WELSH STATUTORY INSTRUMENTS

2004 No. 219 (W.23)

SOCIAL CARE, WALES

The Domiciliary Care Agencies (Wales) Regulations 2004

Made - - - - 3rd February 2004

Coming into force - - 1st March 2004

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred on it by sections 4(6), 12(2), 14(1)(d), 15(3), 16(1) and (3), 22(1), (2)(a) to (d) and (f) to (j), (5)(a) and (7)(a) to (h) and (j), 25, 35 and 118(5) to (7) of the Care Standards Act 2000(**1**), having consulted such persons as it considers appropriate(**2**):—

PART I

GENERAL

Name, commencement and application

1.—(1) These Regulations are called the Domiciliary Care Agencies (Wales) Regulations 2004 and shall come into force on 1st March 2004.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires —

"the Act" ("*y Ddeddf*") means the Care Standards Act 2000;

"agency" ("*asiantaeth*") means a domiciliary care agency;

"agency premises" ("*mangre'r asiantaeth*") means the premises from which the activities of an agency are carried on;

"appropriate office of the National Assembly" ("*swyddfa briodol y Cynulliad Cenedlaethol*") means in relation to an agency —

(**1**) 2000 c. 14. The powers are exercisable by the appropriate Minister, who is defined in section 121(1), in relation to Wales, as the Assembly, and in relation to England, Scotland and Northern Ireland, as the Secretary of State. "Prescribed" and "regulations" are defined in section 121(1) of the Act; "the Assembly" is defined in section 5(b) of the Act.

(**2**) *See* section 22(9) of the Care Standards Act 2000 for the requirement to consult.

(a) if an office of the National Assembly has been specified under regulation 32 for the area in which the agency premises are situated, that office; or

(b) in any other case, any office of the National Assembly;

"direct service provider" ("*darparydd gwasanaeth uniongyrchol*") means a provider who supplies a domiciliary care worker who is employed by and who acts for and under the control of the provider;

"domiciliary care worker" ("*gweithiwr gofal cartref*") means a person who—

(a) is employed by the agency to act for, and under the control of, another person;

(b) is introduced by an agency to a service user for employment by him or her; or

(c) is employed by a direct service provider,

to provide personal care in the homes of and for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance;

"employment agency" ("*asiantaeth gyflogi*") has the same meaning as in the Employment Agencies Act 1973(**3**);

"National Assembly" ("*Cynulliad Cenedlaethol*") means the National Assembly for Wales;

"organisation" ("*corff*") means a body corporate;

"registered manager" ("*rheolwr cofresredig*") in relation to an agency, means a person who is registered under Part II of the Act as the manager of the agency;

"registered person" ("*person cofresredig*") in relation to an agency, means any person who is the registered provider or the registered manager of the agency;

"registered provider"("*darparydd cofresredig*") in relation to an agency, means a person who is registered under Part II of the Act as the person carrying on the agency;

"relative"("*perthynas*") in relation to any person, means —

(a) the person's spouse;

(b) any lineal ancestor, lineal descendant, brother, sister, uncle, aunt, nephew or niece of the person or the person's spouse;

(c) the spouse of any relative within sub-paragraph (b) of this definition,

and for the purpose of determining any such relationship a person's step-child shall be treated as his or her child, and references to "spouse" include a former spouse and a person who is living with the person as if he or she were the person's husband or (as the case may be) wife;

"representative" ("*cynrychiolydd*") in relation to a service user, means a person, other than the registered person or a person employed for the purposes of the agency, who with the service user's express or implied consent takes an interest in the service user's health and welfare;

"responsible individual" ("*unigolyn cyfrifol*") shall be construed in accordance with regulation 8(2)(a);

"service user" ("*defnyddiwr gwasanaeth*") means any person for whom an agency arranges the provision of personal care in the person's own home;

"service user's guide" ("*arweiniad defnyddiwr gwasanaeth*") means the written information prepared in accordance with regulation 5(1);

"staff" ("*staff*") means persons employed by the registered person for the purposes of the agency;

"statement of purpose" ("*datganiad o ddiben*") means the written statement compiled in accordance with regulation 4(1).

(**3**) 1973 c. 35.

(2) In these Regulations, a reference —

(a) to a numbered regulation or Schedule is to the regulation in, or Schedule to, these Regulations bearing that number;

(b) in a regulation or Schedule to a numbered paragraph, is to the paragraph in that regulation or Schedule bearing that number;

(c) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

(3) In these Regulations the terms "employed" and "employment" include employment under a contract of service or a contract for services, or otherwise than under a contract and whether or not for payment.

Excepted undertakings and application to employment agencies

3.—(1) For the purposes of the Act, an undertaking is excepted from the definition of "domiciliary care agency" in section 4(3) of the Act —

(a) if it is carried on by an individual who —

(i) carries it on otherwise than in partnership with others;

(ii) is not employed by an organisation or unincorporated association to carry it on;

(iii) does not employ any other person for the purposes of the undertaking; and

(iv) provides or arranges the provision of personal care services to fewer than four service users;

(b) in so far as it arranges for the provision of personal care for persons accommodated in a care home in respect of which a person is registered under Part II of the Act;

(c) to the extent that it arranges the provision of personal care by an agreement with an undertaking which is registered under the Act and these Regulations.

(2) The provisions of these Regulations set out in paragraph (3) shall not apply to domiciliary care agencies to the extent to which they are also employment agencies.

(3) The regulations are 13 (Conduct of agency), 14 (Arrangements for the provision of personal care), 16 (Staffing), 17 (Staff handbook and code of conduct) and 19 (Identification of workers).

Statement of purpose

4.—(1) The registered person shall compile in relation to the agency a statement written on paper (in these Regulations referred to as "the statement of purpose") which shall consist of —

(a) a statement of the aims and objectives of the agency;

(b) a statement specifying the personal care services which the agency arranges to be provided to service users;

(c) a statement as to the number and scale of contracts or other arrangements under which the agency provides services; and

(d) a statement as to the matters listed in Schedule 1.

(2) The registered person shall make the statement of purpose available at the agency premises for inspection by every service user and any person employed for the purposes of the agency.

Service user's guide

5.—(1) The registered person shall produce a written guide to the agency which shall contain —

(a) a summary of the statement of purpose;

(b) a description of the geographical area in respect of which the agency arranges for services to be provided;

(c) the terms and conditions upon which personal care is to be provided for service users, including those as to —

(i) the amount and method of payment of fees;

(ii) the matters described in paragraphs 5, 6 and 9 of Schedule 1;

(d) a description of the staff structure of the agency;

(e) a summary of the agency's complaints procedure required by regulation 21;

(f) a statement as to the responsibilities of the agency and the service user in relation to health and safety;

(g) details of how the service user may contact the registered person, or a person nominated to act on his or her behalf, at all times during the period for which personal care is being provided;

(h) information on the matters described in paragraphs 8, 16 and 18 of Schedule 1; and

(i) a description of the process established by the agency for monitoring and reviewing the quality of the service being provided by the agency to the service user (including where appropriate consultation with other bodies providing services to the service user).

(2) The registered person shall —

(a) provide a copy of the first service user's guide to the appropriate office of the National Assembly;

(b) provide a copy of the current version of the service user's guide to each service user or the service user's representative when the agency first arranges for the provision of personal care for the service user; and

(c) subsequent to the provision described in (b), provide on request further copies of the service user's guide to the service user or the service user's representative.

Review of statement of purpose and service user's guide

6.—(1) The registered person shall —

(a) at intervals not exceeding one year and in consultation with service users, review and, where appropriate, revise the statement of purpose and the service user's guide; and

(b) notify service users and the appropriate office of the National Assembly of any such revision within 28 days.

(2) Unless it is not reasonably practicable to do so, the registered person shall notify the appropriate office of the National Assembly of any revision to be made to the statement of purpose at least 28 days before the revision is to take effect.

Agency documents

7. The registered person shall ensure that registration in respect of the agency under Part II of the Act is noted in all correspondence and other documents prepared in connection with the agency's business.

PART II

REGISTERED PERSONS

Fitness of registered provider

8.—(1) A person shall not carry on an agency unless fit to do so.

(2) A person is not fit to carry on an agency unless the person —

(a) is an individual who carries on an agency —

(i) otherwise than in partnership with others and he or she satisfies the requirements of paragraph (3); or

(ii) in partnership with others and he or she and each of the partners satisfies the requirements set out in paragraph (3); or

(b) is an organisation and —

(i) it has given notice to the appropriate office of the National Assembly of the name, address and position in the organisation of an individual (in these Regulations referred to as "the responsible individual") who is a director, manager, secretary or other senior officer of the organisation and is responsible for the management of the agency; and

(ii) that individual satisfies the requirements set out in paragraph (3).

(3) The requirements are that —

(a) the person is of integrity and good character;

(b) the person is physically and mentally fit to carry on or (as the case may be) be responsible for the management of the agency; and

(c) full and satisfactory information or (as the case may be) documentation in respect of each of the matters listed in Schedule 2 is available in relation to the person.

(4) A person is not fit to carry on an agency if —

(a) he or she has been adjudged bankrupt or sequestration of his or her estate has been awarded and (in either case) he or she has not been discharged and the bankruptcy order has not been annulled or rescinded; or

(b) he or she has made a composition or arrangement with, or granted a trust deed for, his or her creditors and has not been discharged in respect of it.

Appointment of manager

9.—(1) The registered provider shall appoint an individual to manage the agency if —

(a) there is no registered manager in respect of the agency; and

(b) the registered provider —

(i) is an organisation;

(ii) carries on the agency in partnership;

(iii) is not a fit person to manage an agency; or

(iv) is not, or does not intend to be, in full time day to day charge of the agency.

(2) Where —

(a) the registered provider, or

(b) if an appointment has been made under paragraph (1), the registered manager,