

Draft Regulations laid before the Scottish Parliament under section 133 of the Public Services Reform (Scotland) Act 2010, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

SOCIAL SERVICES

**The Public Services Reform (Joint
Inspections) (Scotland) Regulations 2011**

Made - - - - *2011*

Coming into force - - *1st April 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 117 of the Public Services Reform (Scotland) Act 2010⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 133 of that Act a draft of this instrument has been laid before, and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Public Services Reform (Joint Inspections) (Scotland) Regulations 2011 and come into force on 1st April 2011.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Public Services Reform (Scotland) Act 2010;

“authorised person” means a person authorised in terms of regulation 3;

“information” includes any document, record (including personal records) or item or any part of a document, record or item;

“personal records” includes health records within the meaning of section 105 (interpretation of Part 5);

“service” means any children’s service (as defined in section 115(12) (joint inspections)), such other service as the Scottish Ministers specify under section 115(1)(b) or a combination of services;

“service user” means a person who is provided with, who uses or is eligible to use a service.

(1) 2010 asp 8.

(2) Any reference in these Regulations—

- (a) to the provision of a service includes the management, organisation or co-ordination of a service; and
- (b) to a section is a reference to that section of the Act except where otherwise indicated.

Authorised persons

3. Any person authorised by a person or body listed in section 115(6) to carry out a joint inspection is an authorised person.

Exercise of the power of entry and inspection

4.—(1) An authorised person carrying out a joint inspection may at any time enter and inspect premises which are used, or which the authorised person has reasonable cause to believe may be used for the purpose of providing a service.

(2) The power to enter and inspect in paragraph (1) includes the power to—

- (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 the powers under paragraph (1); and
- (b) take such measurements, photographs and recordings as the authorised person considers necessary or expedient for the purposes of the inspection.

Power to require information

5.—(1) If an authorised person considers it necessary or expedient for the purposes of the joint inspection, the authorised person may—

- (a) inspect, remove from the premises and take copies of information; and
- (b) request delivery of information and make copies of that information.

(2) The powers in this regulation include—

- (a) power to require any person holding or accountable for information to produce it; and
- (b) in relation to electronically stored information, power to require it to be produced in a form which is acceptable to the authorised person and which can be removed from the premises.

(3) When inspecting information an authorised person is entitled to have access to any computer and associated apparatus or material which is or has been used in connection with that information.

Explanation of information

6.—(1) If an authorised person considers it necessary or expedient for the purposes of a joint inspection, the authorised person may require a person falling within the description in paragraph (2) to explain any information inspected, copied, removed or provided in the course of the inspection.

(2) A person falls within the description in this paragraph if the authorised person considers the person to be, or to have been—

- (a) responsible for compiling or holding the information;
- (b) making use of the information.

Interviews and examinations

7. An authorised person may conduct any interview or examination with regard to the following matters if authorised person considers it necessary or expedient for the purposes of carrying out an inspection:—

- (a) the provision, organisation or co-ordination of the service;
- (b) the premises from which the service is provided; and
- (c) the treatment of service users.

(2) Without prejudice to the generality of paragraph (1), an authorised person may in private interview—

- (a) the manager of the service or the premises;
- (b) any person involved in the provision, co-ordination or organisation of the service;
- (c) any person otherwise connected with the provision of the service;
- (d) any person employed at the premises;
- (e) any service user who consents to be interviewed; or
- (f) any carer or relative of a service user who consents to be interviewed.

(3) An interview is in private for the purposes of paragraph (2) even if conducted in the presence of—

- (a) a guardian, continuing attorney or welfare attorney of the person interviewed; or
- (b) some other person provided that the person interviewed so wishes and the authorised person does not object.

(4) If the authorised person is a registered medical practitioner or a registered nurse and has reasonable cause to believe that a service user is not receiving proper care, the authorised person may in private and only with the service user's consent, conduct an examination of the service user.

(5) If the authorised person is a registered dentist and has reasonable cause to believe that a service user is not receiving proper dental care, the authorised person may in private and only with the service user's consent, conduct an examination of the service user.

(6) An examination is in private for the purposes of paragraphs (4) and (5) of this regulation even if conducted in the presence of a third party provided that—

- (a) the person examined so wishes and the authorised person does not object; or
- (b) the authorised person so wishes and the person examined consents.

(7) In this regulation—

“continuing attorney” has the same meaning as in section 15 (creation of continuing power of attorney) of the Adults with Incapacity (Scotland) Act 2000⁽²⁾;

“guardian” means a guardian appointed under section 58 (disposal of application) of the Adults with Incapacity (Scotland) Act 2000;

“registered dentist” means a person registered in the register maintained under section 14 (the dentists register and the registrar) of the Dentists Act 1984⁽³⁾;

“registered nurse” means an individual registered in the register maintained under article 5 (establishment and maintenance of the register) of the Nurses and Midwives Order 2001⁽⁴⁾ by virtue of qualifications in nursing;

(2) 2000 asp 4.

(3) 1984 c.24.

(4) S.I. 2002/253.

“welfare attorney” has the same meaning as in section 16 (creation and exercise of welfare power of attorney) of the Adults with Incapacity (Scotland) Act 2000.

Authorised persons: duty to prove authorisation

8. An authorised person must, on request, produce a document from the appropriate body or person listed in section 115(6) (joint inspections) confirming the person is authorised to carry out the inspection.

Disposal of personal records

9.—(1) If an authorised person is in possession of personal records obtained for the purposes of a joint inspection which are no longer required for those purposes, the authorised person must, not later than the date specified in paragraph (2)—

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

(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 inspection is submitted to the Scottish Ministers;
- (b) if the report is published, the date of publication; or
- (c) the final determination of any proceedings taken.

(3) For the purposes of paragraph (2)(c) “proceedings” means proceedings under the Act or any other enactment, before any court or tribunal, if those proceedings are connected to the service or subject to the joint inspection mentioned in paragraph (1).

Information sharing

10.—(1) An authorised person may share information obtained for the purpose of a joint inspection with any other authorised person (including a person authorised by another person or body) but only for the purposes of a joint inspection.

(2) Subject to section 117(3) (regulations relating to joint inspections), if an authorised person has obtained information for the purpose of a joint inspection, that person may share that information with—

- (a) any person or body listed in section 115(6) (joint inspections) but only to assist the carrying out of functions by that body or person; or
- (b) any person or body directed by the Scottish Ministers to participate in the conduct of a joint inspection under section 116 (participation in joint inspections) but only to assist the carrying out of functions by that person or body.

Offences

11. Any person who—

- (a) intentionally obstructs an authorised person exercising the power conferred by these Regulations; or
- (b) fails, without reasonable excuse, to comply with any requirement imposed by an authorised person under the power conferred by these Regulations,

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

Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning joint inspections carried out under section 1155 of the Public Services (Reform) Scotland Act 2010 ('the Act').

Regulation 3 sets out who is an authorised person for the purposes of joint inspections carried out under section 115.

Regulation 4 gives authorised persons the right to enter and inspect premises. Regulations 5 and 6 concern the power to require information, an explanation of the information and disposal of information acquired during the inspection, requiring persons to assist authorised persons, including producing information and providing an explanation of such information, and giving authorised persons the power to take photographs, recordings or measurements as necessary for the purposes of an inspection.

Regulation 7 provides for interviews and examinations carried out within an inspection, setting out the circumstances in which an interview or examination may be carried out, who may be interviewed, and restrictions on the examination of health records, which may only be carried out by a medically qualified person.

Regulation 8 places a duty upon authorised persons to produce authentication of authority to carry out inspections.

Regulation 9 concerns the disposal of personal records held by an authorised person in consequence of an inspection.

Regulation 10 concerns the power to share information obtained for the purpose of a joint inspection; this power is limited in its scope by the application of section 117(3) of the Act which limits the extent to which confidential information may be shared.

Regulation 11 creates criminal offences in respect of obstructing an authorised person or failing to comply with certain requirements in the Regulations.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies are available from www.legislation.gov.uk.