

July 2015

GUIDANCE FOR CARE INSPECTORATE INSPECTORS

Interpretation of regulations about the requirements on certain employers to employ registered workers

The Registration of Social Workers and Social Service Workers in Care Services (Scotland) Regulations 2013

Implementation of Regulation 3 (4)

These regulations require certain groups of workers to register with the Scottish Social Services Council (SSSC) and set out that a social service provider may be committing an offence if they employ workers who are not registered. This guidance is to help inspectors make a decision and give advice about whether or not an offence may have been committed.

The offence is set out at Regulation 3:

3. Requirements on providers and offences

- (1) A provider of a care service may only employ a social worker in a care service who complies with regulation 4.
- (2) A provider of a care service may only employ a social service worker in a care service who complies with regulation 5 or 6.
- (3) In the inspection of a care service, SCSWIS may only employ--
 - (a) a social worker who complies with regulation 4; and
 - (b) a social service worker who complies with regulation 5, or who in terms of regulation 7 is exempt from the requirements of regulation 5.
- (4) It is an offence to fail to comply with the requirements of this regulation without reasonable excuse.

Regulations 4 and 5 set out that social workers and social service workers must be registered. They also create a 'grace period' of six months for workers who are new into the role. The effect of this is that no offence is committed in the first six months so long as the application is made as soon as reasonably possible after starting work.

Regulation 6 provides a partial exemption for seasonal day care of children workers.

The Regulations also set out dates for mandatory registration. Three are outstanding:

- support worker in a care home service for adult: 30 September 2015
- supervisor in a care at home service: 30 June 2017
- supervisor in a housing support service: 30 June 2017

The SSSC set earlier deadlines for receipt of applications to guarantee registration by the required date.

The regulations state that it is an offence to employ an unregistered worker beyond the mandatory registration date unless the provider has a reasonable excuse. 'Reasonable excuse' is not defined. Decisions about what a 'reasonable excuse' need to be clearly understood and then consistently applied by the Care Inspectorate.

Each case must to be considered on its own merits but here are some examples of a 'reasonable excuse'.

1. SSSC investigations about an applicant resulting in a delayed decision

The SSSC investigates an application and does not reach a decision within the six month 'grace period' but only where:

- the worker has submitted a complete application as soon as reasonably practicable after starting in the role
- the relevant provider has not delayed in providing the SSSC with information about the worker.

Note: The SSSC aim to process applications within 60 days of the date they are received. Delays occur if the application is not complete or the supporting documentation is not supplied. If the SSSC holds information about the applicant or if certain criminal/disciplinary matters have been declared the case will be investigated by the Fitness to Practise Department. It is not possible to say how long these processes may take to complete. SSSC officers may decide to register or offer registration with a condition. If the offer of the conditional registration is not accepted or officers consider that the application should be refused, the case will be heard by a Registration Sub-committee and cases in this category will take longer.

2. Secondments and acting-up periods

Where a secondment is for a fixed term which overruns the six months period, it may be unrealistic for the secondee to move to another part of the SSSC Register or achieve initial registration for their temporary post for a very short period of time.

An employer may temporarily promote a worker to cover sickness or absence of another employee but may not know at that time whether the period will extend beyond six months. The employer may not be able to determine when the absent employee will return to work which means they may have to extend the temporary arrangement.

It should be noted that there is no fee to move to another part of the SSSC Register if a fee has been paid in the last 6 months and the application is likely to be processed by the SSSC relatively quickly. The inspector would need to consider if a provider was routinely extending secondments to avoid the need for registration.

3. Workers registered with another regulatory body and moving to the SSSC

If a worker is currently registered with another regulatory body but wishes to end that registration and apply to register with the SSSC, there will be a period of time when they are not registered whilst the application is being processed. This is unavoidable as the legislation does not allow workers to be registered with the SSSC and another regulatory body at the same time. In these circumstances, the worker should be advised that they must apply for registration as soon as reasonably practicable after their registration with the previous regulator has ended.