of that Act. Those services registered under the previous local authority system, including a small number of offender accommodation services, have been regulated by the Care Commission since 1 April 2002. Regulation of the rest of the services defined in the Act is being phased in. This is to allow the Commission to take on the additional work gradually rather than all at once.

3. Housing support services, child care agencies and limited services for adults with incapacity are also being regulated now; care at home services will be from December 2003; and the proposal is that adoption and fostering services will be regulated from April 2004.

Commencement for Offender Accommodation Services and Transitional Arrangements for Registration

4. A consultation paper covering Transitional Issues, which was widely circulated in October 2001 by the Regulation of Care Project Team, stated that services in care sectors which were 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 such services would be required to apply for registration would be set out and publicised in advance, and services would be required to apply by a cut off date.

5. The proposal for the as yet unregulated offender accommodation services is that they be regulated by the Care Commission from April 2004. Those (unregulated) services in existence immediately before that date would be deemed to be registered for the 6 months following the commencement date. An application for registration would have to be made to the Care Commission before 1 October 2004, otherwise the service would no longer be deemed as registered and the provider would be committing an offence under Section 21 of the Act if he/she continued to provide it. The Care Commission would then have a further 6 months to consider and make a decision on the applications received. This proposal follows the same process as was set in place for the services new to regulation from April 2003, where applications had to be with the Care Commission by October 2003 and processed by them by April 2004.
6. Those intending to provide a new offender accommodation service service after April 2004 would, of course, have to submit an initial application for registration for consideration by the Care Commission in line with the requirements for all other services. Registration would have to be granted by the Care Commission before the service could operate.

7. The draft Regulation of Care (Scotland) Act 2001 (Commencement No. 4 and Transitional Provisions) Order 2004 attached at Appendix A seeks to commence the rest of the definition of offender accommodation services in the Act and put in place these transitional arrangements. It should be noted that it also covers the commencement of regulation and transitional provisions for adoption and fostering services, which are being consulted on separately.

Other relevant legislation

8. The following legislation already applies to the offender accommodation services already regulated by the Care Commission:

- The Regulation of Care (Requirements as to Care Services)(Scotland) Regulations 2002
- The Regulation of Care (Applications and Provision of Advice)(Scotland) Order 2002
- The Regulation of Care (Registration and Registers)(Scotland) Regulations 2002

9. No changes are considered to be necessary to any of this legislation to cater for the regulation of the rest of offender accommodation services.

10. Maximum registration fees for those offender accommodation services already regulated are specified in the Regulation of Care (Fees) (Scotland) Order 2003. New fee levels from April 2004 for all regulated services are currently under consideration and proposals will be subject to a separate consultation later this year.

Summary

11. We would welcome comments on the proposals contained in this consultation paper. Responses should be sent to Colin MacFadyen at Care Standards and Sponsorship Branch, Scottish Executive Health Department, 2 ES, St Andrew's House, Regent Road, Edinburgh EH1 3DG no later than 9 January 2004. Electronic responses should be sent to: standardsandsponsorship@scotland.gsi.gov.uk.

1. We may not be able to reply to you personally, but will consider all comments in reaching any decisions on the legislation.

2. 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
November 2003
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. 4 and Transitional Provisions) Order 2004.

(2) In this Order,—
“the Act” means the Regulation of Care (Scotland) Act 2001; and
“the 2002 Order” means the Regulation of Care (Scotland) Act 2001 (Commencement No. 2 and Transitional Provisions) Order 2002(2).

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), (1)(j), (10) (so far as not already in force) and (11) to (15);
(b) section 5, subsection (4);
(c) section 33, subsection (1)(a) and (b);
(d) section 79, so far as relating to the provisions in Schedule 3 specified in paragraph (e) below;
(e) in Schedule 3, paragraph 7(1) to (10), (11)(a) and (c) and paragraph 22(b) and (c);
(f) Section 80(1), so far as relating to the provisions in Schedule 4 specified in paragraph (g) below; and
(g) in Schedule 4, the entries relating to section 94 of, and Schedule 2 to, the Children (Scotland) Act 1995(3).

Transitional provisions
3.—(1) Where on 1st April 2004 a person is providing a care service to which this article applies the service shall be treated 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.

(1) 2001 asp 8.
(2) S.S.I. 2002/162.
(3) 1995 c.36.
(3) This article applies to the following care services:–
   (a) an adoption service,
   (b) a fostering service, and
   (c) an offender accommodation service other than one to which article 4(8) of the 2002 Order 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.

St Andrew’s House,
Edinburgh
2004

Authorised to sign by the Scottish Ministers
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force certain provisions of the Regulation of Care (Scotland) Act 2001 (“the Act”) and makes transitional provisions.

Article 2 sets out the provisions of the Act that are to come into force on 1st April 2004. These include in article 2(a) the definitions of those care services to which the Act will apply from that date, namely adoption services, fostering services and the remainder of offender accommodation services.

Article 3 contains transitional provisions. Persons providing the care services mentioned in article 3(3) are deemed on 1st April 2004 to have registered that service under Part I, or as the case may be, Part 2, of the Act. Article 3(2) provides the circumstances in which a service will cease to be deemed to be registered. Deemed registration is to last for six months or, where the provider has applied to the Care Commission for registration, for a further six months.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

1. The following provisions of the Act have been brought into force by the Regulation of Care (Scotland) Act 2001 (Commencement No. 1) Order 2001 (S.S.I. 2001/304):–

<table>
<thead>
<tr>
<th>Provision</th>
<th>Date of commencement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sections 5(1) and (2), 6, 24(1), 29, 30, 53 to 55, 63 to 65, 67, 71, 79 (partially), 80(3) and (4), and paragraphs 20 and 23(7) of schedule 3</td>
<td>1st October 2001</td>
</tr>
<tr>
<td>Section 70</td>
<td>20th December 2001</td>
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2. The following provisions of the Act have been brought into force by the Regulation of Care (Scotland) Act 2001 (Commencement No. 2 and Transitional Provisions) Order 2001 (S.S.I. 2002/162):–

<table>
<thead>
<tr>
<th>Provision</th>
<th>Date of commencement</th>
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<tbody>
<tr>
<td>Sections 2 subsections (1)(a) to (h), (l) and (m), (2) to (4), 5(a) and (b), (6), (9), (17) to (26) and (28),</td>
<td>1st April 2002</td>
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<tr>
<td>Section 2(5)(c) (partially)</td>
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<td>Section 2(7) (partially)</td>
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<td>Section 2(10) (partially)</td>
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<tr>
<td>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</td>
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<td>Section 79 (partially)</td>
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<td>Section 80(i) (partially)</td>
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<td>Paragraphs 1 to 3, 4(1) and (3), 5, 6, 7(11)(b), 8 to 19, 21, 23(1) to (6) and 25 of Schedule 3</td>
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<td>Schedule 4 (partially)</td>
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3. The following provisions of the Act have been brought into force by the Regulation of Care (Scotland) Act 2001 (Commencement No. 3 and Transitional Provisions) Order 2003 (S.S.I. 2003/205):

<table>
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<tr>
<th>Provision</th>
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<tbody>
<tr>
<td>Sections 2(1)(n)</td>
<td>1st April 2003</td>
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<tr>
<td>Section 2(7) so far as not already in force</td>
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<td>Section 2(8)</td>
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<td>Section 2(27)</td>
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<td>Section 8</td>
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