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SCOTTISH STATUTORY INSTRUMENTS

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**2002 No. 114**

**SOCIAL CARE**

**The Regulation of Care (Requirements as to  
Care Services) (Scotland) Regulations 2002**

*Made* - - - - 8th March 2002  
*Laid before the Scottish  
Parliament* - - - - 8th March 2002  
*Coming into force* - - 1st April 2002

The Scottish Ministers, in exercise of the powers conferred by section 29 of the Regulation of Care (Scotland) Act 2001<sup>(1)</sup> and of all other powers enabling them in that behalf, and having consulted such persons and groups of persons as they consider appropriate in accordance with section 29(12) of that Act, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 and shall come into force on 1st April 2002.

(2) In these Regulations—

“health care professional” means—

- (a) a registered medical practitioner;
- (b) a registered dentist;
- (c) a registered pharmacist, as defined in section 108(1) of the National Health Service (Scotland) Act 1978<sup>(2)</sup>;
- (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<sup>(3)</sup>;
- (e) a registered nurse, midwife or health visitor;
- (f) a person who is registered as a member of a profession to which the Professions Supplementary to Medicine Act 1960<sup>(4)</sup> extends;

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(1) 2001 asp 8.  
(2) 1978 c. 29.  
(3) 1989 c. 44.  
(4) 1960 c. 66.

- (g) a registered osteopath as defined by section 41 of the Osteopaths Act 1993<sup>(5)</sup>; or
- (h) a registered chiropractor as defined by section 43 of the Chiropractors Act 1994<sup>(6)</sup>.

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

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

“statement of aims and objectives” means the written statement compiled in accordance with regulation 3.

(3) 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 shall be construed accordingly.

### **Principles**

2. A provider of a care service shall provide the service in a manner which promotes and respects the independence of service users and, so far as it is practicable to do so, affords them choice in the way in which the service is provided to them.

### **Statement of aims and objectives**

3. A provider shall prepare a written statement of the aims and objectives of the care service.

### **Welfare of users**

4.—(1) Providers shall—

- (a) make proper provision for the health and welfare 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 of that or any other service user and there are exceptional circumstances; and
- (d) have appropriate procedures for the control of infection and the management of clinical waste.

(2) Providers of a care home service shall 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 or child minding shall 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.

### **Personal plans**

5.—(1) Subject to paragraph (4), a provider shall, after consultation with each service user and, where it appears to the provider to be appropriate, any representative, within one month 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 and welfare needs are to be met.

(2) The provider of a care home service shall in addition—

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(5) 1993 c. 21.  
(6) 1994 c. 17.

- (a) make the personal plan available to the service user and to any representative consulted under paragraph 2(1);
  - (b) review the personal plan—
    - (i) when requested to do so by the service user or any representative; and
    - (ii) at least once in every six month period;
  - (c) where appropriate, 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) In this regulation “representative” means any person appearing to the provider to act on behalf of the service user.
- (4) This regulation does not apply to any care service which is a nurse agency, child minding or day care of children.

### **Fitness of providers**

- 6.—(1) A person shall not provide a care service unless the person is fit to do so.
- (2) The following persons are not fit 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;
  - (c) a person whose estate has been sequestrated in Scotland or who has been adjudged bankrupt elsewhere than in Scotland or in relation to whose estate a judicial factor has been appointed or who has granted a trust deed for the benefit of the person’s creditors:

Provided that—

- (i) the disqualification attaching to a person whose estate has been sequestrated shall cease if and when—
    - (aa) the sequestration is recalled or reduced; or
    - (bb) the sequestration is discharged;
  - (ii) the disqualification attaching to a person by reason of having been adjudged bankrupt shall cease if and when—
    - (aa) the bankruptcy is annulled; or
    - (bb) the person is discharged;
  - (iii) the disqualification attaching to a person in relation to whose estate a judicial factor has been appointed shall cease if and when—
    - (aa) that appointment is recalled; or
    - (bb) the judicial factor is discharged; or
  - (iv) the disqualification attaching to a person who has granted a trust deed shall cease if and when the person pays the creditors in full or on the expiry of 5 years from the date of grant of the deed.
- (3) For the purposes of paragraph (2)(b)–
- (a) the date of conviction shall be deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires or, if such

an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its not being prosecuted; and

- (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 shall be disregarded.

(4) A provider shall inform the Commission 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 shall not act as a manager in relation to a care service unless the person is fit to do so.

- (2) The following persons are not fit to act as a manager in relation to a care service—
  - (a) any person to whom regulation 6(2)(a) applies;
  - (b) any person to whom regulation 6(2)(b) applies;
  - (c) a person who is not physically and mentally fit to manage the care service;
  - (d) a person who does not have the skills, knowledge and experience necessary for managing the care service;
  - (e) 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**

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 shall immediately give notice to the Commission of—

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

(2) Where a provider of a care service becomes aware that a person acting as manager in relation to that service is not fit to do so in terms of this regulation, the provider shall immediately notify the Commission in writing of that fact.

### **Fitness of employees**

9.—(1) A provider shall 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 not fit to be employed in the provision of the care service:—
  - (a) a person who is not physically and mentally fit for the purposes of the work for which the person is employed in the 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 regulation 7(2)(e) applies.

### **Fitness of premises**

**10.**—(1) A provider shall 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 which are set out in the statement of aims and objectives;
- (b) are of sound construction and kept in a good state of repair externally and internally; and
- (c) have adequate and suitable ventilation, heating and lighting.

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

### **Fitness in relation to child minding**

**11.** A provider of child minding shall not permit any person who is not fit to be in the proximity of children to live at the premises which are used for the provision of the service.

### **Facilities in care homes**

**12.** Providers of a care home service shall, 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 in writing the return to them of any money or valuables so deposited.

### **Staffing**

**13.** A provider shall, having regard to the size and nature of the 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 and welfare of service users;
- (b) where the care service is a care home which provides nursing, ensure that at all times a suitably qualified registered nurse is working at the care home or, where that is sufficient to meet the nursing requirements of service users, available on call; and
- (c) 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.

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

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

### **Quality of independent health care**

15. A provider of an independent health care service shall make such arrangements as are necessary for securing that any treatment or services provided by the service are of a quality which is appropriate to meet the needs of service users.

### **Financial position**

16.—(1) Subject to paragraph (3), a provider shall provide the Commission with such information and documents as it may require in order to consider the financial viability of the care service, including—

- (a) the annual accounts of the care service certified by an accountant;
- (b) a reference from a bank expressing an opinion as to the provider's financial standing;
- (c) information as to the financing and financial resources of the care service;
- (d) where the provider is a company, information as to any of its associated companies; and
- (e) a certificate of insurance for the provider in respect of liability which may be incurred by the provider in relation to the care service in respect of death, injury, public liability, damage or other loss.

(2) A provider, other than a person to whom paragraph (3) applies, shall—

- (a) ensure that adequate accounts are maintained in respect of the care service and kept up to date;
- (b) ensure that the accounts give details of the running costs of the care service, including any rent, payments under a mortgage and expenditure on food, heating and payments to employees; and
- (c) supply a copy of the accounts to the Commission at its request.

(3) This regulation shall not apply to—

- (a) a local authority; and
- (b) except for paragraph (1)(e), a provider of child minding.

(4) In this regulation a company is an associated company of another if one of them has control of the other or both are under the control of the same person.

### **Appointment of manager**

17.—(1) A provider who—

- (a) is not an individual;
- (b) is not a fit person to manage a care service; or
- (c) is not, or does not intend to be, in full-time day-to-day charge of the care service;

shall 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 shall forthwith give notice to the Commission of—

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

### **Appointment of liquidators etc**

**18.** Any person to whom section 29(3) of the Regulation of Care (Scotland) Act 2001 applies must—

- (a) forthwith notify the Commission of that person’s appointment; and
- (b) where no person has been appointed to manage the care service, appoint such a person.

### **Records**

**19.—(1)** A provider shall keep a record of the following matters in respect of each service user:—

- (a) the service user’s name, address and date of birth;
- (b) the name, address and telephone number of the service user’s next of kin or of any person authorised to act on behalf of the service user;
- (c) the name, address and telephone number of the service user’s general practitioner; and
- (d) the date on which the service was first provided to the service user.

**(2)** A provider shall keep a record of all persons employed in the provision of the service, specifying in each case—

- (a) their full name, address, date of birth, qualifications, training and experience;
- (b) the date of commencement and, where applicable, the termination of the employment;
- (c) positions held;
- (d) any registration which the person is required by or under any enactment to hold in order to perform the duties for which the person is employed; and
- (e) any disciplinary action which the employer has taken against the person, including the outcome of any such action.

**(3)** A provider shall keep a record of—

- (a) any occasion on which restraint or control has been applied to a user, with details of the form of restraint or control, the reason why it was necessary and the name of the person authorising it;
- (b) the procedure which is to be followed in the event of a fire or other emergency;
- (c) all fire drills and alarm tests which have been conducted;
- (d) any incident which is detrimental to the health or welfare of a service user;
- (e) any maintenance of equipment which is used in the provision of the service;
- (f) any complaint made by a service user or a representative or relative of a service user or a person employed in the care service about the operation of the care service, the outcome of such complaint and the action taken;
- (g) the persons who were employed in the provision of the service each day;
- (h) all money or other valuables deposited by a service user for safekeeping or received on the service user’s behalf, which—
  - (i) shall state the date on which the money or valuables were deposited or received, the date on which any money or valuables were returned to a service user or used, at the request of the service user, on the service user’s behalf and, where applicable, the purpose for which the money or valuables were used; and
  - (ii) shall include the written acknowledgement of the return of the money or valuables;
- (i) the date, time and cause of death of any service user who has died while the care service was being provided to the service user and the name of the doctor certifying death;

- (j) medicines for the use of service users which are kept on the premises from which the care service is provided; and
- (k) details of any instance in which medication has been administered to a service user without the consent of that service user or of a person duly authorised to consent on the service user's behalf.

### **Returns**

**20.** A provider shall make returns to the Commission at least once in every twelve month period giving details of any instance referred to in regulation 19(3)(k) above.

### **Notification of death, illness and other events**

**21.—(1)** A provider shall give notice to the Commission without delay of the death of any service user who has died while the care service was being provided to the service user, and of the circumstances of the death.

(2) A provider of a care home service shall give notice to the Commission without delay of the occurrence of—

- (a) the outbreak in the care home of any infectious disease which in the opinion of any registered medical practitioner attending persons in the care home is sufficiently serious to be so notified;
- (b) any serious injury to a service user;
- (c) any theft or accident; or
- (d) any allegation of misconduct by the provider or any person who is employed in the care service.

### **Notice of absence**

**22.—(1)** Where a manager proposes to be absent from the duties of manager of the care service for a continuous period of 28 days or more, the provider shall give notice to the Commission of the proposed absence.

(2) Except in the case of an emergency, the notice referred to in paragraph (1) above shall be given no later than 14 days before the proposed absence or within such shorter period as may be agreed with the Commission and the notice shall specify—

- (a) the length or expected length of the proposed absence;
- (b) the reason for that absence;
- (c) the arrangements which have been made for the running of the care service during that absence; and
- (d) the name, address and qualifications of the person who will manage the care service during that absence.

(3) Where the absence arises as a result of an emergency, the provider shall give notice of the absence within one week of its occurrence specifying the matters in sub-paragraphs (a) to (d) of paragraph (2).

### **Notice of changes**

**23.—(1)** A provider shall give notice in writing to the Commission as soon as it is practicable to do so if any of the following events takes place or is proposed to take place:—

- (a) any change of provider of the care service;



- (b) any change of manager of the care service;
  - (c) any change of premises which are used in the provision of the care service;
  - (d) where the provider is an individual, that person's name is changed;
  - (e) where the provider is a body corporate, any change in the ownership of the body or of the identity of its officers; or
  - (f) where the provider is a firm, any change in the identity of the persons who are its partners.
- (2) A provider of child minding shall, in relation to persons living at the premises which are used for the provision of the service, give notice to the Commission without delay where—
- (a) any such person becomes 16 years of age; or
  - (b) any such person ceases to live at the premises,
- or where another person begins to live at the premises.

### **Death of provider**

**24.** Where a provider who is an individual dies and there is no other provider, the personal representatives of the provider shall without delay give notice of the death to the Commission.

### **Complaints**

**25.—(1)** A provider shall establish a procedure (“the complaints procedure”) for considering complaints made to the provider by a service user or person acting on the service user's behalf.

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

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

(4) The provider shall, within 28 days after the date on which the complaint is made, or such shorter period as may be reasonable in the circumstances, inform the person who made the complaint of the action (if any) that is to be taken.

(5) The provider shall supply a written copy of the complaints procedure to every service user and to any person acting on behalf of a service user if that person so requests.

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

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

(7) The provider shall supply to the Commission at its request a statement containing a summary of the complaints made during the preceding twelve months and the action that was taken.

### **Offences**

**26.** A contravention of or failure to comply with any of the provisions of regulations 4(3), 6(1), 7(1), 9(1) or 14 shall be an offence.

St Andrew's House,  
Edinburgh  
8th March 2002

*MALCOLM CHISHOLM*  
A member of the Scottish Executive

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## 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 the Regulation of Care (Scotland) Act 2001. A care service must be provided in accordance with the general principles set out in regulation 2. The provider is required by regulation 3 to prepare a written statement of the aims and objectives of the care service. 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 and welfare needs will be met.

The Regulations specify persons who are not fit to provide (regulation 6), manage (regulation 7) or be employed in (regulation 9) a care service. They also make provision as to fitness of premises (regulation 10) and require providers to make certain notifications to the Scottish Commission for the Regulation of Care (regulation 8). A provider of child minding is required by regulation 11 not to permit any person to live on the premises who is not fit to be in the proximity of children.

Regulation 12 imposes requirements as to the equipment and facilities to be provided in a care home service. Regulation 13 imposes requirements as to staffing in all services. Regulation 15 imposes requirements in relation to independent health care services.

Regulation 14 prohibits any person having a financial interest in a care home service from acting as a medical practitioner for any user of that service.

Providers are required to provide the Commission with the information specified in regulation 16 and the returns specified in regulation 20, to give notice of certain events as provided for by regulations 21 to 24, and to keep records as provided for by regulation 19. By regulation 25 they are required to establish and operate a complaints procedure.

Regulation 17 makes provision as to the appointment of a manager of a care service, and regulation 18 specifies what is to happen where a liquidator or similar person is appointed.

Regulation 26 provides that the contravention of specified provisions of these Regulations shall be an offence.