

NATIONAL ASSEMBLY FOR WALES

S T A T U T O R Y I N S T R U M E N T S

2003 No. (W.)

**NURSES MIDWIVES AND
HEALTH VISITORS, WALES**

**Nurses Agencies (Wales)
Regulations 2003**

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 nurses agencies in Wales only. Parts I and II of the Act provide for the National Assembly for Wales, in relation to Wales, to register and inspect establishments and agencies, including nurses agencies. The Act also provides for the Assembly to make regulations governing the conduct of establishments and agencies.

By regulation 4, each agency must prepare a statement of purpose in relation to the matters set out in Schedule 1 and a service user’s guide to the agency (regulation 5). The agency must be carried on in a manner which is consistent with the statement of purpose.

Regulations 7 to 11 make provision about the fitness of the persons carrying on and managing an agency and require satisfactory information to be obtained in relation to the matters specified in Schedule 2. Where the provider is an organisation, it must nominate a responsible individual in respect of whom this information must be available (regulation 7). Regulation 8 prescribes the circumstances where a manager must be appointed in respect of the agency, and regulation 9 makes provision concerning the fitness of the manager. Regulation 10 imposes general requirements in relation to the proper conduct of the agency, and the need for appropriate training.

Part III makes provision in relation to the conduct of agencies, in particular about the quality of services to be provided by an agency. Regulation 12 makes provision about the fitness of all nurses supplied by an

agency. Regulation 13 sets out the policies and procedures which must be prepared and implemented by the registered person where the agency is acting as an employment business. In addition, provision is made as to staffing (regulation 14), the provision of information to service users (regulation 16), record keeping (regulation 17 and Schedule 4) and complaints (regulation 18). Provision is also made about the suitability of premises (regulation 20) and the financial management of the agency (regulation 21). Regulations 22 to 25 deal with the giving of notices to the Assembly.

Part IV deals with miscellaneous matters. In particular, regulation 27 provides for offences. A breach of regulations 4 to 23 may found an offence on the part of the registered person. Regulation 28 amends the Regulation of Social Care and Independent Healthcare (Fees) (Wales) Regulations 2002 by prescribing the annual fee in respect of the registration of nurses agencies. Regulation 29 makes amendments to the Registration of Social Care and Independent Health Care (Wales) Regulations 2002 to include nurses agencies and regulation 30 deals with transitional arrangements.

2003 No. (W.)

**NURSES MIDWIVES AND
HEALTH VISITORS, WALES**

**Nurses Agencies (Wales)
Regulations 2003**

Made 2003

Coming into force 2nd October 2003

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The National Assembly for Wales, in exercise of powers conferred upon it by sections 4(6), 16(3), 22(1), (2)(a) to (c), (f) to (j) and (7)(a) to (h) and (j), 25, 34(1), 35 and 118(5) to (7) of the Care Standards Act 2000(1) and of all other powers enabling it in that behalf, having consulted such persons as it considers appropriate(2), hereby makes the following Regulations:—

PART I GENERAL

Citation, commencement and application

1. —(1) These Regulations may be cited as the Nurses Agencies (Wales) Regulations 2003 and come into force on 2nd October 2003.

(2) These Regulations apply to nurses agencies in Wales only.

Interpretation

2. —(1) In these Regulations —

“1957 Act” (“*Deddf 1957*”) means the Nurses Agencies Act 1957(3);

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

“agency” (“*asiantaeth*”) means a nurses agency;

“appropriate office” (“*swyddfa briodol*”) means in relation to a nurses agency —

(a) if an office has been specified under paragraph (4) below for the area in which the nurses agency operates, that office;

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

“authority” (“*awdurdod*”) means, in respect of a person who —

(a) carries on, or wishes to carry on, an agency for the supply of nurses within the meaning of the 1957 Act; and

(1) 2000 c.14. The powers are exercisable by the appropriate Minister, who is defined in section 121(1)(as read with section 5(1)(b)), in relation to Wales as the National Assembly for Wales 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.

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

(3) 1957 c.16.

- (b) is the holder of a licence which has been granted to that person by a local authority under section 2 of that Act and which authorises the holder to carry on that agency from premises specified in the licence, or has applied for such a licence,

the local authority which for the purposes of that section is the licensing authority in whose area the premises are situated;

“effective date” (“*dyddiad effeithiol*”) means the date with effect from which an existing provider is for the purposes of Part II of the Act to be treated, in accordance with paragraph 1(6) of Schedule 5 to these Regulations, as having applied for and been granted registration in respect of the existing undertaking;

“existing undertaking” (“*ymgymeriad presennol*”) means a person who, immediately before 2nd October 2003 —

- (a) carries on an agency for the supply of nurses within the meaning of the 1957 Act; and
- (b) is the holder of a licence which has been granted to that person by a local authority under section 2 of that Act and which authorises the holder to carry on that agency from premises specified in the licence;

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

“nurse” (“*nyrs*”) means a registered nurse, registered midwife or registered health visitor⁽⁴⁾;

“nurses agency provider” (“*darparydd asiantaeth nyrsys*”) means a person who, immediately before 2nd October 2003 —

- (a) carries on an agency for the supply of nurses within the meaning of the 1957 Act; and
- (b) is the holder of a licence which has been granted to that person by a local authority under section 2 of that Act and which authorises the holder to carry on that agency from premises specified in the licence;

“NHS trust” (“*ymddiriedolaeth GIG*”) has the same meaning as in the National Health Service and Community Care Act 1990⁽⁵⁾;

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

(4) See the Interpretation Act 1978 (c.30), Schedule 1. A definition of “registered” in relation to nurses, midwives and health visitors was inserted by the Nurses, Midwives and Health Visitors Act 1979 (c.36), section 23(4) and Schedule 7, paragraph 30, as substituted by article 54(3) of, and Schedule 5, paragraph 7 to, the Nursing and Midwifery Order 2001 (S.I. 2002/253), on a date to be appointed.

(5) 1990 c. 19. See section 5 of that Act as amended by paragraph 69 of Schedule 1 to the Health Authorities Act 1995 (c.17) and sections 13(1) and 14 of the Health Act 1999 (c.8).

“patient” (*“claf”*) means a person to whom nursing is provided by a nurse supplied by an agency;

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

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

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

“responsible individual” (*“unigolyn cyrifol”*) is to be construed in accordance with regulation 7;

“service user” (*“defnyddiwr gwasanaeth”*) means a person to whom an agency —

- (a) supplies a nurse who is employed by the agency; or
- (b) provides services for the purpose of supplying the service user with a nurse for employment by that service user;

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

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

(2) In these Regulations, references to the supply of a nurse mean —

- (a) the supply of a nurse who is employed for the purposes of an agency to act for and under the control of another person; and
- (b) the introduction of a nurse by an agency to a service user for employment by that service user.

(3) In the definition of “service user” in paragraphs (1) and (2), the terms “employed” and “employment” include employment under a contract for services.

(4) The National Assembly may specify an office controlled by it as the appropriate office in relation to a nurses agency situated in a particular part of Wales.

Excepted agencies

3. For the purposes of the Act, an NHS trust which supplies nurses to work solely for other NHS trusts is excepted from being a nurses agency.

Statement of purpose

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

(2) The registered person must supply a copy of the statement of purpose to the appropriate office of the National Assembly and must make a copy of it available on request for inspection by every service user and any person acting on behalf of a service user.

(3) Nothing in regulation 20 shall require or authorise the registered person to contravene, or not to comply with —

- (a) any other provision of these Regulations; or
- (b) the conditions for the time being in force in relation to the registration of the registered person under Part II of the Act.

Service user’s guide

5. —(1) The registered person must prepare a service user’s guide which must include —

- (a) a summary of the statement of purpose;
- (b) the terms and conditions in respect of the services to be provided to service users, including as to the amount and method of payment of fees;
- (c) a summary of the complaints procedure established in accordance with regulation 18; and
- (d) the address and telephone number of any specified appropriate office of the National Assembly.

(2) The registered person must make a copy of the service user’s guide available on request for inspection at the agency premises by every service user and any person acting on behalf of a service user.

Review of statement of purpose and service user’s guide

6. —(1) The registered person must —

- (a) keep under review and, where appropriate, revise the statement of purpose and the service user’s guide; and
- (b) notify the appropriate office of the National Assembly of any significant revision within 28 days.

PART II

REGISTERED PERSONS

Fitness of registered provider

7.—(1) A person must not carry on an agency unless that person is fit to do so.

(2) A person is not fit to carry on an agency unless the person —

- (a) is an individual who satisfies the requirements set out in paragraph (3); or
- (b) is an organisation and —
 - (i) the organisation 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 officer of the organisation and is responsible for supervising the management of the agency; and
 - (ii) that individual satisfies the requirements set out in paragraph (3).

(3) The requirements are that —

- (a) the individual is of integrity and good character;
- (b) the individual is physically and mentally fit to carry on the agency; and
- (c) full and satisfactory information is available in relation to the individual —
 - (i) except where paragraph (4) applies, in respect of each matter specified in paragraphs 1 to 8 of Schedule 2;
 - (ii) where paragraph (4) applies, in respect of each matter specified in paragraphs 1 and 3 to 9 of Schedule 2.

(4) This paragraph applies where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued.

(5) A person must not 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 his or her creditors and has not been discharged in respect of it.

Appointment of manager

8.—(1) The registered provider must appoint an individual to manage the agency where —

- (a) there is no registered manager in respect of the agency; and
- (b) the registered provider—
 - (i) is an organisation; or
 - (ii) is not a fit person to manage an agency; or
 - (iii) is not, or does not intend to be, in full-time day to day charge of the agency.

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

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

Fitness of manager

9.—(1) A person must not manage an agency unless he or she is fit to do so.

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

- (a) he or she is of integrity and good character;
- (b) having regard to the size of the agency, its statement of purpose and the number and needs of the service users—
 - (i) he or she has the qualifications, skills and experience necessary to manage the agency; and
 - (ii) he or she is physically and mentally fit to do so; and
- (c) full and satisfactory information is available in relation to him or her —
 - (i) except where paragraph (3) applies, in respect of each matter specified in paragraphs 1 to 8 of Schedule 2,
 - (ii) where paragraph (3) applies, in respect of each matter specified in paragraphs 1 and 3 to 9 of Schedule 2.

(3) This paragraph applies where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued.

Registered person – general requirements and training

10.—(1) The registered provider and the registered manager must, having regard to the size of the agency, its statement of purpose 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, he or she must undertake; or
- (b) an organisation, it must ensure that the responsible individual undertakes,

from time to time such training as is appropriate to ensure that he or she has the experience and skills necessary for carrying on the agency.

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

Notification of offences

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

- (i) the date and place of the conviction;
- (ii) the offence of which he or she was convicted; and
- (iii) the penalty imposed in respect of the offence.

PART III

CONDUCT OF NURSES AGENCIES

CHAPTER 1

QUALITY OF SERVICE PROVISION

Fitness of nurses supplied by an agency

12.—(1) The registered person must ensure that no nurse is supplied by the agency unless—

- (a) he or she is of integrity and good character;
- (b) he or she has the qualifications, skills and experience which are necessary for the work which he or she is to perform;
- (c) he or she is physically and mentally fit for that work; and
- (d) full and satisfactory information is available in relation to him or her in respect of each of the matters specified in Schedule 3.

(2) The registered person must ensure that the selection of a nurse for supply is made by or under the supervision of a nurse and that in relation to the nurse carrying out the selection full and satisfactory information is available —

- (i) except where paragraph (3) applies, in respect of each matter specified in paragraphs 1 to 8 of Schedule 2;
- (ii) where paragraph (3) applies, in respect of each matter specified in paragraphs 1 and 3 to 9 of Schedule 2.

(3) This paragraph applies where an individual has applied for a certificate referred to in paragraph 2 of Schedule 2 but the certificate has not been issued.

(4) The registered person must ensure that every nurse supplied by the agency acting as an employment business⁽⁶⁾ is instructed that when working for a service user he or she must at all times wear identification showing his or her name, the name of the agency and a recent photograph.

Policies and procedures

13. —(1) Paragraphs (2) and (3) apply where an agency acting as an employment business supplies a nurse to provide nursing care in the private residence of a service user or patient.

(2) The registered person must prepare and implement written policies in relation to —

- (a) ensuring that the services provided to each patient are in accordance with the statement of purpose and meet that patient’s individual needs;
- (b) circumstances in which nurses may administer or assist in the administration of a patient’s medication;
- (c) the other tasks which nurses may or may not perform in connection with a patient’s care, and the tasks which may only be performed if the nurse has received specialist training;
- (d) arrangements to assist patients with mobility in their homes, where required;
- (e) measures to protect the safety and property of the patient;
- (f) arrangements to ensure that the privacy, dignity and wishes of the patient are respected;
- (g) measures to safeguard the patient against abuse or neglect;
- (h) measures to safeguard nurses against abuse or other harm;
- (i) the procedure to be followed after an allegation of abuse, neglect or other harm has been made.

⁽⁶⁾ See section 121(1) of the Act for the definition of “employment business”.

(3) The procedure referred to in paragraph (2)(i) must in particular provide for —

- (a) written records to be kept of any allegation of abuse, neglect or other harm and of the action taken in response; and
- (b) the appropriate office of the National Assembly to be notified of any incident reported to the police, not later than 24 hours after the registered person—
 - (i) has reported the matter to the police; or
 - (ii) is informed that the matter has been reported to the police.

(4) The registered person must ensure that any personal information about a patient for whom a nurse is supplied by the agency is not disclosed to any member of the agency's staff unless it is necessary to do so in order to provide an effective service to the patient.

Staffing

14.—(1) Where an agency is acting as an employment business, the registered person must, having regard to the size of the agency, its statement of purpose and the number and needs of the service users, take all reasonable measures to ensure that there is at all times an appropriate number of suitably qualified, skilled and experienced persons employed for the purposes of the agency.

(2) The registered person must ensure that each employee of the agency —

- (a) receives appropriate supervision; and
- (b) is provided with a job description outlining his or her responsibilities.

(3) The registered person must establish a procedure for collecting information from service users about the performance of nurses employed for the purposes of the agency, and must take such steps as may be necessary to address any aspect of a nurse's clinical practice.

(4) The registered person must provide to each nurse who is employed for the purposes of the agency a written statement of the terms and conditions on which he or she will be supplied to work for, and under the control of, a service user.

(5) The statement of terms and conditions provided under paragraph (4) must, in particular, specify the employment status of the nurse.

Staff handbook

15.—(1) Where the agency is acting as an employment business, the registered person must

prepare a staff handbook and provide a copy to every member of staff.

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

- (a) the conduct expected of staff, and disciplinary action which may be taken against them;
- (b) the role and responsibilities of nurses and other staff;
- (c) record keeping requirements;
- (d) recruitment procedures; and
- (e) training and development requirements and opportunities.

Provision of information to service users

16.—(1) The registered person must ensure that before a nurse is supplied, the service user is informed of —

- (a) the name of the nurse who is to be supplied and the means of contacting that nurse;
- (b) the name of the member of staff of the agency who is responsible for the supply of that nurse; and
- (c) where the agency is acting as an employment business, details of how the service user may contact the registered person, or a person nominated to act on behalf of the registered person.

(2) Where the service user is also the patient, the registered person must ensure that the information specified in paragraph (1) is, where appropriate, provided to the person acting on behalf of the patient.

Records

17. The registered person must 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; and
- (b) retained for a period of not less than three years beginning on the date of the last entry.

Complaints

18.—(1) The registered person must establish a procedure (“the complaints procedure”) for considering complaints made to the registered person by a service user or a person acting on behalf of the service user.

(2) The registered person must supply a written copy of the complaints procedure to every service user and,

upon request, to any person acting on behalf of a service user.

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

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

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

(5) The registered person must, within the period of 28 days beginning on 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 that is to be taken in response.

(6) The registered person must maintain a record of each complaint, including details of the investigation made, the outcome and any action taken in consequence and the requirements of regulation 17 apply to that record.

(7) The registered person must supply to the appropriate office of the National Assembly annually a statement containing a summary of the complaints made during the preceding twelve months and the action taken in response.

(8) The registered person must ensure that any evidence of misconduct by a nurse is reported promptly and in writing to the Nursing and Midwifery Council⁽⁷⁾.

Review of quality of service provision

19.—(1) The registered person must introduce and maintain a system for reviewing at appropriate intervals the quality of services provided by the agency.

(2) The registered person must supply to the appropriate office of the National Assembly a report in respect of any review conducted by the registered person for the purposes of paragraph (1) and must make a copy of the report available upon request for inspection by service users and persons acting on behalf of service users.

(7) The Nursing and Midwifery Council was established by article 3 of the Nursing and Midwifery Order 2001 (S.I. 2002/253).

(3) The system referred to in paragraph (1) must provide for consultation with service users and persons acting on behalf of service users.

CHAPTER 2

PREMISES

Fitness of premises

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

CHAPTER 3

FINANCIAL MATTERS

Financial position

21.—(1) The registered provider must 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 must, if the appropriate office of the National Assembly so requests, provide that office with such information and documents as it may require 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 in relation to the agency in respect of death, injury, public liability, damage or other loss.

CHAPTER 4

NOTICES TO BE GIVEN TO THE NATIONAL ASSEMBLY

Notice of absence

22.—(1) Where —

- (a) the registered provider, being an individual in full-time day to day charge of the agency; or
- (b) the registered manager,

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

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

- (a) the length or expected length of the absence;
- (b) the reason for the absence;
- (c) the arrangements which have been made for running 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) in the case of the absence of the registered manager, the arrangements that have been, or are proposed to be, made for appointing another person to manage the agency during that absence, including the proposed date by which the appointment is to be made.

(3) Where the absence arises as a result of an emergency, the registered person must give notice of the absence within one week of its occurrence specifying the matters set out in paragraph (2)(a) to (e).

(4) Where —

- (a) the registered provider, being an individual in full-time day to day charge of the agency; or
- (b) the 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 must, without delay, give notice in writing to the appropriate office of the National Assembly of the absence, specifying the matters set out in paragraph (2)(a) to (e).

(5) The registered person must 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 not later than 7 days after the date of return.

Notice of changes

23. The registered person must give notice in writing to the appropriate office of the National Assembly as soon as it is practicable to do so if any of the following events takes place or is proposed to take place —

- (a) a person other than the registered person carries on or manages the agency;
- (b) a person ceases to carry on or manage the agency;

- (c) where the registered person is an individual, that individual changes name;
- (d) where the registered provider is an organisation —
 - (i) the name or address of the organisation is changed;
 - (ii) there is any change of director, manager, secretary or other similar officer of the organisation;
 - (iii) there is any change in the identity of the responsible individual;
- (e) where the registered provider is an individual, a trustee in bankruptcy is appointed;
- (f) where the registered provider is a company, a receiver, manager, liquidator or provisional liquidator is appointed;
- (g) where a registered provider is in a partnership whose business includes carrying on a nurses agency, a receiver or manager is, or is likely to be, appointed in respect of the partnership; or
- (h) the registered provider acquires additional premises for the purposes of the agency.

Appointment of liquidators etc.

24. —(1) Any person to whom paragraph (2) applies must —

- (a) forthwith notify the appropriate office of the National Assembly of his or her appointment indicating the reasons for it;
- (b) appoint a manager to take full-time day to day charge of the agency in any case where there is no registered manager; and
- (c) not more than 28 days after appointment, notify the appropriate office of the National Assembly of the intended future operation of the agency.

(2) This paragraph applies to any person appointed as —

- (a) the receiver or manager of the property of a company which is a registered provider in respect of an agency;
- (b) the liquidator or provisional liquidator of a company which is the registered provider in respect of an agency;
- (c) the receiver or manager of the property of a partnership whose business includes carrying on an agency;
- (d) the trustee in bankruptcy of a registered provider in respect of an agency.

Death of registered person

25. —(1) If more than one person is registered in respect of an agency, and a registered person dies, the surviving registered person must without delay notify the appropriate office of the National Assembly of the death in writing.

(2) If only one person is registered in respect of an agency, and that person dies, his or her personal representatives must notify the appropriate office of the National Assembly in writing —

- (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 further period, not exceeding one year, as the National Assembly determines, and must notify any such determination to the personal representatives in writing.

(5) The personal representatives must 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

26. 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 must, if done by one of the registered persons, not be required to be done by any of the other registered persons.

Offences

27. —(1) A contravention or failure to comply with any of the provisions of regulations 4 to 23 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 17.

Fees

28.—(1) The “Registration of Social Care and Independent Healthcare (Fees) (Wales) Regulations 2002⁽⁸⁾ are amended in accordance with the following provisions of this regulation.

(2) In the paragraph headed “Arrangement of Regulations”, the following line is added at the end “13. Annual fee – nurses agencies”.

(3) In regulation 2(1) —

(a) after the definition of “the Act” add —

““the 1957 Act” means the Nurses Agencies Act 1957”;

(b) after the words ““agency” means a fostering agency” add the words “or nurses agency”;

(c) in the definition of “existing undertaking” add at the appropriate place —

“(e) a nurses agency that is licensed immediately before 2nd October 2003 under the 1957 Act;”.

(4) After regulation 12 (Annual fee – fostering agencies and local authority fostering services), insert the following regulation —

“Annual fee – nurses agencies

13.—(1) The annual fee in respect of a nurses agency is £500.

(2) The annual fee in respect of a nurses agency shall be first payable by the registered provider on the date specified in respect of him or her in paragraph (3) (“the first date”) and thereafter on the anniversary of the first date.

(3) The specified date is —

(a) in the case of the registered provider of a nurses agency that is an existing undertaking —

(i) in a case where a licence fee was payable under the 1957 Act in respect of the undertaking, the anniversary of the date on which the last fee was payable;

(ii) in any other case, 31st December 2003;

(b) in the case of a registered provider who is a new provider, the date on which a certificate of registration is first issued under Part II of the Act in respect of that registered provider of the nurses agency.”

⁽⁸⁾ S.I. 2002/921 as amended by S.I. 2003/237 and S.I. 2003/781.

Registration

29. Regulation 2(1) of the Registration of Social Care and Independent Health Care (Wales) Regulations 2002 (9) is amended as follows —

- (a) in the definition of “appropriate office of the National Assembly”, after sub-paragraph (e) insert —
 - “(f) (i) if an office has been specified under regulation 2(4) of the Nurses Agencies (Wales) Regulations 2003 (10), that office;
 - (ii) in any other case, any office of the National Assembly.”
- (b) in the definition of “statement of purpose”, after sub-paragraph (e) insert —
 - “(f) in relation to a nurses agency, the written statement required to be compiled in relation to the nurses agency in accordance with regulation 4(1) of the Nurses Agency (Wales) Regulations 2003.”

Transitional provisions

30. Schedule 5 to these Regulations, which makes transitional provisions, shall have effect.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(11)

Date

The Presiding Officer of the National Assembly

(9) S.I. 2002/919 (W 107) as amended by S.I. 2002/237
(10) S.I.
(11) 1998 c.38.

SCHEDULE 1 Regulation 4

INFORMATION TO BE INCLUDED
IN THE STATEMENT OF PURPOSE

1. The aims and objectives of the agency.
2. The nature of the services which the agency provides.
3. The name and address of the registered provider and of any registered manager.
4. The relevant qualifications and experience of the registered provider and any registered manager.
5. The range of qualifications of nurses supplied by the agency, and the types of settings in which they are supplied to work.
6. The complaints procedure established in accordance with regulation 18.

SCHEDULE 2

Regulations 7(3), 9(2) and 12(2)

INFORMATION REQUIRED IN
RESPECT OF REGISTERED
PROVIDERS AND MANAGERS OF
AN AGENCY AND NURSES
RESPONSIBLE FOR SELECTING
NURSES FOR SUPPLY TO SERVICE
USERS

1. Proof of identity, including a recent photograph.
2. Either —
 - (a) where the certificate is required for a purpose relating to section 115(5)(ea) of the Police Act 1997 (registration under Part II of the Care Standards Act 2000)(**12**), or the position falls within section 115(3) or (4) of that Act(**13**), an enhanced criminal record

(**12**) Section 115(5)(ea) is inserted by the Care Standards Act 2000, section 104.

(**13**) 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.

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 once they are in force, namely section 113(3C)(a) and (b) and section 115(6B)(a) and (b) of that Act⁽¹⁴⁾.

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

4. 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. .

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. In respect of a nurse to whom regulation 12(2) applies, confirmation of current registration with the Nursing and Midwifery Council⁽¹⁵⁾, including details of the Part of the register in which the nurse is registered.

8. Details of any professional indemnity insurance.

9. A police check being a report produced by or on behalf of a chief officer of police within the meaning of the Police Act 1997 which records, as at the time the report is produced, all criminal offences —

- (a) for which the person has been convicted including convictions which are spent within the meaning of the Rehabilitation of Offenders Act 1974⁽¹⁶⁾ and which may be disclosed by virtue of the Rehabilitation of

⁽¹⁴⁾ 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.

⁽¹⁵⁾ The register is maintained pursuant to paragraph 10 of Schedule 2 to the Nursing and Midwifery Order 2001 (S.I. 2002/253).

⁽¹⁶⁾ 1974 c.53.

Offenders Act 1974 (Exceptions) Order 1975(17); or

- (b) in respect of which the person has been cautioned and which, at the time the caution was given, the person admitted.

SCHEDULE 3

Regulation 12(1)

INFORMATION REQUIRED IN RESPECT OF NURSES TO BE SUPPLIED BY AN AGENCY

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 which the nurse is supplied to perform 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 sections 113(3A) and 115(6A) of that Act and the following provisions once they are in force, namely section 113(3C)(a) and (b) and section 115(6B)(a) and (b) of that Act.

5. A police check being a report produced by or on behalf of a chief officer of police within the meaning of the Police Act 1997 which records, as at the time the report is produced, all criminal offences —
 - (a) which may be disclosed by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(18); or
 - (b) in respect of which the person has been cautioned and which, at the time the caution was given, the person admitted.

6. Two written references from nurses or other health professionals, including a reference relating to

(17) S.I. 1975/1023. Relevant amendments have been made by S.I. 1986/1249, S.I. 1986/2268 and S.I. 2001/1192.

(18) S.I. 1975/1023. Relevant amendments have been made by S.I. 1986/1249, 1986/2268, 2001/1192 and 2002/441.

the last period of employment as a nurse of not less than three months duration.

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

8. Evidence of a satisfactory knowledge of the English language, where the nurse's nursing qualifications were obtained outside the United Kingdom.

9. Documentary evidence of any relevant qualifications and training.

10. 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.

11. Record of Immunisation status.

12. Confirmation of current registration with the Nursing and Midwifery Council, including details of the Part of the register in which the nurse is registered.

13. Details of any professional indemnity insurance.

SCHEDULE 4 Regulation 17

RECORDS TO BE MAINTAINED FOR INSPECTION

Records relating to supply of nurses

1. Copies of all agreements between the agency and nurses supplied or to be supplied by the agency and evidence that a copy of any standard terms and conditions has been supplied by the agency to each nurse.

2. Details of the remuneration payable to each nurse who is employed by the agency and her conditions of employment.

3. Copies of any statement given to a service user setting out the qualifications and relevant experience of a nurse supplied to that service user.

4. An alphabetical index of service users, including the full name, address and telephone number of each of them and any serial numbers assigned to them.

5. An alphabetical index of nurses supplied or available for supply by the agency, including any serial numbers assigned to them.

6. Details of each supply of a nurse to a service user.

7. Where the agency is acting as an employment business and a nurse is supplied to provide nursing care in the private residence of a service user or patient, details of —

- (a) the illness or disability from which the patient is suffering;
- (b) the name and address of the patient's general medical practitioner;
- (c) other health professionals from whom the patient is receiving treatment;
- (d) the patient's next of kin;
- (e) the patient's religion;
- (f) other occupants at the premises where nursing will be provided; and
- (g) the nursing plan devised for the patient and a detailed record of the nursing care provided.

Other records

1. All information provided to the National Assembly for the purposes of registration in relation to the agency.

2. Details of every allegation of abuse —

- (a) against a nurse; or
- (b) by a nurse (which is not the subject of a complaint made under regulation 18),

who is employed by the agency, including details of the investigations made, the outcome and any action taken in consequence.

SCHEDULE 5

Regulation 30

Transition from licensing under the 1957 Act to registration under the 2000 Act

1. —(1) This sub-paragraph applies to a nurses agency provider (referred to as “the provider” (“*y darparydd*”) in the following provisions of this Schedule) when in accordance with sub-paragraph (6) he or she is treated as having applied for and been granted registration under Part II of the 2000 Act in respect of the agency that he or she was licensed to carry on under the 1957 Act.

(2) The 1957 Act shall continue in force for the purpose of giving effect to the following provisions of this paragraph.

(3) Until such time as sub-paragraph (1) applies in relation to a nurses agency provider the provisions of the 1957 Act shall continue in force in relation to, and in respect of, the provider as if any reference in the 1957 Act to the licensing authority is a reference to the National Assembly.

(4) The National Assembly, having regard to any representations made by the provider under sub-paragraph (9), shall determine at such time as it thinks fit, the matters described in sub-paragraph (5), and serve notice of its determination upon the provider.

(5) The matters are —

- (a) the conditions (if any) to which the registration of the provider under the 1957 Act was subject;
- (b) any other matter in so far as the determination of that matter is necessary to enable the provider, in accordance with sub-paragraph (6), to be treated for the purposes of Part II of the 2000 Act as having applied for and been granted registration in respect of the agency;

and any determination of the National Assembly under sub-paragraph (4) shall for the purposes of section 21 of the 2000 Act (appeals to the Tribunal) be treated as if it were a decision of the Assembly under Part II of that Act.

(6) When the National Assembly has made a determination in accordance with sub-paragraph (4), then with effect from a date specified by the National Assembly ('the effective date') —

- (a) the provider shall, for the purposes of Part II of the 2000 Act, be treated as having applied for and been granted registration in respect of the existing undertaking;
- (b) the conditions (if any) determined in accordance with sub-paragraph (5)(a) shall, in so far as they are capable of being conditions to which the registration for the purposes of Part II of the 2000 Act is subject, have effect —
 - (i) as if they were conditions to which the registration for those purposes is subject; and
 - (ii) as if, for the purposes of section 19(1) of the 2000 Act, they had been agreed in writing between the provider and the National Assembly.

(7) On, or before, the effective date in respect of a determination under this paragraph the National Assembly shall issue a certificate to the provider —

- (a) the contents of which shall be in accordance with any regulations made under section 16(1)(b) of the 2000 Act about the contents of certificates issued under Part II of that Act; and
- (b) which shall be treated as if it were a certificate in respect of the existing undertaking issued by the National Assembly under Part II of the 2000 Act.

(8) The provisions of sub-paragraphs (5) and (6) shall be without prejudice to the powers of the National Assembly to vary, remove or impose any condition in accordance with Part II of the 2000 Act.

(9) Before making a determination as to the matters described in sub-paragraph (5) in relation to an existing undertaking the National Assembly shall give notice in writing to the provider informing the provider that he or she may, within twenty eight days of the receipt of that notice, make written representations about the determination, and that no determination will be made before the expiry of those twenty eight days.

Transfer of outstanding applications for licensing under the 1957 Act

2. —(1) Sub-paragraph (3) applies to an application for a licence under the 1957 Act to carry on an agency for the supply of nurses —

- (a) which has been made to an authority before 2nd October 2003 and which has not been granted at that date; and
- (b) to which sub-paragraph (2) does not apply.

(2) This sub-paragraph applies to an application in respect of which the authority has given the person who made the application —

- (a) notice under section 2(4) of the 1957 Act of the refusal of a licence, or the grant of a licence subject to conditions and either —
 - (i) the period for appealing in respect of that notice has not expired; or
 - (ii) the person who made the application has appealed but the appeal has not been determined or abandoned; or
- (b) the opportunity of being heard under section 2(5) of that Act in respect of any proposal to refuse to grant a licence, unless —
 - (i) the person has not, within the time allowed by the authority in the notice giving opportunity to be heard, taken the

opportunity so offered or indicated that he or she wishes to do so; or

- (ii) the authority has given notice of the refusal of a licence.

(3) Where this sub-paragraph applies in relation to an application that application shall be treated as an application for registration under Part II of the 2000 Act.

(4) Where sub-paragraph (2) applies —

- (a) the 1957 Act shall, subject to the next following paragraph of this sub-paragraph, continue in force in relation to the following matters —
 - (i) the decision to grant or refuse a licence under section 2 of that Act;
 - (ii) an appeal against such a decision;
- (b) the functions, powers and duties that immediately before 2nd October 2003 the authority had under that Act in relation to the matters mentioned in the preceding paragraph of this sub-paragraph shall apply to, and be exercisable by, the National Assembly instead of the authority;
- (c) the decision to adopt a proposal to grant an application with effect from the date on which it takes effect, shall be treated for the purposes of Part II of the Act —
 - (i) as if it were a decision to adopt a proposal to grant an application for registration in respect of a nurses agency;
 - (ii) as if it had taken effect in accordance with section 19(5) of the Act.

Pending decision as to cancellation

3. Where the authority have revoked the licence of the existing provider in respect of the existing undertaking, and either —

- (a) the period for appealing against the revocation has not expired; or
- (b) the existing provider has appealed under section 2(4) of the 1957 Act and the appeal has not been determined or abandoned,

the existing provider shall not be treated, for the purposes of Part II of the Act, as having been granted registration in respect of that existing undertaking.

Pending proposal as to cancellation

4. —(1) This sub-paragraph applies where, immediately before the effective date —

- (a) the authority or the National Assembly are considering whether to revoke the licence of the existing provider in respect of the existing undertaking;
 - (b) in pursuance of section 2(5) of the 1957 Act the existing provider has been given an opportunity of being heard; and
 - (c) the authority or the National Assembly have not determined the matter.
- (2) Where sub-paragraph (1) applies —
- (a) subject to paragraph (b) of this sub-paragraph, the notice informing the existing provider that he or she is to be given the opportunity of being heard shall, for the purposes of Part II of the Act, and notwithstanding that it does not comply with the requirements for such a notice under the Act, be treated with effect from the effective date as if it were a notice of proposal given under section 17(4) of the Act to cancel the registration (otherwise than in accordance with an application under section 15(1)(b)), in respect of the existing undertaking;
 - (b) section 18(2) of the Act shall have effect as if —
 - (i) in paragraph (a) the word “written” were omitted;
 - (ii) for paragraph (c) the following paragraph were substituted —
 - “(c) the person who is registered in respect of the agency has been given an opportunity to make oral or written representations to the National Assembly concerning the matter within a reasonable period and has failed to make them within that period.”

Transfer of Information and documents

5. An authority shall pass to the National Assembly —

- (a) forthwith at the coming into force of these Regulations all information and documents which are in their possession relating to the licensing of any nurses agency in relation to which immediately before the coming into force of these regulations it is exercising the functions of the licensing authority under the 1957 Act;
- (b) as soon as practicable, all such information or documents which come into their possession after the coming into force of these Regulations.