

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

2013 No.

SOCIAL CARE

**The Social Care and Social Work Improvement Scotland
(Requirements for Care Services) Amendment Regulations 2013**

Made - - - - 2013
Coming into force - - 1st April 2013

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 78(2) 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⁽²⁾, 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 Social Care and Social Work Improvement Scotland (Requirements for Care Services) Amendment Regulations 2013 and come into force on 1st April 2013.

Amendment of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulation 2011

2. The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011⁽³⁾ are amended as follows—

- (a) in regulation 6(2) (fitness of providers) omit sub-paragraphs (c) to (f);
- (b) in regulation 6(4), for “(2)(c)” substitute “(2)(g)”; and
- (c) after regulation 6 insert—

(1) 2010 asp 8.

(2) Section 104(2) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(3) S.S.I. 2011/210.

“Notification of insolvency event: companies

6A.—(1) A company (or any person appointed or nominated to act on behalf of that company at the time of an insolvency event) who is a provider of a care service must notify SCSWIS immediately of any insolvency event.

(2) An “insolvency event” means any of the following events:—

- (a) the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986⁽⁴⁾ (“the 1986 Act”) submits a report to the court under section 2 (procedure where nominee is not the liquidator or administrator) of that Act⁽⁵⁾ which states that in the nominee’s opinion meetings of the company and its creditors should be summoned to consider the proposal;
- (b) the directors of the company lodge with the court documents and statements in accordance with paragraph 7(1) of Schedule A1⁽⁶⁾ (moratorium where directors propose voluntary arrangement) to the 1986 Act;
- (c) an administrative receiver within the meaning of section 251 of the 1986 Act⁽⁷⁾ is appointed in relation to the company;
- (d) the company enters administration within the meaning of paragraph 1(2)(b) of Schedule B1⁽⁸⁾ to the 1986 Act;
- (e) a resolution is passed for a voluntary winding up of the company without a declaration of solvency under section 89 of the 1986 Act;
- (f) a meeting of creditors is held in relation to the company under section 95 (creditors’ meeting which has the effect of converting a members’ voluntary winding up into a creditors’ voluntary winding up) of the 1986 Act⁽⁹⁾;
- (g) an order for the winding up of the company is made by the court under Part 4 or 5 of the 1986 Act;
- (h) an administration order is made by the court in respect of the company by virtue of any enactment which applies Part 2 (administration orders) of the 1986 Act (with or without modification);
- (i) a notice from an administrator under paragraph 83(3) (moving from administration to creditors’ voluntary liquidation) of Schedule B1⁽¹⁰⁾ to the 1986 Act in relation to the company is registered by the registrar of companies;
- (j) the company moves from administration to winding up pursuant to an order of the court under rule 2.132 (conversion of administration to winding up — power of court) of the Insolvency Rules 1986⁽¹¹⁾;
- (k) an administrator or liquidator of the company, being the nominee in relation to a proposal for a voluntary arrangement under Part 1 (company voluntary arrangements) of the 1986 Act, summons meetings of the company and of its creditors, to consider the proposal, in accordance with section 3(2) (summoning of meetings) of the 1986 Act.

(4) 1986 c.45.

(5) Section 2 was amended by the Insolvency Act 2000 (c.39) (“the 2000 Act”), Schedule 1, paragraph 3 and Schedule 2, paragraph 3.

(6) Paragraph 7 of Schedule A1 was inserted by the 2000 Act, Schedule 1, paragraph 4.

(7) Section 251 has been amended, but those amendments are not relevant to these Regulations.

(8) Paragraph 1(2) of Schedule B1 was inserted by the Enterprise Act 2002 (c.40), Schedule 16.

(9) Section 95 was amended by S.I. 2009/864 and 2010/18.

(10) Paragraph 83(3) of Schedule B1 was inserted by the Enterprise Act 2002 (c.40), Schedule 16.

(11) S.I. 1986/1925. Rule 2.132 was inserted by S.I. 2003/1730 and amended by S.I. 2010/686.

Notification of insolvency event: individuals

6B.—(1) Subject to paragraph (3), a provider who is an individual must notify SCSWIS immediately of any insolvency event.

(2) An “insolvency event” means any of the following events:—

- (a) the provider is adjudged bankrupt or sequestration of the provider’s estate has been awarded;
- (b) the nominee in relation to a proposal for a voluntary arrangement under Part 8 of the Insolvency Act 1986 submits a report to the court under section 256(1) or 256A(3) of that Act⁽¹²⁾ which states that in the nominee’s opinion a meeting of the provider’s creditors should be summoned to consider the debtor’s proposal;
- (c) a deed of arrangement made by or in respect of the affairs of the individual is registered in accordance with the Deeds of Arrangement Act 1914⁽¹³⁾;
- (d) the provider executes a trust deed for the provider’s creditors or enters into a composition contract.

(3) This regulation does not apply where the individual is the provider of a child minding service.

Notification of insolvency event: partnerships

6C.—(1) A partnership (or any person appointed or nominated to act on behalf of that partnership at the time of an insolvency event) who is a provider of a care service must notify SCSWIS immediately of any insolvency event.

(2) An “insolvency event” means any of the following events:—

- (a) an order for the winding up of the partnership is made by the court under any provision of the Insolvency Act 1986 (“the 1986 Act”) (as applied by an order under section 420 (insolvent partnerships) of that Act);
- (b) sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985⁽¹⁴⁾ or the partnership grants a trust deed for its creditors;
- (c) the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the 1986 Act (as applied by an order under section 420 of that Act) submits a report to the court under section 2 (procedure where nominee is not the liquidator or administrator) of that Act which states that in the nominee’s opinion meetings of the members of the partnership and the partnership’s creditors should be summoned to consider the proposal;
- (d) the members of the partnership lodge with the court documents and statements in accordance with paragraph 7(1) of Schedule A1 (moratorium where directors propose voluntary arrangement) to the 1986 Act (as applied by an order under section 420 of that Act);
- (e) the partnership enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to the 1986 Act (as applied by an order under section 420 of that Act).”.

⁽¹²⁾ Section 256 was amended by the 2000 Act, Schedule 3, paragraph 6, and section 256A was inserted by paragraph 7 of that Schedule.

⁽¹³⁾ 1914 c.47.

⁽¹⁴⁾ 1985 c.66.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Amendment Regulations 2013 No. 110

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (“the 2011 Regulations”).

Regulation 19, read with regulation 6, of the 2011 Regulations created an offence of providing a care service whilst the service was subject to various forms of insolvency procedure. These Regulations remove that offence and place a duty on a provider to notify Social Care and Social Work Improvement Scotland (commonly known as “the Care Inspectorate”) immediately upon an insolvency event (as defined in new regulations 6A, 6B and 6C).