EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend and consolidate the Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) (No. 2) Regulations 2009 ("the 2009 Regulations"). These Regulations impose requirements on care service providers and Social Care and Social Work Improvement Scotland ("SCSWIS") as regards the social workers and social service workers they employ.

Regulation 3 places duties, enforced by offences, on providers to ensure that their care service workforce is appropriately registered with the Scottish Social Services Council ("the SSSC"). Subject to exceptions, both social workers and social service workers may only work in a care service (as defined in section 47(1) of the Public Services Reform (Scotland) Act 2010) if they are registered with the SSSC.

Social workers may only work in a care service if they are registered with the SSSC. On starting as a social worker for the first time, such a worker must apply for registration as soon as is practicable. Regulation 4(3) creates a 6 month grace period whereby a social worker starting work in a care service for the first time has 6 months to register (but must still apply as soon as is practicable). By virtue of regulation 4(4) a social worker need not register with the SSSC if that worker is already obliged to register with another person or body to provide a care service (for example, with the Nursing and Midwifery Council). That exception does not apply to a social worker registered in an equivalent register applicable to the other parts of the UK. Such social workers also require to register with the SSSC and have the same 6 month grace period as any other social worker.

Social service workers are defined in section 77 of the Regulation of Care (Scotland) Act 2001 and different types of social service worker are prescribed by the Regulation of Care (Social Service Workers) (Scotland) Order 2005. Each type of social service worker is registered in a different part of the register by the SSSC. Again the general principle is that social service workers must be registered to provide care services or to inspect care services for SCSWIS.

Any social service worker entering a care service, or changing the type of social service they provide, will have to be registered (regulation 5). Like social workers, they will have to apply for registration as soon as is practicable on starting work, which includes starting work as a different type of social service worker (regulations 5(2) and (8)). Similarly, if not already registered they will have a six month grace period in which to register (regulation 5(3)). This is a change from the 2009 Regulations where only certain social service workers were given this grace period.

Mandatory registration of those social service workers already in post is, however, being phased in. Mandatory registration will only apply to those social service workers named in the Schedule from the dates set out in that Schedule; all other social service workers currently in post must be registered (regulation 5(7)).

As with social workers, a social service worker need not register with the SSSC if they are already obliged to register with another person or body to provide or inspect a care service and they are so registered (regulation 5(4)). There is no provision equivalent to that provided, for social workers, by regulation 4(7).

A further change to the 2009 Regulations is that a partial exemption is made to mandatory registration for social service workers in regulation 6. Regulation 6 applies to practitioners and support workers in a seasonal day care of children services (as defined in regulation 6(4)). This would include, for example, a day care of children service provided during school holidays only. This rule only applies from 2015 onwards. Once this rule is engaged, that seasonal worker may not provide a seasonal day

care service unless registered. Such employees must register with the SSSC if they have worked in such a position in any two preceding calendar years; otherwise they need not be registered.

Regulation 7 provides a further exemption for certain persons engaged by SCSWIS as inspectors (known legislatively as "authorised persons"). Regulation 7 exempts inspectors who are engaged on a short term basis to provide specialist advice for a particular inspection or inspections. This could, for example, apply to an architect or accountant.

Regulation 8 revokes the 2009 Regulations, and regulation 9 provides transitional and savings provisions such that workers who started work prior to the coming into force of these Regulations will be subject to the requirement to achieve registration and will continue to benefit from the periods of grace for registration set out in the relevant provision of the 2009 Regulations.