



SCOTTISH EXECUTIVE

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1 August 2003

Dear Colleague

REGULATION OF CARE (SCOTLAND) ACT 2001 REGULATION OF CARE AT HOME - CONSULTATION ON ASSOCIATED SUBORDINATE LEGISLATION

1. I am writing to invite you to comment, **no later than 24 October 2003**, on the enclosed consultation paper on new subordinate legislation to be made under the Regulation of Care (Scotland) Act 2001 (the Act). The Act itself can be viewed on the Parliament website at www.scottish.parliament.uk.

2. Care at home falls within the definition of "support services" at section 2 (2) of the Act. Only the day care element of that definition was commenced and has been regulated since 1 April 2002. Care at home was excepted from the definition by the Regulation of Care (Excepted Services)(Scotland)Regulations 2002, which are replicated at **Appendix A**. The intention now is to remove that exception via the Regulation of Care (Excepted Services)(Scotland) Amendment Regulations 2003. The paper also explains the transitional arrangements proposed for registration of care at home services when regulation starts (expected to be some time in December). They would be set in place by the Regulation of Care (Scotland) Act 2001 (Transitional Provisions) Order 2003, a draft of which is at **Appendix B**.

3. The subordinate legislation replicated at **Appendices C and D** has been in place since 1 April 2002 and applies to **all** regulated care services regardless of when regulation commences. It follows that it would apply to care at home from December 2003 when regulation commences. However, it is considered that some provisions are not relevant for care at home services. The consultation paper explains the changes proposed to the original legislation in respect of care at home. We would appreciate your views on the proposed changes, on whether you consider any of the other current provisions to be inappropriate, and on whether there are any other requirements which need to be included. Drafts of the new legislation to effect the proposed changes - the Regulation of Care (Requirements as to Care Services)Amendment No.2 Regulations 2003 and the Regulation of Care (Applications and Provision of Advice)(Scotland) Amendment No.2 Order 2003 - have been



prepared. If you would like copies of these, or, indeed, of the draft Excepted Services Amendment Regulations referred to earlier in this letter, you should contact Jane Martin on 0131 244 3515. Alternatively, you will be able to view them all shortly on our website at:

<http://www.scotland.gov.uk/about/HD/CCD1/00017652/Carestandardshome.aspx>

4. The registration fees currently applicable for regulated services are replicated at **Appendix E**. The paper explains the stated policy on fees; proposes fee levels for care at home services; and confirms that these would be set in place in an Amendment Order. A related Regulatory Impact Assessment is attached at **Appendix F**. Again, copies of the draft Order can be obtained from Jane Martin on 0131 244 3515 or you can view them shortly on our website.

5. We are aware that the Care Commission has already sought information from local authorities on housing support services, including details of any care at home services provided alongside them. However, that will not provide a full picture of the number of care at home services. **It would therefore be very helpful if local authorities responding to the enclosed care at home consultation paper could also provide details of any care at home services they supply or commission which are not tied in with housing support services, and any independent services they are aware of. If you are aware of any care at home service providers please feel free to bring this paper to their attention and encourage them to respond.**

6. Once all the responses to this consultation have been considered, the draft orders and regulations will be amended as necessary and laid before the Scottish Parliament.

Yours sincerely

Linda Gregson

MRS LINDA GREGSON
Care Standards and Sponsorship Branch





SCOTTISH EXECUTIVE

**Subordinate legislation
relevant to Regulation by the
Care Commission of Support
Services (Care at home)
under the Regulation of Care
(Scotland) Act 2001)**

Consultation Paper

REGULATION OF CARE (SCOTLAND) ACT 2001

COMMENCEMENT OF REGULATION OF SUPPORT SERVICES (CARE AT HOME) BY THE SCOTTISH COMMISSION FOR THE REGULATION OF CARE FROM DECEMBER 2003

DRAFT SUBORDINATE LEGISLATION

Purpose

1. This paper seeks views on proposals for 5 pieces of subordinate legislation which are required to ensure the commencement of regulation of the care at home element of support services by the Scottish Commission for the Regulation of Care (the Care Commission) from a date in December 2003.

2. This paper explains the legislative provisions proposed and the intended vehicles to achieve them.

3. Comments on the contents of this paper are invited by 24 October 2003. All responses should be sent to Jane Martin, 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 from 1 April 2002 under the Regulation of Care (Scotland) Act 2001 (the Act) to regulate a wide range of care services defined in section 2 of the Act. The Regulation of Care (Scotland) Act 2001 (Commencement No. 2 and Transitional Provisions Order 2002) ensured that services previously regulated in some way were regulated by the Care Commission from the outset. This included "support services". However, in recognition of the fact that part of that definition - care at home - was not previously regulated in any way, that element was excepted from the definition by the Regulation of Care (Excepted Services) (Scotland) Regulations 2002. This ensured that only the day care element of "support services" was regulated from April 2002.

5. Regulation by the Care Commission of housing support services and child care agencies commenced on 1 April 2003. The regulation of the rest of the services defined in the Act is being phased in. Until recently the intention was that care at home, adoption and fostering services should all be regulated from October 2003. However, in recognition of the significant extra work the Care Commission has already taken on this year, regulation of adoption and fostering services has been postponed and the new provisional commencement date for them is April 2004. It is proposed that regulation of care at home should commence in December 2003.

6. Legislation must now be set in place to ensure that regulation of care at home by the Care Commission commences in December 2003. In addition, some changes are considered to be necessary in the suite of legislation which currently covers all regulated care services. Proposals are set out in paragraphs 7 to 21.

Commencement of Regulation and Transitional Provisions

7. The "support services" definition in section 2(2) of the Act has already been commenced. However, as explained in paragraph 4, care at home services have been excepted from the definition. The Regulation of Care (Excepted Services)(Scotland) Regulations 2002 are replicated at **Appendix A**. **To ensure commencement of care at home services from December, the intention is to remove paragraph (a) of Article 2 of these Regulations by means of Amendment Regulations.**

8. A consultation paper covering Transitional Issues, which was 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.

9. The proposal for the care at home element of "support services" to be regulated from December is that they be deemed registered for the 6 months following the commencement date. An application for registration would have to be made to the Care Commission by the end of that 6 month period, 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.

10. The draft Regulation of Care (Scotland) Act 2001 (Transitional Provisions) Order 2003 attached at Appendix B seeks to set these arrangements in place in respect of care at home services.

The Regulation of Care (Requirements as to Care Services)(Scotland) Regulations 2002

11. The Regulation of Care (Requirements as to Care Services)(Scotland) Regulations 2002, which are replicated at **Appendix C**, set out the requirements which must be complied with by providers of all care services. These Regulations were slightly amended earlier this year by means of the Regulation of Care (Requirements as to Care Services)(Scotland) Amendment Regulations 2003 (SS1 2003/149) to ensure that some (inappropriate) provisions did not apply to the services to be regulated from 1 April 2003. **As it is considered that there is no need for care at home services to keep records of fire and other emergency procedures, fire drills and alarm tests, money and valuables deposited, and medicines for the use of service users, it is proposed that sub-paragraphs 3(b), (c), (h) and (j) of Regulation 19 of the 2002 Order be disapplied for these services. This would be done in a further set of Amendment Regulations.**

12. For the avoidance of doubt all other requirements of the 2002 Order remain valid for care at home services.

13. We are also proposing to take this opportunity to effect a number of minor technical changes in the existing Regulations which will apply to all regulated care services, as follows:

13.1 In the definition of "employed" at Regulation 1 of the 2002 Order, the insertion of a further sub-paragraph to ensure that, for nurse agencies, the definition of "employed" includes those introduced to users.

13.2 In paragraph (2) of Regulations 6, 7 and 8, "not fit" to be changed to "unfit" for consistency.

13.3 Similarly, in paragraph (2) of Regulation 6, "disqualification" to be replaced with "unfitness".

13.4 In order to remove any ambiguity, in paragraph (2) of Regulation 8, "this" to be deleted and "7" inserted after "regulation".

The Regulation of Care (Applications and Provision of Advice)(Scotland) Order 2002

14. The Regulation of Care (Applications and Provision of Advice)(Scotland) Order 2002, which is replicated at **Appendix D**, sets out the information to be provided by a person who makes an application for registration of any care service under the Act. The Order was amended by the Regulation of Care (Applications and Provision of Advice)(Scotland) Amendment Order 2003 (SSI 2003/151) to ensure that some (inappropriate) provisions did not apply to the services to be regulated from 1 April 2003. **The following changes are considered necessary to the original Order to ensure that they do not apply to care at home services:**

14.1 Disapply paragraph 12 of the existing Schedule, which requires details of ratios of employees to service users during the day or night.

14.2 Disapply paragraphs 31, 32 and 33, which only apply to specific services.

15. The proposal is to effect these changes in a further Amendment Order.

16. Again, for the avoidance of doubt, all other requirements remain valid for care at home services.

The Regulation of Care (Fees)(Scotland) Order 2003

17. In terms of the Act, Scottish Ministers prescribe maximum fees which may be imposed by the Care Commission. The Commission imposes fees for:

- applications for registration or for cancellation of registration;
- annual continuation of registration;
- applications for variation or removal of a condition of registration; and
- new certificates of registration.

18. The policy on fees was set out in the Financial Memorandum to the Regulation of Care (Scotland) Bill when it was introduced in the Scottish Parliament in December 2000.

Registration fees for services already regulated were to be increased by 10% each year until 2004-05, when they would be set at a level which represented the full cost to the Care Commission of the regulatory process. Services new to regulation were to be set at full cost recovery level from the start of regulation. This policy has been followed since then. The current maximum fees for regulated services were set in the Regulation of Care (Fees) (Scotland) Order 2003, which is replicated at **Appendix E**.

19. Care at home services have not been regulated previously and maximum registration fees are therefore to be set at full cost recovery level. It is considered that they are likely to take the same length of time to register and inspect as housing support services, therefore the same levels of fees are proposed, as follows:

	For a small service (one with up to 3 WTE staff, discounting volunteers)	For a medium service (one with over 3 but not more than 15 WTE staff, discounting volunteers)	For a service with more Than 15 WTE staff, Discounting Volunteers
For applications for registration	£1230	£2000	£2731
For annual continuation of registration	£642	£1400	£2143
For applications for cancellation of registration	£244	£244	£244
For applications for variation or removal of a condition of registration	£244	£244	£244
New certificate of registration	£72	£72	£72

20. The maximum fees already in place for housing support services were based on information provided by the Care Commission on how long it was expected to take to register and inspect such services. The estimated cost of an "inspector hour" used for this calculation was £28-£29. This included elements for Team Leader supervision; administration; support staff; premises; travel; subsistence; IT; and time likely to be spent on complaints and enforcement.

21. Different levels of fee set in place for housing support services were for three different sizes of service, each based on the number of whole-time equivalent staff, discounting volunteers. This was considered appropriate for care at home services too. **The intention is to add maximum fees for care at home services to the 2003 Order by means of an Amendment Order. A related Regulatory Impact Assessment is attached at Appendix F.**

Summary

22. We would welcome comments on the proposals contained in this paper. **It would be very helpful if you could use the sheet attached at Appendix G to respond.** Responses should be sent to Jane Martin at Care Standards and Sponsorship Branch, Scottish Executive Health Department, 2 ES, St Andrew's House, Regent Road, Edinburgh EH1 3DG. **no later than 24 October.** Electronic responses should be sent to: **standardsandsponsorship@scotland.gsi.gov.uk**.

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

24. 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
7 August 2003

SCOTTISH STATUTORY INSTRUMENTS

2002 No. 120

SOCIAL CARE

The Regulation of Care (Excepted Services) (Scotland) Regulations 2002

Made 11th March 2002

Laid before the Scottish Parliament 11th March 2002

Coming into force 1st April 2002

The Scottish Ministers, in exercise of the powers conferred by section 2(2), (4), (6) and (20) of the Regulation of Care (Scotland) Act 2001[1] and of all powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.— (1) These Regulations may be cited as the Regulation of Care (Excepted Services) (Scotland) Regulations 2002 and shall come into force on 1st April 2002.

(2) In these Regulations “the Act” means the Regulation of Care (Scotland) Act 2001.

Support services

2. There is excepted from the definition of a “support service” in section 2(2) of the Act any service which consists wholly of one or more of the following—

- (a) a service which provides personal care or personal support to a person (“the recipient”) within the recipient’s home;
- (b) field social work;
- (c) counselling which is not provided in residential accommodation as part of a planned programme of care; or
- (d) a service which consists of the provision of assistance to a person to enable that person to prepare for, obtain or engage in any work.

School care accommodation services

3. There is excepted from the definition of a “school care accommodation service” in section 2(4) of the Act the provision of residential accommodation where it is—

- (a) provided by or under arrangements made by the managers of an independent school and does not provide personal care or support;
- (b) provided by an education authority with respect to a special school within the meaning of the Education (Scotland) Act 1980[2]; or
- (c) a hostel provided by the local authority for the use of children to enable them to attend school.

Nurse agencies

4. There is excepted from the definition of “nurse agency” in section 2(6) of the Act any service provided by a health body acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978[3].

Day care of children

5. There is excepted from the definition of “day care of children” in section 2(20) of the Act any service unless it has as its primary purpose the provision of care to children.

ROSS FINNIE

A member of the Scottish Executive

St Andrew’s House, Edinburgh

11 March 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations exclude certain specified activities from the definition of care services under the Regulation of Care (Scotland) Act 2001. Regulation 2 excepts certain activities from the definition of a support service. Regulation 3 restricts the scope of the definition of a school care accommodation service. Regulation 4 provides that activities of health bodies under the National Health Service (Scotland) Act 1978 are excepted from the definition of nurse agencies. Regulation 5 excepts certain activities from the definition of day care of children.

Notes:

[1] 2001 asp 8; see section 77(1) for the definition of "regulations"

[2] 1980 c.44

[3] 1978 c.29

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SCOTTISH STATUTORY INSTRUMENTS

2003 No.

SOCIAL CARE

The Regulation of Care (Scotland) Act 2001 (Transitional Provisions) Order 2003

Made

2003

The Scottish Ministers, in exercise of the powers conferred by section 80(2) of the Regulation of Care (Scotland) Act 2001(1), after consulting such persons or groups of persons as they consider appropriate in accordance with that section, hereby make the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Regulation of Care (Scotland) Act 2001 (Transitional Provisions) Order 2003.

(2) In this Order “the Act” means the Regulation of Care (Scotland) Act 2001.

Transitional provisions

2.—(1) Where on [] 2003 a person is providing a support service to which this article applies the service shall be treated for all purposes as if it had been registered under Part 1 of the Act on that date.

(2) Paragraph 1 shall cease to apply—

(a) where the person providing the service has before 1st April 2004 made an application for registration of the service under section 7(1) of the Act, on [] 2004; or

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

(1) 2001 asp 8.

(3) This article applies to a support service which provides personal care or personal support to a person (“the recipient”) within the recipient’s home, which is substantially the same as a service, activity or undertaking which was provided or carried on by that person immediately before that date.

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh

2003

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitional provisions. Persons providing the support services mentioned in Article 2(3) are deemed on 1st October 2003 to have registered that service under Part I of the Regulation of Care (Scotland) Act 2001 (asp 8). Article 2(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.

Scottish Statutory Instrument 2002 No. 114

**The Regulation of Care (Requirements as to Care Services)
(Scotland) Regulations 2002**

SCOTTISH STATUTORY INSTRUMENTS

**2002 No. 114
SOCIAL CARE**

The Regulation of Care (Requirements as to Care Services) (Scotland)
Regulations 2002

<i>Made</i>	<i>8th March 2002</i>
<i>Laid before the Scottish Parliament</i>	<i>8th March 2002</i>
<i>Coming into force</i>	<i>1st April 2002</i>

The Scottish Ministers, in exercise of the powers conferred by section 29 of the Regulation of Care (Scotland) Act 2001[1] and of all other powers enabling them in that behalf, and having consulted such persons and groups of persons as they consider appropriate in accordance with section 29(12) of that Act, hereby make the following Regulations:

Citation, commencement and interpretation

1. - (1) These Regulations may be cited as the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 and shall come into force on 1st April 2002.

(2) In these Regulations-

"health care professional" means-

(a) a registered medical practitioner;

(b) a registered dentist;

(c) a registered pharmacist, as defined in section 108(1) of the National Health Service (Scotland) Act 1978[2];

(d) an ophthalmic optician, as defined in section 108(1) of the National Health Service (Scotland) Act 1978 but excluding a body corporate enrolled in the list kept under section 9 of the Opticians Act 1989[3];

(e) a registered nurse, midwife or health visitor;

(f) a person who is registered as a member of a profession to which the Professions Supplementary to Medicine Act 1960[4] extends;

(g) a registered osteopath as defined by section 41 of the Osteopaths Act 1993[5]; or

(h) a registered chiropractor as defined by section 43 of the Chiropractors Act 1994[6].

"provider" in relation to a care service means the person for the time being providing that service;

"service user" in relation to a care service means any person to whom that service is provided; and

"statement of aims and objectives" means the written statement compiled in accordance with regulation 3.

(3) In these Regulations, references to employing a person include employing a person whether or not for payment and whether under a contract of service, a contract for services or otherwise than under a contract, and allowing a person to work as a volunteer; and references to an employee or to a person being employed shall be construed accordingly.

Principles

2. A provider of a care service shall provide the service in a manner which promotes and respects the independence of service users and, so far as it is practicable to do so, affords them choice in the way in which the service is provided to them.

Statement of aims and objectives

3. A provider shall prepare a written statement of the aims and objectives of the care service.

Welfare of users

4. - (1) Providers shall-

(a) make proper provision for the health and welfare of service users;

(b) provide services in a manner which respects the privacy and dignity of service users;

(c) ensure that no service user is subject to restraint unless it is the only practicable means of securing the welfare of that or any other service user and there are exceptional circumstances; and

(d) have appropriate procedures for the control of infection and the management of clinical waste.

(2) Providers of a care home service shall make such arrangements as are necessary for the provision to service users of adequate services from any health care professional.

(3) A provider of day care or child minding shall not administer, or permit any person employed in the provision of the service to administer, physical chastisement or punishment to any child who is looked after or cared for by the service.

Personal plans

5. - (1) Subject to paragraph (4), a provider shall, after consultation with each service user and, where it appears to the provider to be appropriate, any representative, within one month of the date on which the service user first received the service prepare a written plan ("the personal plan") which sets out how the service user's health and welfare needs are to be met.

(2) The provider of a care home service shall in addition-

(a) make the personal plan available to the service user and to any representative consulted under paragraph 2(1);

(b) review the personal plan-

(i) when requested to do so by the service user or any representative; and

(ii) at least once in every six month period;

(c) where appropriate, and after consultation with the service user and, where it appears to the provider to be appropriate, any representative, revise the personal plan; and

(d) notify the service user and any representative consulted under paragraph (2)(c) of any such revision.

(3) In this regulation "representative" means any person appearing to the provider to act on behalf of the service user.

(4) This regulation does not apply to any care service which is a nurse agency, child minding or day care of children.

Fitness of providers

6. - (1) A person shall not provide a care service unless the person is fit to do so.

(2) The following persons are not fit to provide a care service:-

(a) a person who is not of integrity and good character;

(b) a person who has been convicted whether in the United Kingdom or elsewhere of any offence which is punishable by a period of imprisonment of not less than 3 months and has been sentenced to imprisonment (whether or not suspended or deferred) for any period without the option of a fine;

(c) a person whose estate has been sequestrated in Scotland or who has been adjudged bankrupt elsewhere than in Scotland or in relation to whose estate a judicial factor has been appointed or who has granted a trust deed for the benefit of the person's creditors:

Provided that-

(i) the disqualification attaching to a person whose estate has been sequestrated shall cease if and when-

(aa) the sequestration is recalled or reduced; or

(bb) the sequestration is discharged;

(ii) the disqualification attaching to a person by reason of having been adjudged bankrupt shall cease if and when-

(aa) the bankruptcy is annulled; or

(bb) the person is discharged;

(iii) the disqualification attaching to a person in relation to whose estate a judicial factor has been appointed shall cease if and when-

(aa) that appointment is recalled; or

(bb) the judicial factor is discharged; or

(iv) the disqualification attaching to a person who has granted a trust deed shall cease if and when the person pays the creditors in full or on the expiry of 5 years from the date of grant of the deed.

(3) For the purposes of paragraph (2)(b)-

(a) the date of conviction shall be deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires or, if such an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its not being prosecuted; and

(b) any conviction by or before a court outside the United Kingdom for an offence in respect of conduct which, if it had taken place in any part of the United Kingdom, would not have constituted an offence under the law in force in that part of the United Kingdom shall be disregarded.

(4) A provider shall inform the Commission immediately in writing where the provider becomes a person who is not fit to provide a care service in terms of this regulation.

Fitness of managers

7. - (1) A person shall not act as a manager in relation to a care service unless the person is fit to do so.

(2) The following persons are not fit to act as a manager in relation to a care service-

(a) any person to whom regulation 6(2)(a) applies;

(b) any person to whom regulation 6(2)(b) applies;

(c) a person who is not physically and mentally fit to manage the care service;

(d) a person who does not have the skills, knowledge and experience necessary for managing the care service;

(e) a person who, in order to perform the duties for which the person is employed in the care service, is required by any enactment to be registered with any person or body and is

not so registered.

Notification of unfitness

8. - (1) Where a provider of a care service is, or becomes aware that a person acting as a manager in relation to the care service has been, convicted of any criminal offence whether in the United Kingdom or elsewhere, the provider shall immediately give notice to the Commission of-

- (a) the date and place of conviction;
- (b) the offence of which the provider or manager was convicted; and
- (c) the penalty imposed in respect of the offence.

(2) Where a provider of a care service becomes aware that a person acting as manager in relation to that service is not fit to do so in terms of this regulation, the provider shall immediately notify the Commission in writing of that fact.

Fitness of employees

9. - (1) A provider shall not employ any person in the provision of a care service unless that person is fit to be so employed.

(2) The following persons are not fit to be employed in the provision of the care service:-

- (a) a person who is not physically and mentally fit for the purposes of the work for which the person is employed in the care service;
- (b) a person who does not have the qualifications skills and experience necessary for the work that the person is to perform; and
- (c) any person to whom regulation 7(2)(e) applies.

Fitness of premises

10. - (1) A provider shall not use premises for the provision of a care service unless they are fit to be so used.

(2) Premises are not fit to be used for the provision of a care service unless they-

- (a) are suitable for the purpose of achieving the aims and objectives of the care service which are set out in the statement of aims and objectives;
- (b) are of sound construction and kept in a good state of repair externally and internally; and
- (c) have adequate and suitable ventilation, heating and lighting.

(3) Accommodation shall not be provided and used for the purpose of restricting the liberty of children in any residential premises where care services are provided unless it has been approved for such provision and use by the Scottish Ministers.

Fitness in relation to child minding

11. A provider of child minding shall not permit any person who is not fit to be in the proximity of children to live at the premises which are used for the provision of the service.

Facilities in care homes

12. Providers of a care home service shall, having regard to the size of the service, the statement of aims and objectives and the number and needs of service users-

- (a) provide sufficient and suitable kitchen equipment, crockery, cutlery and utensils, and adequate facilities for the preparation and storage of food;
- (b) provide such other equipment for the general use of service users as is suitable and sufficient having regard to their health and personal care needs;
- (c) provide adequate facilities for service users to prepare their own food and ensure that such facilities are fit for use by service users;
- (d) ensure that there are provided at appropriate places in the premises from which the service is provided sufficient numbers of lavatories, and of wash-basins, baths and showers fitted with a hot and cold water supply; and
- (e) provide a place where the money and valuables of service users may be deposited for safe keeping, and make arrangements for service users to acknowledge in writing the return to them of any money or valuables so deposited.

Staffing

13. A provider shall, having regard to the size and nature of the service, the statement of aims and objectives and the number and needs of service users-

- (a) ensure that at all times suitably qualified and competent persons are working in the care service in such numbers as are appropriate for the health and welfare of service users;
- (b) where the care service is a care home which provides nursing, ensure that at all times a suitably qualified registered nurse is working at the care home or, where that is sufficient to meet the nursing requirements of service users, available on call; and
- (c) ensure that persons employed in the provision of the care service receive-
 - (i) training appropriate to the work they are to perform; and
 - (ii) suitable assistance, including time off work, for the purpose of obtaining further qualifications appropriate to such work.

Medical practitioners in care homes

14. A person having a financial interest in a care home service shall not act as a medical practitioner for any user of that service.

Quality of independent health care

15. A provider of an independent health care service shall make such arrangements as are

necessary for securing that any treatment or services provided by the service are of a quality which is appropriate to meet the needs of service users.

Financial position

16. - (1) Subject to paragraph (3), a provider shall provide the Commission with such information and documents as it may require in order to consider the financial viability of the care service, including-

- (a) the annual accounts of the care service certified by an accountant;
- (b) a reference from a bank expressing an opinion as to the provider's financial standing;
- (c) information as to the financing and financial resources of the care service;
- (d) where the provider is a company, information as to any of its associated companies; and
- (e) a certificate of insurance for the provider in respect of liability which may be incurred by the provider in relation to the care service in respect of death, injury, public liability, damage or other loss.

(2) A provider, other than a person to whom paragraph (3) applies, shall-

- (a) ensure that adequate accounts are maintained in respect of the care service and kept up to date;
- (b) ensure that the accounts give details of the running costs of the care service, including any rent, payments under a mortgage and expenditure on food, heating and payments to employees; and
- (c) supply a copy of the accounts to the Commission at its request.

(3) This regulation shall not apply to-

- (a) a local authority; and
- (b) except for paragraph (1)(e), a provider of child minding.

(4) In this regulation a company is an associated company of another if one of them has control of the other or both are under the control of the same person.

Appointment of manager

17. - (1) A provider who-

- (a) is not an individual;
- (b) is not a fit person to manage a care service; or
- (c) is not, or does not intend to be, in full-time day-to-day charge of the care service;

shall appoint an individual to be the manager of the care service.

(2) Where a provider appoints a person to manage the care service the provider shall forthwith give notice to the Commission of-

- (a) the name of the person so appointed; and
- (b) the date on which the appointment is to take effect.

Appointment of liquidators etc

18. Any person to whom section 29(3) of the Regulation of Care (Scotland) Act 2001 applies must-

- (a) forthwith notify the Commission of that person's appointment; and
- (b) where no person has been appointed to manage the care service, appoint such a person.

Records

19. - (1) A provider shall keep a record of the following matters in respect of each service user:-

- (a) the service user's name, address and date of birth;
- (b) the name, address and telephone number of the service user's next of kin or of any person authorised to act on behalf of the service user;
- (c) the name, address and telephone number of the service user's general practitioner; and
- (d) the date on which the service was first provided to the service user.

(2) A provider shall keep a record of all persons employed in the provision of the service, specifying in each case-

- (a) their full name, address, date of birth, qualifications, training and experience;
- (b) the date of commencement and, where applicable, the termination of the employment;
- (c) positions held;
- (d) any registration which the person is required by or under any enactment to hold in order to perform the duties for which the person is employed; and
- (e) any disciplinary action which the employer has taken against the person, including the outcome of any such action.

(3) A provider shall keep a record of-

- (a) any occasion on which restraint or control has been applied to a user, with details of the form of restraint or control, the reason why it was necessary and the name of the

person authorising it;

(b) the procedure which is to be followed in the event of a fire or other emergency;

(c) all fire drills and alarm tests which have been conducted;

(d) any incident which is detrimental to the health or welfare of a service user;

(e) any maintenance of equipment which is used in the provision of the service;

(f) any complaint made by a service user or a representative or relative of a service user or a person employed in the care service about the operation of the care service, the outcome of such complaint and the action taken;

(g) the persons who were employed in the provision of the service each day;

(h) all money or other valuables deposited by a service user for safekeeping or received on the service user's behalf, which-

(i) shall state the date on which the money or valuables were deposited or received, the date on which any money or valuables were returned to a service user or used, at the request of the service user, on the service user's behalf and, where applicable, the purpose for which the money or valuables were used; and

(ii) shall include the written acknowledgement of the return of the money or valuables;

(i) the date, time and cause of death of any service user who has died while the care service was being provided to the service user and the name of the doctor certifying death;

(j) medicines for the use of service users which are kept on the premises from which the care service is provided; and

(k) details of any instance in which medication has been administered to a service user without the consent of that service user or of a person duly authorised to consent on the service user's behalf.

Returns

20. A provider shall make returns to the Commission at least once in every twelve month period giving details of any instance referred to in regulation 19(3)(k) above.

Notification of death, illness and other events

21. - (1) A provider shall give notice to the Commission without delay of the death of any service user who has died while the care service was being provided to the service user, and of the circumstances of the death.

(2) A provider of a care home service shall give notice to the Commission without delay of the occurrence of-

- (a) the outbreak in the care home of any infectious disease which in the opinion of any registered medical practitioner attending persons in the care home is sufficiently serious to be so notified;
- (b) any serious injury to a service user;
- (c) any theft or accident; or
- (d) any allegation of misconduct by the provider or any person who is employed in the care service.

Notice of absence

22. - (1) Where a manager proposes to be absent from the duties of manager of the care service for a continuous period of 28 days or more, the provider shall give notice to the Commission of the proposed absence.

(2) Except in the case of an emergency, the notice referred to in paragraph (1) above shall be given no later than 14 days before the proposed absence or within such shorter period as may be agreed with the Commission and the notice shall specify-

- (a) the length or expected length of the proposed absence;
- (b) the reason for that absence;
- (c) the arrangements which have been made for the running of the care service during that absence; and
- (d) the name, address and qualifications of the person who will manage the care service during that absence.

(3) Where the absence arises as a result of an emergency, the provider shall give notice of the absence within one week of its occurrence specifying the matters in sub-paragraphs (a) to (d) of paragraph (2).

Notice of changes

23. - (1) A provider shall give notice in writing to the Commission as soon as it is practicable to do so if any of the following events takes place or is proposed to take place:-

- (a) any change of provider of the care service;
- (b) any change of manager of the care service;
- (c) any change of premises which are used in the provision of the care service;
- (d) where the provider is an individual, that person's name is changed;
- (e) where the provider is a body corporate, any change in the ownership of the body or of the identity of its officers; or
- (f) where the provider is a firm, any change in the identity of the persons who are its

partners.

(2) A provider of child minding shall, in relation to persons living at the premises which are used for the provision of the service, give notice to the Commission without delay where-

(a) any such person becomes 16 years of age; or

(b) any such person ceases to live at the premises,

or where another person begins to live at the premises.

Death of provider

24. Where a provider who is an individual dies and there is no other provider, the personal representatives of the provider shall without delay give notice of the death to the Commission.

Complaints

25. - (1) A provider shall establish a procedure ("the complaints procedure") for considering complaints made to the provider by a service user or person acting on the service user's behalf.

(2) The complaints procedure shall be appropriate to the needs of service users.

(3) The provider shall ensure that any complaint made under the complaints procedure is fully investigated.

(4) The provider shall, within 28 days after the date on which the complaint is made, or such shorter period as may be reasonable in the circumstances, inform the person who made the complaint of the action (if any) that is to be taken.

(5) The provider shall supply a written copy of the complaints procedure to every service user and to any person acting on behalf of a service user if that person so requests.

(6) The written copy of the complaints procedure shall include-

(a) the name and address of the Commission, and

(b) the procedure (if any) that has been notified by the Commission to the provider for the making of complaints to the Commission relating to the care service.

(7) The provider shall supply to the Commission at its request a statement containing a summary of the complaints made during the preceding twelve months and the action that was taken.

Offences

26. A contravention of or failure to comply with any of the provisions of regulations 4(3), 6(1), 7(1), 9(1) or 14 shall be an offence.

MALCOLM CHISHOLM

A member of the Scottish Executive

St Andrew's House, Edinburgh
8th March 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out requirements which must be complied with by providers of care services under the Regulation of Care (Scotland) Act 2001. A care service must be provided in accordance with the general principles set out in regulation 2. The provider is required by regulation 3 to prepare a written statement of the aims and objectives of the care service. Regulation 4 imposes requirements on providers which relate to the welfare of service users. In accordance with regulation 5, the provider is required to prepare a personal plan for each service user setting out how the service user's health and welfare needs will be met.

The Regulations specify persons who are not fit to provide (regulation 6), manage (regulation 7) or be employed in (regulation 9) a care service. They also make provision as to fitness of premises (regulation 10) and require providers to make certain notifications to the Scottish Commission for the Regulation of Care (regulation 8). A provider of child minding is required by regulation 11 not to permit any person to live on the premises who is not fit to be in the proximity of children.

Regulation 12 imposes requirements as to the equipment and facilities to be provided in a care home service. Regulation 13 imposes requirements as to staffing in all services. Regulation 15 imposes requirements in relation to independent health care services.

Regulation 14 prohibits any person having a financial interest in a care home service from acting as a medical practitioner for any user of that service.

Providers are required to provide the Commission with the information specified in regulation 16 and the returns specified in regulation 20, to give notice of certain events as provided for by regulations 21 to 24, and to keep records as provided for by regulation 19. By regulation 25 they are required to establish and operate a complaints procedure.

Regulation 17 makes provision as to the appointment of a manager of a care service, and regulation 18 specifies what is to happen where a liquidator or similar person is appointed.

Regulation 26 provides that the contravention of specified provisions of these Regulations shall be an offence.

Scottish Statutory Instrument 2002 No. 113
**The Regulation of Care (Applications and Provision of Advice)
 (Scotland) Order 2002**

SCOTTISH STATUTORY INSTRUMENTS

**2002 No. 113
 SOCIAL CARE**

The Regulation of Care (Applications and Provision of Advice) (Scotland)
 Order 2002

Made

8th March 2002

Laid before the Scottish Parliament

8th March 2002

Coming into force

1st April 2002

The Scottish Ministers, in exercise of the powers conferred by sections 4(3), 7(2)(a), 14(3) and 33(2) of the Regulation of Care (Scotland) Act 2001^[1] and of all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement and interpretation

1. - (1) This Order may be cited as the Regulation of Care (Applications and Provision of Advice) (Scotland) Order 2002 and shall come into force on 1st April 2002.

(2) In this Order-

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

"the applicant" means the person making an application for registration of a care service under the Act;

"public body" means a body established by or under any enactment; and

"relative" in relation to an applicant means a spouse, parent, grandparent, brother, sister, child, grandchild, uncle, aunt, nephew or niece of the applicant, a person who is living with the applicant as if that person were the applicant's husband or wife, or a person of the same sex as the applicant who is living with the applicant in a relationship which has the characteristics (other than that the persons are of the opposite sex) of husband and wife.

(3) In this Order, references to employing a person include employing a person whether or not for payment and whether under a contract of service, a contract for services or otherwise than under a contract, and allowing a person to work as a volunteer; and references to employment, to an employee or to a person being employed shall be construed accordingly.

Applications for registration under Part 1 of the Act

2. An application for registration under section 7(1) of the Act shall provide the information specified in relation to the particular application in the Schedule.

Local authority applications under Part 2 of the Act

3. An application by a local authority for registration under section 33(1)(c) of the Act shall provide-

- (a) the information set out in the Schedule;
- (b) a statement that the local authority have determined that they must provide the service in order to fulfil a statutory duty; and
- (c) a statement of the reasons for that determination (including identification of the statutory provisions which in the opinion of the local authority give rise to that duty).

Variation or removal of conditions

4. - (1) An application under section 14(1)(a) of the Act for variation or removal of a condition relating to registration of a care service shall specify-

- (a) the date on which it is proposed that the variation or removal is to take effect;
- (b) the reason or reasons for making the application; and
- (c) any changes which the person providing the service proposes to make in relation to the care service as a consequence of the proposed variation or removal.

(2) Except where the Commission has agreed in writing that an earlier date may be specified, the date referred to in paragraph (1)(a) shall be not less than three months after the date on which the application is made.

Cancellation of registration

5. - (1) An application under section 14(1)(b) of the Act for cancellation of the registration of a care service shall specify-

- (a) the date on which it is proposed that the cancellation is to take effect;
- (b) the reason or reasons for making the application;
- (c) any arrangements made by the provider with the aim of ensuring that persons using the service will continue to receive a similar service (including, where appropriate, accommodation) from the provider or another person;
- (d) whether notice of the application has been given to any of the persons to whom paragraph (2) applies and the form and terms of any such notice; and
- (e) where notice has not been given to any of the persons to whom paragraph (2) applies, whether there were any circumstances which made it impracticable for the person providing the service to give such notice.

(2) The persons to whom this paragraph applies are-

- (a) any person using the service when the application is made;
- (b) any person appearing to be a representative or relative of the person using the service; and

(c) any local authority or health body.

(3) Except where the Commission has agreed in writing that an earlier date may be specified, the date referred to in paragraph (1)(a) shall be not less than three months after the date on which the application is made.

Provision of advice

6. The Mental Welfare Commission for Scotland which is continued in being by section 2 of the Mental Health (Scotland) Act 1984[2] is prescribed for the purposes of section 4(3)(b)(vi) of the Act (persons prescribed by the Scottish Ministers to be provided by the Commission with advice).

MALCOLM CHISHOLM

A member of the Scottish Executive

St Andrew's House, Edinburgh
8th March 2002

SCHEDULE

Articles 2 and 3

1. The full name, and the address and telephone number and any facsimile number and electronic mail address, of the applicant.

2. If the applicant is not an individual-

(a) its name;

(b) the address, telephone number, and any facsimile number of the applicant's principal office and (where it has one) registered office;

(c) the full name, and the address and telephone number and any facsimile number and electronic mail address, of any person to whom the applicant wishes enquiries concerning the care service to be addressed; and

(d) the full name, date of birth, address and telephone number of every person who is or purports to act in the capacity of a person who is-

(i) where the applicant is a body corporate other than a local authority, a director, manager or secretary of the body corporate;

(ii) where the applicant is a firm, a partner in the firm; or

(iii) where the applicant is an unincorporated association other than a firm, concerned in the management or control of the association,

and in each case whether registration of any care service provided by such a person, or in respect of an activity specified in paragraph 20(a) in which the person has engaged, has ever been cancelled other than at that person's request.

- 3.** Where the applicant is not the person who is to manage the care service, the full name, address and telephone number, and any facsimile number and electronic mail address, of the person who is to manage the service
- 4.** The name of the care service and address of any premises from which the care service is to be provided.
- 5.** The times at and periods during which it is proposed to provide the care service.
- 6.** The date on which the care service was, or is proposed to be, commenced.
- 7.** Specification of the type of care service, in terms of section 2(1) of the Act, which is to be provided.
- 8.** A statement of the aims and objectives of the care service.
- 9.** Where the care service is a care home service or is to be provided either wholly or in part to children, the following information about the persons to whom the care service is to be provided:-
 - (a) their age range;
 - (b) their sex;
 - (c) the maximum number of such persons; and
 - (d) if those persons are to be selected by reference to criteria other than age or sex, those criteria.
- 10.** A statement of the way in which, having regard to the needs of persons using the care service, sufficient suitably qualified and competent employees are to be obtained.
- 11.** Details of the persons proposed to be employed in the care service, specifying the total number and in each case including-
 - (a) job title;
 - (b) duties and responsibilities;
 - (c) age and sex;
 - (d) whether employed on a full-time or part-time basis, and, if part-time, the number of hours;
 - (e) qualifications, skills and experience; and

(f) details of any registration which the person is required by any enactment to hold in order to perform the duties for which the person is to be employed in the care service.

12. Proposed ratios of employees to service users during the day and at night.

13. Details of any policy which the applicant has on recruitment, interviewing, selection and checking of references and other documentation for all persons to be employed in the provision of the care service.

14. Details of any proposed programme for induction, development, and continuing training of employees.

15. Except where the applicant is a local authority or proposes to provide only child minding-

(a) a business plan and details as to cash flow covering all care services provided by the applicant which are of the type in respect of which the application is made; and

(b) where available, annual accounts for any part of the three year period preceding the date of application during which the care service was in operation.

16. Where the applicant is an individual-

(a) a copy of the applicant's birth certificate, and

(b) each address occupied by the applicant in the ten year period preceding the application and the length of time at each such address.

17. A statement that the applicant is (or as the case may be is not) the owner of the care service.

18. Where the applicant is an individual, details of professional or technical qualifications held by the applicant.

19. Where the applicant is an individual who has previously been in employment other than as a volunteer at any time in the previous five years, details of employment history, including the name and address of each employer for that period.

20. A statement whether at any time the applicant-

(a) is a person who has-

(i) provided a care service;

(ii) carried on a nursing home within the meaning of the Nursing Homes Registration (Scotland) Act 1938[3];

(iii) carried on an agency for the supply of nurses within the meaning of the Nurses (Scotland) Act 1951[4];

(iv) carried on an establishment within the meaning of the Social Work (Scotland)

Act 1968[5];

(v) acted as a child minder or provided day care for children within the meaning of section 71 of the Children Act 1989[6]; or

(vi) been granted approval under section 3 of the Adoption (Scotland) Act 1978[7],

or has engaged in a similar activity under legislation of similar effect in force in England, Wales or Northern Ireland;

(b) has been employed by any person specified in sub-paragraph (a); or

(c) has, or has had, any interest in any activity which is specified in that sub-paragraph.

21. A statement whether any registration relating-

(a) to a care service provided by the applicant; or

(b) to the applicant in respect of an activity specified in paragraph 20(a),

22. Where the applicant is an individual, the name and address of two persons who are able to provide a reference as to the applicant's good character and competence to provide a care service of the kind which the applicant proposes to provide-

(a) neither of whom shall be a relative of the applicant;

(b) where the applicant has been employed by any person for any period greater than three months in the five years preceding the date of the application, one of whom shall be such a person; and

(c) at least one of whom shall be a person who is in a class which is specified by the Adults with Incapacity (Countersignatories of Applications for Authority to Intromit) (Scotland) Regulations 2001[8].

23. Where the applicant is an individual and is the person who is to manage the care service, a declaration of opinion by the applicant that the applicant is physically and mentally fit to manage the service.

24. A statement as to whether the applicant is a person whose estate has been sequestrated in Scotland or who has been adjudged bankrupt elsewhere than in Scotland or in relation to whose estate a judicial factor has been appointed or who has granted a trust deed for the benefit of the person's creditors.

25. Except where the applicant is a local authority, a statement from a bank as to the applicant's financial standing.

26. In respect of the manager of the care service, the information specified in paragraphs 18 to 23, read in each case as though references to the applicant were references to the person

who is to manage the care service.

27. Except where the applicant is a public body a certificate of insurance in respect of liability which may be incurred in relation to the care service in respect of death, injury, public liability, damage or other loss.

28. A description of any premises, facilities and services to be used for the provision of the care service.

29. A statement as to whether any premises to be used for the provision of the care service are or will be capable of being used for the purposes of achieving the aims and objectives of the care service without the need for planning permission, building works or conversion of the premises and, if the premises are not capable of such use at the date the application is made, details of the permission, works or conversion needed.

30. A list of persons who will be residing on a regular basis in any premises from which the care service is provided other than the applicant or any employee or user of the service.

31. Where the care service is a care home service or an independent health care service, details of arrangements for control of infection.

32. Where the care service is an independent health care service-

- (a) a description of the equipment and facilities to be provided;
- (b) details of any arrangements for any supply of blood and blood products;
- (c) details of any arrangements for any provision of pathology and radiology services;
- (d) details of any services which are to be provided to children; and
- (e) where the independent health care service is an independent hospital, details of any arrangements for the attendance at all times of a registered medical practitioner.

33. Where the care service is provided by the managers of an independent school within the meaning of the Education (Scotland) Act 1980[9], confirmation that the school has been registered with the Registrar of Independent Schools in terms of section 98 or that an application for such registration has been lodged.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies the information which is to be provided by a person who makes an application for registration of a care service under the Registration of Care (Scotland) Act 2001. Where the application is made under Part 1 of the Act the information is specified by article 2 and the Schedule. Where the application is made under Part 2 of the Act the

information is specified by article 3 and the Schedule.

The Order also specifies the information which is to be provided by a person who makes an application for variation or removal of a condition of registration relating to registration of a care service (article 4) or for cancellation of the registration of a care service (article 5).

The Order also prescribes the Mental Welfare Commission as a body to which the Scottish Commission for the Regulation of Care is under section 4(3)(b) of the Act to provide advice when asked to do so.

2003 No. 152

SOCIAL CARE

The Regulation of Care (Fees) (Scotland) Order 2003

<i>Made</i>	<i>6th March 2003</i>
<i>Laid before the Scottish Parliament</i>	<i>10th March 2003</i>
<i>Coming into force</i>	<i>1st April 2003</i>

The Scottish Ministers, in exercise of the powers conferred by section 24(1) of the Regulation of Care (Scotland) Act 2001(1), and of all other powers enabling them in that behalf, after consulting such persons or groups of persons as they consider appropriate in accordance with that section, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Regulation of Care (Fees) (Scotland) Order 2003 and shall come into force on 1st April 2003.

(2) In this Order—

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

“medium housing support service” means a housing support service which employs more than three whole-time equivalent persons but does not employ more than fifteen whole-time equivalent persons to provide and manage the service;

“other day care of children” means day care of children which is not small day care of children;

“other support service” means a support service which is not a small support service;

“other housing support service” means a housing support service which is neither a small housing support service nor a medium housing support service;

“other child care agency” means a child care agency which is not a small child care agency;

“other limited registration service” means a limited registration service which is not a small limited registration;

“small day care of children” means day care of children which does not employ more than three whole-time equivalent persons to provide and manage the service;

“small support service” means a support service which does not employ more than three whole-time equivalent persons to provide and manage the service;

“small housing support service” means a housing support service which does not employ more than three whole-time equivalent persons to provide and manage the service;

“small child care agency” means a child care agency which does not employ more than three whole-time equivalent persons to provide and manage the service;

“small limited registration service” means a limited registration service which does not employ more than three whole-time equivalent persons to provide and manage the service; and

where a fee is expressed to be payable “per place”, the total fee payable in respect of a particular care service shall be the sum shown multiplied by the maximum number of persons to whom the care service may be

provided in accordance with any condition for the time being in force in relation to registration of that care service under the Act.

(3) In this Order, references to employing a person include employing a person who works under a contract of service or a contract for services.

Maximum fees

2. For each of the services listed in column 1 of the Schedule, the maximum fee which may be imposed by the Commission in respect of—

- (a) any application for registration under Part 1 or Part 2 of the Act is that shown in column 2 of the Schedule;
- (b) the annual continuation of such registration is that shown in column 3 of the Schedule;
- (c) any application made for the variation or removal of a condition for the time being in force in relation to any such registration is that shown in column 4 of the Schedule; and
- (d) any application for cancellation of any such registration is that shown in column 5 of the Schedule.

Fees for new certificates

3. For each of the services listed in column 1 of the Schedule, the maximum fee which may be imposed by the Commission in respect of issuing a new certificate of registration under section 24(2)(d) of the Act is £72.

Revocation

4. The Regulation of Care (Fees) (Scotland) Order 2002 is hereby revoked(2).

FRANCIS McAVEETY
Authorised to sign by the Scottish Ministers

St Andrew's House, Edinburgh
6th March 2003

SCHEDULE

<i>Column 1 Service</i>	<i>Column 2 Application for registration</i>	<i>Column 3 Annual continuation</i>	<i>Column 4 Variation or removal of condition</i>	<i>Column 5 Cancellation of registration</i>
Small support service	£495	£247	£129	£129
Other support service	£990	£495	£129	£129
Care home service	£2,244	£95 per place	£257	£257
Independent health care service	£2,244	£95 per place	£257	£257
Nurse agency	£550	£275	£129	£129
Small child care agency	£1,059	£642	£244	£244
Other child care agency	£2,559	£2,143	£244	£244
School care accommodation service	£2,244	£95 per place	£257	£257
Offender accommodation service	£2,244	£95 per place	£257	£257
Secure accommodation service	£3,487	£140 per place	£257	£257
Child minding	£16	£13	£3	£3
Small day care of children	£16	£13	£3	£3
Other day care of children	£146	£113	£36	£36
Small housing support service	£1230	£642	£244	£244
Medium housing support service	£2000	£1400	£244	£244
Other housing support service	£2731	£2143	£244	£244
Small limited registration service	£1059	£642	£244	£244
Other limited registration service	£2131	£1714	£244	£244

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prescribes the maximum fees which may be imposed by the Scottish Commission for the Regulation of Care in respect of applications for registration or for cancellation of registration of a care service, the annual continuation of any such registration, and applications for variation or removal of a condition of registration under the Regulation of Care (Scotland) Act 2001. It also prescribes the maximum fee for registration or for cancellation of registration of a limited registration service; the annual continuation of any such registration, and applications for variation or removal of a condition of registration.

It also prescribes the maximum fee for issuing a new certificate of registration.

The maximum fees are set out in the Schedule.

This Order revokes the Regulation of Care (Fees) (Scotland) Order 2002.

Notes:

[1] 2001 asp 8. See section 77 for the definition of "prescribed".

[2] S.S.I. 2002/112

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PARTIAL REGULATORY IMPACT ASSESSMENT

Title

Draft Regulation of Care (Fees)(Scotland) Amendment Order 2003.

Purpose and intended effect

Issue

1 This regulatory impact assessment is provided to assist public consultation on Scottish Ministers' proposals under the Regulation of Care (Scotland) Act 2001 for maximum fees which may be imposed by the Scottish Commission for the Regulation of Care (the Care Commission) from December 2003 related to the regulation of care at home services. The new fees would apply from December 2003, when regulation of care at home by the Care Commission is due to commence. The Care Commission is required under Section 24 of the Act to impose fees for applications for registration, for the annual continuation of registration, for any variation or removal of a condition in force, for cancellation of registration, and for issuing a new certificate of registration. Ministers are responsible for setting maximum fee levels and these were prescribed from 1 April 2003 in the Regulation of Care (Fees)(Scotland) Order 2003 for all the care services already regulated by the Care Commission.

2 The Regulatory Impact Assessment which accompanied the Regulation of Care (Scotland) Bill (now the Act) in December 2000 assumed an increase of 10% (or £10 per bed) in all fee levels in each year leading up to 2004-05 for all services already regulated. By that year the Care Commission was expected to recoup the entire cost of the Care Commission's regulatory functions from fee income. Services new to regulation were to pay fees reflecting full cost recovery from the start, with all services (with the exception of early education and childcare) paying fees at full cost recovery level by 2004-05. During the passage of the Bill, Ministers indicated that they would keep the policy on full cost recovery under review and would consider the effects of fee increases in the years to 2004-05 on the care services sector. It is also expected that Orders prescribing fees for future years will take account of the experience gained and the evidence collected by the Care Commission from the regulation process.

3 As care at home is new to regulation, they are to have their fees set at full cost recovery level from the start of regulation.

Risk assessment

4 The central purpose of regulating care is the protection of people using care services, particularly vulnerable adults and children, and a focus on continuing improvement. It is essential that the new national regulator is adequately funded to enable it to ensure that care services can deliver to all those using them the quality of care they expect regardless of where they live or the type of care they are receiving.

OPTIONS

5 3 options for fee levels were identified in 2000 and are still relevant:

Option 1 – full central government subsidy.

Option 2 – Short-term central government subsidy covering the regulatory functions of the Care Commission, as set out in the Bill's Regulatory Impact Assessment.

Option 3 – Set maximum fees for all services to be regulated from 1 April 2002 at a level which achieves recovery of the full costs of the Care Commission.

Option 1

6 An effective regulatory system is of benefit to providers of care services as well as to users. It is part of the total cost of providing a care service, and should therefore fall to providers in the first instance, so that it can be taken into account in setting charges for the service. If central government met the full cost of the Care Commission, there would be little incentive for the Commission to keep costs down or ensure that its procedures were seen to provide value for money by providers. And there is no good reason why the cost of regulating care services which include private doctors and dentists, or home care provided by a large private sector company, should be met by central government.

Options 2 and 3

7 The benefits of the Act were debated at length in the Scottish Parliament and are widely supported by providers, users and commissioners of services alike. Options 2 and 3 would ensure a transparent system. Both would help the Care Commission to deliver its key aim to encourage continuous improvement in the quality of care service provision and to make a better quality of life a reality for those who use care services.

8 Following option 3 and moving to full cost recovery from the outset would, however, have placed a considerable financial burden on services regulated immediately prior to 1 April 2002 in the short term. Some of the smaller services might have gone out of business if they unexpectedly had had to meet the cost of this as quickly as 1 April 2002. **Option 2, which proposed a staged approach to full cost recovery for those services, was therefore the preferred option.** The additional costs to local authorities of paying fees to register those of their own services which were regulated but did not attract fees prior to April 2002 were taken into account in determining their resources for 2001-02, 2002-03 and 2003-04.

Quantifying and valuing the benefits

9 It is difficult in the short term to quantify the benefits of a strong regulatory system in financial terms. Many of the benefits to service users and the public will be in terms of protection, peace of mind, and reassurance. In the longer term the Care Commission will be expected to report to Ministers on any improvements to the quality of care. Fees for services not previously registered will need to meet the cost to the Care Commission of delivering its statutory functions and aims in respect of that service.

Business sectors affected

10 Care at home services are provided by the private and voluntary sectors and by local authorities. Services new to regulation will pay the proposed initial registration fee on application, and the proposed annual continuation fee thereafter.

11 The Scottish Executive is committed to regulatory arrangements that are effective, transparent and accountable. It is important that regulatory authorities have sufficient resources to carry out their statutory duties, and that those duties are carried out in a cost-effective manner without imposing unreasonable burdens on providers. The Scottish Executive believes that the proposed fee levels are reasonable in that context.

Compliance costs for a typical business

12 The Act allows for fees to be prescribed for the following:

- *initial registration* – this is a one-off fee that is paid by providers applying to register a care service for the first time only;
- *annual continuation, per registered place* – this will be the biggest recurrent regulatory fee cost for existing providers;
- *variation or removal of a condition of registration* – unlikely to be a significant cost to the majority of providers as such variations occur infrequently;
- *cancellation of registration* - unlikely to be a significant cost; and
- *issue of a revised registration certificate* – also occurs infrequently.

13 Current fees for services already regulated are shown in the Regulation of Care (Fees)(Scotland) Order 2003 at **Appendix E** of the consultation paper. There is no previous experience of regulating care at home services to draw on, but it is known that local authorities all provide such services and may also commission them from the independent sector. Until the Care Commission begins regulation of this sector it is difficult to estimate its size. No up to date information on the number and size of services is available centrally. However, it is considered that, as care at home has similar characteristics to housing support services, the maximum fees should, at least initially, be set at the same levels, as follows:

	For a small service (one with up to 3 WTE staff, discounting volunteers)	For a medium service (one with over 3 but not more than 15 WTE staff, discounting volunteers)	For a service with more than 15 WTE staff, discounting volunteers
For applications for registration	£1230	£2000	£2731
For annual continuation of registration	£642	£1400	£2143
For applications for cancellation of registration	£244	£244	£244
For applications for variation or removal of a condition of registration	£244	£244	£244

14 Estimates of fees for care at home services, like housing support service fees, have been based on the length of time the Care Commission considered it would take to inspect them, times the cost of an inspector hour. The latter included all aspects of the regulation process, including activity on complaints and enforcement.

15 Care at home services will be deemed to be registered with the Care Commission pending receipt of an application within 6 months of regulation being commenced. The initial registration fee will be payable at the time the application is submitted to the Care Commission, and will cover the cost of regulation (including any inspection) in the first year after registration. The annual continuation fee will be payable one year after registration and every year thereafter. Different levels of fees are proposed, to lessen their impact - for small, medium and large services - based on the number of employees. In addition, and in recognition of the fact that many services are heavily reliant on volunteers, the number of WTE employees for the calculation is to exclude volunteers.

16 Care at home services are generally provided or commissioned by local authorities, but may also be provided by the independent sector through private agreements with individuals. It seems likely that independent providers will pass the extra cost of annual registration on to local authorities where the service is being commissioned by them, and to users where that is not the case.

Impact on local authorities and others

17 If the annual registration fee is passed on to the purchasers of care, then there will also be funding implications for local authorities, who provide and commission these services. There will also be implications for the independent sector as it will be providing these services through commissioning arrangements with local authorities or under private arrangements with users. The impact is likely to be small when divided among them. It is not

possible at this stage, however, to estimate accurately the level of costs that will fall to the industry as a whole, or what proportion of that cost will fall to local authorities. Until the Care Commission begins to regulate these services, the scale of local authority services and how many registrations they are likely to generate is difficult to predict. It will be for the Care Commission to determine this, having discussed the relevant management and operational arrangements with each local authority. This is also true for the independent sector, whether they are providing care at home directly or through contracting arrangements with local authorities. The Department will ensure, however, that as hard data becomes available through the regulatory process, further discussions are held with the Care Commission and with the colleagues who have responsibility for care at home policy, on the appropriateness of the current fees and on future fee levels. It is recognised that some providers may be providing more than one type of service from the same location, for instance a housing support service and a care at home service. The Care Commission is already examining the scope for an integrated fees structure which reflects an integrating regulatory regime in such circumstances. This also opens up the possibility of using their powers to waive or remit one of the fees, minimising the impact on the sectors.

Issues of equity and fairness

18 The principle that providers should meet the reasonable cost of regulation is well established. Any costs that are passed on to users are likely to have to be met from the public purse through other initiatives (e.g. free personal care etc, direct payments etc). The current policy is that, by 2004-05, fees for all services are to be set at full cost recovery levels, achieving equal treatment.

Consultation

19 These proposals are included in a consultation paper on other subordinate legislation related to commencing regulation of care at home. This will be issued to care at home contacts, local authorities, and a wide range of contacts in the care sector with different perspectives on the maximum fees proposed.

Enforcement, monitoring and evaluation

20 The Care Commission will impose fees within the maximum fees prescribed. The impact of the fees on the market, along with the experiences of the Care Commission in the regulatory process, will be considered by Ministers in taking decisions on the levels to be prescribed for future years.

Timetable

21 The new fees will come into force from the date regulation starts, expected to be in December 2003.

Review

22 The content of this Regulatory Impact Assessment will be subject to review 12 months after the fees come into operation.

Conclusion

23 We would welcome the views of businesses on the potential impact on them of the changes set out within this document.

**Care Standards and Sponsorship Branch
Scottish Executive Health Department
1 August 2003**

APPENDIX G

Response to consultation on subordinate legislation needed to ensure regulation of care at home services by the Care Commission from December 2003

Question 1

Do you have any comments on the transitional registration arrangements for Care at Home services proposed at paragraph 9 of the Consultation Paper?

Question 2

Do you have any comments on the changes to be made to the Regulation of Care (Requirements as to Care Services)(Scotland) Regulations 2002 proposed at paragraph 11 to 13 of the Consultation Paper?

Question 3

Are you aware of any other legislative changes, which may be needed in the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 to cater for care at home services?

Question 4

Do you have any comments on the changes to the Regulation of Care (Applications and Provision of Advice)(Scotland) Order 2002 proposed at paragraph 14 of the Consultation Paper?

Question 5

Are you aware of any other changes, which may be needed in the Regulation of Care (Applications and Provision of Advice)(Scotland) Order 2002 to cater for care at home services?

Question 6

Do you have any comments on the maximum fee levels proposed for application by the Care Commission, as set out at paragraph 19 of the Consultation Paper?

Question 7

Do you have any other comments on the proposals set out in the Consultation Paper?

NAME

ADDRESS

INTEREST
(USER/PROVIDER/INTERESTED ORGANISATION/PROFESSIONAL BODY)

DATE