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SCOTTISH STATUTORY INSTRUMENTS

# 2009 No. 91

# SOCIAL CARE

## The Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) Regulations 2009

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| *Made - - - -* | *9th March 2009* |
| *Laid before the Scottish Parliament - - - -* | *9th March 2009* |
| *Coming into force - -* | *31st March 2009* |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 29(1), (2), (5) and (13) of the Regulation of Care (Scotland) Act 2001(**1**) and all other powers enabling them to do so.

In accordance with section 29(12) of that Act they have consulted with such persons and groups of persons as they consider appropriate.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) Regulations 2009 and shall come into force on 31st March 2009.

(2) In these Regulations, references to employing a person include employing a person for payment, whether under a contract of service, a contract for services or otherwise than under a contract but do not include allowing a person to act as a volunteer; and references to an employee or to a person being employed shall be construed accordingly.

(3) In these Regulations–

"adult day care service" means a support service(**2**) which consists of any form of care provided to persons who have attained the age of sixteen years on premises other than domestic premises, during the day (whether or not it is provided on a regular basis or commences or ends during the hours of daylight);

"care home service for adults" means a care home service(**3**) which is provided to persons who have attained the age of sixteen years;

(**1**) 2001 asp 8 ("the Act").
(**2**) Section 2(2) of the Act defines "support service". Services have been excepted from this definition by S.S.I 2002/120 as amended by S.S.I. 2003/571 and S.S.I. 2005/96.
(**3**) Section 2(3) of the Act defines "care home service". No services are currently excepted from the definition by Regulations made under section 2(3)(d) of the Act.

"child" means–

(a) for the purposes of paragraph (a) of the definition of "residential child care service", a person under the age of sixteen years;

(b) for the purposes of paragraph (b) of the definition of "residential child care service", a child within the meaning of section 135(1) (interpretation) of the Education (Scotland) Act 1980(**4**); and

(c) for the purposes of paragraph (c) of the definition of "residential child care service", a child within the meaning of section 93(2)(b) (interpretation) of the Children (Scotland) Act 1995(**5**);

"manager of an adult day care service" means a person who is employed in managing the provision of an adult day care service and is the manager of that adult day care service;

"manager of a care home service for adults" means a person who is employed in managing the provision of a care home service for adults and is the manager of that care home service for adults;

"manager of a day care of children service" means a person who is employed in managing the provision of a day care of children service(**6**) and is the manager of that service;

"practitioner in a care home service for adults" means a person (not being a manager of, or supervisor in, a care home service for adults) who is employed in the provision of a care home service for adults and whose normal duties include caring for and supporting adults and responsibility for coordinating the implementation of planned programmes of care;

"practitioner in a day care of children service" means a person (not being a manager of, or support worker in, day care of children) who is employed in the provision of day care of children whose normal duties include being responsible for identifying the care, support and learning needs of children and includes caring for, supervising or being in sole charge of children;

"prescribed descriptions of social service worker" are those descriptions of social service worker prescribed by each sub-paragraph of article 2 of the Regulation of Care (Social Service Workers) (Scotland) Order 2005(**7**);

"provider" in relation to a care service means the person for the time being providing that service;

"relevant register" means any register prescribed by article 2 of the Regulation of Care (Prescribed Registers) (Scotland) Order(**8**);

"residential child care service" means a service which consists in the provision of personal care or personal support–

(a) to any child as part of a care home service(**9**);

(b) to any child as part of a school care accommodation service(**10**) other than the provision of residential accommodation where it is–

  (i) provided by or under arrangements made by the managers of an independent school and does not provide personal care or support;

(**4**) 1980 c. 44.
(**5**) 1995 c. 26.
(**6**) Section 2(20) of the Act defines "day care of children".
(**7**) S.S.I. 2005/318 as amended by S.S.I. 2005/611, S.S.I. 2006/453 and S.S.I. 2007/407.
(**8**) S.S.I. 2005/432.
(**9**) Section 2(3) of the Act defines "care home service".
(**10**) Section 2(4) of the Act defines "school care accommodation service". The provision of residential accommodation described in sub-paragraphs (i) to (iii) was excepted from the definition of "school care accommodation service" by S.S.I. 2002/120 but this exception from the definition was revoked with effect from 1st April 2005 by S.S.I. 2005/96.

(ii) provided by an education authority with respect to a special school within the meaning of the Education (Scotland) Act 1980; or

(iii) a hostel provided by the local authority for the use of children to enable them to attend school; or

(c) to any child as part of a secure accommodation service(**11**);

"residential child care worker" means a person who, not being a social worker, is employed in the provision of (or in managing the provision of) a residential child care service;

"social worker" has the meaning in section 77 of the Regulation of Care (Scotland) Act 2001;

"social service worker" means any person falling within the description of social service worker prescribed by the Regulation of Care (Social Service Workers) (Scotland) Order 2005(**12**);

"supervisor in a care home service for adults" means a person (not being a manager of a care home service for adults) who is employed in the provision of a care home service for adults and whose normal duties include supervising staff employed in such provision and monitoring the implementation of planned programmes of care;

"support worker in a care home service for adults" means a person (other than a manager of, or practitioner or supervisor in, a care home service for adults) who is employed in the provision of a care home service for adults and whose normal duties include caring for and supporting adults;

"support worker in a day care of children service" means a person (not being a manager of, or practitioner in, day care of children) who is employed in the provision of day care of children whose normal duties include caring for children; and

"the relevant part of the register maintained by the Scottish Social Services Council" means that part of the register, as defined by section 44 of the Regulation of Care (Scotland) Act 2001, which is most relevant to that person, taking into account their current employment.

### Fitness of Social Workers

**2.**—(1) A provider shall not employ a person in the provision or inspection of a care service in the position of a social worker unless that person is fit to be so employed.

(2) Subject to paragraph (3) and regulation 4 and 5, a person is unfit to be so employed unless registered in the relevant part of the register maintained by the Scottish Social Services Council.

(3) Paragraph (2) does not apply to a person who, in order to perform the duties for which the person is so employed is required by any enactment, other than this enactment, to be registered with any person or body other than the Scottish Social Services Council and is so registered.

### Fitness of Social Service Workers

**3.**—(1) A provider shall not employ a person in the provision or inspection of a care service in the position of a social service worker unless that person is fit to be so employed.

(2) Subject to paragraphs (3) and (4), and regulation 6, a person is unfit to be so employed unless registered in the relevant part of the register maintained by the Scottish Social Services Council.

(3) Paragraph (2) does not apply to a person who, in order to perform the duties for which the person is so employed is required by any enactment, other than this enactment, to be registered with any person or body other than the Scottish Social Services Council and is so registered.

(**11**) Section 2(9) of the Act defines "secure accommodation service".

(**12**) S.S.I. 2005/318 as amended by S.S.I. 2005/611, S.S.I. 2006/453 and S.S.I. 2007/407.

(4) This regulation shall apply to those holding a social service worker position as specified in Regulations 7 to 15, subject to Regulations 6 to 15.

### First Employment as a Social Worker

**4.**—(1) Where a person commences employment in the position of a social worker for the first time on or after 1st April 2009 regulation 2 shall apply in accordance with this regulation.

(2) That person shall apply for registration in the relevant part of the register maintained by the Scottish Social Services Council, as soon as reasonably practicable upon commencing that employment.

(3) That person shall have–

(a) a period of 6 months, starting on the commencement date of that employment; or

(b) the period starting from the commencement date of that employment until the application is determined,

whichever is the shorter, to achieve registration.

### Registration in a Relevant Register for Social Workers

**5.**—(1) Where a person is registered in a relevant register and applies for registration in the relevant part of the register maintained by the Scottish Social Services Council, as soon as reasonably practicable upon commencing employment as a social worker in Scotland, on or after 1st April 2009, regulation 2 shall apply in accordance with this regulation.

(2) That person shall have–

(a) a period of 6 months, starting on the commencement date of that employment; or

(b) the period starting from the commencement date of that employment until the application is determined,

whichever is the shorter, to achieve registration with the Scottish Social Services Council.

### New Employment as a Social Service Worker

**6.**—(1) Where a person, prior to commencing new employment as one of the prescribed descriptions of social service worker, has not held continuous employment as that prescribed description of social service worker, regulation 3 shall apply in accordance with this regulation.

(2) That person shall apply for registration in the relevant part of the register maintained by the Scottish Social Services Council as soon as reasonably practicable on commencing that new employment.

(3) That person shall have a period of–

(a) 6 months starting on the commencement date of that new employment; or

(b) the period from the commencement date of the new employment until the application is determined, whichever is the shorter, to achieve registration.

(4) In this regulation–

(a) “new employment” includes a change of employment to a new position coming within a different description of prescribed social service worker, whether the same or a different employer; and

(b) “continuous employment” includes consecutive employment with different employers provided such employment is of the same prescribed description of social service worker and there is no break in employment.

**Registration Requirement Commencement Dates for Descriptions of Social Service Workers**

**7.** Regulation 3 shall not apply to a residential child care worker until 30th September 2009.

**8.** Regulation 3 shall not apply to–

(a) a manager of an adult day care service; and

(b) a manager of a care home service for adults;

until 30th November 2009.

**9.** Regulation 3 shall not apply to a manager of a day care of children service until 30th November 2010.

**10.** Regulation 3 shall not apply to a practitioner in a day care of children service until 30th September 2011.

**11.** Regulation 3 shall not apply to a supervisor in a care home service for adults until 30th March 2012.

**12.** Regulation 3 shall not apply to a practitioner in a care home service for adults until 29th March 2013.

**13.** Regulation 3 shall not apply to a support worker in a day care of children service until 30th June 2014.

**14.** Regulation 3 shall not apply to a support worker in a care home service for adults until 30th September 2015.

**15.** Regulation 3 shall not apply to an employee of the Commission who is also an authorised person within the meaning of sections 25 and 27 of the Act until 31st March 2010.

**Offences**

**16.**—(1) A contravention or failure to comply with any of the provisions of regulations 2(1) or 3(1), without reasonable excuse shall be an offence.

(2) For the purposes of these Regulations, 'reasonable excuse' shall include failure to register timeously due to the actings or otherwise of a third party and it shall be a defence that persons exercised all due diligence and took all reasonable steps to avoid committing the offence.

(3) For the purposes of paragraph 2 above, 'persons' means the provider of a care service or person so employed in terms of Regulations 2 (1) and 3(1).

St Andrew's House,
Edinburgh
9th March 2009

*ADAM INGRAM*
Authorised to sign by the Scottish Ministers

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations specify persons who are not fit to be employed in the provision of a care service, in the position of social worker or social service worker. A social worker (regulation 2) or social service worker (regulation 3) is not fit unless registered with the Scottish Social Services Council (SSSC).

There are specific provisions for commencing employment as a social worker for the first time. A newly qualified social worker must make an application for registration with the SSSC on starting employment. Regulation 4 permits persons taking their first employment as a social worker after qualification to have a limited period in which to achieve registration after starting that employment.

There are also specific provisions for social workers who are registered as such in England, Wales or Northern Ireland. Regulation 5 permits social workers a limited period in which to achieve registration with the SSSC after starting employment in Scotland as a social worker.

There are specific provisions for commencing new employment as a social service worker. The Regulation of Care (Scotland) Act 2001 defines a social service worker as a person *employed* in the provision of a care service. Under that Act registration with the SSSC can only be achieved if a social service worker is already employed as such. Therefore regulation 6 permits social service workers a limited period in which to achieve registration on commencement of new employment.

The registration requirement applies to different descriptions of social service worker from different dates as specified in regulations 7 to 15.

Regulation 16 provides that contravention of specified provisions of these Regulations without reasonable excuse is an offence. Reasonable excuse includes failure to register is due to the actings of a third party, or if it can be demonstrated that the all due diligence and all reasonable steps were taken to avoid committing the offence.