

**NORTH LANARKSHIRE COUNCIL  
REPORT**

TO: Social Work Committee	Subject:  <b>SCOTTISH OFFICE GUIDANCE: COMMUNITY CARE: REGISTRATION OF RESIDENTIAL AND OTHER ESTABLISHMENTS FOR ADULTS AND CHILDREN</b>
FROM: Jim Dickie, Director of Social Work	
DATE OF COMMITTEE: 6 October 1998	
REF: DOD/LK	

**1 PURPOSE OF REPORT**

- 1.1 This report advises members of the publication of new guidance by the Scottish Office on the registration of residential and other establishments for adults and children and identifies implications for existing Social Work Department services.

**2 BACKGROUND AND PURPOSE OF GUIDANCE**

- 2.1 Following the findings of the Glenglova Fatal Accident Inquiry into the death of a resident in a private residential home in 1995, the Scottish Office set up a national Working Group to examine residential care home registration procedures. Deficiencies found illustrated that changes both in regulatory practice and legislation were required.
- 2.2 The purpose of the new guidance is to give emphasis to aspects of the working group's recommendations which do not require legislation.
- 2.3 The guidance outlines the Scottish Office intention to:
- ◆ introduce new legislation in this area;
  - ◆ review the regulations affecting Tribunals that hear appeals against de-registration;
  - ◆ encourage local authorities to prepare their own services for future registration;
  - ◆ bring certain day services for older children within the scope of existing legislation;
  - ◆ expand regulation into other service areas, including domiciliary care;
  - ◆ ensure local authority day services are subject to inspection;
  - ◆ develop national care standards for residential and nursing homes;
  - ◆ better facilitate joint working between Health Boards and Social Work Departments;

- ◆ bring forward an action plan covering closer joint working between social care, health and housing services.

- 2.4 In defining within the guidance that local authorities treat their own direct provision, as far as possible, in the same way as the independent sector, the Scottish Office has signalled major changes in the future location of the regulatory functions for residential and day services.
- 2.5 The new guidance reinforces and expands previous guidance (Circulars SWSG 9/90, SWSG 2/92 and SWSG 7/96, and Guidance and Regulations on the Children (Scotland) Act 1995). It cancels Circulars SWSG 17/69 and SWSG 16/88.

### 3 CONTENT OF THE GUIDANCE

#### **Registrable establishments**

- 3.1 Guidance restates the requirements for registration affecting certain categories of provision and sets out in detail the determining factors of the level and type of care and support being provided. Both residential and day services fall within the scope of registration. Any decision on whether or not to register continues to lie with the local authority.
- 3.2 Reference to services excluded from registration still includes any establishment controlled by a local authority, but one of the main changes introduced by the guidance, pending future legislation, is the requirement that local authority provision is, as far as possible, treated in the same way as the independent sector.
- 3.3 The guidance clarifies a new requirement to inspect day centres and, pending legislative change, reminds local authorities of their responsibilities to monitor domiciliary care services closely.
- 3.4 No reference is made to the practical arrangements or financial and resource implications which will arise from bringing the local authority into the same regulatory framework as the private sector. These would include:
- a) significant capital and revenue implications in meeting registration standards in the case of local authority residential and day services, and
  - b) immediate staffing implications for the registration and inspection unit arising from inspection of local authority day services and the regulation of the local authority sector.
- 3.5 The guidance defines types of establishments where joint registration with Health Boards should take place and exemptions to this. Specific reference is made certain NHS Trust Hospitals providing social care services which may now fall within registration criteria.

### **Supported Housing**

- 3.6 The guidance assists local authorities in decisions about whether supported accommodation requires to be registered or not by providing a list of criteria and circumstances relevant to reaching that decision. Where housing and support services are separate this is identified as one firm indicator that registration is likely to be inappropriate.
- 3.7 Guidance acknowledges that requirements to either register or deregister supported accommodation can change over time and so should be subject to ongoing review, and that special inspection arrangements may be necessary to suit the design of the service and needs of users. The guidance encourages local authorities to give legal security to tenants in supported accommodation through providing proper tenancy agreements

### **Registration Process and Standards.**

- 3.8 There are no significant changes to the existing registration processes and the setting of standards meantime continues to lie with the local authority. The requirement that pre-registration standards are relevant to individual client services and publicly available, reflects intended practice in North Lanarkshire.
- 3.9 Guidance highlights the varying demands made on staff by applicants for registration but fails to address deficiencies in the existing fee structures and the low fee ceiling, last reviewed in 1995. Limited scope exists within the guidance for local authorities to charge for registration advice prior to registration but income derived would not address the issue that fees account for only a small percentage of regulatory costs.

### **Staff Involved in Registration and Inspection**

- 3.10 The new Circular contains guidance on the competencies, qualities, skills and experience required of staff engaged in registration duties and of the need for a balanced approach to the registration task which should be rigorous but not cumbersome.

### **Refusal or Cancellation of Registration**

- 3.11 Local authorities are reminded that the onus lies with the registering authority to identify reasons why a registration application should be refused or a registration cancelled, and that commonly this would be on one of three grounds: unfit persons, unfit premises or inappropriate service.
- 3.12 The guidance fails to make reference as had been hoped to establishing a nation wide listing of those people who have either been refused registration or had their registration cancelled.

### **Fit Person**

- 3.13 Determination of any applicant's fitness continues to lie with the local authority. The guidance defines that the test of fitness applies to the person or incorporated or unincorporated body who intends to carry on an establishment and lists a series of indicators to assist in the assessment of applicants.
- 3.14 Similar guidance is provided for assessing the fitness of managers which is largely in line with current practices. The inclusion of specific reference to the experience and qualification requirements expected of managers will assist in raising management standards. The guidance helpfully adds to that previously available in identifying that fit persons should be periodically re-assessed and outlines requirements on applicants regarding management cover in the event of leave or illness.

### **Fit Buildings**

- 3.15 The guidance adds little to the present position nor assists local authorities to develop consistent space standards for different types of services. A focus is given to health and safety issues already prominent in most standards documents. Further reference material is to be made available regarding supported housing specifications. The guidance fails to address difficulties that can arise in relation to applications to register large scale residential developments.

### **Fit Conduct of Establishments**

- 3.16 The focus of the guidance again adds little to existing practice and in effect provides a listing of essential policies and procedures.

### **Enforcement**

- 3.17 Given the origin of the guidance this area is surprisingly weak in addressing the difficulties experienced by the local authority when moving from an enabling to an enforcement approach with providers. The lack of specificity in the guidance and the open-ended timescales which exist for hearings and tribunals to be arranged, may be due in part to the need for legislative change. Arrangements will continue to favour the interests of proprietors receiving a fair hearing against the interests of vulnerable service users.

### **Local Authority Hearings and Tribunals**

- 3.18 The guidance seeks to achieve some consistency in the ways in which local authority hearings are conducted. It states that hearings should observe the rules of natural justice and be as speedy as is consistent with a full and fair hearing. It fails to set specific timescales.

- 3.19 It remains for each local authority to decide on the hearing process, arrangements for evidence to be led and legal representation. The need for local authorities to be mindful of the role of the appeals tribunal at the next stage of the process is emphasised but the guidance fails to distinguish whether the tribunals function is to review the local authority's decision or to hear the case afresh.

### **Removal of Persons from Establishments**

- 3.20 The guidance is explicit that local authorities should be alert to ensuring the welfare of residents once a notice to cancel has been issued. Caution is urged in taking the measure of removing residents from an establishment following cancellation although this option is put forward alongside that of installing alternative management. Again the guidance fails to identify timescales or legal implications of these measures. The complexity of removal of residents in supported accommodation or where they have tenancy rights are specifically raised with reference made to separate guidance.

### **Joint Working with Health Boards**

- 3.21 The guidance confines comment to the value of developing more joint working between the social work and health inspectorate at a local level and urges both agencies to identify such opportunities.

## **4 SUMMARY OF GUIDANCE**

- 4.1 The guidance provides additional clarification regarding criteria for registration. The need for legislative change seriously restricts the scope of the guidance in addressing difficulties in enforcement and legal action. The Scottish Office gives clear notice of future intention to subject local authorities to regulation and urge that preparations towards this commence, but makes no reference to the financial or resource implications of this. Guidelines specifies that local authorities are now expected to inspect their own day services.

## **5 RECOMMENDATIONS**

Committee is asked to

- (i) note the publication of the guidance
- (ii) request the Director of Social Work bring an early report outlining the Department's response to the resource implications arising from this guidance.



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