

Draft Regulations laid before Parliament under section 240(6) of the Local Government and Public Involvement in Health Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

NATIONAL HEALTH SERVICE, ENGLAND

**The Local Involvement Networks (Duty of Services-
Providers to Allow Entry) Regulations 2008**

Made - - - - *[]*
Coming into force - - *1st April 2008*

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 225(1) to (3) and (7) and 229(2) of the Local Government and Public Involvement in Health Act 2007(1).

[A draft of these Regulations was laid before Parliament in accordance with section 240(6) of the Local Government and Public Involvement in Health Act 2007 and approved by a resolution of each House of Parliament.]

Citation and commencement

1.—(1) These Regulations may be cited as the Local Involvement Networks (Duty of Services-Providers to Allow Entry) Regulations 2008.

(2) These Regulations shall come into force on 1st April 2008.

Interpretation

2. In these Regulations—

“the 2006 Act” means the National Health Service Act 2006(2);

“the Act” means the Local Government and Public Involvement in Health Act 2007;

“care home” has the meaning assigned by section 3 of the Care Standards Act 2000(3);

“care services” has the meaning given in section 221(6) of the Act;

“excluded activities” means any activities provided in pursuance of—

(1) 2007 c.28.
(2) 2006 c.41.
(3) 2000 c.14.

- (a) the social services functions of a local authority so far as relating to persons aged under 18;
- (b) the functions, in so far as not covered by paragraph (a), conferred on or exercised by a local authority under the Children Act 1989(4), the Adoption (Intercountry Aspects) Act 1999(5) or the Adoption and Children Act 2002(6); and
- (c) the functions, in so far as not covered by paragraph (a), continuing to be exercisable by a local authority under the Adoption Act 1976(7);

“excluded premises” means—

- (a) parts of a care home which are not communal areas;
- (b) premises or parts of premises used as residential accommodation for employees of services-providers;
- (c) premises which are occupied by one or more persons as their home and which at least one of those persons occupies under a tenancy or a licence;

“social services functions”, in relation to a local authority, has the same meaning as in the Local Authority Social Services Act 1970(8).

Duty of services-providers to allow entry by local involvement networks

3.—(1) A services-provider must allow an authorised representative(9) to—

- (a) enter and view, and
- (b) observe the carrying-on of activities on,

premises that it owns or controls.

(2) Paragraph (1) does not apply—

- (a) in respect of any premises, or parts of premises, if the presence of an authorised representative on those premises, or those parts of premises, would compromise—
 - (i) the effective provision of care services, or
 - (ii) the privacy or dignity of any person;
- (b) if the authorised representative does not comply with regulation 5;
- (c) in respect of excluded premises;
- (d) to observing the carrying-on of excluded activities;
- (e) to entering and viewing premises, or parts of premises, for the purpose of observing the carrying-on of excluded activities;
- (f) in respect of any premises, or parts of premises, at any time when care services are not being provided on those premises or those parts of premises;
- (g) if, in the opinion of the services-provider, the authorised representative in seeking to enter and view, and observe the carrying-on of activities on, the premises that the services-provider owns or controls is not acting reasonably and proportionately;
- (h) if an authorised representative does not provide the services-provider with evidence that the representative is authorised in accordance with regulation 4.

(4) 1989 c.41.

(5) 1999 c.18.

(6) 2002 c.38.

(7) 1976 c.36.

(8) 1970 c.42. Section 1A (meaning of “social services functions”) was inserted by section 102(3) of the Local Government Act 2000 (c.22).

(9) See section 225(5) of the Act for the definition of authorised representative.

(3) Where any premises, or parts of premises, are owned by a services-provider and controlled by another services-provider, then for the purpose of this regulation the services-provider who owns those premises, or parts of premises, is to be treated as not being a services-provider.

Authorised representative

4. An individual may be authorised for the purposes of section 225 of the Act only if that individual is authorised in accordance with arrangements made in pursuance of arrangements made by a local authority under section 221(1) of the Act.

Viewing and observing activities

5. For the purposes of section 225(4)(b) of the Act, while an authorised representative is on any premises as a result of a services-provider having complied with a duty imposed under regulation 3(1) the authorised representative must not act in any way that compromises—

- (a) the effective provision of care services; or
- (b) the privacy or dignity of any person.

Services-provider

6. For the purposes of section 225(7)(e) of the Act, the following persons are prescribed as services-providers—

- (a) a person providing services which are primary medical services for the purposes of the 2006 Act;
- (b) a person providing services which are primary dental services for the purposes of the 2006 Act;
- (c) a person providing services which are primary ophthalmic services for the purposes of the 2006 Act;
- (d) a person providing services which are pharmaceutical services for the purposes of the 2006 Act; and
- (e) a person who owns or controls premises where services referred to in paragraphs (c) or (d) are provided.

Signed by the authority of the Secretary of State for Health

Date

Name
Parliamentary Under Secretary of State
Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose a duty on services-providers requiring them to allow authorised representatives of local involvement networks to enter and view certain premises owned or controlled by certain services-providers and to allow authorised representatives to observe the carrying-on of certain activities on such premises.

Regulation 3 sets out the duty to be imposed on services-providers. In particular it sets out that the duty is not to apply—

- if the presence of an authorised representative would compromise the effective provision of care services or the privacy or dignity of any person;
- to activities provided as part of a local authority’s functions relating to or concerning persons aged under 18;
- to non-communal areas of care homes and certain types of residential accommodation;
- to premises or any parts of premises when care services are not being provided on those premises or parts of premises; and
- if in the opinion of the services-provider, the authorised representative in seeking to enter and view the premises and observe the carrying-on of activities is not acting reasonably and proportionately.

Regulation 5 provides that whilst an authorised representative is on premises owned or controlled by a services-provider in accordance with these Regulations then the authorised representative must not compromise the provision of care services or the privacy or dignity of any person.

Section 225(7) of the Local Government and Public Involvement in Health Act 2007 (c. 28) sets out the meaning of “services-provider” for the purposes of that section. Regulation 6 sets out additional persons who are to be services-providers for the purposes of section 225 and who will therefore have to comply with the duty to allow authorised representatives to enter and view the premises that they own or control and to view activities carried-on on those premises.

A full Impact Assessment has been produced for this instrument and copies are available from the PPI Policy Team, Room 502A, Skipton House, 80 London Road, London SE1 6LH (email – ppimailbox@dh.gsi.gov.uk).