

Draft Regulations laid before the Scottish Parliament under section 6(4) of the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2006 No.

CHILDREN AND YOUNG PERSONS

The Joint Inspections (Scotland) Regulations 2006

Made - - - - 2006
Coming into force - - 2006

The Scottish Ministers, in exercise of the powers conferred by sections 3(1) and 6(2) of the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 6(4) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation and commencement

1. These Regulations may be cited as the Joint Inspections (Scotland) Regulations 2006 and shall come into force on the day after the day on which it is made.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006;

“health information” means—

- (a) information (however recorded) which relates to the physical or mental health or condition of an individual, to the diagnosis of that individual's condition or to that individual's care or treatment; and
- (b) information (however recorded) which is to any extent derived, directly or indirectly, from such information;

“joint inspection” means an inspection under section 1 of the Act; and

“personal records” includes medical records;

(2) For the purposes of regulation 9, health information is “confidential health information” where—

- (a) the identity of the individual in question is ascertainable—
 - (i) from that information; or
 - (ii) from that information and other information which is in the possession of, or is likely to come into the possession of, the person having that information; and
- (b) that information was obtained or generated by a person who, in the circumstances, owed an obligation of confidence to that individual.

Sharing of information

3.—(1) Where an authorised person has obtained information for the purposes of a joint inspection, that person may share that information with any other authorised person but only for those purposes.

(2) Where an authorised person—

- (a) has obtained information for the purposes of a joint inspection; and
- (b) considers that holding that information would assist a person or body listed in, or specified under, section 1(7) of the Act to carry out their functions,

the authorised person may disclose that information to the person or body in question.

Disclosure of information held by certain persons and bodies

4.—(1) A person or body listed in, or specified under, section 1(7) of the Act may disclose to an authorised person any information which the person or body—

- (a) holds for the purposes, or in consequence, of the performance of their functions; and
- (b) considers would assist an authorised person for the purposes of a joint inspection.

(2) A person or body disclosing information in terms of paragraph (1) shall, so far as it is practical to do so, remove from that information any particulars which identify the person to whom that information relates and which are not required for the purposes of the joint inspection.

Power of entry

5.—(1) If an authorised person considers it necessary or expedient for the purposes of a joint inspection, that person may at any reasonable time enter and inspect any premises owned or controlled by a person providing children’s services.

(2) A person who proposes to exercise any power of entry or inspection conferred by this regulation must if so requested produce some duly authenticated document showing the authority to exercise the power.

Power of entry: supplementary

6.—(1) An authorised person exercising the power of entry and inspection conferred by regulation 5 may, if that person considers it necessary or expedient for the purposes of the joint inspection, inspect, take copies of and remove from the premises any documents or records (including personal records) relating to the provision of children’s services.

(2) The power in paragraph (1) includes—

- (a) power to require any person holding or accountable for documents or records kept on the premises to produce them; and

- (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
- (3) A person inspecting records under paragraph (1) is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been used in connection with the records in question.
- (4) An authorised person exercising the power of entry and inspection conferred by regulation 5 may—
 - (a) require any person to afford such facilities and assistance with respect to matters within the person's control as are necessary to enable the authorised person to exercise powers under regulation 5 or this regulation; and
 - (b) take such measurements and photographs and make such recordings as the authorised person considers necessary to enable exercise of those powers.

Power to require information

- 7.—(1) An authorised person may at any time require any person to provide to the authorised person any documents, records (including personal records) or other items—
- (a) which relate to the provision of children's services; and
 - (b) which the authorised person considers it necessary or expedient to have for the purposes of a joint inspection.
- (2) The power in paragraph (1) to require the provision of records includes, in relation to records kept by means of a computer, power to require the provision of the records in legible form.

Power to require explanation

- 8.—(1) If an authorised person considers it necessary or expedient for the purposes of a joint inspection, that person may require a person falling within the description in paragraph (2) to provide an explanation of—
- (a) any documents, records or other items inspected, copied, removed or provided under regulation 6 or 7; or
 - (b) any other information provided under those regulations.
- (2) A person falls within the description in this paragraph if the authorised person considers that person to be, or to have been, responsible—
- (a) for compiling any part of the document, record, item or information in question; or
 - (b) for holding the document, record, item or information in question.

Confidential health information

9. Where an authorised person is in possession of confidential health information which has been obtained for the purposes of a joint inspection, that person shall—
- (a) not allow any other person access to that information, other than a person who, by virtue of a contract of employment or otherwise, is involved in using or disclosing that information for one or more of those purposes for which the information may be used or disclosed;
 - (b) ensure that appropriate technical and organisational measures are taken to prevent unauthorised use or disclosure of that information; and
 - (c) on request by any person or body, make available information on the steps taken to comply with this regulation.

Disposal of personal records

10.—(1) Where an authorised person is in possession of personal records which have been obtained for the purposes of a joint inspection and which are no longer required for those purposes that person shall, not later than the date specified in paragraph (2)—

- (a) in the case of principal records, return them to the person or body from which they were obtained; or
- (b) in any other case, destroy them.

(2) The date specified for the purposes of paragraph (1) is the later of one year after—

- (a) the date upon which the report of the joint inspection is submitted to the Scottish Ministers; or
- (b) if the report is published, the date of publication.

Offences

11. Any person who without reasonable excuse—

- (a) obstructs the exercise of any power conferred by regulation 5 or 6; or
- (b) fails to comply with any requirement of, or any requirement imposed by virtue of, regulation 5, 6, 7 or 8;

is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

St Andrew's House,
Edinburgh
2006

A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision under section 3 of the [Joint Inspection of Children's Services and Inspection of Social Work Services \(Scotland\) Act 2006 \(asp 3\)](#) ("the Act") with regard to the conduct of joint inspections.

Regulation 3 provides for the sharing of information as between authorised persons for the purposes of joint inspections.

Regulation 4 provides for the disclosure of information by the persons or bodies who may conduct joint inspections and provides, where practical, for the anonymisation of that information.

Regulation 5 provides for the exercise of a power of entry by authorised persons for the purposes of a joint inspection.

Regulation 6 provides for an authorised person exercising the power of entry in terms of regulation 5 to inspect, copy and remove documents or records, to have access to computers and to require facilities and assistance to enable the exercise of the power under regulation 5.

Regulation 7 provides for an authorised person to require the production of documents and records.

Regulation 8 provides for an authorised person to require explanations of documents and material inspected or provided in relation to joint inspections.

Regulation 9 makes specific provision in relation to confidential health information obtained for the purposes of a joint inspection.

Regulation 10 provides for the disposal or destruction of personal records following completion of a joint inspection.

Regulation 11 provides that a person obstructing the exercise of a power or failing to comply with requirements made under regulations 5, 6, 7 and 8 shall be guilty of an offence. Section 3(1)(f) of the Act provides for the creation of offences punishable on summary conviction by a fine not exceeding level 4 on the standard scale.

A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of business, charities or voluntary bodies.