

HEALTHWATCH ENTER AND VIEW – STATUTORY DUTIES

The Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013

PART 4 DUTY OF SERVICES-PROVIDERS TO ALLOW ENTRY BY LOCAL HEALTHWATCH REPRESENTATIVES

Interpretation

10. In this Part—

“the 2007 Act” means the Local Government and Public Involvement in Health Act 2007; and

“care services” has the meaning given in section 221(6) of the 2007 Act (local arrangements in relation to health services and social services).

Duty of services-providers to allow entry by Local Healthwatch organisations or contractors

11.—(1) In relation to premises that a services-provider owns or controls, that services-provider must allow an authorised representative to—

- (a) enter and view those premises; and
- (b) observe the carrying-on of activities on those premises.

(2) Paragraph (1) does not apply—

(a) in respect of any premises, or parts of premises, if the presence of an authorised representative on those premises, or those parts of premises, would compromise—

- (i) the effective provision of care services, or
- (ii) the privacy or dignity of any person;

(b) if the authorised representative does not comply with regulation 13;

(c) in respect of excluded premises;

(d) to observing the carrying-on of excluded activities;

(e) to entering and viewing premises, or parts of premises, for the purpose of observing the carrying-on of excluded activities;

(f) in respect of any premises, or parts of premises, at any time when care services are not being provided on those premises or those parts of premises;

(g)if, in the opinion of the services-provider, the authorised representative in seeking to enter and view, or observe the carrying-on of activities on, premises is not acting reasonably and proportionately;

(h)if an authorised representative does not provide the services-provider with evidence that the representative is authorised in accordance with regulation 12.

(3) Where any premises, or parts of premises, are owned by a services-provider and controlled by another services-provider, the duty under paragraph (1) applies only to the services-provider who controls those premises, or those parts of premises.

(4) In this regulation—

“care home” means an establishment which is a care home within the meaning of section 3 of the Care Standards Act 2000;

“excluded activities” means any activities provided in pursuance of—

(a)
the social services functions of a local authority so far as relating to persons aged under 18;

(b)
the functions, in so far as not covered by paragraph (a), conferred on or exercised by a local authority under the Children Act 1989, the Adoption (Intercountry Aspects) Act 1999 or the Adoption and Children Act 2002; or

(c)
the functions, in so far as not covered by paragraph (a), continuing to be exercisable by a local authority under the Adoption Act 1976;

“excluded premises” means—

(a)
parts of a care home which are not communal areas;

(b)
premises or parts of premises used as residential accommodation for employees of services-providers;

(c)
premises which are occupied by one or more persons as their home and which at least one of those persons occupies under a tenancy or a licence;

“social services functions”, in relation to a local authority, has the same meaning as in the Local Authority Social Services Act 1970.

Authorised representative

12. An individual may be authorised for the purposes of section 225 of the 2007 Act (duties of services-providers to allow entry by Local Healthwatch organisations or contractors) only if that individual is authorised in accordance with arrangements made by a local authority under section 221(1) of the 2007 Act (health and social services: Local Healthwatch) or in accordance with Local Healthwatch arrangements([41](#)).

Viewing and observing activities

13. For the purposes of section 225(4)(b) of the 2007 Act (conditions and restrictions imposed on authorised representatives of Local Healthwatch), whilst an authorised representative is on any premises as a result of a services-provider having complied with a duty imposed under regulation 11(1), the authorised representative must not act in any way that compromises—

(a) the effective provision of care services; or

(b) the privacy or dignity of any person.

Services-provider

14. For the purposes of section 225(7)(e) of the 2007 Act, the following persons are prescribed as services-providers—

(a) a person providing services which are primary medical services for the purposes of the Act;

(b) a person providing services which are primary dental services for the purposes of the Act;

(c) a person providing services which are primary ophthalmic services for the purposes of the Act;

(d) a person providing services which are pharmaceutical services or local pharmaceutical services for the purposes of the Act; and

(e) a person who owns or controls premises where services referred to in paragraphs (a) to (d) are provided.

Revocation

15. The Local Involvement Networks (Duty of Services-Providers to Allow Entry) Regulations 2008 are revoked.

Signed by authority of the Secretary of State for Health.

Earl Howe, Parliamentary Under-Secretary of State, Department of Health

18th February 2013