

2003 No. 150

SOCIAL CARE

**The Regulation of Care (Requirements as to Limited
Registration Services) (Scotland) Regulations 2003**

Made 6th March 2003

Laid before the Scottish Parliament 10th March 2003

Coming into force 1st April 2003

The Scottish Ministers, in exercise of the powers conferred by section 29 of the Regulation of Care (Scotland) Act 2001(a) 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 Limited Registration Services) (Scotland) Regulations 2003 and shall come into force on 1st April 2003.

(2) In these Regulations—

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

“service user” in relation to a limited registration 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 limited registration 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 limited registration service.

(a) 2001 asp 8; see section 77(1) for a definition of “regulations”.

Fitness of providers

4.—(1) A person shall not provide a limited registration service unless the person is fit to do so.

(2) The following persons are not fit to provide such a 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
- (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

5.—(1) A person shall not act as a manager in relation to a limited registration service unless the person is fit to do so.

(2) The following persons are not fit to act as a manager in relation to such a service:—

- (a) any person to whom regulation 4(2)(a) applies;
- (b) any person to whom regulation 4(2)(b) applies;
- (c) a person who is not physically and mentally fit to manage the service;
- (d) a person who does not have the skills, knowledge and experience necessary for managing the service;
- (e) a person who, in order to perform the duties for which the person is employed in the service, is required by any enactment to be registered with any person or body and is not so registered.

Notification of unfitness

6.—(1) Where a provider of a limited registration service is, or becomes, aware that a person acting as a manager in relation to the 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 limited registration 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

7.—(1) A provider shall not employ any person in the provision of a limited registration service unless that person is fit to be so employed.

- (2) The following persons are not fit to be employed in the provision of such a 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 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 5(2)(e) applies.

Staffing

8. A provider of a limited registration service 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 service in such numbers as are appropriate for the management of the finances of service users; and
- (b) ensure that persons employed in the provision of the 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.

Financial position

9.—(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 limited registration service, including—

- (a) the annual accounts of the 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 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 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 service and kept up to date;
 - (b) ensure that the accounts give details of the running costs of the 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 a local authority.

(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

10.—(1) A provider who—
(a) is not an individual;
(b) is not a fit person to manage a limited registration service; or
(c) is not, or does not intend to be, in full-time day-to-day charge of the service;
shall appoint an individual to be the manager of the service.

(2) Where a provider appoints a person to manage the 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.

11. 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 limited registration service, appoint such a person.

Records

12.—(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; and
- (c) 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 in relation to that service;
- (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 complaint made by a service user or a representative or relative of a service user or a person employed in the limited registration service about the operation of the service, the outcome of such complaint and the action taken; and
- (b) the persons who were employed in the provision of the service each day.

Notice of absence

13.—(1) Where a manager proposes to be absent from the duties of manager of the limited registration 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 service during that absence; and
- (d) the name, address and qualifications of the person who will manage the 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

14. 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 service;
- (b) any change of manager of the service;
- (c) any change of premises which are used in the provision of the 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.

Death of provider

15. 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

16.—(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 service.

(7) The provider shall supply to the Commission at its request a statement containing a summary of the complaints made during the preceding 12 months and the action that was taken.

Offences

17. A failure to comply with any of the provisions of regulations 4(1), 5(1) or 7(1) shall be an offence.

FRANCIS McAVEETY
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
6th March 2003

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out requirements which must be complied with by providers of a limited registration service under the Regulation of Care (Scotland) Act 2001. A limited registration 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 limited registration service.

The Regulations specify persons who are not fit to provide (regulation 4), manage (regulation 5) or be employed in (regulation 7) a limited registration service. They also require providers to make certain notifications to the Scottish Commission for the Regulation of Care (regulation 6).

Regulation 8 imposes requirements as to staffing.

Providers are required to provide the Commission with the information specified in regulation 9, to give notice of certain events as provided for by regulations 13 to 15, and to keep records as provided for by regulation 12. By regulation 16 they are required to establish and operate a complaints procedure.

Regulation 10 makes provision as to the appointment of a manager of a limited registration service and regulation 11 specifies what is to be happen where a liquidator or similar person is appointed.

Regulation 17 provides that the contravention of specified provisions of these Regulations shall be an offence.

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