

2013 No. 225

HEALTH AND PERSONAL SOCIAL SERVICES

The Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013

Made - - - - *20th September 2013*

Coming into operation - *21st October 2013*

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The Department of Health, Social Services and Public Safety makes the following Regulations in exercise of the powers conferred by section 8(3) and 57(3) of the Health and Personal Social

Services Act (Northern Ireland) 2001^(a) and Articles 23(1), (2)(a) and (b), (3) and (4), 25(1) and 48(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003^(b).

In accordance with Article 23(8) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 the Department has consulted with such persons as it considers appropriate.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013 and shall come into operation on 21st October 2013.

Interpretation

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 a person being employed shall be construed accordingly.

3. In these Regulations—

“the Act” means the Health and Personal Social Services Act (Northern Ireland) 2001;

“the Order” means the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

“provider” means the person who for the time being is registered under Part III of the Order as a person who carries on a children’s home, a residential care home, a nursing home, a day care setting or a domiciliary care agency;

“the register” means the register of social care workers maintained by the Northern Ireland Social Care Council under section 3(1) of the Act;

“relevant part” means that part of the register referred to in section 3(2) of the Act which is most relevant to that person, taking into account their current employment;

“social care worker” means a person, other than a person excepted by regulation 2 of the 2006 regulations, who is specified in section 2(2)(b) to (d) of the Act and includes a person described in section 2(3)(c) of the Act who is treated as a social care worker by virtue of regulation 3 of the 2006 regulations;

“the 2006 Regulations” means the Northern Ireland Social Care Council (Social Care Workers) Regulations (Northern Ireland) 2006^(c).

(a) 2001 c.3 (N.I.)
(b) S.I. 2003/431 (N.I. 9)
(c) S.R. 2006 No. 394

PART 2

Social care workers

Registration

4.—(1) For the purposes of section 8(3) of the Act a social care worker is prohibited from working in any of the positions specified in paragraph (2) unless they are registered in a relevant part of the register.

(2) The positions referred to in paragraph (1) are—

- (a) a member of care staff of—
 - (i) a children's home;
 - (ii) a residential care home; or
 - (iii) a nursing home;

and

- (b) a manager of—
 - (i) a residential care home;
 - (ii) a day care setting; or
 - (iii) a domiciliary care agency.

PART 3

Fitness of workers

Duty on providers

5.—(1) For the purposes of article 23 of the 2003 Order, a provider shall not employ a person in any of the positions specified in Regulation 4(2) unless that person is fit to be employed.

(2) Subject to paragraph 3 and Regulations 6 and 7, a person is unfit to be so employed unless registered in the relevant part of the register.

(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 statutory provision, other than this statutory provision to be registered with any person or body other than the Northern Ireland Health and Social Care Council and is so registered.

Registration of the existing work force

6.—(1) Subject to paragraph (2), where a person is employed in one of the positions specified in Regulation 4(2), Regulation 5(2) shall not apply to a person required to register in a relevant part of the register until 3 months from the date these Regulations come into operation.

(2) Paragraph (1) shall not apply to a person who has been removed from the register under rules made pursuant to section 6 of the Act.

New employment

7.—(1) Subject to paragraph (4), where a person commences employment for the first time in one of the positions specified in Regulation 4(2), Regulation 5 shall apply in accordance with this Regulation.

(2) The person required to register in a relevant part of the register shall apply for registration as soon as reasonably practicable after commencing that new employment.

(3) Notwithstanding the generality of paragraph (2), the person must achieve such registration within 6 months of the commencement date of that new employment.

(4) Paragraphs (2) and (3) shall not apply to a person who has been removed from the register under rules made pursuant to section 6 of the Act.

Offences

8.—(1) A contravention of the provisions of Regulation 5(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), “persons” means the provider or a person so employed in terms of Regulation 5(1).

PART 4

Consequential amendments

Amendments to the Children’s Homes Regulations (Northern Ireland) 2005

9.—(1) The Children’s Homes Regulations (Northern Ireland) 2005(a) shall be amended in accordance with the following paragraphs.

(2) In Regulation 2(1) for the definition of “relevant register” substitute the following definitions—

“the register” means the register of social care workers maintained by the Northern Ireland Social Care Council under section 3(1) of the 2001 Act;

“the relevant part” means that part of the register referred to in section 3(2) of the 2001 Act which is most relevant to that person, taking into account their current employment;”.

(3) In Regulation 8—

(a) for paragraph (2)(b)(ii) substitute—

“(ii) subject to paragraph (3), he is registered as a social worker in the relevant part of the register; and”

and

(b) after paragraph (2) insert—

“(3) Paragraph (2)(b)(ii) does not apply to a person whose employment as a manager of a children’s home commenced prior to 21st October 2013.”

(4) In Regulation 25(3)(c) and (e) and paragraph 7 of Schedule 2 after “relevant” insert “ part of the”.

Amendments to the Residential Care Homes Regulations (Northern Ireland) 2005 and the Nursing Homes Regulations (Northern Ireland) 2005

10.—(1) The Residential Care Homes Regulations (Northern Ireland) 2005(b) and the Nursing Homes Regulations (Northern Ireland) 2005(c) shall be amended in accordance with the following paragraphs.

(a) S.R. 2005 No. 176
(b) S.R. 2005 No. 161
(c) S.R. 2005 No. 160

(2) In Regulation 2(1) in the appropriate place insert the following definitions—
““the register” means the register of social care workers maintained by the Northern Ireland Social Care Council under section 3(1) of the 2001 Act;

“the relevant part” means that part of the register referred to in section 3(2) of the 2001 Act which is most relevant to that person, taking into account their current employment;”.

(3) In Regulation 21(5) after sub-paragraph (d) insert—

“(e) subject to sub-paragraph (f) he is registered in the relevant part of the register;

(f) sub-paragraph (e) does not apply to a person who, in order to perform the duties for which the person is so employed is required by any statutory provision, other than this statutory provision to be registered with any person or body other than the Northern Ireland Social Care Council and is so registered.”.

11. In Regulation 9(2)(b) of the Residential Care Homes Regulations (Northern Ireland) 2005 after head (ii) insert—

“(iii) subject to head (iv) he is registered in the relevant part of the register;

(iv) head (iii) does not apply to a person who, in order to perform the duties for which the person is so employed is required by any statutory provision, other than this statutory provision to be registered with any person or body other than the Northern Ireland Social Care Council and is so registered;”.

Amendments to the Day Care Setting Regulations (Northern Ireland) 2007 and the Domiciliary Care Agencies Regulations (Northern Ireland) 2007

12.—(1) The Day Care Setting Regulations (Northern Ireland) 2007(**a**) and the Domiciliary Care Agencies Regulations (Northern Ireland) 2007(**b**) shall be amended in accordance with the following paragraphs.

(2) In Regulation 2(1) in the appropriate place insert the following definitions—

““the register” means the register of social care workers maintained by the Northern Ireland Social Care Council under section 3(1) of the 2001 Act;

“the relevant part” means that part of the register referred to in section 3(2) of the 2001 Act which is most relevant to that person, taking into account their current employment;”

(3) In Regulation 10(2)(b) after head (ii) insert—

“(iii) subject to head (iv), he is registered in the relevant part of the register;

(iv) head (iii) does not apply to a person who, in order to perform the duties for which the person is so employed is required by any statutory provision, other than this statutory provision to be registered with any person or body other than the Northern Ireland Social Care Council and is so registered; and”.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on
20th September 2013



Christine Smyth
A senior officer of the
Department of Health, Social Services and Public Safety

(a) S.R. 2007 No. 234
(b) S.R. 2007 No. 235

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision (Regulation 4) prohibiting social care workers from working in specified positions unless they are registered in a relevant part of the register maintained by the Northern Ireland Social Care Council.

The Regulations also impose a requirement on providers (i.e. persons carrying on specified establishments or agencies) (Regulation 5) not to employ persons in any of those specified positions unless they comply with the requirement in Regulation 4 to register. A provider who fails to comply with this requirement without reasonable excuse is guilty of an offence (Regulation 8).

The Regulations also provide a timeframe within which the persons employed in the specified positions must secure registration (Regulations 6 and 7).

Consequential amendments are made to the Children's Homes Regulations (Northern Ireland) 2005, the Residential Care Homes Regulations (Northern Ireland) 2005, the Nursing Homes Regulations (Northern Ireland) 2005, the Day Care Setting Regulations (Northern Ireland) 2007 and the Domiciliary Care Agencies Regulations (Northern Ireland) 2007.

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