

SCHEDULES

SCHEDULE 9

Regulation 10

Social workers in Scotland

PART 1

Amendments to legislation

Interpretation

1. In this Schedule, “the 2001 Act” means the Regulation of Care (Scotland) Act 2001⁽¹⁾.

Regulation of Care (Scotland) Act 2001

2. The 2001 Act is amended as follows.
3. In section 44 (register of social workers and of other social service workers)⁽²⁾—
 - (a) in subsection (1), omit paragraph (aa);
 - (b) in subsection (2), omit paragraph (b);
 - (c) omit subsection (2A).
4. In section 45 (applications for registration under Part 3)⁽³⁾—
 - (a) in subsection (1), omit “, other than for registration in the visiting European part of the register.”;
 - (b) omit subsection (1A).
5. Omit section 46A (visiting social workers from relevant European States)⁽⁴⁾.
6. In section 46B (qualifications gained outside Scotland)⁽⁵⁾, omit paragraph (a).
7. In section 47(1) (variation etc. of conditions in relation to registration under Part 3)⁽⁶⁾, omit “, other than in the visiting European part of the register.”.
8. In section 51 (appeal against decision of Council)⁽⁷⁾—
 - (a) in subsection (1), omit paragraphs (b) and (c);
 - (b) in subsection (2)(b), omit “or, in the case of an appeal under subsection (1)(c), direct that the alert be withdrawn or amended”.

(1) 2001 asp 8.

(2) Subsection (1)(aa) was inserted, and subsections (2) and (2A) were substituted, by S.I. 2007/3101.

(3) Subsection (1) was amended, and subsection (1A) was inserted, by S.I. 2007/3101.

(4) Section 46A was inserted by S.I. 2007/3101 and amended by S.I. 2016/1030.

(5) Section 46B was inserted by S.I. 2007/3101.

(6) Subsection (1) was amended by S.I. 2007/3101 and paragraph 3 of Schedule 15 to the Public Services Reform (Scotland) Act 2010 (asp 8).

(7) Subsection (1) was substituted by S.I. 2007/3101. Subsections (1) and (2) were amended by paragraph 9 of Schedule 15 to the Public Services Reform (Scotland) Act 2010, S.I. 2016/1030.

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9. In section 57 (power of Council to make rules)(8), omit subsection (2A).
10. In section 77 (interpretation)(9)—
 - (a) omit the definitions of “EEA State”, “exempt person”, “the General Systems Regulations”, “relevant European State” and “visiting social worker from a relevant European state”;
 - (b) in the definition of “social service worker”, omit paragraph (b).

National Health Service (Primary Medical Services Performers List) (Scotland) Regulations 2004

11. The National Health Service (Primary Medical Services Performers List) (Scotland) Regulations 2004(10), in paragraph 4 of Schedule 1—
 - (a) in sub-paragraph (a), for “34J” substitute “34H”;
 - (b) in sub-paragraph (b), for “within the meaning of” substitute “established under”.

PART 2

Savings and transitional provision

Pending applications

- 12.—(1) This paragraph applies where a relevant application is made, but not finally determined, before exit day.
- (2) Despite their repeal by Part 1 of this Schedule, the following provisions of the 2001 Act continue to apply in relation to the application (including any appeal arising from it), on and after exit day, subject to the modifications specified in paragraph 13—
 - (a) section 46B(a);
 - (b) section 51(1)(b); and
 - (c) in section 77, the definitions of “EEA State”, “exempt person”, “the General Systems Regulations” and “relevant European State”.
- (3) For the purposes of sub-paragraph (1), “relevant application” means an application for—
 - (a) registration in a part of the register maintained under Part 3 of the 2001 Act; or
 - (b) renewal of registration in that register.
- (4) For the purposes of sub-paragraph (1), an application is finally determined when—
 - (a) it is withdrawn;
 - (b) notice is given that it has been granted; or
 - (c) notice is given that it has been granted subject to conditions, or refused, and either—
 - (i) the time limit for appeal against the decision has expired without an appeal being made; or
 - (ii) an appeal made against the decision under section 51 of the 2001 Act has been finally determined or abandoned.

(8) Subsection (2A) was inserted by [S.I. 2007/3101](#).

(9) Section 77 was substituted by [S.S.I. 2011/211](#) and amended by [S.I. 2011/1043](#), [2016/1030](#) and [S.S.I. 2013/177](#).

(10) [S.S.I. 2004/114](#). Paragraph 4 was substituted by [S.I. 2010/234](#).

Visiting social workers: saving of old law for up to one year

13.—(1) This paragraph applies where—

- (a) a person had, immediately before exit day, the benefit of regulation 12 of the European Union (Recognition of Professional Qualifications) Regulations 2015 in respect of the provision by that person of services as a social worker (and section 46A(3) of the 2001 Act accordingly applied to the person), and
- (b) the person continues to have that benefit on or after exit day.

(2) Despite their repeal or amendment by Part 1 of this Schedule, the following provisions of the 2001 Act continue to apply in relation to the provision of those services by that person on and after exit day, as they applied before that day, subject to the modifications specified in paragraph 13—

- (a) section 44(1)(aa), (2)(b) and (2A);
- (b) section 45(1) and (1A);
- (c) section 46A;
- (d) section 47(1);
- (e) section 57(2A); and
- (f) in section 77, the definitions of “EEA State”, “exempt person”, “the General Systems Regulations”, “relevant European State”, “social service worker” and “visiting social worker from a relevant European state”.

(3) Sub-paragraph (2) has effect until—

- (a) in the case of a person who is registered in accordance with section 46A(3) of the 2001 Act, the day on which the person’s name is removed from the register under section 46A(6) of that Act;
- (b) in any other case, the day on which the person’s entitlement under section 46A(3) of the 2001 Act to be registered ceases by virtue of section 46A(5) of that Act.

Interpretation of saved provisions

14. The modifications of the 2001 Act mentioned in paragraphs 11(2) and 12(2) are as follows—

- (a) section 46A(1) is to have effect as if, in the reference to a relevant European State other than the United Kingdom, “other than the United Kingdom” were omitted;
- (b) section 77 is to have effect as if—

(i) at the appropriate place, there were inserted—

““enforceable EU right” means a right recognised and available in domestic law, immediately before exit day, by virtue of section 2(1) of the European Communities Act 1972;”;

(ii) in the definition of “exempt person”—

(aa) for paragraphs (a) to (c), there were substituted—

- “(a) a person who, immediately before exit day, was a national of a relevant European State,
- (b) a person who, immediately before exit day, was a national of the United Kingdom and, at that time, was seeking to engage in relevant social work by virtue of an enforceable EU right, or
- (c) a person who, immediately before exit day, was not a national of a relevant European State, but at that time was, by virtue of an enforceable EU right, entitled to be treated, as regards the right to

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engage in relevant social work, no less favourably than a national of a relevant European State;”;

(bb) in the words after paragraph (c), for “is not” there were substituted “was not, immediately before exit day”;

(iii) at the end of the definition of “the General Systems Regulations”, there were inserted—

“—

(a) in relation to anything done before exit day, as they had effect at that time;

(b) otherwise, as (and only to the extent that) they have effect, on or after exit day, in relation to an entitlement which arose before exit day or arises as a result of anything done before exit day;”.

IMI alerts

15.—(1) This paragraph applies where—

(a) before exit day, a person is given notice of a decision made under regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015 to send an alert about the person; and

(b) either—

(i) the time limit for appeal against the decision under section 51(1)(c) of the 2001 Act expires on or after exit day; or

(ii) an appeal against the decision under that section is made, but not finally determined, before exit day.

(2) Despite their repeal by Part 1 of this Schedule, the following provisions of the 2001 Act continue to apply in relation to the decision on and after exit day—

(a) section 51(1)(c); and

(b) in section 77, the definition of “the General Systems Regulations”.

(3) In disposing of an appeal against the decision on or after exit day, the sheriff has (instead of the powers specified in section 51(2) of the 2001 Act) the power—

(a) to confirm the decision; or

(b) if the sheriff considers that the alert should be withdrawn or amended, to direct that the Scottish Social Services Council take such steps as the sheriff thinks fit to notify the European Commission of the sheriff’s decision.