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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**The Health and Social Care Act 2008  
(Regulated Activities) Regulations 2009**

**PART 1**

**GENERAL**

**Interpretation**

**2.** In these Regulations—

“the Act” means the Health and Social Care Act 2008;

“the 1983 Act” means the Mental Health Act 1983(1);

“the 2006 Act” means the National Health Service Act 2006(2);

“the 2001 Order” means the Health Professions Order 2001(3);

“adult placement carer” means an individual who, under the terms of a carer agreement, provides, or intends to provide, personal care for service users together with, where necessary, accommodation in the individual’s home;

“adult placement scheme” means a scheme carried on (whether or not for profit) by a local authority or other person for the purposes of—

- (a) recruiting and training adult placement carers;
- (b) making arrangements for the placing of service users with adult placement carers; and
- (c) supporting and monitoring placements;

“carer agreement” means an agreement entered into between a person carrying on an adult placement scheme and an individual for the provision, by that individual, of personal care to a service user together with, where necessary, accommodation in the individual’s home;

“chiropodist or podiatrist” means a person registered as such with the Health Professions Council pursuant to article 5 of the 2001 Order(4);

“employment” means—

- (a) employment under a contract of service, an apprenticeship, a contract for services or otherwise than under a contract (including under a carer agreement); and
- (b) the grant of practising privileges,

and “employed” and “employer” should be construed accordingly;

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(1) 1983 c.20.

(2) 2006 c.41.

(3) S.I. 2002/254.

(4) See the definition of “relevant professions” in Schedule 3, paragraph 1 of the 2001 Order as amended by S.I. 2004/2033, article 10(5)(b)(i).

“employment agency” and “employment business” have the same meanings as in the Employment Agencies Act 1973<sup>(5)</sup>;

“health care professional” means, except in paragraph 5 of Schedule 1, a person who is registered as a member of any profession to which section 60(2) of the Health Act 1999<sup>(6)</sup> applies;

“hospital”, except in paragraphs 1(3)(d) and 6 of Schedule 1, has the same meaning as in section 275 of the 2006 Act;

“institution within the further education sector” has the same meaning as in section 91 of the Further and Higher Education Act 1992<sup>(7)</sup>;

“local anaesthesia” means any anaesthesia other than general, spinal or epidural anaesthesia, and also excludes the administration of a regional nerve block;

“medical practitioner” means a registered medical practitioner<sup>(8)</sup>;

“nominated individual” must be construed in accordance with regulation 5(2);

“nurse” means a registered nurse;

“nursing care” means any services provided by a nurse and involving—

- (a) the provision of care; or
- (b) the planning, supervision or delegation of the provision of care,

other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a nurse;

“personal care” means—

- (a) physical assistance given to a person in connection with—
  - (i) eating or drinking (including the administration of parenteral nutrition),
  - (ii) toileting (including in relation to the process of menstruation),
  - (iii) washing or bathing,
  - (iv) dressing,
  - (v) oral care, or
  - (vi) the care of skin, hair and nails (with the exception of nail care provided by a chiropodist or podiatrist); or
- (b) the prompting, together with supervision, of a person, in relation to the performance of any of the activities listed in paragraph (a), where that person is unable to make a decision for themselves in relation to performing such an activity without such prompting and supervision;

“practising privileges” means the grant, by a person managing a hospital, to a medical practitioner of permission to practise as a medical practitioner in that hospital;

“premises” means—

- (a) any building or other structure, including any machinery or engineering systems which are physically affixed and integral to such building or structure; or
- (b) a vehicle;

<sup>(5)</sup> 1973 c.35. See section 13(2) and (3). Section 13(2) was amended by the Employment Relations Act 1999 (c.26), Schedule 7, paragraphs 1 and 7.

<sup>(6)</sup> 1999 c.8. Section 60(2) was amended by the Health and Social Care Act 2008, Schedule 8, paragraph 1(3) and Schedule 15, Part 2 and by S.I. 2002/253 and the 2001 Order.

<sup>(7)</sup> 1992 c.13.

<sup>(8)</sup> The definition of “registered medical practitioner” in Schedule 1 to the Interpretation Act 1978 (c.30) has been substituted by S.I. 2002/3135, Schedule 1, paragraph 10 with effect from 16th November 2009.

“registered manager” means, in respect of a regulated activity, a person registered with the Commission under Chapter 2 of Part 1 of the Act as a manager in respect of that activity, and “manage” should be construed accordingly;

“registered person” means, in respect of a regulated activity, a person who is the service provider or registered manager in respect of that activity;

“school” has the same meaning as in the Education Act 1996<sup>(9)</sup>;

“service provider” means, in respect of a regulated activity, a person registered with the Commission under Chapter 2 of Part 1 of the Act as a service provider in respect of that activity;

“service user” means a person who receives services provided in the carrying on of a regulated activity;

“treatment”, except in paragraph 6 of Schedule 1, includes—

- (a) a diagnostic or screening procedure carried out for medical purposes;
- (b) the ongoing assessment of a service user’s mental or physical state;
- (c) nursing, personal and palliative care; and
- (d) the giving of vaccinations and immunisations;

“vulnerable adult” has the same meaning as in section 59 of the Safeguarding Vulnerable Groups Act 2006<sup>(10)</sup>.

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(9) 1996 c.56; see section 4 for the meaning of “school”. Section 4 has been amended by the Education Act 1997 (c. 44), sections 51, 57(1) and (4) and Schedule 7, paragraphs 10(a) and (b) and Schedule 8, by the Education Act 2002 (c. 32), section 215(2) and Schedule 22, Part 3, and by the Childcare Act 2006 (c. 21), section 95(1), (2) and (3).

(10) 2006 c. 47. Section 59 was amended by S.I. 2008/912, Schedule 1, paragraph 21 and by the Education and Skills Act 2008 (c. 25), section 147(8).