

**2009 No. 32**

**SOCIAL CARE**

**The Regulation of Care (Miscellaneous Amendments)  
(Scotland) Regulations 2009**

*Made* - - - - - *3rd February 2009*

*Laid before the Scottish Parliament* *4th February 2009*

*Coming into force* *1st April 2009*

The Scottish Ministers make these Regulations in exercise of the powers conferred by sections 28(1)(c), 29(1), (2)(a) and (b) of the Regulation of Care (Scotland) Act 2001<sup>(a)</sup> and of all other powers enabling them to do so.

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

**Citation and commencement**

1. These Regulations may be cited as the Regulation of Care (Miscellaneous Amendments) (Scotland) Regulations 2009 and come into force on 1st April 2009.

**Amendment of the Regulation of Care (Registration and Registers) (Scotland) Regulations 2002**

2. The Regulation of Care (Registration and Registers) (Scotland) Regulations 2002<sup>(b)</sup> are amended in accordance with regulations 3 and 4.

3. In regulation 4(1) for "The following" to "the Act" inclusive, substitute—

“A person shall not make an application for registration under Part 1 of the Act unless the person is fit to do so and the following persons are unfit to make such an application—”.

4. For regulation 4(1)(b) substitute—

“(b) 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 unfitness attaching to a person whose estate has been sequestrated shall cease if and when—

(aa) the sequestration is recalled or reduced; or

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<sup>(a)</sup> 2001 asp 8; see section 77(1) for the definition of “regulations”.

<sup>(b)</sup> S.S.I. 2002/115, as amended by S.S.I. 2003/148.

- (bb) the sequestration is discharged;
- (ii) the unfitness 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 unfitness 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 unfitness 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 grant of the deed.”.

**Amendment of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002**

**5.**—(1) The Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002(a) are amended in accordance with regulations 6 and 7.

**Amendment of regulation 7**

**6.** In regulation 7 (fitness of managers), for paragraph (2)(b) substitute—

“(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, and who is, in the reasonable opinion of the provider of the care service, having regard to the circumstances of the conviction, unfit to be a manager in relation to a care service;”.

**Amendment of regulation 9**

**7.** In regulation 9 (fitness of employees), after paragraph (2)(c) insert—

“(d) a person to whom regulation 6(2)(a) applies; or

(e) 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 is, in the reasonable opinion of the provider of the care service, having regard to the circumstances of the conviction, unsuitable to be employed in the provision of a care service.”.

**Amendment of the Regulation of Care (Requirements as to Limited Registration Services) (Scotland) Regulations 2003**

**8.**—(1) The Regulation of Care (Requirements as to Limited Registration Services) (Scotland) Regulations(b) are amended in accordance with regulations 9 to 13.

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(a) S.S.I. 2002/114 as amended by S.I. 2003/1590, S.S.I. 2003/149 and 572, 2004/94 and 2006/274 and 457.  
 (b) S.S.I. 2003/150.

#### **Amendment of regulation 4**

9. In regulation 4 (fitness of providers)–

- (a) for “not fit” substitute “unfit” in each place it occurs; and
- (b) in paragraph (2)(c) after “person’s creditors” for “provided that ...” to “grant of the deed” inclusive, substitute–

“Provided that–

- (i) the unfitness 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 unfitness 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 unfitness 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 unfitness attaching to a person who has granted a trust deed shall cease if and when the person pays the creditor in full or on the expiry of 5 years from the date of the grant of the deed.”.

#### **Amendment of regulation 5**

10. In regulation 5(2) for “not fit” substitute “unfit”.

#### **Amendment of regulation 6**

11. In regulation 6(2) for “not fit” substitute “unfit”.

#### **Amendment of regulation 7**

12. In regulation 7(2) for “not fit” substitute “unfit”.

#### **Amendment of regulation 10**

13. In regulation 10(1)(b) for “is not a fit person” substitute “is an unfit person”.

St Andrew’s House,  
Edinburgh  
3rd February 2009

*S ROBISON*  
Authorised to sign by the Scottish Ministers

## EXPLANATORY NOTE

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

These Regulations amend the Regulation of Care (Registration and Registers) (Scotland) Regulations 2002 (S.S.I. 2002/115), the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 (S.S.I. 2002/114) and the Regulation of Care (Requirements as to Limited Registration Services) (Scotland) Regulations 2003 (S.S.I. 2003/150).

The regulations provide consistency in all regulations made under section 29((1) and (2)(a) and (b) of the Regulation of Care (Scotland) Act 2001 in respect of persons who are fit to register a care service, to provide a care service, act as manager of a care service or be employed in a care service. The regulations also give providers of care services an element of discretion in considering persons fit to manage or be employed in a care service, where those persons have been convicted of an offence.

Regulations 3 and 4 amend Regulation 4 of S.S.I. 2002/115 to provide consistency with S.S.I. 2002/114. Regulations 6 and 7 give discretion to care home providers to consider a person fit to manage or be employed in the delivery of a care service, despite that person having a conviction. Regulations 9 to 13 amend S.S.I. 2003/150 to ensure consistency with S.S.I. 2002/114 and 2002/115 as amended by these Regulations.

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£4.00