



SCOTTISH EXECUTIVE

**THE REGULATION OF CARE
(SCOTLAND) ACT 2001-
REGULATION OF CARE
SERVICES BY THE
SCOTTISH COMMISSION
FOR THE REGULATION OF
CARE**

**PROPOSALS FOR MAXIMUM
FEES TO BE SET BY
SCOTTISH MINISTERS FOR
2002-03**

Consultation Paper

THE REGULATION OF CARE (SCOTLAND) ACT 2001- REGULATION OF CARE SERVICES BY THE SCOTTISH COMMISSION FOR THE REGULATION OF CARE.

PROPOSALS FOR MAXIMUM FEES TO BE SET BY SCOTTISH MINISTERS FOR 2002-03.

Purpose

1. This paper proposes maximum fee levels to be applied from 1 April 2002 by the Scottish Commission for the Regulation of Care for:

- an application for registration or for cancellation of registration;
- the annual continuation of registration;
- an application for the variation or removal of a condition of registration; or
- the issue of a new certificate of registration.

2. **Comments on the contents of this paper are requested no later than 22 February 2002. It would be helpful if providers could indicate the potential effect of the proposed increases on services. All responses should be sent to Patrick Watt, Regulation of Care Project, Room 38, James Craig Walk, Edinburgh EH1 3BA (E-mails to patrick.watt@scotland.gsi.gov.uk).**

Introduction

3. The Scottish Commission for the Regulation of Care was set up by the Regulation of Care (Scotland) Act 2001 (the Act) to regulate care services. From 1 April 2002 the Commission will have registration, inspection, complaints and enforcement duties in relation to care services defined in the Act.

4. The Care Commission will replace the current system whereby local authority and health boards register and inspect care services provided by the private and voluntary sectors. Registration will be extended to encompass not only services currently regulated but not required to register, including those provided by local authorities, but also some services which are not currently regulated at all.

5. Appendix A lists all the care services to be regulated by the Care Commission and indicates for each one whether it is likely to be regulated and required to register with the Commission (and pay the relevant fee) from 1 April 2002 or later.

Objective

6. The Financial Memorandum which accompanied the Regulation of Care (Scotland) Bill at introduction stated that the general policy intention was recovery of the full cost of the regulation of care services through fees by 2004-05. The only exception was childminding and day care of children, which would continue to be subsidised by the Scottish Executive. Annual increases of 10% (and of £10 per bed per annum for care homes) were proposed for each of the years leading up to 2004-05.

7. During the passage of the Bill, Ministers indicated that they would keep the full cost recovery policy under review and take into account any effect which fee increases in 2001-02 onwards had on the care service market.

Fees for 2001-02

8. Existing fees were increased by 10% (£10 per annum for a care home bed) from 1 August 2001 following a consultation process. The opportunity was also taken to align those for adult residential and nursing homes, which are all to be regulated as care homes from April 2002. Fees for nurse agencies were increased more significantly as they had not been changed since 1968. Appendix B provides details of current fees.

New legislative provision for the setting of maximum fees

9. Section 24(1) of the Act provides for Scottish Ministers to prescribe (by Order) maximum fees to be imposed by the Care Commission. Before doing so, Ministers must consult as appropriate on the potential effect of the proposed increases. Ministers may also prescribe circumstances in which the fees shall not be payable.

10. Section 24 (2) allows the Commission to impose fees for applications for registration or for cancellation of registration; for the annual continuation of registration; for variation or removal of a condition of registration; and for issuing a new certificate.

Proposals for 2002-03

11. The next step is to increase the existing fees for relevant care services from 1 April 2002, and to set fees for those services to be required to register and pay a fee for the first time from that date.

Increases in current fees for registration and continuation/ annual inspection

12. The proposed increases for services already subject to regulation are in line with the policy set out in the Bill's Financial Memorandum and repeated during its passage through Parliament. They reflect a general 10% increase in existing fees, and a £10 increase in the annual fee per bed for care homes. These fees will apply to local authority services as well as to services provided by the private and voluntary sectors from 1 April.

13. It is again proposed that the fees for nurse agencies be increased more significantly as part of the catching up process.

New fees for services previously regulated, but not required to register and pay a fee

14. To arrive at appropriate fees for those services to be registered and pay a fee for the first time, we have calculated the number of inspector days likely to be involved. In doing so we have taken into account both the frequency of inspection (some requiring a minimum of one inspection a year, while others are required in terms of the Act to be inspected at least twice) and the number and skills mix of inspectors likely to be needed (for instance, a childminder will usually require to be visited by one inspector, a care home by 2 and some specialist inspections or services by 3). We have based this work on the assumption that a

large care home would need 9 inspector days on an annual basis and twice that for first registration.

15. Appendix C shows the proposed fees for all those services to be required to register with the Commission from 1 April. As indicated during the passage of the Regulation of Care Bill, this reflects a 10% increase for those already required to register. For the rest, an indication of the number of inspector days considered necessary for inspection etc on an annual basis is also shown. This figure has been used to calculate rates proportionate to the proposed care homes rate.

16. Charging per bed for residential services produces a sliding scale. For non-residential services, it would not be equitable to charge the full rate for smaller services and those heavily reliant on voluntary workers. For these services, we propose a fee which is 50% lower for services with up to 3 paid staff. In similar vein, we propose that, for day care services for children with only one paid employee, the childminder rate be applied.

Fee for variation or removal of existing conditions of registration

17. The relevant fee rate for applications for variation or removal of existing conditions of registration is currently £410 for care homes. We propose this be increased to £510, and that a rate of 25% of the initial registration fee be applied to all care services to be regulated by the Commission from 2002-03.

Fee for a revised certificate of registration

18. The relevant fee rate for a revised certificate of registration for a care home is currently £60. We propose this be increased to £66 and applied to all care services to be regulated by the Commission from 2002-03.

Fee for applications for cancellation

19. There is no current maximum fee for applications for cancellation. We propose that this be set at the same rate as for variation or removal of a condition of registration.

Circumstances in which fees shall not be payable

20. Ministers are able to prescribe circumstances in which fees shall or shall not be payable. We consider that we have taken into account the needs of small businesses and of services provided entirely or mainly by volunteers in setting the fee levels above. We do not, therefore propose to prescribe circumstances in which fees should not be payable.

Regulatory Impact Assessment

21. A partial Regulatory Impact Assessment is attached at Appendix D.

Views on these proposals will be welcomed by 22 February 2002. It would be helpful if providers could comment on the potential effect of the proposed fees on services. Responses should be sent to Patrick Watt, Regulation of Care Project, Room 38, James Craig Walk, Edinburgh EH1 3BA (E-mails to patrick.watt@scotland.gsi.gov.uk).

22. This consultation period is short, but the proposals have not altered from those set out when the Regulation of Care Bill was introduced and discussed in considerable detail during the passage of the Bill through Parliament.

23. We are unlikely to be able to reply to you personally, but will take all comments into account.

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

Regulation of Care Project
January 2002

Appendix A

DATES FROM WHICH RELEVANT CARE SERVICES ARE LIKELY TO BE REQUIRED TO REGISTER WITH THE SCOTTISH COMMISSION FOR THE REGULATION OF CARE

Services likely to be required to register with the Care Commission from 1 April 2002

- support services
 - day care for adults
- care home services
- school care accommodation services
 - independent special schools with boarding provision
 - grant-aided special schools
- independent healthcare services
 - independent hospitals
 - private psychiatric hospitals
 - currently registered clinics
 - hospices
- nurse agencies
- secure accommodation services
- adoption services
- child minding
- daycare of children

Services likely to be required to register from a date subsequent to 1 April 2002

- support services
 - home care
- school care accommodation services
 - independent schools with boarding provision
 - education authority special schools with boarding
 - school hostels
- child care agencies
- adult placement services
- independent healthcare services

- other clinics
- medical agencies

- housing support services

- offender accommodation services

- fostering services

- limited registrations for AWI purposes NB Part 4 of the Adults With Incapacity Act comes into force on 1 April 2003, therefore these limited registrations can only apply from then.

CURRENT REGISTRATION FEES

Care service

Care home services (includes nursing homes)

Application for registration	£1854
Annual continuation fee	£75 per bed
Variation in condition of registration	£410
Revised certificate of registration	£60

Full time day care for children

Registration fee	£121
Continuation fee	£94

Child minding and sessional day care for children

Registration fee	£14
Continuation fee	£11

Nurse Agencies

Registration fee	£175
Continuation fee	£125

Appendix C

PROPOSED MAXIMUM FEES FOR 2002- 03

Care Service	Initial registration	Maximum annual fee
<u>Support services</u>		
Day care for adults		
- small service with up to 3 paid staff	£450	£225
- others (estimated at 4 annual inspector days)	£900	£450
<u>Care home services</u> (estimated at 9 annual inspector days)	£2040	£85 per bed
<u>School care accommodation</u>		
Independent <u>special</u> schools with boarding provision	£2040	£85 per bed
Grant-aided <u>special</u> schools (both estimated to take the same time as care homes due to the specialised nature of the service)	£2040	£85 per bed
<u>Independent healthcare</u>		
Independent hospitals and private psychiatric hospitals and hospices	£2040	£85 per bed
Currently registered clinics	£2040	£85 per place
Nurse agencies	£500	£250
Secure accommodation service (estimated to take 14 inspector days)	£3170	£130 per bed
<u>Adoption services</u>		
- small service with up to 3 paid staff	£680	£340
- others (estimated to take 6 annual inspector days)	£1360	£680
Child minding	£15	£12
Day care of children		
- small service with up to one paid member of staff	£15	£12
- others	£133	£103

PARTIAL REGULATORY IMPACT ASSESSMENT

Title

Consultation on a draft Order in which Scottish Ministers prescribe the maximum fees which may be imposed by the Scottish Commission for the Regulation of Care for 2002-03.

Purpose and intended effect

Issue

1. This regulatory impact assessment is provided to assist public consultation on the proposals for the prescribing by Scottish Ministers of maximum fees which may be imposed by the Scottish Commission for the Regulation of Care (the Care Commission) for 2002-03. The Regulation of Care (Scotland) Act 2001 (the Act) requires any person seeking to provide a care service as defined therein to apply to the Care Commission for registration of that service. Some care services will be required to register from 1 April 2002, and the rest later (see Appendix A of consultation paper for latest proposals). The Care Commission is required 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.

Objectives

2. The Act was introduced to modernise and standardise the regulation of care services, replacing most of the existing legislation, regulations, etc. It also established the Care Commission as a new national regulator of care services.

3. Under the current system, the regulation of care services is patchy. Some services are not regulated at all, while many others are regulated under a range of legislation, regulations, circulars and guidance notes which are now largely outdated. Currently there are a number of different regulators - health boards and local authorities - each of which may be adopting different standards and procedures.

4. From 1 April 2002 the Care Commission will implement the policy set out in the Act, establishing a new unified regulatory system. A separate consultation exercise is already underway on an order and regulations which would all come into operation on that date, covering:

4.1 Applications for registration, for variation or removal of a condition of registration and for cancellation of registration.

4.2 The keeping of registers and access to those registers.

4.3 The management, staffing, premises and conduct of all care services, and the promotion and protection of the health and welfare of people using them.

5. This new regulatory system will remedy gaps and anomalies in the current system. Local authority care services too will be subject to registration and inspection, and will have to pay fees like everyone else. The intention is to establish a level playing field for all providers, so that users know what to expect and can rely on a consistent approach.

6. The Regulatory Impact Assessment which accompanied the Regulation of Care (Scotland) Bill (now the Act) assumed an increase of 10% (£10 per year per bed for annual continuation for care homes) in current fee levels for each of the years leading up to 2004-05, when the Commission was expected to recoup the entire cost of registration and inspection from fees income. The RIA said that services new to regulation would be expected to pay fees reflecting full cost recovery from the start. Early education and child care were to be excepted from full cost recovery and would continue to be subsidised by the Scottish Executive. 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.

7. The first step towards full cost fees was taken in 2001-02, when a 10% increase (additional £10 per bed continuation for care homes) was effected. We now propose a further such increase for 2002-03.

Risk assessment

8. The central purpose of regulating care is the protection of people using care services, particularly vulnerable adults and children. It will be essential that the new national regulator is adequately funded to ensure it can guarantee to all those using the system the quality of care they expect.

OPTIONS

9. 3 options for fee levels have been identified:

Option 1 – full central government subsidy.

Option 2 – Partial central government subsidy, 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

10. 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 as 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

11. The benefits of the Act were debated at length in the Scottish Parliament and are widely supported by providers, users and commissioners alike. Options 2 and 3 would ensure a transparent system. Both would assist the Care Commission to make better quality of life a reality for those who use care services.

12. Following option 3 and moving to full cost recovery from the outset would, however, place a considerable financial burden on currently regulated services in the short term. Some of the smaller services might go out of business if they unexpectedly had to effect increases on this scale as quickly as 1 April 2002. Option 2 is therefore the preferred option. We have ensured that the additional costs to local authorities of paying fees to register their own services and of paying any increased charges for services they commission were taken into account in determining their resources for 2002-03.

Quantifying and valuing the benefits

13. It is difficult 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. Increased fees and new fees for services not previously registered will create additional fee income to assist the Care Commission in carrying out its duties. The shortfall will be met through subsidy.

Business sectors affected

14. Care services are provided by the private and voluntary sectors and by local authorities. All services currently registered will be required to pay the increased annual fee on the next anniversary of their registration following 1 April. Providers who are registered after the legislation is in place will pay the new initial registration fee immediately and the new annual fee thereafter.

15. 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 increases are reasonable in that context.

Compliance costs for a typical business

16. Currently care homes, independent hospitals, private psychiatric hospitals and hospices for example, pay fees for the following:

- *initial registration* – this is a one-off fee that is paid by providers registering for the first time only;

- *annual continuation, per registered place* – this will be the biggest single cost for existing providers;
- *variation in any condition of registration* – unlikely to be a significant cost to the majority of providers as such variations occur infrequently; and
- *issue of a revised registration certificate* – also occur infrequently.

17. The Act allows fees to be prescribed by the Commission for all of the above, and in addition for removal of a condition of registration and for cancellation of registration. Current and proposed fee levels for care homes etc are:

	<u>Current fees</u>	<u>Proposed fees from 1 April 2002</u>
Application for registration	£1854	£2040
Annual continuation fee per registered place	£75 per bed	£85 per bed
Variation in condition of registration	£410	£510
Removal of condition of registration	Not applicable	£510
Cancellation of registration	Not applicable	£510
New certificate of registration	£60	£66

18. For existing registered providers of care home services the total compliance cost will simply be the increase in the annual continuation fee (£10) multiplied by the number of registered places they have. For example, a home registered for 20 places would pay an additional £200 per year. New providers, and those wishing to change their registration will incur costs as above.

19. Registration fees are a small part of the total cost of providing a care service and it is expected that at least some of the increase can be absorbed. On average, private and voluntary care homes for older people were charging nearly £14,500 per bed per year in 2000 (Scottish Community Care Statistics 2000). An annual increase of £10 per bed would only represent a tiny proportion of the total costs.

Independent special schools with boarding provision, grant-aided special schools,

20. The same fees as for care homes are proposed for these services, which are to register for the first time. The cost of registration has to be balanced against the improvements which effective regulation will make to the services they offer. Again, some of the costs will be absorbed, while the rest will probably be passed on to the users. The annual cost will not be a significant proportion of the total annual cost of providing a place.

Day care for adults

21. It is difficult to quantify the average cost of providing day care for adults (one of the services to pay fees for the first time from 1 April 2002), as the range of services offered varies considerably from one organisation to the next. What can be said, however, is that providers of such services are generally commissioned by local authorities and should therefore be able to pass on the cost of registration. As indicated above, local authority resources have been set at a level which takes into account this pressure.

22. We are suggesting a lower rate for those organisations which rely on fundraising and volunteers, to minimise the impact. The annual fee proposed for larger services is relatively low, however, at £450.

Impact on others

Childminders and day care for children

23. It is not considered that the proposed increases of £1 and £9 respectively in the annual rates for childminders and day care are likely to have a significant impact.

Users of care services

24. If the increase in fees is passed on to the purchasers of care in full the amounts involved would be a very small rise in existing care bills. For example, a person in a care home paying his/her own care bills might have to pay an extra £10 on top of the £14,500 per year he/she is already being charged.

Issues of equity and fairness

25. Many providers of care services already pay fees for registration and inspection services they receive from local authorities. The principle that providers should meet the reasonable cost of regulation is well established. Extending it in 2002-03 to those services (including local authorities) which are regulated in some way but not inspected and required to pay a fee achieves equal treatment, and the proposed increase will help ensure that the cost of regulation in future continues to be met by those who are regulated.

Consultation

26. As has been the practice with previous consultations at different stages of the Regulation of Care Project, we are issuing this consultation paper to a wide range of contacts who will have different perspectives on the maximum fees proposed.

Enforcement, monitoring and evaluation

27. The Care Commission will implement the maximum fees prescribed. Scottish Ministers will monitor the fees charged by the Care Commission with a view to ensuring that maximum fee rates are not being exceeded. The impact of the fees on the market will be considered by Ministers in taking decisions on the levels to be prescribed for future years.

Timetable

28. The new fees system will come into force from April 2002

Review

29. The content of this Regulatory Impact Assessment will be subject to review before fees are set for 2003-04.

Conclusion

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

**Regulation of Care Project
January 2002**