

2004 No. 1770

SOCIAL CARE, ENGLAND

NURSES, MIDWIVES AND HEALTH VISITORS, ENGLAND

**The Care Standards Act 2000 (Establishments and Agencies)
(Miscellaneous Amendments) Regulations 2004**

<i>Made</i> - - - -	<i>9th July 2004</i>
<i>Laid before Parliament</i>	<i>9th July 2004</i>
<i>Coming into force</i> - -	<i>26th July 2004</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 22(1), (2)(b) and (h), (7)(c) and 118(5) and (6) of the Care Standards Act 2000(a), and of all other powers enabling him in that behalf, and having consulted such persons as he considers appropriate(b), hereby makes the following Regulations:—

Citation, commencement and application

1.—(1) These Regulations may be cited as the Care Standards Act 2000 (Establishments and Agencies) (Miscellaneous Amendments) Regulations 2004 and shall come into force on 26th July 2004.

(2) These Regulations apply in relation to establishments and agencies in England only.

Amendment of the Care Homes Regulations 2001

2.—(1) The Care Homes Regulations 2001(c) are amended in accordance with the following provisions of this regulation.

(2) In regulation 2(1) (interpretation), after the definition of “the Act”, insert—

““the 1997 Act” means the Police Act 1997;”(d).

(3) In regulation 18 (staffing)—

(a) in paragraph (1)(c)(i), after the word “perform” insert “including structured induction training”; and

(b) for paragraph (2), substitute—

“(2) The registered person shall ensure that—

(a) persons working at the care home are appropriately supervised; and

(a) 2000 c.14. The powers are exercisable by the appropriate Minister, who is defined in section 121(1), in relation to England, Scotland and Northern Ireland, as the Secretary of State. See section 121(1) for the definitions of “prescribed” and “regulations”.

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

(c) S.I. 2001/3965. Amending instruments are S.I. 2002/865, 2003/534, 2003/1703 and 2003/1845.

(d) 1997 c.50, as amended by the Protection of Children Act 1999 (c.14), section 8, and by the Care Standards Act 2000 (c.14), sections 90 and 104.

- (b) for the duration of a new worker’s induction training—
 - (i) a member of staff (“the staff member”), who is appropriately qualified and experienced, is appointed to supervise the new worker;
 - (ii) as far as is practicable, the staff member is on duty at the same time as the new worker; and
 - (iii) the new worker does not escort any service user away from the care home premises unless accompanied by the staff member.”.
- (4) In regulation 19 (fitness of workers)—
 - (a) for paragraph (1)(b), substitute—

“(b) subject to paragraphs (6), (8) and (9), he has obtained in respect of that person the information and documents specified in paragraphs 1 to 9 of Schedule 2;”;
 - (b) in paragraph (4)—
 - (i) at the beginning, insert “Subject to paragraph (4A),”; and
 - (ii) in sub-paragraph (b)(i), for the words “1 to 7” substitute “1 to 9”;
 - (c) after paragraph (4), insert—

“(4A) In the circumstances to which paragraph (7) of regulation 12 of the Nurses Agencies Regulations 2002(a) applies, with the result that a criminal record certificate pursuant to section 113 of the 1997 Act, or an enhanced criminal record certificate pursuant to section 115 of that Act is not yet available in respect of a person to whom paragraph (2) applies, the registered person may allow that person to start work at a care home in a position to which paragraph (3) applies pending receipt of, and satisfying himself with regard to, that outstanding information.”;
 - (d) in paragraph (5)(d)—
 - (i) at the beginning, insert “subject to paragraphs (4A), (6), (8) and (9),” and
 - (ii) in head (i), for the words “1 to 7” substitute “1 to 9”;
 - (e) after paragraph (6) add—

“(7) This paragraph applies in respect of a person (“the existing worker”)—

 - (a) who immediately before 26th July 2004 is employed to work at the care home in a care position; and
 - (b) in respect of whom there has been obtained a criminal record certificate pursuant to section 113 of the 1997 Act or an enhanced criminal record certificate pursuant to section 115 of that Act.

(8) Where paragraph (7) applies, paragraphs (1)(b) and (5)(d), in so far as they relate to the following provisions specified in paragraph 7 of Schedule 2, namely—

 - (i) section 113(3C)(a) and (b) of the 1997 Act; or
 - (ii) section 115(6B)(a) and (b) of that Act,

shall not apply in relation to the existing worker for as long as he remains in the care position mentioned in paragraph (7)(a).

(9) Where the conditions set out in paragraph (10) are satisfied, the registered person may permit a person (“the new worker”) to start work at a care home notwithstanding that paragraphs (1)(b) and (5)(d) have not been complied with in so far as they relate to paragraph 7 of Schedule 2.

(10) The conditions are—

 - (a) a criminal record certificate (“a criminal record certificate”) has been applied for in respect of the new worker pursuant to section 113 or, if applicable, section 115 of the 1997 Act; and

(a) S.I. 2002/3212 as amended by S.I. 2003/2323.

- (b) full and satisfactory information in respect of the new worker has been obtained in relation to paragraph 7 of Schedule 2 in so far as it relates, where applicable, to sections 113(3A) or 115(6A) of the 1997 Act and sections 113(3C)(a) and (b) or 115(6B)(a) and (b) of that Act.

(11) Where a registered person permits a new worker to start work pursuant to paragraph (9) the registered person shall—

- (a) appoint a member of staff (“the staff member”), who is appropriately qualified and experienced, to supervise the new worker pending receipt of, and satisfying himself with regard to, the outstanding information in relation to a criminal record certificate;
- (b) so far as is possible, ensure that the staff member is on duty at the same time as the new worker; and
- (c) ensure that the new worker does not escort service users away from the care home premises unless accompanied by the staff member.”.

(5) For regulation 33 (fitness of workers) substitute—

“33. Regulation 19 shall have effect as if, at the end of paragraph (5), there were added the following—

“and

- (e) his qualifications, skills and experience are suitable for the purpose of working with children.”.

(6) For Schedule 2 (information and documents in respect of persons carrying on, managing or working at a care home), substitute the Schedule 2 set out in the Schedule to these Regulations.

(7) In Schedule 4 (other records to be kept in a care home), in paragraph 6—

- (a) sub-paragraph (b) is omitted; and
- (b) after sub-paragraph (f), add—

“(g) a record of all training undertaken, including induction training.”.

(8) Schedule 6 (additional information and documents to be obtained in respect of persons working at a care home where children are accommodated) is omitted.

Amendment of the Domiciliary Care Agencies Regulations 2002

3.—(1) The Domiciliary Care Agencies Regulations 2002(a) are amended in accordance with the following provisions of this regulation.

(2) In regulation 2(1) (interpretation), after the definition of “the Act” insert—

“the 1997 Act” means the Police Act 1997;”.

(3) In regulation 12 (fitness of domiciliary care workers supplied by an agency)—

- (a) in paragraph (1), at the beginning, insert “Subject to paragraphs (2), (4) and (5),”;
- (b) after paragraph (2), add—

“(3) This paragraph applies in respect of a person (“the existing worker”)—

- (a) who immediately before 26th July 2004 is supplied by an agency to work in a care position; and
- (b) in respect of whom there has been obtained a criminal record certificate pursuant to section 113 of the 1997 Act or an enhanced criminal record certificate pursuant to section 115 of that Act.

(4) Where paragraph (3) applies, paragraph (1)(d), in so far as it relates to the following provisions specified in paragraph 13 of Schedule 3, namely—

- (i) section 113(3C)(a) and (b) of the 1997 Act; or

(a) S.I. 2002/3214 as amended by S.I. 2003/2323.

(ii) section 115(6B)(a) and (b) of that Act,
shall not apply in relation to the existing worker for as long as he remains in the care position mentioned in paragraph (3)(a).

(5) Where the conditions set out in paragraph (6) are satisfied, the registered person may supply a domiciliary care worker (“the new worker”) to a service user notwithstanding that paragraph (1)(d) has not been complied with in so far as it relates to paragraph 13 of Schedule 3.

(6) The conditions are—

- (a) a criminal record certificate has been applied for in respect of the new worker pursuant to section 113 or, if applicable, section 115 of the 1997 Act; and
- (b) full and satisfactory information in respect of the new worker has been obtained in relation to paragraph 13 of Schedule 3 in so far as it relates, where applicable, to sections 113(3A) or 115(6A) of the 1997 Act and sections 113(3C)(a) and (b) or 115(6B)(a) and (b) of that Act.

(7) Where the registered person supplies a new worker pursuant to paragraph (5), and where the new worker is being supplied by the agency acting otherwise than as an employment agency, the registered person shall, pending receipt of the outstanding information in relation to a criminal record certificate (“the outstanding information”)—

- (a) appoint a member of staff (“the staff member”), who is appropriately qualified and experienced, to supervise the new worker;
- (b) so far as is possible, ensure that the staff member, or another suitably qualified staff member, is on duty at the same time as the new worker, and is available to be contacted; and
- (c) contact the service user, or any representative of the service user, at weekly intervals in order to monitor the service user’s satisfaction with the care provided by the new worker, and any complaints that may arise;
- (d) inform the service user, or any representative of the service user, of the position in relation to the outstanding information, including when the outstanding information has been obtained; and
- (e) terminate the supply of the new worker to the service user where the registered person considers that the outstanding information, when obtained, is not satisfactory.”.

(4) In regulation 15 (staffing), at the end, add—

“(5) Where an agency is acting otherwise than as an employment agency, the registered person shall ensure that—

- (a) a new domiciliary care worker (“the new worker”) is provided with appropriately structured induction training lasting a minimum of three full working days;
- (b) during that induction training—
 - (i) the new worker is not supplied to a service user unless accompanied by another domiciliary care worker who is a suitably qualified and competent person;
 - (ii) a member of staff (“the staff member”) who is suitably qualified and experienced, is appointed to supervise the new worker;
 - (iii) the staff member (or another suitably qualified and competent person if the staff member is unavailable) will always be available to be consulted while the new worker is on duty; and
 - (iv) subject to the consent of the service user, the staff member makes arrangements to observe, on at least one occasion, the new worker carrying out his duties.”.

(5) In regulation 17 (provision of information to service users)—

(a) after paragraph (1), insert—

“(1A) Where the agency—

- (a) is acting as an employment agency; and

- (b) has supplied a domiciliary care worker in the circumstances to which regulation 12(5) applies,

the registered person shall inform the service user that there is outstanding information in relation to the criminal record certificate, and shall also inform the service user when that outstanding information is obtained.”; and

- (b) in paragraph (2), for the words “paragraph (1)” substitute “ paragraphs (1) and, where applicable, (1A)”.

- (6) In Schedule 4 (records to be maintained for inspection), after paragraph 4, add—

“5. Where the registered provider is carrying on an agency other than an employment agency, details of the training undertaken by all employees including, where applicable, induction training.”.

Amendment of the Nurses Agencies Regulations 2002

4.—(1) The Nurses Agencies Regulations 2002(a) are amended in accordance with the following provisions of this regulation.

- (2) In regulation 2(1) (interpretation), after the definition of “the Act” insert—

““the 1997 Act” means the Police Act 1997;”.

- (3) In regulation 12 (fitness of nurses supplied by an agency)—

- (a) in paragraph (1), at the beginning, insert “Subject to paragraphs (4), (6) and (7),”;

- (b) after paragraph (4), add—

“(5) This paragraph applies in respect of a nurse (“the existing worker”)—

- (a) who immediately before 26th July 2004 is supplied by an agency to work in a care position; and
- (b) in respect of whom there has been obtained a criminal record certificate pursuant to section 113 of the 1997 Act or an enhanced criminal record certificate pursuant to section 115 of that Act.

(6) Where paragraph (5) applies, paragraph (1)(d), in so far as it relates to the following provisions specified in paragraph 13 of Schedule 3, namely—

- (i) section 113(3C)(a) and (b) of the 1997 Act; or
- (ii) section 115(6B)(a) and (b) of that Act,

shall not apply in relation to the existing worker for as long as she remains in the care position mentioned in paragraph (5)(a) .

(7) Where the conditions set out in paragraph (8) are satisfied, the registered person may supply a nurse to a service user notwithstanding that paragraph (1)(d) has not been complied with in so far as it relates to paragraph 13 of Schedule 3.

- (8) The conditions are—

- (a) a criminal record certificate has been applied for in respect of the nurse pursuant to section 113 or, if applicable, section 115 of the 1997 Act; and
- (b) full and satisfactory information in respect of the nurse has been obtained in relation to paragraph 13 of Schedule 3 in so far as it relates, where applicable, to sections 113(3A) or 115(6A) of the 1997 Act and sections 113(3C)(a) and (b) or 115(6B)(a) and (b) of that Act.

(9) Where paragraph (7) applies, and where the agency is acting as an employment business, the registered person shall—

- (i) pending receipt of the outstanding information in relation to a criminal record certificate (“the outstanding information”), take steps, where appropriate, to inform the service user, or the service user’s representative, that a full criminal record certificate has not yet been obtained in respect of the nurse;

(a) S.I. 2002/3212 as amended by S.I. 2003/2323.

- (ii) where appropriate, inform the service user, or the service user’s representative, when the outstanding information has been obtained; and
 - (iii) terminate the supply of the nurse to the service user where the registered person considers that the outstanding information, when obtained, is not satisfactory.”.
- (4) In regulation 14 (staffing), at the end, add—
- “(6) Where the agency is acting as an employment business, the registered person shall ensure that a new nurse is provided with appropriately structured induction training.”.
- (5) In regulation 16 (provision of information to service users)—
- (a) after paragraph (1), insert—
 - “(1A) Where an agency—
 - (a) is acting as an employment agency; and
 - (b) has supplied a nurse in the circumstances to which regulation 12(7) applies,
 the registered person shall inform the service user, or the service user’s representative, that there is outstanding information in relation to the criminal record certificate, and shall also inform the service user, or the service user’s representative, when that information is obtained.”; and
 - (b) in paragraph (2), for the words “paragraph (1)” substitute “ paragraphs (1) and, where applicable, (1A)”.

Signed by authority of the Secretary of State for Health

Stephen Ladyman
Parliamentary Under Secretary of State,
Department of Health

9th July 2004

SCHEDULE

Regulation 2(5)

SUBSTITUTED SCHEDULE 2 TO THE CARE HOMES REGULATIONS 2001

“Schedule 2

Regulations 7, 9 and 19

Information and documents in respect of persons carrying on, managing or working at a care home

1. Proof of identity, including a recent photograph.
2. Details of any criminal offences—
 - (a) of which the person has been convicted, including details of any convictions which are spent within the meaning of section 1 of the Rehabilitation of Offenders Act 1974(a) and which may be disclosed by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975(b); or
 - (b) in respect of which he has been cautioned by a constable and which, at the time the caution was given, he admitted.

(a) 1974 c.53.

(b) S.I. 1975/1023. Relevant amending instruments are S.I. 1986/1249, 1986/2268 and 2001/1192.

3. Two written references, including, where applicable, a reference relating to the person's last period of employment, which involved work with children or vulnerable adults, of not less than three months duration.

4. Where a person has previously worked in a position which involved contact with children or vulnerable adults, written verification of the reason why he ceased to work in that position unless it is not reasonably practicable to obtain such verification .

5. Documentary evidence of any relevant qualifications and training.

6. A full employment history, together with a satisfactory written explanation of any gaps in employment.

7. Either—

(a) where the certificate is required for a purpose relating to section 115(5)(ea) of the 1997 Act (registration under Part 2 of the Care Standards Act 2000)(a), or the position falls within section 115(3) or (4) of that Act(b), an enhanced criminal record certificate issued under section 115 of that Act; or

(b) in any other case, a criminal record certificate issued under section 113 of that Act,

including, where applicable, the matters specified in sections 113(3A) and 115(6A) of that Act and the following provisions namely section 113(3C)(a) and (b) and section 115(6B)(a) and (b) of that Act(c).

8. A statement by the person as to his mental and physical health.

9. Details and evidence of registration with, or membership of, any professional body.”.

(a) Section 115(5)(ea) was inserted by the Care Standards Act 2000, section 104.

(b) A position is within section 115(3) if it involves regularly caring for, training, supervising or being in sole charge of persons aged under 18. A position is within section 115(4) if it is of a kind specified in regulations and involves regularly caring for, training, supervising or being in sole charge of persons aged 18 or over.

(c) Sections 113(3A) and 115(6A) are added to the Police Act 1997 by section 8 of the Protection of Children Act 1999 (c.14), and amended by sections 104 and 116 of, and paragraph 25 of Schedule 4 to, the Care Standards Act 2000. Sections 113(3C) and 115(6B) are added to the Police Act 1997 by section 90 of the Care Standards Act 2000 on a date to be appointed.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations, which apply to establishment and agencies in England only, amend certain Regulations made under the Care Standards Act 2000 in respect of care homes, domiciliary care agencies and nurses agencies.

Regulation 2 of these Regulations amends the Care Homes Regulations 2001 so that workers employed in a care position prior to the coming into force of these Regulations will not be required to obtain a check against the Protection of Vulnerable Adults list (“the POVA list”)(a), for as long as they remain in that care position, provided that a Criminal Records Bureau check (“a CRB check”) has been obtained in respect of them. In addition, provision is made to enable a care home provider to allow a person to start work in a care position, pending the receipt of a CRB check, provided that certain conditions are met. The conditions include a check against the POVA list (or, where appropriate, a check against the Protection of Children Act list (“the POCA list”)(b) in respect of that person. Provision is also made to ensure that new care workers are provided with induction training, and supervised during such training. Other amendments are also made which include the substitution of a new Schedule 2 to the Regulations which sets out the information and documents needed in respect of care workers and those carrying on or managing a care home. There are also minor and consequential amendments.

Regulation 3 of these Regulations amends the Domiciliary Care Agencies Regulations 2002 so that workers supplied by an agency to work in a care position prior to the coming into force of these Regulations will not be required to obtain a check against the POVA list for as long as they remain in that care position, provided that a CRB check has been obtained in respect of them. In addition, provision is made to enable an agency provider to supply a worker to a service user, pending the receipt of a CRB check, provided that certain conditions are met. The conditions include a check against the POVA list (or, where appropriate, a check against the POCA list) in respect of that worker. Provision is also made to ensure that new agency workers are provided with induction training, and supervised during such training. Minor and consequential amendments are also made.

Regulation 4 of these Regulations amends the Nurses Agencies Regulations 2002 so that nurses supplied by an agency to work in a care position prior to the coming into force of these Regulations will not be required to obtain a check against the POVA list for as long as they remain in that care position, provided that a CRB check has been obtained in respect of them. In addition, provision is made to enable an agency provider to supply a nurse to a service user, pending the receipt of a CRB check, provided that certain conditions are met. The conditions include a check against the POVA list (or, where appropriate, a check against the POCA list) in respect of that nurse. Provision is also made to ensure that nurses new to the agency are provided with induction training.

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- (a) The POVA list is maintained by the Secretary of State for Health pursuant to section 81 of the Care Standards Act 2000 (c. 14).
(b) The POCA list is maintained by the Secretary of State for Education and Skills pursuant to section 1 of the Protection of Children Act 1999 (c. 14).

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