WELSH STATUTORY INSTRUMENTS

2003 No. 2527 (W.242)

NURSES, MIDWIVES AND HEALTH VISITORS, WALES

The Nurses Agencies (Wales) Regulations 2003

Made - - - -	*1st October 2003*
Coming into force - -	*2nd October 2003*

The National Assembly for Wales, in exercise of powers conferred upon it by sections 4(6), 16(3), 22(1), (2)(a) to (c), (f) to (j) and (7)(a) to (h) and (j), 25, 34(1), 35 and 118(5) to (7) of the Care Standards Act 2000(**1**) and of all other powers enabling it in that behalf, having consulted such persons as it considers appropriate(**2**), hereby makes the following Regulations:—

PART I

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Nurses Agencies (Wales) Regulations 2003 and come into force on 2nd October 2003.

(2) These Regulations apply to nurses agencies in Wales only.

Interpretation

2.—(1) In these Regulations —

"1957 Act" ("*Deddf 1957*") means the Nurses Agencies Act 1957(**3**);

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

"agency" ("*asiantaeth*") means a nurses agency;

"appropriate office" ("*swyddfa briodol*") means in relation to a nurses agency —

(**1**) 2000 c. 14. The powers are exercisable by the appropriate Minister, who is defined in section 121(1)(as read with section 5(1)(b)), in relation to Wales as the National Assembly for Wales 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.

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

(**3**) 1957 c. 16.

(a) if an office has been specified under paragraph (4) below for the area in which the nurses agency operates, that office;

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

"authority" ("*awdurdod*") means, in respect of a person who —

(a) carries on, or wishes to carry on, an agency for the supply of nurses within the meaning of the 1957 Act; and

(b) is the holder of a licence which has been granted to that person by a local authority under section 2 of that Act and which authorises the holder to carry on that agency from premises specified in the licence, or has applied for such a licence,

the local authority which for the purposes of that section is the licensing authority in whose area the premises are situated;

"effective date" ("*dyddiad effeithiol*") means the date with effect from which an existing provider is for the purposes of Part II of the Act to be treated, in accordance with paragraph 1(6) of Schedule 5 to these Regulations, as having applied for and been granted registration in respect of the existing undertaking;

"existing undertaking" ("*ymgymeriad presennol*") means a person who, immediately before 2nd October 2003 —

(a) carries on an agency for the supply of nurses within the meaning of the 1957 Act; and

(b) is the holder of a licence which has been granted to that person by a local authority under section 2 of that Act and which authorises the holder to carry on that agency from premises specified in the licence;

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

"nurse" ("*nyrs*") means a registered nurse, registered midwife or registered health visitor(**4**);

"nurses agency provider" ("*darparydd asiantaeth nyrsys*") means a person who, immediately before 2nd October 2003 —

(a) carries on an agency for the supply of nurses within the meaning of the 1957 Act; and

(b) is the holder of a licence which has been granted to that person by a local authority under section 2 of that Act and which authorises the holder to carry on that agency from premises specified in the licence;

"NHS trust" ("*ymddiriedolaeth GIG*") has the same meaning as in the National Health Service and Community Care Act 1990(**5**);

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

"patient" ("*claf*") means a person to whom nursing is provided by a nurse supplied by an agency;

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

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

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

(**4**) *See* the Interpretation Act 1978 (c. 30), Schedule 1. A definition of "registered" in relation to nurses, midwives and health visitors was inserted by the Nurses, Midwives and Health Visitors Act 1979 (c. 36), section 23(4) and Schedule 7, paragraph 30, as substituted by article 54(3) of, and Schedule 5, paragraph 7 to, the Nursing and Midwifery Order 2001 (S.I.2002/253), on a date to be appointed.

(**5**) 1990 c. 19. *See* section 5 of that Act as amended by paragraph 69 of Schedule 1 to the Health Authorities Act 1995 (c. 17) and sections 13(1) and 14 of the Health Act 1999 (c. 8).

"responsible individual" ("*unigolyn cyrifol*") is to be construed in accordance with regulation 7;

"service user" ("*defnyddiwr gwasanaeth*") means a person to whom an agency —

(a) supplies a nurse who is employed by the agency; or

(b) provides services for the purpose of supplying the service user with a nurse for employment by that service user;

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

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

(2) In these Regulations, references to the supply of a nurse mean —

(a) the supply of a nurse who is employed for the purposes of an agency to act for and under the control of another person; and

(b) the introduction of a nurse by an agency to a service user for employment by that service user.

(3) In the definition of "service user" in paragraphs (1) and (2), the terms "employed" and "employment" include employment under a contract for services.

(4) The National Assembly may specify an office controlled by it as the appropriate office in relation to a nurses agency situated in a particular part of Wales.

Excepted agencies

3. For the purposes of the Act, an NHS trust which supplies nurses to work solely for other NHS trusts is excepted from being a nurses agency.

Statement of purpose

4.—(1) The registered person must compile in relation to the agency a written statement (in these Regulations referred to as "the statement of purpose") which must consist of a statement as to the matters listed in Schedule 1.

(2) The registered person must supply a copy of the statement of purpose to the appropriate office of the National Assembly and must make a copy of it available on request for inspection by every service user and any person acting on behalf of a service user.

(3) Nothing in regulation 20 shall require or authorise the registered person to contravene, or not to comply with —

(a) any other provision of these Regulations; or

(b) the conditions for the time being in force in relation to the registration of the registered person under Part II of the Act.

Service user's guide

5.—(1) The registered person must prepare a service user's guide which must include —

(a) a summary of the statement of purpose;

(b) the terms and conditions in respect of the services to be provided to service users, including as to the amount and method of payment of fees;

(c) a summary of the complaints procedure established in accordance with regulation 18; and

(d) the address and telephone number of any specified appropriate office of the National Assembly.

(2) The registered person must make a copy of the service user's guide available on request for inspection at the agency premises by every service user and any person acting on behalf of a service user.

Review of statement of purpose and service user's guide

6. The registered person must —

(a) keep under review and, where appropriate, revise the statement of purpose and the service user's guide; and

(b) notify the appropriate office of the National Assembly of any significant revision within 28 days.

PART II

REGISTERED PERSONS

Fitness of registered provider

7.—(1) A person must not carry on an agency unless that person is fit to do so.

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

(a) is an individual who satisfies the requirements set out in paragraph (3); or

(b) is an organisation and —

(i) the organisation 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 officer of the organisation and is responsible for supervising the management of the agency; and

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

(3) The requirements are that —

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

(b) the individual is physically and mentally fit to carry on the agency; and

(c) full and satisfactory information is available in relation to the individual —

(i) except where paragraph (4) applies, in respect of each matter specified in paragraphs 1 to 8 of Schedule 2;

(ii) where paragraph (4) applies, in respect of each matter specified in paragraphs 1 and 3 to 9 of Schedule 2.

(4) This paragraph applies where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued.

(5) A person must not 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 his or her creditors and has not been discharged in respect of it.

Appointment of manager

8.—(1) The registered provider must appoint an individual to manage the agency where —

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

(b) the registered provider —

(i) is an organisation; or

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

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

(2) Where the registered provider appoints a person to manage the agency, he or she must forthwith give notice to the appropriate office of the National Assembly of —

(a) the name of the person so appointed; and

(b) the date on which the appointment is to take effect.

Fitness of manager

9.—(1) A person must not manage an agency unless he or she is fit to do so.

(2) A person is not fit to manage an agency unless—

(a) he or she is of integrity and good character;

(b) having regard to the size of the agency, its statement of purpose and the number and needs of the service users—

(i) he or she has the qualifications, skills and experience necessary to manage the agency; and

(ii) he or she is physically and mentally fit to do so; and

(c) full and satisfactory information is available in relation to him or her —

(i) except where paragraph (3) applies, in respect of each matter specified in paragraphs 1 to 8 of Schedule 2,

(ii) where paragraph (3) applies, in respect of each matter specified in paragraphs 1 and 3 to 9 of Schedule 2.

(3) This paragraph applies where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued.

Registered person – general requirements and training

10.—(1) The registered provider and the registered manager must, having regard to the size of the agency, its statement of purpose and the number and needs of the service users, carry on or (as the case may be) manage the agency with sufficient care, competence and skill.

(2) If the registered provider is —

(a) an individual, he or she must undertake; or

(b) an organisation, it must ensure that the responsible individual undertakes,

from time to time such training as is appropriate to ensure that he or she has the experience and skills necessary for carrying on the agency.

(3) The registered manager must undertake from time to time such training as is appropriate to ensure that he or she has the experience and skills necessary for managing the agency.