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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 227**

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

**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(1);

“the 2005 Order” means the Regulation of Care (Social Service Workers) (Scotland) Order 2005(2);

“the 2010 Act” means the Public Services Reform (Scotland) Act 2010(3);

“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(4);

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

(2) In these Regulations reference to—

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(1) 2001 asp 8.

(2) 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.

(3) 2010 asp 8.

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

- (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.

(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(5).

### **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—

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(5) [S.S.I. 2005/432](#).

(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(6) 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—

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

- (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<sup>(7)</sup>; and
- (c) the Regulation of Care (Fitness of Employees in Relation to Care Services) (Scotland) (No. 2) Amendment Regulations 2010<sup>(8)</sup>.

(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<sup>(9)</sup> 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.

### **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  
3rd July 2013

*AILEEN CAMPBELL*  
Authorised to sign by the Scottish Ministers

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<sup>(7)</sup> S.S.I. 2009/349.

<sup>(8)</sup> S.S.I. 2010/443.

<sup>(9)</sup> S.S.I. 2009/118 as amended by S.S.I. 2009/349 and 2010/443.