



care
inspectorate

**Requiring care services in Scotland
to improve:** how the Care Inspectorate
uses recommendations, requirements
and its legal powers



The Care Inspectorate was established in April 2011 by the Public Services Reform (Scotland) Act 2010. We are an independent body, governed by our Board which is appointed by and accountable to the Scottish Government. As well as this legislation, we operate according to various sets of regulations. We have the general duty of furthering improvement in the quality of social services. These services fall into two categories: care services and social work services.

We carry out joint inspections of services for children and services for older people in each part of Scotland, ensuring that social work, health, police and education colleagues are all working together effectively. In addition, we regulate some **14,000** individual care services, including:

- Childminding
- Nurseries
- Housing support
- Support services (including care at home and daycare of adults)
- Care homes for people of various ages and with different needs
- School care accommodation
- Nurse agencies
- Childcare agencies
- Secure accommodation
- Offender accommodation
- Adoption and fostering services
- Adult placement

A care service cannot operate if it is not registered with us. In deciding whether to register a new service, we must take account of matters including the welfare of users, the fitness of the provider, the fitness of the manager, the fitness of staff, and the fitness of the premises.

After a care service has been registered, we carry out regular inspection visits to check that the service is providing high quality care.

What powers do we have if a care service is not operating to legal standards?

Where we find that a care service is not operating according to the standards we expect, we have the powers to:

- make recommendations
- make requirements
- take enforcement action which may lead to the service's registration being cancelled if required improvements are not made
- apply to the sheriff for emergency cancellation of the service's registration
- attach a condition to the registration of the service.

Recommendations

Where we believe changes should be made which would benefit the people using a care service, we make recommendations. These may be made in a report following an inspection, or if a complaint has been investigated and upheld.

In newer inspections from 2018, we may describe these as 'areas of improvement' instead of 'recommendations'.

Requirements

Where a service is not meeting the standards we expect, we may make a requirement. Again, this may be made at an inspection or after a complaint has been upheld. We will set a timescale for the requirement to be met, which may be days, weeks or months depending on its nature and the speed with which it could be reasonably done. When requirements have been made, we expect services to draw up an action plan for change. At subsequent inspections, we will check to see whether requirements have been met.

Formal enforcement action

Where a service is not complying with the legal standards we may issue an improvement notice. This advises a provider that unless there is a significant improvement of a specific nature within a reasonable period specified in the notice we intend to make a proposal to cancel the registration of the care service. (In the case of an adoption or fostering service failing to make changes required in an improvement notice, we instead report the matter to the Scottish Ministers for further action).

The types of situation where we issue an improvement notice vary greatly, but in general terms we use this approach where the failing is significant and where cancellation of the service's registration may be an option were improvements not to be made. For example, we may ask a provider to demonstrate that they have improved their system for administering medication, or implemented a planned programme of staff training, or replaced worn materials, or are providing sufficient activities for people using the care service.

After we have issued an improvement notice our inspectors monitor the service to check whether the improvements are being made. If our inspectors are satisfied, the improvement notice is recorded by us as implemented. If our inspectors are not satisfied, they will either allow further time for the provider to comply or propose to cancel the service's registration.

Cancelling a service's registration if required improvements are not made

There are two stages in closing a care service which is not performing. If improvements set out in an improvement notice have not been made, we may issue a notice proposing to cancel the registration of the care service.

We must issue a notice to the provider of the care service advising them we are **proposing** to cancel the registration. The provider may then make written representations, within 14 days of receipt of our proposal, arguing that we should not implement our proposal.

If we do not receive representations we must implement our proposal unless it would be inappropriate to do so. If we do receive representations we must consider whether to implement our proposal to cancel, or decide that, based on the provider's representations, cancellation would not be appropriate.

If we decide to cancel the registration, we must send written notice to the provider. This notice sets out the provider's right of appeal to the Sheriff Court against the decision, which must be made within 14 days of receipt of the notice. If no appeal is made, the service must close by that date. If the service provider does appeal to the Sheriff Court, the service can continue to operate whilst the appeal is ongoing.

Apply to the sheriff for emergency cancellation of registration

In situations which we consider to be an emergency we may decide to apply for a court order to cancel the registration of a care service. The Act provides that the Sheriff may make an order cancelling registration if she or he is satisfied that, unless the order is made, there will be a serious risk to life, health or wellbeing. It should be noted that the Act provides that, even if the court is satisfied that there will be a serious risk to life, health or wellbeing, the making of an order is at the Sheriff's discretion – she or he is not obliged to grant it.

Attach a condition to the registration of a service

We can attach conditions to a service's registration, meaning that we require a service to operate in a particular way. This can also be done on an emergency basis if required.

Where a service is not operating in accordance with regulations we may attach an express condition to their registration certificate to ensure compliance. There are no prescribed situations where we must do this but likely examples may be to increase staff numbers or to limit the number of people using the care service. We must issue a notice stating that we are proposing to impose the condition. The provider has 14 days following receipt of the proposal notice in which to make written representations arguing that we should not implement our proposal. If we receive representations we must consider them. If we do not receive representations we must implement our proposal unless it would be inappropriate to do so. Following receipt of representations we may proceed to implement our proposal or we may decide that based on the provider's representations it would not be appropriate to do so.

If we do not receive representations in response to the proposal notice, or are not satisfied that the representations address the issue, we may impose the condition. We issue the provider with a notice confirming that we have made the decision. The provider has 14 days in which to appeal to the Sheriff against the decision. If the service provider does appeal, the condition does not come into effect while the appeal is ongoing.

If we believe that the absence of a condition poses a serious risk to life, health or wellbeing we may issue an emergency condition notice. The condition becomes effective as soon as the provider receives the notice. If the provider wishes to dispute any matter they may make representations to us within 14 days after receipt of the notice. We may

then remove or vary the condition, or leave it in place. The provider may also appeal to the Sheriff against the emergency condition notice, but the condition notice stays in place until legal appeals are concluded.

The statutory provisions

This leaflet is a short summary of the key provisions of the Public Services Reform (Scotland) Act 2010 which relate to our enforcement powers. The detailed provisions can be found within sections 62 to 75 of the Act.



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Tha am foillseachadh seo ri fhaighinn ann an cruthannan is cànanan eile ma nithear iarrtas.

অনুরোধসাপেক্ষে এই প্রকাশনাটি অন্য ফরম্যাট এবং অন্যান্য ভাষায় পাওয়া যায়।

یہ اشاعت گزارش پر دیگر شکلوں اور دیگر زبانوں میں دستیاب ہے۔

ਬੇਨਤੀ 'ਤੇ ਇਹ ਪ੍ਰਕਾਸ਼ਨ ਹੋਰ ਰੂਪਾਂ ਅਤੇ ਹੋਰਨਾਂ ਭਾਸ਼ਾਵਾਂ ਵਿਚ ਉਪਲਬਧ ਹੈ।

هذا المنشور متوافر عند الطلب بتنسيقات وبلغات أخرى.

本出版品有其他格式和其他語言備索。

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