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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2011 No.**

**SOCIAL CARE**

**The Social Care and Social Work Improvement Scotland  
(Requirements for Care Services) 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 78 of the Public Services Reform (Scotland) Act 2010(a) and all other powers enabling them to do so.

In accordance with section 78(5) they have consulted such persons or groups of persons as they consider appropriate.

In accordance with section 104(2) of that Act a draft of the instrument has been laid before, and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Social Care and Social Work Improvement Scotland (Requirements for Care Services) 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;

“SCSWIS” means Social Care and Social Work Improvement Scotland;

“provider” in relation to a care service(b) means the person registered to provide that service;

“representative” means any person having legal authority, or the consent of the service user, to act on the service user’s behalf;

“service user” in relation to a care service means any person to whom that service is provided.

(2) 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 are to be construed accordingly.

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(a) 2010 asp 8.

(b) Section 47 of the Act defines a care service.

(3) In the case of a care service which is a child care agency, nurse agency or adult placement service(a), any reference to a person employed includes reference to a person who is introduced to the service user by the provider and associated expressions referring to employment are to be construed accordingly.

## Principles

3. A provider of a care service shall provide the service in a manner which promotes quality and safety and respects the independence of service users, and affords them choice in the way in which the service is provided to them.

## Welfare of users

4.—(1) A provider must—

- (a) make proper provision for the health, welfare and safety 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 and safety of that or any other service user and there are exceptional circumstances; and
- (d) where necessary, have appropriate procedures for the prevention and control of infection.

(2) A provider of a care home service(b) must 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 of children, child minding or a child care agency(c) must 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.

(4) In this regulation, health care professional means—

- (a) a registered medical practitioner;
- (b) a registered dentist, or dental practitioner registered with the General Dental Council;
- (c) a registered pharmacist as defined in section 108(1) of the National Health Service (Scotland) Act 1978(d);
- (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(e);
- (e) a registered nurse, midwife or health visitor (being a person registered in the register maintained under article 5 of the Nurses and Midwives Order 2001(f);
- (f) a person who is registered as a member of a profession to which the Health Professions Order 2001(g) extends;
- (g) a registered chiropractor as defined in section 43 of the Chiropractors Act 1994(h); or
- (h) a registered osteopath as defined in section 41 of the Osteopaths Act 1993(i).

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(a) “Child care agency”, “nurse agency” and “adult placement service” are defined in paragraphs 5, 4 and 11 respectively of schedule 12 to the Act.

(b) “Care home service” is defined in paragraph 2 of schedule 12 to the Act.

(c) “Day care of children”, “child minding” and “child care agency” are defined in paragraphs 13, 12, and 5 respectively of schedule 12 to the Act.

(d) 1978 c.29. Section 108 was amended by the European Qualifications (Health and Social Care Professions) Regulations S.I. 2007/3101.

(e) 1989 c.44.

(f) S.I. 2002/253, as amended by S.I. 2009/1182.

(g) S.I. 2002/254, as amended by the Health and Social Care (Community Health and Standards) Act 2003 (c.43), the Health Act 2006 c.28 and S.I. 2002/1124, 2003/3148, 2004/2033, 2004/1947, 2007/3101, 2009/1182 and 2010/233, and Health and Social Care (Community Health and Standards) Act 2003.

(h) 1994 c.17.

(i) 1993 c.21.

## Personal plans

5.—(1) Subject to paragraph (3) a provider must, after consultation with each service user and, where it appears to the provider to be appropriate, any representative of the service user, within 28 days 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, welfare and safety needs are to be met.

(2) Subject to paragraph (3) a provider of a care service must—

- (a) make the personal plan available to the service user and to any representative consulted under paragraph (1);
- (b) review the personal plan—
  - (i) when requested to do so by the service user or any representative;
  - (ii) when there is a significant change in a service user’s health, welfare or safety needs; and
  - (iii) at least once in every six month period whilst the service user is in receipt of the service;
- (c) where appropriate, after any review mentioned in sub-paragraph (b), 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) Paragraphs (1) and (2) do not apply to any adoption service or fostering service but the provider of such a service must, after consultation with each service user and, where it appears to the provider to be appropriate, any representative of the service user—

- (a) within one month of the date on which the service user first received the service prepare in writing a plan which confirms—
  - (i) what the care service will provide over the next 12 months;
  - (ii) who the service user is; and
  - (iii) the intended outcome for that service user;
- (b) review that plan at least once in every 12 month period, whilst the service user is in receipt of the service,

and where the provider is a local authority any plan prepared in accordance with this paragraph must be consistent with the plan prepared by that local authority in terms of section 4 of the Adoption and Children (Scotland) Act 2007(a).

(4) In this regulation “representative” includes any person appearing to the provider to act on behalf of the service user or who has an interest in the welfare of the service user.

## Fitness of providers

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

(2) The following persons are unfit 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 and who, in the reasonable opinion of SCSWIS is unsuitable to be a provider of a care service;

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(a) 2007 asp 4.

- (c) a person whose estate has been sequestrated who has been adjudged bankrupt unless (in either case) the person has been discharged or the bankruptcy order annulled;
- (d) a person who has been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986<sup>(a)</sup> or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985<sup>(b)</sup> unless that order has ceased to have effect or has been annulled;
- (e) a person who has made a composition or arrangement with, or granted a trust deed for, the person's creditors unless the person has been discharged in respect of it;
- (f) a person who has had an administrator, administrative receiver or a receiver appointed (which appointment is still in effect);
- (g) a person who has been—
  - (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005<sup>(c)</sup> (powers of the Court of Session) from being concerned in the management or control of any body; or
  - (ii) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission for England and Wales or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which the person by that person's conduct contributed to or facilitated;
- (h) a person who is subject to a disqualification order under the Company Directors Disqualification Act 1986<sup>(d)</sup>, the Companies (Northern Ireland) Order 1986<sup>(e)</sup>, or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order); and
- (i) a person who is subject to proceedings outside the United Kingdom which are equivalent to those listed at sub-paragraphs (b) to (h) above.

(3) For the purposes of paragraph (2)(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 is to be disregarded.

(4) Paragraph (2)(c) to (i) is to be disregarded if the provider is seeking to provide a child minding service.

(5) A provider must inform SCSWIS 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 must not act as a manager in relation to a care service unless the person is fit to do so.

(2) The following persons are unfit to act as a manager in relation to a care service:—

- (a) any person to whom regulation 6(2)(a) applies;
- (b) any 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 and who, in the reasonable opinion of the provider of the care service having regard to the circumstances of the conviction is unsuitable to be a manager in relation to a care service;

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(a) 1986 c.45. Schedule 4A was inserted by section 27 of and Schedule 20 to the Enterprise Act 2002 (c.40).

(b) 1985 c.66. Sections 56A to 56K were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

(c) 2005 asp 10.

(d) 1986 c.46, as amended by the Insolvency Act 2000 (c.39).

(e) S.I. 1986/1032 (N.I.6).

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

**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 must immediately give notice to SCSWIS of—

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

(2) Where a provider of a care service is or becomes aware that a person acting as manager in relation to that service is unfit to do so in terms of regulation 7, the provider must immediately notify SCSWIS in writing of that fact.

#### **Fitness of employees**

**9.**—(1) A provider must 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 unfit to be employed in the provision of a care service:—

- (a) any 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 and who, in the reasonable opinion of the manager of the care service having regard to the circumstances of the conviction, is unsuitable to work in a 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 regulations 6(2)(a) or 7(2)(d) apply.

#### **Fitness of premises**

**10.**—(1) A provider must 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 as set out in the aims and objectives of the care service;
- (b) are of sound construction and kept in a good state of repair externally and internally;
- (c) have adequate and suitable ventilation, heating and lighting; and
- (d) are decorated and maintained to a standard appropriate for the care service.

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

#### **Fitness in relation to adult placement services**

**11.** A provider of an adult placement service must not place any service user in premises in which there is any person living who is unfit to be in the proximity of the service user.

## **Child minding**

**12.**—(1) A provider of child minding must not permit any person who is unfit to be in the proximity of children to live at the premises which are used for the provision of the service.

(2) A provider of child minding must give notice to SCSWIS immediately where a person living at the premises used for the provision of the service—

- (a) becomes 16 years of age;
- (b) ceases to live at the premises;
- (c) is convicted of an offence; or
- (d) another person begins to live at the premises.

## **Protection of vulnerable groups listings**

**13.**—(1) A person who is listed in the children’s list in the Protection of Vulnerable Groups (Scotland) Act 2007<sup>(a)</sup> must not provide, manage or be employed in a care service for children.

(2) A person who is listed in the adults’ list in the Protection of Vulnerable Groups (Scotland) Act 2007 must not provide, manage or be employed in a care service for adults.

## **Facilities in care homes**

**14.** A provider of a care home service must, 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 deposit and return to them of any money or valuables so deposited, at the request of the service user or the service user’s representative.

## **Staffing**

**15.** A provider must, having regard to the size and nature of the care 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, welfare and safety of service users; and
- (b) 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.

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(a) 2007 asp 14. Section 1 defines children’s and adults’ list.

### **Medical practitioners in care homes**

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

### **Appointment of manager**

17.—(1) A provider who—

- (a) is not an individual;
- (b) is unfit to act as a manager in relation to a care service in terms of regulation 7(2); or
- (c) is not, or does not intend to be, in full-time day-to-day charge of the care service,

must 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 must immediately give notice to SCSWIS of—

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

### **Complaints**

18.—(1) A provider must establish a procedure (“the complaints procedure”) for considering complaints made to the provider.

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

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

(4) The provider must, within 20 working days after the date on which the complaint is made, or such shorter period as may be reasonable in the circumstances, inform the complainant of the action (if any) that is to be taken.

(5) The provider must supply a written copy of the complaints procedure to every service user and to any representative if that representative so requests.

(6) The written copy of the complaints procedure must include—

- (a) the name and address of SCSWIS; and
- (b) the procedure (if any) that has been notified by SCSWIS to the provider for the making of complaints to SCSWIS relating to the care service.

(7) The provider must supply to SCSWIS at its request a statement containing a summary of the complaints made during the preceding 12 months and the action that was taken in respect of each complaint.

(8) In this regulation, “address” includes both a postal address and where available an electronic mail address but an electronic mail address may not be substituted for a postal address.

### **Offences**

19.—(1) Subject to paragraph 2 it is an offence to contravene or fail to comply with regulations 4(3), 6(1), 7(1), 9(1) and 16.

(2) Failure to comply with regulation 6(2)(a) does not constitute an offence.

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh

## 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 Part 5 of the Public Services Reform (Scotland) Act 2010. A care service must be provided in accordance with the general principles set out in regulation 3. 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, welfare and safety needs will be met.

The Regulations specify persons who are not fit to provide (regulation 6), manage (regulation 7) or be employed in a care service (regulation 9). They also make provision as to fitness of premises (regulation 10) and fitness in relation to adult placement services (regulation 11). A provider of child minding is required by regulation 12 not to allow persons unfit to be in the proximity of children to live on the premises and requires notification to SCSWIS of certain changes to persons living at the premises.

Regulation 13 concerns the impact of a listing in the children's or adults' list in the Protection of Vulnerable Groups Act 2007. Regulation 14 makes provision as to the facilities required in care homes and regulation 15 concerns the staffing in care services.

Regulation 16 imposes a prohibition on any person having a financial interest in a care home from acting as a medical practitioner for any user of that service.

Regulation 17 makes provision as to the appointment of a manager of a care service and regulation 18 obliges a care service to establish and operate a complaints procedure. Regulation 19 provides that contravening or failing to comply with certain provisions of the Regulations is an offence. A person who commits an offence under these Regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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