
SCOTTISH STATUTORY INSTRUMENTS

2017 No.

NATIONAL HEALTH SERVICE

SOCIAL CARE

SOCIAL WORK

The Duty of Candour Procedure (Scotland) Regulations [2017]

Made - - - -

Laid before Parliament

Coming into force - -

1st April 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 22 (1) and (2) of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016^(a) and all other powers enabling them to do so.

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Duty of Candour Procedure (Scotland) Regulations [2017] and come into force on 1st April 2018.

(2) In these Regulations—

“the Act” means the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016;

“the incident” means the unintended or unexpected incident by virtue of which section 21(2) of the Act applies to a person;

“the procedure” means the actions set out in regulations 4 to 7;

“procedure start date” is the day on which the opinion referred to in section 21(2)(b) of the Act is provided;

“the relevant person” means a relevant person, within the meaning of section 22(3) of the Act, for the purpose of the incident; and

“the responsible person” means a responsible person within the meaning of section 25 of the Act who is following the procedure in respect of the incident (and includes a member of staff acting on behalf of a responsible person).

(a) 2016 asp 14.

Application of procedure in cases with more than one responsible person

2.—(1) Where an incident relates to the provision of a service by more than one responsible person, all of the responsible persons involved must agree to follow the duty of candour procedure collectively in accordance with this regulation.

(2) The responsible persons involved must agree which of them (“the lead responsible person”) will be responsible for carrying out the procedure.

(3) The lead responsible person must carry out the procedure in accordance with these Regulations (and references to the responsible person should be read as the lead responsible person accordingly).

(4) A responsible person who has provided a service in respect of an incident to which this regulation applies must provide assistance and information to the lead responsible person when requested to do so.

(5) The lead responsible person must consult with all other responsible persons involved before—

- (a) issuing a notification in accordance with regulation 4;
- (b) issuing an apology in accordance with regulation 5;
- (c) having a meeting with the relevant person in accordance with regulation 6; and
- (d) sending a note of a meeting in accordance with regulation 6(4)(a).

(6) In carrying out a review in accordance with regulation 7, the lead responsible person must seek the views of the other responsible persons involved and must in particular ascertain what actions each responsible person has taken or intends to take in accordance with regulation 7(5)(b) and (6)(b).

(7) The report of the review prepared in accordance with regulation 7(5) must include a statement of any actions which have been taken by all responsible persons as mentioned in paragraph (6) of this regulation.

(8) The record to be kept in accordance with regulation 9 must be kept by the lead responsible person.

Communication with relevant person

3.—(1) If, in respect of an incident, the responsible person is unable to contact the relevant person—

- (a) the record kept under regulation 9 must include information about the attempts made to contact the relevant person; and
- (b) any requirement in these Regulations to provide information to, or communicate with, the relevant person does not apply in respect of that incident.

(2) Where a responsible person is providing information to or communicating with a relevant person in accordance with these Regulations, the responsible person must ascertain the relevant person’s preferred method of communication and, where reasonably practicable, communicate with the relevant person by this means.

(3) These Regulations do not permit or require a responsible person to disclose any information which: -

- (a) would prejudice any criminal investigation or prosecution; or
- (b) would contravene any restriction on disclosure arising by virtue of an enactment or rule of law.

PART 2

Duty of Candour Procedure

Notification

4.—(1) Where section 21(2) applies to a relevant person, the responsible person must notify that relevant person in accordance with this regulation.

- (2) The notification must be provided within 5 working days of the procedure start date.
- (3) The notification must include—
 - (a) an account of the incident insofar as the responsible person is aware of the facts at the date the notification is provided;
 - (b) an apology on behalf of the responsible person, (unless the responsible person considers that such an apology has been provided at an earlier date);
 - (c) an explanation of the actions that the responsible person will take as part of the procedure; and
 - (d) in the case where the procedure start date is later than one month after the date on which the incident occurred, an explanation of the reason for the delay in starting the procedure.

Apology

5. In addition to any apology provided at the time of the incident or by virtue of regulation 4(3)(b), the responsible person must offer the relevant person a written apology in respect of the incident and must provide one if the relevant person wishes it.

Meeting

6.—(1) The responsible person must invite the relevant person to attend a meeting as described in paragraph (3), and must give the relevant person the opportunity to ask questions in advance of that meeting.

(2) The responsible person must take reasonable steps to ensure that the meeting is accessible to the relevant person, having regard to the relevant person's needs.

- (3) The meeting must include—
 - (a) the provision of a verbal account of the incident by the responsible person;
 - (b) an explanation of any further steps that will be taken by the responsible person to investigate the circumstances which it considers led or contributed to the incident;
 - (c) an opportunity for the relevant person to ask the responsible person questions about the incident;
 - (d) an opportunity for the relevant person to express their views about the incident; and
 - (e) the provision of information to the relevant person about any legal, regulatory or review procedures that are being followed in respect of the incident in addition to the procedure.
- (4) Within 5 working days of the meeting the responsible person is to provide the relevant person with—
 - (a) a note of the meeting;
 - (b) information about an individual member of staff acting on behalf of the responsible person who the relevant person may contact in respect of the procedure; and
 - (c) in the case where the meeting takes place more than one month after the procedure start date, an explanation of the reason for the delay in the meeting taking place.
- (5) If the relevant person does not wish to or is unable to attend the meeting, the responsible person must offer to provide them with the information mentioned in paragraphs (3) and (4)(b).

Review

- 7.—(1) The responsible person must carry out a review of the circumstances which it considers led or contributed to the incident.
- (2) The review must be completed within 3 months of the procedure start date.
- (3) In the case where the review is not completed within 3 months of the procedure start date, the responsible person must provide the relevant person with an explanation of the reason for the delay in completing it.
- (4) In carrying out the review, the responsible person must seek the views of the relevant person and take account of any views expressed.
- (5) The responsible person must prepare a written report of the review, which must include—
- (a) a description of the manner in which the review was carried out;
 - (b) a statement of any actions to be taken by the responsible person for the purpose of—
 - (i) improving the quality of service provided by the responsible person; or
 - (ii) sharing learning with other persons or organisations in order to support continuous improvement in the quality of health, care or social work services; and
 - (c) a list of the actions taken for the purpose of the procedure in respect of the incident and the date each action took place.
- (6) The responsible person must offer to send the relevant person—
- (a) a copy of the report and any other documentation relating to the review;
 - (b) details of any further information about actions taken in accordance with paragraph 7(5)(b) for the purpose of improving the quality of service provided by the responsible person or other health, care or social work services; and
 - (c) details of any services or support of which the responsible person is aware which may be able to provide assistance or support the relevant person, taking into account the relevant person's needs.
- (7) If the relevant person wishes to receive the information mentioned in paragraph (6), the responsible person must provide it within 10 working days of being requested to do so by the relevant person.
- (8) Where the information mentioned in paragraph (6) is not provided within 10 working days the responsible person must provide an explanation of the reason for the delay in providing it.

Training and support

- 8.—(1) Each responsible person must ensure that all staff who carry out the procedure on its behalf—
- (a) are aware of the procedure as provided for in these Regulations;
 - (b) are able to signpost relevant persons appropriately pursuant to regulation 7(6)(c) above; and
 - (c) where necessary, receive relevant training and guidance on the matters mentioned in this regulation.
- (2) Following the procedure start date, the responsible person must provide any of its employees who were involved in the incident with details of any services or support of which the responsible person is aware which may be able to provide assistance or support to any such employee, taking into account—
- (a) the circumstances relating to the incident; and
 - (b) the employee's needs.

PART 3

Further Provision

Records

9.—(1) The responsible person must keep a written record for each incident to which the duty of candour is applied.

(2) The written record is to include a copy of every document or piece of correspondence relating to the application of the procedure to the incident.

(3) A written record created for purpose of this regulation is to be retained by the responsible person for a period of 10 years.

EXPLANATORY NOTE

(This note is not part of the Regulations)