

Draft Regulations laid before the Scottish Parliament under section 104(2) 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 (Social Services 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 58(1) of the Public Services Reform (Scotland) Act 2010⁽¹⁾ and all other powers enabling them to do so.

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 Public Services Reform (Social Services 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 by SCSWIS under section 56 (inspections: authorised persons);

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

“inspection” means an inspection of any social service or the organisation or co-ordination of any social services under section 53 (inspections) or 55 (inspection at request of Scottish Ministers);

“personal records” includes health records as defined in section 105 (interpretation of Part 5);

“pharmacist” means a person who is registered as a pharmacist in Part 1 or 4 of the register maintained under article 19 (establishment, maintenance of and access to the register) of the Pharmacy Order 2010⁽²⁾ or the register maintained in pursuance of articles 6 (the registers) and 9 (the registrar) of the Pharmacy (Northern Ireland) Order 1976⁽³⁾;

“registered dentist” means a person registered in the register maintained under section 14 (the dentists register and the registrar) of the Dentists Act 1984⁽⁴⁾;

“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⁽⁵⁾ by virtue of qualifications in nursing;

“SCSWIS” means Social Care and Social Work Improvement Scotland established by section 44 (Social Care and Social Work Improvement Scotland);

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

“social service” has the same meaning as in section 46 (social services).

(2) In these Regulations—

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

Authorised persons: qualifications

3. SCSWIS will determine the qualifications required for the role of an authorised person.

Exercise of the power of entry and inspection

4. An authorised person exercising the power of entry and inspection conferred by section 56(3) (inspections: authorised persons) 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 carry out the inspection; and
- (b) take such measurements and photographs and make such recordings as the authorised person considers necessary or expedient for the purposes of the inspection.

Power to require information

5.—(1) Subject to paragraph (4), if an authorised person considers it necessary or expedient for the purposes of the 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,

if the information relates to the provision of the social service.

(2) The powers in this regulation include—

- (a) power to require any person holding or accountable for information to produce it; and

(2) S.I. 2010/231.

(3) S.I. 1976/1213 (N.I. 22) to which there are amendments not relevant to these Regulations.

(4) 1984 c.24.

(5) S.I. 2002/253.

- (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 under paragraph (1) 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.
- (4) Nothing in this regulation allows an authorised person to inspect medical records unless that person is a health professional.
- (5) For the purposes of this regulation a “health professional” means—
 - (a) a registered medical practitioner;
 - (b) a registered nurse;
 - (c) a pharmacist; or
 - (d) a registered dentist.

Explanation of information

- 6.—(1) If an authorised person considers it necessary or expedient for the purposes of an 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 that person to be, or to have been—
- (a) responsible for compiling or holding the information; or
 - (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 thinks it necessary or expedient for the purposes of carrying out an inspection:—
- (a) the provision, organisation or co-ordination of the social service;
 - (b) the premises from which the social 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—

- (a) in private and only with the service user’s consent, conduct an examination of the service user;
- (b) inspect any medical records relating to the treatment 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—

- (a) in private and only with the service user’s consent, conduct an examination of the service user;
- (b) inspect any medical records relating to the treatment 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 to it being conducted.

(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⁽⁶⁾;

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

“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. Any authorised person must, on request, produce a document from SCSWIS which confirms the person is authorised to carry out inspections.

Disposal of personal records

9.—(1) If an authorised person is in possession of personal records obtained for the purposes of an 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 subject to the inspection mentioned in paragraph (1).

(6) 2000 asp 4.

Information sharing

10.—(1) Subject to section 56(4) if an authorised person has obtained information for the purpose of an inspection that person may disclose to a person prescribed in paragraph (2), so much of that information as the authorised person considers would assist the person with whom the information is shared, in carrying out that person’s functions.

(2) The prescribed persons are—

- (a) an authorised person as defined in regulation 3 (authorised persons) of the Public Services Reform (Joint Inspections) (Scotland) Regulations 2011(7); or
- (b) an authorised person as defined in regulation 2(1) (interpretation) of the Healthcare Improvement Scotland (Inspections) Regulations 2011(8).

Offences

11. Any person who—

- (a) intentionally obstructs the exercise of any power conferred by section 56 or by these Regulations; or
- (b) fails, without reasonable excuse, to comply with any requirement imposed 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

(7) S.S.I. 2011/XXX.

(8) S.S.I. 2011/XXX.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning inspections carried out under Part 5 of the Public Services (Reform) Scotland Act 2010 ('the Act'). Such inspections in terms of section 53 and 55 of the Act may only be carried out by persons authorised to do so by Social Work and Social Care Improvement Scotland ('SCSWIS').

Regulation 3 provides that the qualifications of an authorised person are to be determined by SCSWIS.

Regulations 4 to 6 provide detail on the power of entry and inspection given to authorised persons in section 56(3) of the Act, 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 provides that the information gathered for one inspection under Part 5 may be used for the purposes of another inspection under Part 5, a joint inspection under section 115 of the Act, or can be used for the purposes of an inspection carried out by Health Improvement Scotland under the National Health Service (Scotland) Act 1978. This power is limited in its scope by the application of section 56(4) 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 may be available from www.legislation.gov.uk.