

2011 No. 35

PUBLIC HEALTH

**The Healthcare Improvement Scotland (Applications and
Registration) Regulations 2011**

<i>Made</i>	- - - -	<i>20th January 2011</i>
<i>Laid before the Scottish Parliament</i>		<i>24th January 2011</i>
<i>Coming into force</i>	- -	<i>1st April 2011</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 10P, 10Y, 10Z6 and 108(1) of the National Health Service (Scotland) Act 1978(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Healthcare Improvement Scotland (Applications and Registration) Regulations 2011 and come into force on 1st April 2011.

Interpretation

2. In these Regulations—

“the Act” means the National Health Service (Scotland) Act 1978;

“HIS” means Healthcare Improvement Scotland;

“the applicant” means the person making an application for registration of an independent health care service(b) under the Act;

“address” means a postal address and, where available, an electronic mail address but an electronic mail address may not be substituted for a postal address;

“health body” means a Health Board or Special Health Board;

“manager” means the person who is to manage the independent health care service;

“provider” in relation to an independent health care service means the person registered to provide that service; and

“service user” in relation to an independent health care service means any person to whom that service is provided.

(a) 1978 c.29. Sections 10A to 10Z19 were inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8). Section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made.

(b) Section 10F of the Act defines an independent health care service.

Applications for registration

3.—(1) The information prescribed for the purposes of section 10P(2)(a) of the Act is the information specified in Schedule 1 about the matters prescribed in paragraph (2).

(2) The matters are the applicant and the independent health care service which is the subject of the application.

Persons disqualified from applying

4.—(1) A person cannot competently make an application for registration under section 10P of the Act unless the person is fit to do so.

(2) The following persons are unfit to make such an application—

- (a) 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 and who in the reasonable opinion of HIS is unsuitable to be a provider of an independent health care service;
- (b) a person whose estate has been sequestrated, or who has been adjudged bankrupt unless (in either case) the person has been discharged or the bankruptcy order annulled;
- (c) a person who has been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986(a) or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985(b) unless that order has ceased to have effect or has been annulled;
- (d) a person who has made a composition or arrangement with, or granted a trust deed for, the person's creditors unless the person has been discharged in respect of it;
- (e) a person who at the time of making the application has an administrator, administrative receiver or a receiver appointed;
- (f) a person who has been—
 - (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005(c) (powers of the Court of Session) from being concerned in the management or control of a charity or body; or
 - (ii) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission for England and Wales or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which the person by that person's conduct contributed to or facilitated;
- (g) a person who is subject to a disqualification order under the Company Directors Disqualification Act 1986(d), the Companies (Northern Ireland) Order 1986(e), or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order);
- (h) a person who is subject to proceedings outside the United Kingdom which are equivalent to those listed at sub-paragraphs (b) to (g) above.

(3) For the purposes of paragraph (2)(a) 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 must be disregarded.

(a) 1986 c.45. Schedule 4A was inserted by section 257 of and Schedule 20 to the Enterprise Act 2002 (c.40).

(b) 1985 c.66. Sections 56A to 56K were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

(c) 2005 asp 10.

(d) 1986 c.46 as amended by the Insolvency Act 2000 (c.39).

(e) S.I. 1986/1032 (N.I.6).

Records, notifications and returns

5.—(1) On granting registration of an independent health care service HIS must, in addition to issuing a certificate of registration, notify the provider in writing of—

- (a) the records the provider must keep and where they must be kept;
- (b) any matters the provider must notify to HIS from time to time, whilst that service is registered; and
- (c) any matters the provider must notify to HIS in an annual return.

(2) HIS may, from time to time make reasonable variations to the information required under paragraph (1).

Registers

6.—(1) HIS must maintain a register of all registered independent health care services.

(2) The register must contain the information specified in Schedule 2.

Access to register

7.—(1) HIS must make available for inspection a copy of the register maintained under regulation 6—

- (a) at each of its offices during its normal hours of business; and
- (b) on a website,

and must provide to any person who makes a request in writing or in person at any HIS office a copy of any register or any part thereof which is specified in the request.

(2) HIS must remove the address of an independent health care service from any copy of the register made available for inspection or provided under paragraph (1) if HIS considers disclosure of the address may expose any person to danger.

(3) HIS may charge a reasonable fee in respect of any copies of the register or part of it provided under paragraph (1).

Variation, removal or addition of conditions

8.—(1) An application under section 10Y of the Act for the variation, removal or addition of a condition relating to the registration of an independent health care service must specify—

- (a) the date on which the proposed variation, removal or addition is to take effect;
- (b) the reason for making the application; and
- (c) any changes which the provider proposes to make in relation to the independent health care service as a consequence of the proposed variation, removal or addition.

(2) Unless HIS has agreed in writing that an earlier date may be specified, the date referred to in paragraph (1)(a) must be not less than three months after the date on which the application is made.

Cancellation of registration

9.—(1) An application under section 10Y of the Act for the cancellation of registration of an independent health care service must specify—

- (a) the date on which cancellation is to take effect;
- (b) the reason for making the application;
- (c) any arrangements made by the provider that seek to ensure service users continue to receive a similar service (including where appropriate accommodation) from the provider or another person;

- (d) whether notice of the application has been given to any of the persons to whom paragraph (2) applies and the terms of any such notice; and
- (e) where notice has not been given to any of those persons whether there were any circumstances which made it impracticable for the provider to give such notice.

(2) The persons to whom this paragraph applies are—

- (a) any service user when the application is made;
- (b) any person appearing to be a relative or representative of the service user; and
- (c) any relevant local authority or health body.

(3) Unless HIS has agreed in writing that an earlier date may be specified, the date referred to in paragraph (1)(a) must be not less than three months after the date on which the application is made.

Contents of certificate

10. A certificate of registration must contain the following information:—

- (a) the full name and address of the place of work and the principal office of the provider and, where it exists, its registered office;
- (b) the name and address of HIS, including its website;
- (c) the full name of the manager;
- (d) all addresses from which the independent health care service will be provided;
- (e) the type of independent health care service (in terms of section 10F of the Act) which is registered;
- (f) details of any condition to which the registration is subject; and
- (g) the date of registration of the independent health care service.

St Andrew's House,
Edinburgh
20th January 2011

SHONA ROBISON
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 3

1. The full name, address, telephone number and any facsimile number of the applicant.
2. If the applicant is not an individual—
 - (a) its name;
 - (b) the address of the applicant's principal office and registered office (if any);
 - (c) the full name and address of any person to whom the applicant wishes enquiries concerning the independent health care service to be addressed; and
 - (d) the full name, date of birth and address of every person who is, or who purports to act in the capacity of a person who is—
 - (i) where the applicant is a body corporate, a director, manager or secretary of the body corporate;
 - (ii) where the applicant is a firm, a partner in the firm; or
 - (iii) where the applicant is an unincorporated association other than a firm, concerned in the management or control of the association,and in each case whether registration of any service provided by such a person has ever been cancelled and the reasons for that cancellation.
3. All addresses of the independent health care service.
4. Specification of the type of independent health care service provided in terms of section 10F of the Act which is to be provided.
5. Proposed date for commencement of the independent health care service.

SCHEDULE 2

Regulation 6

1. The full name, address, phone and facsimile number (if any) of the place of work of the provider.
2. The full name of the manager.
3. All addresses of the independent health care service.
4. The type of independent health care service in terms of section 10F of the Act which is registered.
5. Details of any condition to which the registration is subject.
6. The date of registration of the independent health care service.
7. Any other information which HIS considers would assist users or prospective users of the independent health care service.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the information which is to be provided by a person who makes an application for registration of an independent healthcare service under the National Health Service (Scotland) Act 1978 (the “Act”). Regulation 3 and Schedule 1 prescribe the information (and the matters to which that information relates) which an application must contain. This information is in addition to any information which HIS, acting under section 10P(2)(c) of the Act, may reasonably require the applicant to give in the application.

Regulation 4 sets out who may not apply to provide an independent healthcare service and regulation 5 provides that HIS shall inform a service on registration what other information it requires from the service, and what records must be kept.

Regulation 6 provides that HIS shall keep a register of all independent healthcare services, to contain the information specified in Schedule 2 and regulation 7 makes provision as to access to that register.

The Regulations also specify the information to be provided by a person who makes an application for variation removal or addition of a condition of registration relating to registration of a care service (regulation 8) or cancellation of a care service (regulation 9).

Regulation 10 sets out the information a certificate of registration must contain.

© Crown Copyright 2011

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen’s Printer for Scotland.

2011 No. 35

PUBLIC HEALTH

The Healthcare Improvement Scotland (Applications and
Registration) Regulations 2011