SCOTTISH STATUTORY INSTRUMENTS

2002 No. 114

SOCIAL CARE

The Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002

Made - - - -	*8th March 2002*
Laid before the Scottish Parliament - - - -	*8th March 2002*
Coming into force - -	*1st April 2002*

The Scottish Ministers, in exercise of the powers conferred by section 29 of the Regulation of Care (Scotland) Act 2001(**1**) and of all other powers enabling them in that behalf, and having consulted such persons and groups of persons as they consider appropriate in accordance with section 29(12) of that Act, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 and shall come into force on 1st April 2002.

(2) In these Regulations–

"health care professional" means–

(a) a registered medical practitioner;

(b) a registered dentist;

(c) a registered pharmacist, as defined in section 108(1) of the National Health Service (Scotland) Act 1978(**2**);

(d) an ophthalmic optician, as defined in section 108(1) of the National Heath Service (Scotland) Act 1978 but excluding a body corporate enrolled in the list kept under section 9 of the Opticians Act 1989(**3**);

(e) a registered nurse, midwife or health visitor;

(f) a person who is registered as a member of a profession to which the Professions Supplementary to Medicine Act 1960(**4**) extends;

(**1**) 2001 asp 8.
(**2**) 1978 c. 29.
(**3**) 1989 c. 44.
(**4**) 1960 c. 66.

(g) a registered osteopath as defined by section 41 of the Osteopaths Act 1993(**5**); or

(h) a registered chiropractor as defined by section 43 of the Chiropractors Act 1994(**6**).

"provider" in relation to a care service means the person for the time being providing that service;

"service user" in relation to a care service means any person to whom that service is provided; and

"statement of aims and objectives" means the written statement compiled in accordance with regulation 3.

(3) In these Regulations, references to employing a person include employing a person whether or not for payment and whether under a contract of service, a contract for services or otherwise than under a contract, and allowing a person to work as a volunteer; and references to an employee or to a person being employed shall be construed accordingly.

Principles

2. A provider of a care service shall provide the service in a manner which promotes and respects the independence of service users and, so far as it is practicable to do so, affords them choice in the way in which the service is provided to them.

Statement of aims and objectives

3. A provider shall prepare a written statement of the aims and objectives of the care service.

Welfare of users

4.—(1) Providers shall–

(a) make proper provision for the health and welfare of service users;

(b) provide services in a manner which respects the privacy and dignity of service users;

(c) ensure that no service user is subject to restraint unless it is the only practicable means of securing the welfare of that or any other service user and there are exceptional circumstances; and

(d) have appropriate procedures for the control of infection and the management of clinical waste.

(2) Providers of a care home service shall make such arrangements as are necessary for the provision to service users of adequate services from any health care professional.

(3) A provider of day care or child minding shall not administer, or permit any person employed in the provision of the service to administer, physical chastisement or punishment to any child who is looked after or cared for by the service.

Personal plans

5.—(1) Subject to paragraph (4), a provider shall, after consultation with each service user and, where it appears to the provider to be appropriate, any representative, within one month of the date on which the service user first received the service prepare a written plan ("the personal plan") which sets out how the service user's health and welfare needs are to be met.

(2) The provider of a care home service shall in addition–

(**5**) 1993 c. 21.
(**6**) 1994 c. 17.

(a) make the personal plan available to the service user and to any representative consulted under paragraph 2(1);

(b) review the personal plan–

(i) when requested to do so by the service user or any representative; and

(ii) at least once in every six month period;

(c) where appropriate, and after consultation with the service user and, where it appears to the provider to be appropriate, any representative, revise the personal plan; and

(d) notify the service user and any representative consulted under paragraph (2)(c) of any such revision.

(3) In this regulation "representative" means any person appearing to the provider to act on behalf of the service user.

(4) This regulation does not apply to any care service which is a nurse agency, child minding or day care of children.

Fitness of providers

6.—(1) A person shall not provide a care service unless the person is fit to do so.

(2) The following persons are not fit to provide a 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 of not less than 3 months and has been sentenced to imprisonment (whether or not suspended or deferred) for any period without the option of a fine;

(c) a person whose estate has been sequestrated in Scotland or who has been adjudged bankrupt elsewhere than in Scotland or in relation to whose estate a judicial factor has been appointed or who has granted a trust deed for the benefit of the person's creditors:

Provided that–

(i) the disqualification attaching to a person whose estate has been sequestrated shall cease if and when–

(aa) the sequestration is recalled or reduced; or

(bb) the sequestration is discharged;

(ii) the disqualification attaching to a person by reason of having been adjudged bankrupt shall cease if and when–

(aa) the bankruptcy is annulled; or

(bb) the person is discharged;

(iii) the disqualification attaching to a person in relation to whose estate a judicial factor has been appointed shall cease if and when–

(aa) that appointment is recalled; or

(bb) the judicial factor is discharged; or

(iv) the disqualification attaching to a person who has granted a trust deed shall cease if and when the person pays the creditors in full or on the expiry of 5 years from the date of grant of the deed.

(3) For the purposes of paragraph (2)(b)–

(a) the date of conviction shall be deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires or, if such

an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its not being prosecuted; and

(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 shall be disregarded.

(4) A provider shall inform the Commission immediately in writing where the provider becomes a person who is not fit to provide a care service in terms of this regulation.

Fitness of managers

7.—(1) A person shall not act as a manager in relation to a care service unless the person is fit to do so.

(2) The following persons are not fit to act as a manager in relation to a care service–

(a) any person to whom regulation 6(2)(a) applies;

(b) any person to whom regulation 6(2)(b) applies;

(c) a person who is not physically and mentally fit to manage the care service;

(d) a person who does not have the skills, knowledge and experience necessary for managing the care service;

(e) a person who, in order to perform the duties for which the person is employed in the care service, is required by any enactment to be registered with any person or body and is not so registered.

Notification of unfitness

8.—(1) Where a provider of a care service is, or becomes aware that a person acting as a manager in relation to the care service has been, convicted of any criminal offence whether in the United Kingdom or elsewhere, the provider shall immediately give notice to the Commission of–

(a) the date and place of conviction;

(b) the offence of which the provider or manager was convicted; and

(c) the penalty imposed in respect of the offence.

(2) Where a provider of a care service becomes aware that a person acting as manager in relation to that service is not fit to do so in terms of this regulation, the provider shall immediately notify the Commission in writing of that fact.

Fitness of employees

9.—(1) A provider shall not employ any person in the provision of a care service unless that person is fit to be so employed.

(2) The following persons are not fit to be employed in the provision of the care service:–

(a) a person who is not physically and mentally fit for the purposes of the work for which the person is employed in the care service;

(b) a person who does not have the qualifications skills and experience necessary for the work that the person is to perform; and

(c) any person to whom regulation 7(2)(e) applies.

Fitness of premises

10.—(1) A provider shall not use premises for the provision of a care service unless they are fit to be so used.

(2) Premises are not fit to be used for the provision of a care service unless they–

(a) are suitable for the purpose of achieving the aims and objectives of the care service which are set out in the statement of aims and objectives;

(b) are of sound construction and kept in a good state of repair externally and internally; and

(c) have adequate and suitable ventilation, heating and lighting.

(3) Accommodation shall not be provided and used for the purpose of restricting the liberty of children in any residential premises where care services are provided unless it has been approved for such provision and use by the Scottish Ministers.

Fitness in relation to child minding

11. A provider of child minding shall not permit any person who is not fit to be in the proximity of children to live at the premises which are used for the provision of the service.

Facilities in care homes

12. Providers of a care home service shall, having regard to the size of the service, the statement of aims and objectives and the number and needs of service users–

(a) provide sufficient and suitable kitchen equipment, crockery, cutlery and utensils, and adequate facilities for the preparation and storage of food;

(b) provide such other equipment for the general use of service users as is suitable and sufficient having regard to their health and personal care needs;

(c) provide adequate facilities for service users to prepare their own food and ensure that such facilities are fit for use by service users;

(d) ensure that there are provided at appropriate places in the premises from which the service is provided sufficient numbers of lavatories, and of wash-basins, baths and showers fitted with a hot and cold water supply; and

(e) provide a place where the money and valuables of service users may be deposited for safe keeping, and make arrangements for service users to acknowledge in writing the return to them of any money or valuables so deposited.

Staffing

13. A provider shall, having regard to the size and nature of the service, the statement of aims and objectives and the number and needs of service users–

(a) ensure that at all times suitably qualified and competent persons are working in the care service in such numbers as are appropriate for the health and welfare of service users;

(b) where the care service is a care home which provides nursing, ensure that at all times a suitably qualified registered nurse is working at the care home or, where that is sufficient to meet the nursing requirements of service users, available on call; and

(c) ensure that persons employed in the provision of the care service receive–

(i) training appropriate to the work they are to perform; and

(ii) suitable assistance, including time off work, for the purpose of obtaining further qualifications appropriate to such work.