

These draft Regulations replace the ones laid on 20th May 2013 and are being issued free of charge to all known recipients of those draft Regulations.

Draft Regulations laid before the Scottish Parliament under section 104(2) of the Public Services Reform (Scotland) Act 2012, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No.

SOCIAL CARE

The Registration of Social Workers and Social Service Workers in Care Services (Scotland) Regulations 2013

Made - - - -

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 78(2) and (3) and 104(1) of the Public Services Reform (Scotland) Act 2010⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 78(5) of that Act they have consulted such persons, or groups of persons, as they consider appropriate.

In accordance with section 104(2) of that Act⁽²⁾, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Registration of Social Workers and Social Service Workers in Care Services (Scotland) Regulations 2013 and come into force on 1st August 2013.

Interpretation

2.—(1) In these Regulations—

“the 2001 Act” means the Regulation of Care (Scotland) Act 2001⁽³⁾;

(1) 2010 asp 8.

(2) Section 104(2) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(3) 2001 asp 8.

“the 2005 Order” means the Regulation of Care (Social Service Workers) (Scotland) Order 2005(4);

“the 2010 Act” means the Public Services Reform (Scotland) Act 2010(5);

“care service” has the meaning given in section 47 of the 2010 Act;

“the Council” means the Scottish Social Services Council as constituted by section 43 of the 2001 Act;

“the Council’s rules” means rules made by the Council under section 49 of the 2001 Act;

“provider” is to be construed in accordance with the definition of “provide” in section 105(1) of the 2010 Act;

“registered” means registered in the part of the register maintained by the Council under section 44 of the 2001 Act which is most relevant to the position held by the person concerned and “registration” is to be construed accordingly;

“removal order” means an order removing a person from the Council’s Register in terms of section 49(1) of the 2001 Act;

“restoration order” means an order restoring a person to the Council’s Register in terms of section 49(1) of the 2001 Act;

“SCSWIS” means Social Care and Social Work Improvement Scotland as established by section 44 of the 2010 Act;

“social worker” has the meaning given in section 77 of the 2001 Act(6);

“social service worker” means a person of one of the descriptions in article 2 of the 2005 Order.

(2) In these Regulations reference to—

- (a) a person employed by a provider or SCSWIS means a person in paid employment (whether under a contract of service or apprenticeship) or a person engaged under a contract for services but does not include a person who volunteers to work without pay; and
- (b) work does not include the work of a person who volunteers to work without pay.

Requirements on providers and offences

3.—(1) A provider of a care service may only employ a social worker in a care service who complies with regulation 4.

(2) A provider of a care service may only employ a social service worker in a care service who complies with regulation 5 or 6.

(3) In the inspection of a care service, SCSWIS may only employ—

- (a) a social worker who complies with regulation 4; and
- (b) a social service worker who complies with regulation 5, or who in terms of regulation 7 is exempt from the requirements of regulation 5.

(4) It is an offence to fail to comply with the requirements of this regulation without reasonable excuse.

Requirements on social workers

4.—(1) A social worker may only work in a care service if that social worker is registered.

(4) S.S.I. 2005/318 as amended by S.S.I. 2005/611, 2006/453, 2007/407, 2009/350, 2010/442, S.I. 2009/1182 and 2013/141, S.I. 2010/231 and 2012/1479.

(5) 2010 asp 8.

(6) Section 77 was substituted by S.S.I. 2011/211.

(2) A social worker must apply for registration as soon as reasonably practicable after starting work as a social worker in a care service.

(3) Paragraph (1) does not apply to a social worker—

(a) until the expiry of a period of 6 months from the date on which the social worker first starts work as a social worker in a care service; or

(b) until the application for registration referred to in paragraph (2) is granted,

whichever event occurs first.

(4) Paragraphs (1) and (2) do not apply to a social worker who, by virtue of any enactment, requires to be registered to provide a care service with another person or body and is so registered.

(5) The exception provided for in paragraph (3) does not apply to a social worker who has been the subject of a removal order under the Council's rules and that social worker has not been the subject of a subsequent restoration order.

(6) In the case of a social worker who has been the subject of a restoration order, the six month period mentioned in paragraph (3)(a) commences on the date on which the restoration order has effect.

(7) The exceptions provided for in paragraph (4) do not apply to a social worker registered on a register prescribed by article 2 of the Regulation of Care (Prescribed Registers) (Scotland) Order 2005(7).

Requirements on social service workers

5.—(1) A social service worker may only work in a care service if that worker is registered.

(2) A social service worker must apply for registration as soon as reasonably practicable after starting work as a social service worker in a care service.

(3) Paragraph (1) does not apply to a social service worker—

(a) until the expiry of a period of 6 months from the date on which a social service worker starts work as a social service worker in a care service; or

(b) until the application for registration referred to in paragraph (2) is granted,

whichever event occurs first.

(4) Paragraphs (1) and (2) do not apply to a social service worker who, by virtue of any enactment, requires to be registered to provide or inspect a care service with another person or body and is so registered.

(5) The exception provided for in paragraph (3) does not apply to a social service worker who has been the subject of a removal order under the Council's rules and that social service worker has not been the subject of a subsequent restoration order.

(6) In the case of a social service worker who has been the subject of a restoration order, the six month period mentioned in paragraph (3)(a) commences on the date on which the restoration order has effect.

(7) In the case of a social service worker of a description specified in column 1 of the Schedule who works in such a role on the coming into force of these Regulations—

(a) paragraph (1) does not apply until the date specified in the corresponding entry in column 2 of the Schedule;

(b) that worker must be registered by that date; and

(c) paragraphs (2), (3), (5) and (6) do not apply.

(8) For the purposes of this regulation, starting work includes starting work as a different type of social service worker (including with the same employer).

Partial exemption for seasonal day care of children services

6.—(1) Subject to paragraph (3), regulation 5 does not apply in relation to a worker who works solely in a seasonal day care service.

(2) Where such a worker intends to work in any year and has worked in a seasonal day care service in any two relevant years prior to the year in which that worker is to start such work, the worker must apply to be registered prior to starting work.

(3) Such a worker may only work in a seasonal day care service if that worker—

- (a) is registered; or
- (b) has submitted an application for registration and the worker has not been notified of the Council's decision.

(4) For the purposes of this regulation—

“relevant year” means 2013 and any subsequent calendar year;

“seasonal day care service” means a day care of children⁽⁸⁾ service which is provided—

- (a) for only part of a year (including more than once within a year); and
- (b) to fulfil a particular need for day care of children due to the time of year;

“worker” means either a support worker in a day care of children service or a practitioner in a day care of children service (within the meaning of article 1(2) of the 2005 Order).

Exemptions for certain SCSWIS authorised persons

7. Regulation 5 does not apply to a social service worker who is an authorised person (within the meaning of section 56 of the 2010 Act) employed by SCSWIS—

- (a) for a total of no more than 13 weeks in any calendar year; and
- (b) solely for the purpose of providing specialist assistance which is needed for a particular inspection of a care service.

Revocations

8.—(1) The following Regulations are revoked—

- (a) the 2009 Regulations;
- (b) the Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) (No. 2) Amendment Regulations 2009⁽⁹⁾; and
- (c) the Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) (No. 2) Amendment Regulations 2010⁽¹⁰⁾.

(2) In this regulation and in regulation 9, “the 2009 Regulations” means the Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) (No. 2) Regulations 2009⁽¹¹⁾ and in regulation 9, terms used which are defined for the purposes of the 2009 Regulations have the same meaning in regulation 9 as they have in the 2009 Regulations.

⁽⁸⁾ “Day care of children” is defined in paragraph 13 of schedule 12 to the Public Services Reform (Scotland) Act 2010 ([asp 8](#)).

⁽⁹⁾ [S.S.I. 2009/349](#).

⁽¹⁰⁾ [S.S.I. 2010/443](#).

⁽¹¹⁾ [S.S.I. 2009/118](#) as amended by [S.S.I. 2009/349](#) and [2010/443](#).

Transitional and saving provisions

9.—(1) Despite the revocation of the 2009 Regulations, the requirement in each of regulations 4, 5 and 6 of those Regulations for a person to achieve registration within the relevant period shall continue to apply to any such person who started work prior to the coming into force of these Regulations until that person is registered.

(2) An application for registration under regulation 4, 5 or 6 of the 2009 Regulations made by any person referred to in paragraph (1) and not determined by the date these Regulations come into force is to be treated as an application for registration under these Regulations.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE

Regulation 5(7)

Table with dates of mandatory registration for certain social service workers

Description of social service worker⁽¹⁾ (column 1)	Date of mandatory registration (column 2)
Workers in a residential school care accommodation service	30th November 2013
Manager of a care at home service	31st January 2014
Manager of a housing support service	31st January 2014
Support worker in a day care of children service	30th June 2014
Support worker in a care home service for adults	30th September 2015

(1) The descriptions in this table have the meaning ascribed to them by article 1(2) of the 2005 Order.

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.