

**The Scottish Government**

**Consultation**

**Introduction of final dates for prescribed descriptions of social service workers to achieve registration with the Scottish Social Services Council (SSSC).**

**A Consultation Paper**

## **REGULATION OF CARE (SCOTLAND) ACT 2001**

### **INTRODUCTION OF FINAL DATES TO ACHIEVE REGISTRATION WITH THE SCOTTISH SOCIAL SERVICES COUNCIL (SSSC).**

#### **Introduction**

1. This paper proposes the setting of **final** dates for achievement of registration with the Scottish Social Services Council (SSSC) for social workers and social service workers through the introduction of the Regulation of Care (Fitness to Employees for Employment in Care Services) (Scotland) Regulations 2008. The legislation applies to full and part time workers, not to volunteers or workers in seasonal services.

2. The Scottish Government is committed to raising standards of practice and strengthening and supporting the professionalism of the social service workforce. We want to develop a competent, confident and valued workforce that delivers the best outcomes for services users. Much work has already been done in support of the Government's commitment e.g. CoSLA's inclusion of a Quality Award in the Care Home Settlement Fee a national policy which supports the drive to improve the quality of services provided. Many, with their employer's support, have submitted their applications for registration but now is the time to support all initiatives by setting final dates for achievement of registration.

3. The policy intention as indicated in policy papers, and during the passing of the Regulation of Care (Scotland) Act 2001, was that registration with the SSSC would be a prerequisite of employment and continued employment. That remains. This legislation does not change that policy. The purpose is to introduce dates by which registration with the Scottish Social Services Council (SSSC) must be achieved.

#### **Background**

4. The Scottish Social Services Council (SSSC) was established under the Regulation of Care (Scotland) Act 2001 (the Act). The policy intention in setting up the SSSC was to regulate the social service workforce, to strengthen and support the professionalism of the workforce, raise service standards and practice and protect the users of social services.

5. Section 44 (1) of "the Act" requires the Council to maintain a register of social workers and social service workers. Section 29 makes provision for Scottish Ministers to impose requirements with regard to persons who are fit to provide, or act as managers, or be employed in a care service. Section 29 (5) allows for the making of regulations prohibiting a person from working in the provision of care service unless registered as required.

6. Registration of the workforce commenced in 2003. A suite of subordinate legislation made under the Act applies to commencement of Registration of specific groups. These being:

- The Regulation of Care (Social Service Workers) (Scotland) Order 2005 (SSI 2005/318).
- The Regulation of Care (Social Service Workers) (Scotland) Amendment Order 2005 (SSI 2005/611).
- The Regulation of Care (Social Service Workers) (Scotland) Amendment Order 2006 (SSI 2006/453).
- The Regulation of Care (Social Service Workers) (Scotland) Amendment Order 2007 (SSI 2007/407).

8. The principal regulations as they were laid and the various amending regulations can be found on the Office of Public Sector Information website at:

[www.opsi.gov.uk/legislation/scotland/about.htm](http://www.opsi.gov.uk/legislation/scotland/about.htm)

### **Proposed Amendments**

#### **The Regulation of Care (Fitness of Employees for Employment in Care Services) (Scotland) Regulations 2008**

9. We propose to introduce the following provisions of the Regulation of Care (Fitness of Employees for Employment in Care Services) (Scotland) Regulations 2008 with respect to **final** dates specific groups of social service workers must achieve registration with the SSSC.

10. Registration of each different group of workers with the SSSC has been commenced in stages. In the interests of consistency and to allow employers and staff time to plan and register, we have maintained the phased approach to the achievement of registration. This has been done by taking into account the dates registration commenced for each group, then allowed time for the application to be submitted and processed prior to the date Requirement to Register comes into force for each specific group.

11. Regulations 2 & 3 clarify that in order to be fit to be employed as a social worker or social service worker in the provision of a care service that person must be registered with the SSSC, unless that person is required by any other enactment to be registered with another regulatory body e.g. Nursing and Midwifery Council.

12. Regulations 4 & 6 prescribe the conditions that will apply where a person commences employment for the **first time** as a social worker or for the first time after a break or change in employment as a social service worker. Regulation 5 covers the situation where a person is already registered as a social worker in England, Northern Ireland or Wales then takes employment as a social worker in Scotland. In such circumstances that person is still required to obtain registration with the SSSC. In recognition of the registration process, and on the basis that an application is made as soon as possible after starting their new employment, these workers only will be allowed a period of grace to be employed until they achieve registration. The period reflects the time it can take to process these types of applications for registration.

The grace period is necessary as workers must be given a reasonable opportunity to meet a requirement to register. Also there must be consideration of employers' need to recruit staff within reasonable timescales to meet the demands of their work. Where a person takes new employment it may not be practicable to delay commencing that employment until registration is achieved. (Indeed a social service worker cannot be registered unless employed in a care service under the provisions of the Regulation of Care (Scotland) Act 2001). However at the same time there is a significant interest in protecting the vulnerable persons who social service workers and social workers work with on a regular basis, through requiring their registration. New workers will only obtain the benefit of the grace periods if they make their applications as soon as possible after starting their new position, which allows registration checks to commence as soon as possible. The grace period for new workers strikes a balance between the needs of the sector and the protections offered by the registration process and achieving registration. Although registration is a personal responsibility, it is incumbent on the employer to support their staff to achieve registration and both co-operate with the SSSC during the registration process and confirm registration has been achieved.

13. Regulations 7 to 15 detail the dates when those social service workers currently employed must be registered with the SSSC. The dates take account of:

- the dates when the register was opened for each group, and
- the specific dates from which applications for registration **should** have been made to the SSSC as per the SSSC notifications to the sector at the time the register opened.

**In recognition of the registration process and the potential impact of other parties, in order to assist workers and employers to meet the date set for achievement of registration, the Government has asked the SSSC to contact the relevant workers, and their employers, to advise them when the completed application should be with the SSSC in order that it can be processed to meet the final date set. Registration by the final date cannot be guaranteed if applications are not made in line with advice provided and the SSSC Registration Rules.**

14. Regulation 16 repeats previous legislation, notably The Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002, and confirms that an

employer failing to comply with these regulations and employing persons who do not meet the fitness requirements, without a reasonable excuse, will be guilty of an offence not exceeding level 5 on the standard scale.

15. A copy of the Regulation of Care (Fitness of Employees for Employment in Care Services) (Scotland) Regulations 2008 is attached at Annex A.

2008 No. [ ]

**SOCIAL CARE****The Regulation of Care (Fitness of Employees for Employment in Care Services) (Scotland) Regulations 2008**

|  |     |
|--|-----|
| <i>Made</i> - - - -                        | [ ] |
| <i>Laid before the Scottish Parliament</i> | [ ] |
| <i>Coming into force</i> - -               | [ ] |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 29(1), (2), (5) and (13) of the Regulation of Care (Scotland) Act 2001<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 29(12) of that Act they have consulted with such persons and groups of persons as they consider appropriate.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Regulation of Care (Fitness of Employees for Employment in Care Services) (Scotland) Regulations 2008 and shall come into force on [31 March 2009].

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

(3) In these Regulations—

"adult day care service" means a support service (2) which consists of any form of care provided to persons who have attained the age of sixteen years on premises other than domestic premises, during the day (whether or not it is provided on a regular basis or commences or ends during the hours of daylight);

"care home service for adults" means a care home service (3) which is provided to persons who have attained the age of sixteen years;

"child" means—

(a) for the purposes of paragraph (a) of the definition of "residential child care service", a person under the age of sixteen years;

(1) 2001 asp 8.

(2) Section 2(2) of the Act defines "support service". Services have been excepted from this definition by S.S.I. 2002/120 as amended by S.S.I. 2003/571 and S.S.I. 2005/96.

(3) Section 2(3) of the Act defines "care home service". No services are currently excepted from the definition by Regulations made under section 2(3)(d) of the Act.

(b) for the purposes of paragraph (b) of the definition of "residential child care service", a child within the meaning of section 135(1) (interpretation) of the Education (Scotland) Act 1980; and

(c) for the purposes of paragraph (c) of the definition of "residential child care service", a child within the meaning of section 93(2) (b) (interpretation) of the Children (Scotland) Act 1995;

“continuous employment” includes consecutive employments with different employers and consecutive employment in different roles, whether or not with the same employer, provided that there is no break between employments;

"manager of an adult day care service" means a person who is employed in managing the provision of an adult day care service and is the manager of that adult day care service;

"manager of a care home service for adults" means a person who is employed in managing the provision of a care home service for adults and is the manager of that care home service for adults;

"manager of a day care of children service" means a person who is employed in managing the provision of a day care of children service (4) and is the manager of that service;

“new employment” includes both a new role with the same employer and a new role with a different employer;

"practitioner in a care home service for adults" means a person (not being a manager of, or supervisor in, a care home service for adults) who is employed in the provision of a care home service for adults and whose normal duties include caring for and supporting adults and responsibility for coordinating the implementation of planned programmes of care;

"practitioner in a day care of children service" means a person (not being a manager of, or support worker in, day care of children) who is employed in the provision of day care of children whose normal duties include being responsible for identifying the care, support and learning needs of children and includes caring for, supervising or being in sole charge of children;

“prescribed descriptions of social service worker” are those descriptions of social service worker prescribed by each sub-paragraph of article 2 of the Regulation of Care (Social Service Workers) (Scotland) Order 2005 (5);

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

“registration requirement commencement date” means, in relation to the prescribed description of social service worker position referred to in regulations 7 to 15, the date on which regulation 3 applies to that social service worker position as specified in those regulations;

“relevant register” means any register prescribed by article 2 of the Regulation of Care (Prescribed Registers) (Scotland) Order (6);

"residential child care service" means a service which consists in the provision of personal care or personal support-

(a) to any child as part of a care home service (7);

(b) to any child as part of a school care accommodation service (8) other than the provision of residential accommodation where it is-

(i) provided by or under arrangements made by the managers of an independent school and does not provide personal care or support;

(ii) provided by an education authority with respect to a special school within the meaning of the Education (Scotland) Act 1980; or

(iii) a hostel provided by the local authority for the use of children to enable them to attend school; or

(c) to any child as part of a secure accommodation service (9);

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(4) Section 2(20) of the Act defines “day care of children” .

(5) S.S.I. 2005/318 as amended by S.S.I. 2005/611, S.S.I. 2006/453, S.S.I. 2007/407.

(6) S.S.I. 2005/432.

(7) Section 2(3) of the Act defines “care home service” .

(8) Section 2(4) of the Act defines “school care accommodation service”. The provision of residential accommodation described in sub paragraphs (i) to (iii) was excepted from the definition of “school care accommodation service” by S.S.I. 2002/120 but this exception from the definition was revoked with effect from 1<sup>st</sup> April 2005 by S.S.I. 2005/96.

(9) Section 2(9) of the Act defines “secure accommodation service”.

"residential child care worker" means a person who, not being a social worker, is employed in the provision of (or in managing the provision of) a residential child care service;

"social worker" has the meaning laid down in section 77 of the Regulation of Care (Scotland) Act 2001;

"social service worker" means any person falling within the description of social service worker prescribed by the Regulation of Care (Social Service Workers) (Scotland) Order 2005 (10);

"supervisor in a care home service for adults" means a person (not being a manager of a care home service for adults) who is employed in the provision of a care home service for adults and whose normal duties include supervising staff employed in such provision and monitoring the implementation of planned programmes of care;

"support worker in a care home service for adults" means a person (other than a manager of, or practitioner or supervisor in, a care home service for adults) who is employed in the provision of a care home service for adults and whose normal duties include caring for and supporting adults; and

"support worker in a day care of children service" means a person (not being a manager of, or practitioner in, day care of children) who is employed in the provision of day care of children whose normal duties include caring for children; and

"the relevant part of the register maintained by the Scottish Social Services Council" means that part of the register, as defined by section 44 of the Regulation of Care (Scotland) Act 2001(11), which is most relevant to that person, taking into account their current employment.

### **Fitness of Social Workers**

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

(2) Subject to paragraph (3) and regulation 4 and 5, a person is unfit to be so employed unless registered in the relevant part of the register maintained by the Scottish Social Services Council.

(3) Paragraph (2) does not apply to a person who, in order to perform the duties for which the person is so employed is required by any enactment, other than this enactment, to be registered with any person or body other than the Scottish Social Services Council and is so registered.

### **Fitness of Social Service Workers**

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

(2) Subject to paragraph (3), and regulation 6, a person is unfit to be so employed unless registered in the relevant part of the register maintained by the Scottish Social Services Council.

(3) Paragraph (2) does not apply to a person who, in order to perform the duties for which the person is so employed is required by any enactment, other than this enactment, to be registered with any person or body other than the Scottish Social Services Council and is so registered.

### **First Employment as a Social Worker**

4.—(1) Where a person

(a) commences employment in the position of a social worker for the first time after 31 December 2008; and

(b) applies for registration in the relevant part of the register maintained by the Scottish Social Services Council, as soon as reasonably practicable upon commencing that employment;

regulation 2 shall apply in accordance with this regulation.

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(10) S.S.I. 2005/318 as amended by S.S.I. 2005/611, S.S.I. 2006/453, S.S.I. 2007/407

(11) 2001 ASP. 8

(2) That person shall have

- (i) a period of 6 months, starting on the commencement date of that employment; or
- (ii) the period from the commencement date of that employment until the application is determined;

whichever is the shorter, to achieve registration.

### **Registration in a Relevant Register for Social Workers**

5.—(1) Where a person

- (a) is registered in a relevant register; and
- (b) applies for registration in the relevant part of the register maintained by the Scottish Social Services Council, as soon as reasonably practicable upon commencing employment as a social worker in Scotland on or after 1 January 2009;

regulation 2 shall apply in accordance with this regulation.

(2) That person shall have

- (i) a period of 6 months, starting on the commencement date of that employment; or
- (ii) the period from the commencement date of that employment until the application is determined;

whichever is the shorter, to achieve registration with the Scottish Social Services Council.

### **New Employment as a Social Service Worker**

6.—(1) Where a person

- (a) prior to commencing new employment as one of the prescribed descriptions of social service worker, has not held continuous employment as that prescribed description of social service worker; and
- (b) commences new employment in the position of that prescribed description of social service worker at any time after the date 6 months before the registration requirement commencement date; and
- (c) applies for registration in the relevant part of the register maintained by the Scottish Social Services Council, as soon as reasonably practicable upon commencing that new employment;

regulation 3 shall apply in accordance with this regulation.

(2) That person shall have

- (i) a period of 6 months, starting on the commencement date of that new employment; or
- (ii) the period from the commencement date of the new employment until the application is determined;

whichever is the shorter, to achieve registration.

### **Registration Requirement Commencement Dates for Descriptions of Social Service Workers**

7. Regulation 3 shall not apply to

- (a) a residential child care worker who is the manager of a residential child care service;
- (b) a residential child care worker who-
  - (i) does not fall within paragraph (a) ; and
  - (ii) supervises any other residential child care worker; and
- (c) a residential child care worker who does not fall within either paragraph (a) or (b)(ii); until 30 September 2009.



## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations specify persons who are not fit to be employed in the provision of a care service, in the position of social worker or social service worker. A social worker (regulation 2) or social service worker (regulation 3) is not fit unless registered with the Scottish Social Services Council (SSSC).

There are specific provisions for commencing employment as a social worker for the first time. A newly qualified social worker must make a new application for registration with the SSSC after gaining their [degree]. Regulation 4 permits persons taking their first employment as a social worker after qualification to have a limited period in which to achieve registration after starting that employment.

There are also specific provisions for social workers who are registered as such in England, Wales or Northern Ireland. Regulation 5 permits social workers a limited period in which to achieve registration with the SSSC after starting employment in Scotland as a social worker.

There are specific provisions for commencing new employment as a social service worker. The Regulation of Care Act 2001 defines a social service worker as a person *employed* in the provision of a care service. Under that Act registration with the SSSC can only be achieved if a social service worker is already employed as such. Therefore regulation 6 permits social service workers a limited period in which to achieve registration on commencement of new employment.

The registration requirement applies to different descriptions of social service worker from different dates as specified in regulations 7 to 15.

Regulation 16 provides that contravention of specified provisions of these Regulations without reasonable excuse is an offence but persons may not be held liable for the offence if the failure to register is due to the actions of a third party, or if it can be demonstrated that the all due diligence and all reasonable steps were taken to avoid committing the offence

**CONSULTATION ON:** The Regulation of Care (Fitness of Employees for Employment in Care Services) (Scotland) Regulations 2008

Introduction of final dates to achieve Registration with the Scottish Social Services Council (SSSC)

**Responding to this consultation paper**

We are inviting written responses to this consultation paper by **31 December 2008**.

Please complete an [on-line response form](#)

**Or**

E-mail your response to:

ssw-swregistration@scotland.gsi.gov.uk

**Or**

Post your response to:

Diane White, Scottish Government, Workforce & Capacity Issues Division, 2 C North, Victoria Quay, Leith, Edinburgh EH6 6QQ

If you have any queries please contact Diane White on 0131-244-3530

We would be grateful if you would use the consultation questionnaire provided or could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

**Handling your response**

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Where respondents have given permission for their response to be made public, copies will be made available to the public in the Scottish Government Library and on the Scottish Government web pages. Where agreement to publish has been given, we will check all responses for any potentially defamatory material before logging them in the library or placing them on the website.

### **What happens next ?**

Following the closing date, all responses will be analysed and considered along with any other available evidence to help finalise the legislation. We aim to issue a report on this consultation process by end of January 2009.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to Diane White at the address shown above.

## **Scottish Government**

### **Consultation: The Regulation of Care (Fitness of Employees for Employment in Care Services) (Scotland) Regulations 2008**

#### **Introduction**

Thank you for taking the time to contribute to the Consultation on the Regulation of Care (Fitness of Employees for Employment in Care Services) (Scotland) Regulations 2008

You do not need to answer all of the questions.

All responses will be considered.

#### **Information about you**

Please complete the details on the Respondent Information Form. This is important as it will help ensure we handle your response appropriately.



## **Consultation Questions**

### **First employment as a Social Worker (Regulation 4 & 5)**

#### **Question 1.**

*Do you agree with the grace period being given to achieve registration for newly qualified social workers commencing employment as a social worker for the first time (regulation 4)?*

*Do you agree with the grace period given for social workers who are employed in Scotland but hold registration as a social worker in England, Wales or Northern Ireland (Regulation 5)?*

*If No, please provide comments*

### **New Employment as a Social Service Worker (Regulation 6)**

#### **Question 2.**

*Do you agree with the grace period given to achieve registration for social service workers who take up employment as social service workers for the first time or after a break or change in employment?*

*If No, please provide comments*

#### **Question 3**

*Should the grace period be set at a specific length of time rather than a grace period of however long it takes to process an application for registration?*

## **Registration Requirement Commencement Dates (Regulations 7-15)**

### **Question 4**

*Taking account of the time that the register has been open for specific groups and that registration can be granted with conditions, do you have an opinion on the registration requirement dates for each group of social service workers?*

### **Other Comments**