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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2011 No.**

**The Healthcare Improvement Scotland (Requirements as  
to Independent Health Care Services) Regulations 2011**

**Fitness of providers**

5.—(1) A person must not provide an independent health care service unless that person is fit to do so.

(2) The following persons are unfit to provide an independent health 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 (whether or not suspended or deferred) for a period of 3 months without the option of a fine and who in the reasonable opinion of HIS is unsuitable to be a provider of an independent health care service;
- (c) a person whose estate has been sequestrated or who has been adjudged bankrupt unless (in either case) the person has been discharged or the bankruptcy order annulled;
- (d) a person who has been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986<sup>(1)</sup> or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985<sup>(2)</sup> unless that order has ceased to have effect or has been annulled;
- (e) a person who has made a composition or arrangement with, or granted a trust deed for, the person's creditors unless the person has been discharged in respect of it;
- (f) a person who has had an administrator, administrative receiver or a receiver appointed (which appointment is still in effect);
- (g) a person who has been—
  - (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005<sup>(3)</sup> (powers of the Court of Session) from being concerned in the management or control of any body; or
  - (ii) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission for England and Wales or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which the person by that person's conduct contributed to or facilitated;
- (h) a person who is subject to a disqualification order under the Company Directors Disqualification Act 1986<sup>(4)</sup>, the Companies (Northern Ireland) Order 1986<sup>(5)</sup>, or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order); and

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(1) 1986 c.45. Schedule 4A was inserted by section 27 of and Schedule 20 to the Enterprise Act 2002 (c.40).

(2) 1985 c.66. Sections 56A to 56K were inserted by section 2(1) of the [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#).

(3) 2005 asp 10.

(4) 1986 c.46, as amended by the Insolvency Act 2000 (c.39).

(5) S.I. 1986 (1032 (N.I. 6)).

- (i) a person who is subject to proceedings outside the United Kingdom which are equivalent to those listed at sub-paragraphs (b) to (h) above.
- (3) For the purposes of paragraph (2)(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, is to be disregarded.
- (4) A provider must inform HIS immediately in writing where the provider becomes a person who is unfit to provide an independent health care service in terms of this regulation.