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WELSH STATUTORY INSTRUMENTS

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**2004 No. 219 (W.23)**

**SOCIAL CARE, WALES**

**The Domiciliary Care Agencies (Wales) Regulations 2004**

*Made* - - - - - *3rd February 2004*

*Coming into force* - - - - - *1st March 2004*

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred on it by sections 4(6), 12(2), 14(1)(d), 15(3), 16(1) and (3), 22(1), (2)(a) to (d) and (f) to (j), (5)(a) and (7)(a) to (h) and (j), 25, 35 and 118(5) to (7) of the Care Standards Act 2000(1), having consulted such persons as it considers appropriate(2):—

**PART I**  
**GENERAL**

**Name, commencement and application**

1.—(1) These Regulations are called the Domiciliary Care Agencies (Wales) Regulations 2004 and shall come into force on 1st March 2004.

(2) These Regulations apply in relation to Wales.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires —

“the Act” (“*y Ddeddf*”) means the Care Standards Act 2000;

“agency” (“*asiantaeth*”) means a domiciliary care agency;

“agency premises” (“*mangre'r asiantaeth*”) means the premises from which the activities of an agency are carried on;

“appropriate office of the National Assembly” (“*swyddfa briodol y Cynulliad Cenedlaethol*”) means in relation to an agency —

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(1) 2000 c. 14. The powers are exercisable by the appropriate Minister, who is defined in section 121(1), in relation to Wales, as the Assembly, and in relation to England, Scotland and Northern Ireland, as the Secretary of State. “Prescribed” and “regulations” are defined in section 121(1) of the Act; “the Assembly” is defined in section 5(b) of the Act.

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

(a) if an office of the National Assembly has been specified under regulation 32 for the area in which the agency premises are situated, that office; or

(b) in any other case, any office of the National Assembly;

“direct service provider” (*“darparydd gwasanaeth uniongyrchol”*) means a provider who supplies a domiciliary care worker who is employed by and who acts for and under the control of the provider;

“domiciliary care worker” (*“gweithiwr gofal cartref”*) means a person who—

(a) is employed by the agency to act for, and under the control of, another person;

(b) is introduced by an agency to a service user for employment by him or her; or

(c) is employed by a direct service provider,

to provide personal care in the homes of and for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance;

“employment agency” (*“asiantaeth gyflogi”*) has the same meaning as in the Employment Agencies Act 1973(3);

“National Assembly” (*“Cynulliad Cenedlaethol”*) means the National Assembly for Wales;

“organisation” (*“corff”*) means a body corporate;

“registered manager” (*“rheolwr cofresredig”*) in relation to an agency, means a person who is registered under Part II of the Act as the manager of the agency;

“registered person” (*“person cofresredig”*) in relation to an agency, means any person who is the registered provider or the registered manager of the agency;

“registered provider” (*“darparydd cofresredig”*) in relation to an agency, means a person who is registered under Part II of the Act as the person carrying on the agency;

“relative” (*“perthynas”*) in relation to any person, means —

(a) the person’s spouse;

(b) any lineal ancestor, lineal descendant, brother, sister, uncle, aunt, nephew or niece of the person or the person’s spouse;

(c) the spouse of any relative within sub-paragraph (b) of this definition,

and for the purpose of determining any such relationship a person’s step-child shall be treated as his or her child, and references to “spouse” include a former spouse and a person who is living with the person as if he or she were the person’s husband or (as the case may be) wife;

“representative” (*“cynrychiolydd”*) in relation to a service user, means a person, other than the registered person or a person employed for the purposes of the agency, who with the service user’s express or implied consent takes an interest in the service user’s health and welfare;

“responsible individual” (*“unigolyn cyfrifol”*) shall be construed in accordance with regulation 8(2)(a);

“service user” (*“defnyddiwr gwasanaeth”*) means any person for whom an agency arranges the provision of personal care in the person’s own home;

“service user’s guide” (*“arweiniad defnyddiwr gwasanaeth”*) means the written information prepared in accordance with regulation 5(1);

“staff” (*“staff”*) means persons employed by the registered person for the purposes of the agency;

“statement of purpose” (*“datganiad o ddiben”*) means the written statement compiled in accordance with regulation 4(1).

- (2) In these Regulations, a reference —
- (a) to a numbered regulation or Schedule is to the regulation in, or Schedule to, these Regulations bearing that number;
  - (b) in a regulation or Schedule to a numbered paragraph, is to the paragraph in that regulation or Schedule bearing that number;
  - (c) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

(3) In these Regulations the terms “employed” and “employment” include employment under a contract of service or a contract for services, or otherwise than under a contract and whether or not for payment.

### **Excepted undertakings and application to employment agencies**

3.—(1) For the purposes of the Act, an undertaking is excepted from the definition of “domiciliary care agency” in section 4(3) of the Act —

- (a) if it is carried on by an individual who —
  - (i) carries it on otherwise than in partnership with others;
  - (ii) is not employed by an organisation or unincorporated association to carry it on;
  - (iii) does not employ any other person for the purposes of the undertaking; and
  - (iv) provides or arranges the provision of personal care services to fewer than four service users;
- (b) in so far as it arranges for the provision of personal care for persons accommodated in a care home in respect of which a person is registered under Part II of the Act;
- (c) to the extent that it arranges the provision of personal care by an agreement with an undertaking which is registered under the Act and these Regulations.

(2) The provisions of these Regulations set out in paragraph (3) shall not apply to domiciliary care agencies to the extent to which they are also employment agencies.

(3) The regulations are 13 (Conduct of agency), 14 (Arrangements for the provision of personal care), 16 (Staffing), 17 (Staff handbook and code of conduct) and 19 (Identification of workers).

### **Statement of purpose**

4.—(1) The registered person shall compile in relation to the agency a statement written on paper (in these Regulations referred to as “the statement of purpose”) which shall consist of —

- (a) a statement of the aims and objectives of the agency;
- (b) a statement specifying the personal care services which the agency arranges to be provided to service users;
- (c) a statement as to the number and scale of contracts or other arrangements under which the agency provides services; and
- (d) a statement as to the matters listed in Schedule 1.

(2) The registered person shall make the statement of purpose available at the agency premises for inspection by every service user and any person employed for the purposes of the agency.

### **Service user’s guide**

5.—(1) The registered person shall produce a written guide to the agency which shall contain —

- (a) a summary of the statement of purpose;

- (b) a description of the geographical area in respect of which the agency arranges for services to be provided;
  - (c) the terms and conditions upon which personal care is to be provided for service users, including those as to —
    - (i) the amount and method of payment of fees;
    - (ii) the matters described in paragraphs 5, 6 and 9 of Schedule 1;
  - (d) a description of the staff structure of the agency;
  - (e) a summary of the agency's complaints procedure required by regulation 21;
  - (f) a statement as to the responsibilities of the agency and the service user in relation to health and safety;
  - (g) details of how the service user may contact the registered person, or a person nominated to act on his or her behalf, at all times during the period for which personal care is being provided;
  - (h) information on the matters described in paragraphs 8, 16 and 18 of Schedule 1; and
  - (i) a description of the process established by the agency for monitoring and reviewing the quality of the service being provided by the agency to the service user (including where appropriate consultation with other bodies providing services to the service user).
- (2) The registered person shall —
- (a) provide a copy of the first service user's guide to the appropriate office of the National Assembly;
  - (b) provide a copy of the current version of the service user's guide to each service user or the service user's representative when the agency first arranges for the provision of personal care for the service user; and
  - (c) subsequent to the provision described in (b), provide on request further copies of the service user's guide to the service user or the service user's representative.

#### **Review of statement of purpose and service user's guide**

- 6.—(1) The registered person shall —
- (a) at intervals not exceeding one year and in consultation with service users, review and, where appropriate, revise the statement of purpose and the service user's guide; and
  - (b) notify service users and the appropriate office of the National Assembly of any such revision within 28 days.
- (2) Unless it is not reasonably practicable to do so, the registered person shall notify the appropriate office of the National Assembly of any revision to be made to the statement of purpose at least 28 days before the revision is to take effect.

#### **Agency documents**

7. The registered person shall ensure that registration in respect of the agency under Part II of the Act is noted in all correspondence and other documents prepared in connection with the agency's business.

## PART II

### REGISTERED PERSONS

#### **Fitness of registered provider**

- 8.—**(1) A person shall not carry on an agency unless fit to do so.
- (2) A person is not fit to carry on an agency unless the person —
- (a) is an individual who carries on an agency —
    - (i) otherwise than in partnership with others and he or she satisfies the requirements of paragraph (3); or
    - (ii) in partnership with others and he or she and each of the partners satisfies the requirements set out in paragraph (3); or
  - (b) is an organisation and —
    - (i) it has given notice to the appropriate office of the National Assembly of the name, address and position in the organisation of an individual (in these Regulations referred to as “the responsible individual”) who is a director, manager, secretary or other senior officer of the organisation and is responsible for the management of the agency; and
    - (ii) that individual satisfies the requirements set out in paragraph (3).
- (3) The requirements are that —
- (a) the person is of integrity and good character;
  - (b) the person is physically and mentally fit to carry on or (as the case may be) be responsible for the management of the agency; and
  - (c) full and satisfactory information or (as the case may be) documentation in respect of each of the matters listed in Schedule 2 is available in relation to the person.
- (4) A person is not fit to carry on an agency if —
- (a) he or she has been adjudged bankrupt or sequestration of his or her estate has been awarded and (in either case) he or she has not been discharged and the bankruptcy order has not been annulled or rescinded; or
  - (b) he or she has made a composition or arrangement with, or granted a trust deed for, his or her creditors and has not been discharged in respect of it.

#### **Appointment of manager**

- 9.—**(1) The registered provider shall appoint an individual to manage the agency if —
- (a) there is no registered manager in respect of the agency; and
  - (b) the registered provider —
    - (i) is an organisation;
    - (ii) carries on the agency in partnership;
    - (iii) is not a fit person to manage an agency; or
    - (iv) is not, or does not intend to be, in full time day to day charge of the agency.
- (2) Where —
- (a) the registered provider, or
  - (b) if an appointment has been made under paragraph (1), the registered manager,

proposes to be, is likely to be, or has been, absent from the agency for a continuous period of 28 days or more, the registered provider shall appoint an individual to manage the agency during the provider's or (as the case may be) the registered manager's absence.

(3) Where the registered provider appoints a person to manage the agency, he or she shall forthwith give notice to the appropriate office of the National Assembly of —

- (a) the name of the person so appointed; and
- (b) subject to registration, the date on which the appointment is to take effect.

(4) The registered person shall nominate a person to be in charge at all times when the agency is open for business and the registered person is absent from the premises.

(5) A person may not be nominated for the purpose of paragraph (4) unless full and satisfactory information in respect of each of the matters listed in Schedule 2 is available in relation to him or her and has been provided to the National Assembly, except that the information required in paragraphs 10 and 11 of Schedule 3 must be available in substitution for the information required in paragraph 8 of Schedule 2.

#### **Fitness of manager**

**10.**—(1) A person shall not manage an agency unless fit to do so.

(2) A person is not fit to manage an agency unless —

- (a) the person is of integrity and good character;
- (b) having regard to the nature and size of the agency and the number and needs of the service users —
  - (i) the person has the qualifications, skills and experience necessary to manage the agency; and
  - (ii) the person is physically and mentally fit to manage the agency; and
- (c) full and satisfactory information or (as the case may be) documentation in respect of each of the matters listed in Schedule 2 is available in relation to the person.

#### **Registered person — general requirements and training**

**11.**—(1) The registered provider and the registered manager shall, having regard to the nature and size of the agency and the number and needs of the service users, carry on or (as the case may be) manage the agency with sufficient care, competence and skill.

(2) If the registered provider is —

- (a) an individual, that individual shall undertake, or
- (b) an organisation, it shall ensure that the responsible individual undertakes,

from time to time such training as is appropriate to ensure that the individual has the expertise, experience and skills necessary for carrying on the agency.

(3) If the agency is carried on by individuals in partnership, the partners shall ensure that one of them undertakes training as required by paragraph (2).

(4) The registered manager shall undertake from time to time such training as is appropriate to ensure that he or she has the expertise, experience and skills necessary for managing the agency.

#### **Notification of offences**

**12.** Where the registered person or the responsible individual is convicted of any criminal offence, whether in Wales or elsewhere, he or she shall forthwith give notice in writing to the appropriate office of the National Assembly of —

- (a) the date and place of the conviction;
- (b) the offence; and
- (c) the penalty imposed in respect of the offence.

## PART III

### CONDUCT OF DOMICILIARY CARE AGENCIES

#### **Conduct of agency**

13. The registered person shall make suitable arrangements to ensure that the agency is conducted, and the personal care arranged by the agency is provided —

- (a) so as to ensure the safety of service users;
- (b) so as to safeguard service users against abuse or neglect;
- (c) so as to promote the independence of service users;
- (d) so as to ensure the safety and security of the service users' property, including their homes;
- (e) in a manner which respects the privacy, dignity and wishes of service users, and the confidentiality of information relating to them; and
- (f) with due regard to the sex, religious persuasion, racial origin, and cultural and linguistic background and any disability of service users, and to the way in which they conduct their lives.

#### **Arrangements for the provision of personal care**

14.—(1) The registered person shall, after consultation with the service user, or if consultation with the service user is not practicable, after consultation with a person acting on behalf of the service user, prepare a written plan (“the service delivery plan”) which shall —

- (a) be consistent with any plan for the care of the service user prepared by a local authority;
- (b) specify the service user’s needs in respect of which personal care is to be provided; and
- (c) specify how those needs are to be met by the provision of personal care.

(2) The registered person shall —

- (a) make the service delivery plan available to —
  - (i) the service user, and
  - (ii) any person acting on behalf of a service user who was consulted in its preparation or revision;
- (b) keep the service delivery plan under review;
- (c) where appropriate, and after consultation with the service user, or if consultation with the service user is not practicable, after consultation with a person acting on behalf of the service user, revise the service delivery plan; and
- (d) notify the service user of any such revision.

(3) The registered person shall, so far as is practicable, ensure that the personal care which the agency arranges to be provided to any service user meets the service user’s needs specified in the service delivery plan.

(4) The registered person shall, for the purpose of providing personal care to service users, so far as is practicable —

- (a) ascertain and take into account their wishes and feelings;
  - (b) provide them with comprehensive information and suitable choices as to the personal care that may be provided to them; and
  - (c) encourage and enable them to make decisions with respect to such personal care.
- (5) The registered person shall ensure that arrangements made for the provision of personal care to a service user —
- (a) specify the procedure to be followed after an allegation of abuse, neglect or other harm has been made, ensuring that appropriate steps are taken immediately to reduce the risk of any abuse, neglect or other harm;
  - (b) specify the circumstances in which a domiciliary care worker may administer or assist in the administration of the service user's medication, and the procedures to be adopted in such circumstances;
  - (c) include suitable arrangements to assist the service user with mobility in his or her home, where required; and
  - (d) specify the procedure to be followed where a domiciliary care worker acts as agent for, or receives money from, a service user.
- (6) The registered person shall make suitable arrangements for the recording, handling, safe keeping, safe administration and disposal of medicines used in the course of the provision of personal care to service users.
- (7) The registered person shall make suitable arrangements, including training of staff, to ensure that domiciliary care workers operate a safe system of working, including in relation to lifting and moving service users.
- (8) The registered person shall make suitable arrangements, by training staff or by other measures, to prevent service users being harmed or suffering abuse or being placed at risk of harm or abuse.
- (9) The registered person shall ensure that no service user is subject to physical restraint unless restraint of the kind employed is the only practicable means of securing the welfare of that or any other service user and there are exceptional circumstances.
- (10) On any occasion on which a service user is subject to physical restraint by a person who works as a domiciliary care worker for the purposes of the agency, the registered person shall record the circumstances including the nature of the restraint.

### **Fitness of workers**

- 15.—**(1) The registered person shall ensure that no person works as a domiciliary care worker for the purposes of the agency unless —
- (a) the person is fit to work for the purposes of the agency;
  - (b) there is available in respect of that person full and satisfactory information or (as the case may be) documentation in respect of each of the matters specified in Schedule 3; and
  - (c) the registered person is satisfied on reasonable grounds as to the authenticity of the references referred to in paragraph 5 of Schedule 3 in respect of that person.
- (2) The registered person shall ensure that a person who is not a domiciliary care worker but who otherwise is required for the purposes of the agency to visit a service user in their home shall not work for the agency unless there is available in respect of that person full and satisfactory information or (as the case may be) documentation in respect of the matters specified in paragraphs 1 to 6 and 9 of Schedule 3.
- (3) A person is not fit to work for the purposes of the agency unless —



- (a) the person has the qualifications, experience and skills necessary for the work which he or she is to perform; and
- (b) the person is physically and mentally fit for the purposes of the work which he or she is to perform.

(4) Paragraphs (1)(b) and (2), in so far as they relate to paragraph 4 of Schedule 3, shall not apply until 31st October 2004 in respect of a worker who has been supplied by or worked for the agency at any time during the period from 1st June 2003 to 31st May 2004.

## **Staffing**

**16.**—(1) The registered person shall, having regard to the nature of the agency, the statement of purpose and the number and needs of the service users, ensure that —

- (a) at all times an appropriate number of suitably qualified, skilled and experienced persons are employed for the purposes of the agency;
- (b) appropriate information and advice are provided to persons employed for the purposes of the agency, and further information and advice are made available to them at their reasonable request, in respect of —
  - (i) service users and their needs in respect of personal care, and
  - (ii) the provision of personal care to service users;
- (c) suitable assistance is provided to persons working for the purposes of the agency, and further assistance is made available to them at their reasonable request, in respect of the provision of personal care to service users;
- (d) suitably qualified and competent persons are available to be consulted during any time when a person is working for the purposes of the agency; and
- (e) service users will receive such continuity of care as is reasonable to meet their needs for personal care where persons are employed, or domiciliary care workers are working, on a temporary basis for the purposes of the agency.

(2) The registered person shall ensure that each member of staff —

- (a) receives training and appraisal which are appropriate to the work which he or she is to perform;
- (b) receives suitable assistance, including time off, for the purpose of obtaining further qualifications appropriate to such work;
- (c) is aware of his or her own responsibilities and those of the other members of staff; and
- (d) is required to notify the registered person if convicted of any criminal offence.

(3) The registered person shall take such steps as may be necessary to address any aspect of the performance of a domiciliary care worker which is found to be unsatisfactory.

(4) The registered person shall ensure that members of staff, and domiciliary care workers who are not members of staff, receive appropriate supervision.

## **Staff handbook and code of conduct**

**17.**—(1) The registered person shall prepare a staff handbook and provide a copy of it to every member of staff and every domiciliary care worker who is not a member of staff.

(2) The handbook prepared in accordance with paragraph (1) shall include a statement as to —

- (a) the conduct expected of members of staff and domiciliary care workers, and disciplinary action which may be taken against them;
- (b) the role and responsibilities of members of staff and domiciliary care workers;

- (c) record keeping requirements;
- (d) recruitment procedures; and
- (e) training and development requirements and opportunities.

#### **Provision of information to service users**

**18.**—(1) The registered person shall ensure that before personal care is provided a service user is provided with —

- (a) the name of each domiciliary care worker who is to provide personal care;
- (b) details of how the service user may contact the registered person, or a person nominated to act on his or her behalf, at all times during the period for which personal care is being provided; and
- (c) the terms and conditions upon which personal care is arranged.

(2) The registered person shall ensure that the information specified in paragraph (1) is, where appropriate, also provided on request to the service user’s relatives or carers.

#### **Identification of workers**

**19.** The registered person shall ensure that every domiciliary care worker who works for the purposes of the agency is instructed that while providing personal care to a service user he or she must present the service user with identification showing his or her name, a recent photograph of himself or herself and the name of the agency.

#### **Records**

**20.**—(1) The registered person shall ensure that the records specified in Schedule 4 are maintained and that they are —

- (a) kept up to date, in good order and in a secure manner;
- (b) at all times available for inspection by any person authorised by the National Assembly to enter and inspect the premises; and
- (c) retained for a period of not less than three years beginning on the date of the last entry.

(2) The registered person shall endeavour to ensure that, in addition to the records referred to in paragraph (1), a copy of the service delivery plan and a detailed record of the personal care provided to the service user are kept at the service user’s home and that they are kept up to date, in good order and in a secure manner.

#### **Complaints**

**21.**—(1) The registered person shall establish a written procedure (“the complaints procedure”) for considering complaints made to the registered person by or on behalf of a service user.

(2) The registered person shall supply a written copy of the complaints procedure to every service user and, on request, to any representative of a service user.

(3) The written copy of the complaints procedure shall include —

- (a) the name and address of the appropriate office of the National Assembly; and
- (b) the procedure (if any) which has been notified by the National Assembly to the registered person for making complaints to the National Assembly relating to the agency.

(4) The registered person shall ensure that every complaint made under the complaints procedure is fully investigated.

(5) The registered person shall, within 28 days after the date on which the complaint is made, or such shorter period as may be reasonable in the circumstances, inform the person who made the complaint of the action (if any) that is to be taken.

(6) The registered person shall maintain a record of each complaint, including details of the investigations made, the outcome and any action taken in consequence and the requirements of regulation 20(1) shall apply to that record.

(7) The registered person shall supply to the National Assembly at its request a statement containing a summary of the complaints made during the twelve months ending on the date of the request and the action taken in response.

### **Staff views as to conduct of agency**

**22.**—(1) This regulation applies to any matter relating to the conduct of the agency so far as it may affect the health or welfare of, or the personal care provided to, service users.

(2) The registered person shall make arrangements to enable staff to inform the registered person or, without reference to the agency, the National Assembly of their views about any matter to which this regulation applies.

### **Review of quality of service provision**

**23.**—(1) The registered person shall introduce and maintain a system for reviewing at appropriate intervals the quality of the service and personal care which the agency arranges to be provided.

(2) The registered person shall supply to the appropriate office of the National Assembly a report in respect of any review conducted by him or her for the purposes of paragraph (1) and shall make a copy of the report available to service users.

(3) The system referred to in paragraph (1) shall provide for consultation with service users and their representatives.

### **Fitness of premises**

**24.** The registered person shall not use the agency premises for the purposes of an agency unless they are suitable for the purpose of achieving the aims and objectives set out in the statement of purpose.

### **Financial position**

**25.**—(1) The registered provider shall carry on the agency in such manner as is likely to ensure that the agency will be financially viable for the purpose of achieving the aims and objectives set out in the statement of purpose.

(2) The registered person shall provide to the National Assembly such other information as it may require from time to time in order to consider the financial viability of the agency, including —

- (a) the annual accounts of the agency, certified by an accountant; and
- (b) a certificate of insurance for the registered provider in respect of liability which may be incurred by him or her in relation to the agency in respect of death, injury, public liability, damage or other loss.

### **Notification of incidents**

**26.**—(1) The registered person shall notify the appropriate office of the National Assembly if an incident described in paragraph (2) takes place and such notification shall be given within 24

hours of the registered person being informed, or otherwise becoming aware, that such an incident has taken place.

(2) The incidents are —

- (a) any serious injury sustained by a service user in the agency premises or while a domiciliary care worker is attending on the service user for the purposes of the provision of personal care to him;
- (b) any incident which —
  - (i) occurs in the agency premises or while a domiciliary care worker is attending on the service user for the purposes of the provision of personal care to him, and
  - (ii) is reported to, or investigated by, the police; and
- (c) any allegation of misconduct by the registered person or any person who works for the purposes of the agency.

(3) Any oral notification given in accordance with this regulation shall be confirmed in writing within 48 hours.

(4) The registered person shall ensure that the persons working for the purposes of the agency are required to inform the registered person forthwith of the occurrence of any of the incidents described in paragraph (2).

### **Notice of absence**

27.—(1) Where —

- (a) a registered provider who manages the agency; or
- (b) a registered manager,

is to be absent from the agency for a continuous period of 28 days or more, the registered person shall give notice in writing to the appropriate office of the National Assembly of the absence.

(2) Except in the case of an emergency, the notice referred to in paragraph (1) shall be given no later than one month before the absence commences, or within such shorter period as may be agreed with the National Assembly, and the notice shall specify —

- (a) the length or expected length of the proposed absence;
- (b) the reason for that absence;
- (c) the arrangements which have been made for the running of the agency during that absence;
- (d) the name, address and qualifications of the person who will be responsible for the agency during that absence; and
- (e) the name, address and qualifications of any person appointed or nominated in accordance with regulation 9.

(3) Where an absence referred to in paragraph (1) arises as a result of an emergency, the registered person shall give notice of the absence within one week of the emergency's occurrence specifying the matters in sub-paragraphs (a) to (e) of paragraph (2).

(4) Where —

- (a) a registered provider who manages the agency; or
- (b) a registered manager,

has been absent from the agency for a continuous period of 28 days or more, and the appropriate office of the National Assembly has not been given notice of the absence, the registered person shall forthwith give notice in writing to that office specifying the matters in sub-paragraphs (a) to (e) of paragraph (2).

(5) The registered person shall notify the appropriate office of the National Assembly of the return to duty of the registered provider or (as the case may be) the registered manager no later than 7 days after the date of return.

### **Notice of changes**

**28.** The registered person shall give notice in writing to the appropriate office of the National Assembly as soon as it is practicable to do so if —

- (a) a person other than the registered person carries on or manages, or proposes to carry on or manage, the agency;
- (b) a person ceases, or proposes to cease, to carry on or manage the agency;
- (c) where a registered person is an individual, that individual changes, or proposes to change, his or her name;
- (d) where the registered provider is an organisation —
  - (i) the name or address of the organisation is, or is proposed to be, changed,
  - (ii) there is, or is proposed to be, any change of director, manager, secretary or other similar officer of the organisation,
  - (iii) there is, or is proposed to be, any change in the identity of the responsible individual, or
  - (iv) there is, or is proposed to be, a change of ownership of the organisation;
- (e) where a registered provider is an individual, a trustee in bankruptcy for the individual is, or is likely to be, appointed or a composition or arrangement with the individual's creditors is, or is to be, made;
- (f) where a registered provider is a company, a receiver, manager, liquidator or provisional liquidator is, or is likely to be, appointed;
- (g) where a registered provider is in a partnership whose business includes carrying on an agency, a receiver or manager is, or is likely to be, appointed for the partnership; or
- (h) the agency premises are, or are proposed to be, significantly altered or extended, or additional premises are, or are proposed to be, acquired.

### **Death of registered person**

**29.—**(1) If more than one person is registered in respect of an agency and a registered person dies, the surviving registered person shall without delay give notice in writing of the death to the appropriate office of the National Assembly.

(2) If only one person is registered in respect of an agency and he or she dies, his or her personal representatives shall give notice in writing to the appropriate office of the National Assembly —

- (a) without delay, of the death; and
- (b) within 28 days, of their intentions regarding the future running of the agency.

(3) The personal representatives of the deceased registered provider may carry on the agency without being registered in respect of it —

- (a) for a period not exceeding 28 days; and
- (b) for any further period as may be determined in accordance with paragraph (4).

(4) The National Assembly may extend the period specified in paragraph (3)(a) by such period, not exceeding one year, as the National Assembly shall determine, and shall give notice in writing of such determination to the personal representatives.

(5) The personal representatives shall appoint a person to take full-time day to day charge of the agency during any period in which, in accordance with paragraph (3), they carry on the agency without being registered in respect of it.

## PART IV

### MISCELLANEOUS

#### **Compliance with regulations**

**30.** Where there is more than one registered person in respect of an agency, anything which is required under these Regulations to be done by the registered person shall, if done by one of the registered persons, not be required to be done by any of the other registered persons.

#### **Offences**

**31.—(1)** A contravention or failure to comply with regulations 4 to 7, 9 and 11 to 28 shall be an offence.

(2) The National Assembly may bring proceedings against a person who was once, but no longer is, a registered person in respect of a failure to comply with regulation 20.

#### **Specification of appropriate offices**

**32.** The National Assembly may specify an office controlled by it as the appropriate office in relation to agency premises situated in a particular area of Wales.

#### **Amendment of the Registration of Social Care and Independent Health Care (Wales) Regulations 2002**

**33.—(1)** The Registration of Social Care and Independent Health Care (Wales) Regulations 2002(4) are amended in accordance with the following provisions of this regulation.

(2) In regulation 2(1) —

(a) at the appropriate place, insert —

““domiciliary care agency” has the same meaning as in the Act but subject to the exceptions in regulation 3(1) of the Domiciliary Care Agencies (Wales) Regulations 2004”;

(b) in the definition of “appropriate office”, after paragraph (g) insert —

“(h) in relation to a domiciliary care agency —

(i) if an office has been specified under regulation 32 of the Domiciliary Care Agencies (Wales) Regulations 2004 for the area in which the agency premises are situated, that office;

(ii) in any other case, any office of the National Assembly.”;

(c) in the definition of “statement of purpose” insert —

“(i) in relation to a domiciliary care agency, the written statement required to be compiled in relation to the agency in accordance with regulation 4 of the Domiciliary Care Agencies (Wales) Regulations 2004;”.

(3) In regulation 9 —

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(4) S.I.2002/919 (W.107) as amended by S.I. 2003/710 (W.86) and 2003/2517 (W.242).

- (a) in paragraph (e), after “section 4(8)(a)” insert “or (9)(a)”;
- (b) after paragraph (i) insert —
  - “(j) where the establishment or agency is being carried on by an individual in partnership with others, the names and addresses of all the partners.”.
- (4) In paragraph 1 of Schedule 1, insert —
  - “(g) if he or she intends to carry on a domiciliary care agency in partnership with others, the information specified in the preceding sub-paragraphs of this paragraph in relation to each partner of the firm and the name and address of the partnership.”.

### **Amendment of the Registration of Social Care and Independent Healthcare (Fees) (Wales) Regulations 2002**

**34.**—(1) The Registration of Social Care and Independent Healthcare (Fees) (Wales) Regulations 2002<sup>(5)</sup> are amended in accordance with the following provisions of this regulation.

(2) In the paragraph headed “Arrangement of Regulations”, add the following at the end “15. Annual fee- domiciliary care agencies”.

- (3) In regulation 2(1)(a) —
  - (a) in the definition of “agency”, at the end add “, or a domiciliary care agency”;
  - (b) at the appropriate place, insert —
    - ““domiciliary care agency” has the same meaning as in the Act but subject to the exceptions in regulation 3(1) of the Domiciliary Care Agencies (Wales) Regulations 2004”;
  - (c) at the appropriate place, insert —
    - ““small domiciliary care agency” means a domiciliary care agency which arranges the provision of fewer than 200 hours of personal care per week or a domiciliary care agency which is solely an employment agency”.
- (4) In regulation 3, after paragraph (3C), insert —
  - “(3D) In the case of an application for registration in respect of a small domiciliary care agency —
    - (a) by a person mentioned in paragraph (1)(a), the registration fee shall be £550; and
    - (b) by a person mentioned in paragraph (1)(b), the registration fee shall be nil.”.

(5) After regulation 14 (Annual fee — nurses agencies), there is to be inserted the following regulation —

#### **“Annual fee- domiciliary care agencies**

**15.**—(1) The annual fee in respect of a domiciliary care agency is —

- (a) in the case of a small domiciliary care agency, £375; and
- (b) otherwise, £750.

(2) The annual fee in respect of a domiciliary care agency is to be payable by the registered provider on the first and subsequent anniversaries of the date on which his or her certificate of registration is issued.”.

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(5) S.I. 2002/921 (W.109) as amended by S.I. 2003/710 (W.86), 2003/781 (W.92) and 2003/2517 (W.242).

### **Transitional provisions**

**35.**—(1) This regulation applies to persons who by virtue of the provisions of the Act and these Regulations are required to be registered under the Act but who immediately before 1st March 2004 were not required to be so registered.

(2) Notwithstanding any such provision, a person who immediately before 1st March 2004 was carrying on or managing an agency may continue to carry on or manage the agency without being registered under the Act —

- (a) during the period of 3 months beginning with that date; and
- (b) if within that period application is made for registration, until that application is finally disposed of or withdrawn.

(3) In this regulation “finally disposed of” means the date 28 days following the grant or refusal of registration and, if an appeal is made, the date when the appeal is finally determined or abandoned.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(6)

3rd February 2004

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly



## SCHEDULE 1

Regulation 4(1)(d)

### INFORMATION TO BE INCLUDED IN THE STATEMENT OF PURPOSE

1. Whether the agency is carried on by an individual, by persons in partnership or by an organisation.
2. The nature of the services which the agency provides.
3. The geographical area in which the agency provides services.
4. The range of qualifications of the domiciliary care workers who are to attend at the homes of service users.
5. The circumstances in which the agency may cease to provide services to a service user.
6. Arrangements for cancellation of the supply of a domiciliary care worker by the service user or the agency.
7. The agency's charges.
8. Arrangements which will apply during the sickness or other absence of domiciliary care workers who are to attend at the homes of service users.
9. Requirements in relation to time sheets.
10. The complaints procedure established in accordance with regulation 21.
11. Procedures to safeguard service users and domiciliary care workers.
12. Procedures to safeguard service users' property.
13. Procedures for the administration, or assistance with the administration, of medication.
14. Requirements to protect the health and safety of domiciliary care workers.
15. Procedures to be followed in the event of an occurrence referred to in regulation 27.
16. Arrangements for service users to express their views about the service provided by the agency.
17. The management structure of the agency.
18. Whether, and if so the extent to which, the agency provides services through persons other than employees of the agency.

## SCHEDULE 2

Regulations 8(3)(c), 9(5) and 10(2)(c)

### INFORMATION REQUIRED IN RESPECT OF REGISTERED PROVIDERS AND MANAGERS OF AN AGENCY AND PERSONS NOMINATED TO DEPUTISE FOR A REGISTERED PERSON

1. Name, address, date of birth and telephone number.
2. Proof of identity, including a recent photograph.
3. Either —
  - (a) where the certificate is required for a purpose relating to section 115(5)(ea) of the Police Act 1997(7) (registration under Part II of the Care Standards Act 2000), or the position

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(7) 1997 c. 50.

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falls within section 115(3) or (4) of that Act, 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 section 113(3A) or 115(6A) of that Act and, once they are in force, section 113(3C)(a) and (b) or section 115(6B)(a) and (b) of that Act.

4. Two written references, including a reference relating to the last period of employment of not less than three months duration.

5. Where a person has previously worked in a position which involved work with children or vulnerable adults, verification of the reason why the employment or position ended except where the National Assembly has determined that all reasonable steps have been taken to obtain such verification but it is not available.

6. Documentary evidence of any relevant qualifications and training.

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

8. Where the person is an individual, a report by a general medical practitioner as to whether the person is physically and mentally fit to (as the case may be) carry on, manage or be in charge of an agency.

9. Details of registration with or membership of any professional body.

10. Details of any professional indemnity insurance.

### SCHEDULE 3

Regulation 15(1)(b) and (2)

#### INFORMATION AND DOCUMENTATION TO BE AVAILABLE IN RESPECT OF DOMICILIARY CARE WORKERS

1. Name, address, date of birth and telephone number.

2. Name, address and telephone number of next of kin.

3. Proof of identity, including a recent photograph.

4. Either —

(a) where the position falls within section 115(3) or (4) of the Police Act 1997, 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 section 113(3A) or 115(6A) of that Act and, once they are in force, section 113(3C)(a) and (b) or section 115(6B)(a) and (b) of that Act.

5. Where the person has worked at any time within the period of five years before being employed by the agency, two written references including, where the person has previously worked for more than three months in a position which involved work with children or vulnerable adults, a reference relating to the last such position held.

6. Where a person has previously worked in a position which involved work with children or vulnerable adults, verification of the reason why the employment or position ended except where the National Assembly has determined that all reasonable steps have been taken to obtain such verification but it is not available.

7. Evidence of satisfactory linguistic ability for the purposes of providing personal care to those service users for whom the worker is to provide personal care.
8. Documentary evidence of any relevant qualifications and training.
9. A full employment history, together with a satisfactory written explanation of any gaps in employment and details of any current employment other than for the purposes of the agency.
10. A statement by the person as to the state of his or her physical and mental health.
11. A statement by the registered provider, or the registered manager, as the case may be, that the person is physically and mentally fit for the purposes of the work which he or she is to perform.
12. Details of any professional indemnity insurance.

#### SCHEDULE 4

Regulation 20

#### RECORDS TO BE MAINTAINED FOR INSPECTION

##### **Financial records**

1. A record of all business transacted by the agency.
2. Counterfoils or copies of all receipts issued.
3. Details of the charges payable by each service user in respect of the provision of personal care.
4. Records of tax and national insurance contributions relating to each person who works for the purposes of the agency.

##### **Other records**

5. A record of all information provided to the National Assembly for the purposes of registration in relation to the agency.
6. Details of every allegation of abuse, neglect or other harm made against an employee of, or any domiciliary care worker who works for the purposes of, the agency, including details of the investigations made, the outcome and any action taken in consequence.
7. Details of any physical restraint used on a service user.
8. Each service user's service delivery plan prepared for him or her and a detailed record of the personal care provided to him or her.
9. A personnel record relating to each person employed by, or working for the purposes of, the agency.

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## EXPLANATORY NOTE

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

These Regulations are made under the Care Standards Act 2000 (“the Act”) and apply in relation to domiciliary care agencies (“agencies”) in Wales. Parts I and II of the Act provide for the National Assembly for Wales, in relation to Wales, to register persons carrying on or managing agencies and to inspect agency premises. Part II also provides that a person who carries on or manages an agency without being registered in respect of it commits an offence. The Act also provides for the National Assembly to make regulations governing the conduct of agencies in relation to Wales. Under section 13 of the Act the National Assembly must be satisfied that the regulations are being and will continue to be complied with if it is to grant an application for registration.

Regulation 3 excludes certain undertakings from the definition of domiciliary care agency in section 4 of the Act. These include undertakings which are carried on solely by an individual who is not employed by an organisation to carry it on, who does not employ anyone else for the purposes of the undertaking and who arranges personal care to fewer than four service users. Regulations 4 to 6 are about the agency’s statement of purpose and service users’ guide. Each agency must have a statement of purpose and a service users’ guide to the agency (regulations 4 and 5). The registered person must have regard to the statement of purpose in making staffing arrangements for the agency (regulation 16), and ensure that the agency premises are suitable for the purpose of achieving the aims and objectives set out in the statement of purpose (regulation 24). The statement and the guide are to be kept under review and revised if necessary (regulation 6).

Regulation 7 requires the fact of an agency’s registration to be noted on its correspondence.

PART II of the Regulations makes provision about the fitness of persons carrying on or managing the agency, and requires satisfactory information as to the matters set out in schedule 2 to be available in relation to these persons. Where the person carrying on an agency is an organisation, it must nominate a responsible person in respect of whom this information must be available (regulation 8). Regulation 9 provides that a manager must be appointed for an agency in certain circumstances, and regulation 11 imposes general requirements in relation to the conduct of an agency and the need for registered persons to undertake appropriate training.

Part III of the Regulations makes provision about the conduct of agencies, in particular as to the arrangements for the provision of personal care (regulation 14), the fitness of workers (regulation 15), staffing requirements (regulation 16), provision of a handbook and code of conduct to staff and information to service users (regulations 17 and 18), identification to be produced by workers (regulation 19), record keeping (regulation 20), complaints procedures of the agency (regulation 21), the seeking of staff views about the conduct of an agency (regulation 22) and the review of the operations of an agency (regulation 23).

PART III also makes provision about the fitness of agency premises (regulation 24), imposes requirements as to the financial position of agencies (regulation 25) and requires notice to be given to the National Assembly of specified events relating to an agency (regulations 26 to 29).

Part IV of the Regulations deals with miscellaneous matters such as the discharge of obligations under the Regulations where an agency has more than one registered person (regulation 30), offences under the Regulations (regulation 31), the specification of appropriate offices of the National Assembly for the purposes of obligations under the Regulations to give notice (regulation 32), amendments to the Statutory Instruments about the making of applications for registration and the payment of registration fees to take account of the application of the Act to agencies (regulations 33 and 34), and also makes transitional provision (regulation 35).

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