

Regulation 19: Fit and proper persons employed

Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 19

The intention of this regulation is to make sure that providers only employ 'fit and proper' staff who are able to provide care and treatment appropriate to their role and to enable them to provide the regulated activity. To meet this regulation, providers must operate robust recruitment procedures, including undertaking any relevant checks. They must have a procedure for ongoing monitoring of staff to make sure they remain able to meet the requirements, and they must have appropriate arrangements in place to deal with staff who are no longer fit to carry out the duties required of them.

It is important to note that "person employed" will include any member of staff who currently works in the service as a **volunteer** or a contractor, as well as agency or bank staff. This is based on the broad meaning of "employment" set out in Regulation 2, which extends the scope to those engaged who are not under a contract.

Employing unfit people, or continuing to allow unfit people to stay in a role, may lead CQC to question the fitness of a provider.

If CQC considers that a breach of this regulation is also a breach of another regulation(s) that carries offence clauses, then we can move directly to prosecution without serving a Warning Notice. For example, in situations where the care and treatment is provided without the consent of a person using the service or someone lawfully acting on their behalf, and where it is unsafe, does not meet the person's nutritional needs, results in abuse, or puts the person at risk of abuse.

CQC cannot prosecute for a breach of this regulation or any of its parts, but we can take regulatory action. See the [offences section](#) for more detail.

CQC must refuse registration if providers cannot satisfy us that they can and will continue to comply with this regulation.

The regulation in full

19.—

1. Persons employed for the purposes of carrying on a regulated activity must—
 - a. be of good character,
 - b. have the qualifications, competence, skills and experience which are necessary for the work to be performed by them, and
 - c. be able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the work for which they are employed.
2. Recruitment procedures must be established and operated effectively to ensure that persons employed meet the conditions in—
 - a. paragraph (1), or
 - b. in a case to which regulation 5 applies, paragraph (3) of that regulation.

3. The following information must be available in relation to each such person employed—
 - a. the information specified in Schedule 3, and
 - b. such other information as is required under any enactment to be kept by the registered person in relation to such persons employed.
4. Persons employed must be registered with the relevant professional body where such registration is required by, or under, any enactment in relation to—
 - a. the work that the person is to perform, or
 - b. the title that the person takes or uses.
5. Where a person employed by the registered person no longer meets the criteria in paragraph (1), the registered person must—
 - a. take such action as is necessary and proportionate to ensure that the requirement in that paragraph is complied with, and
 - b. if the person is a health care professional, social worker or other professional registered with a health care or social care regulator, inform the regulator in question.
6. Paragraphs (1) and (3) of this regulation do not apply in a case to which regulation 5 applies.

Guidance

This sets out the guidance providers must have regard to against the relevant component of the regulation.

19(1) Persons employed for the purposes of carrying on a regulated activity must–

19(1)(a) be of good character,

19(1)(a)

- When assessing whether an applicant is of good character, providers must have robust processes and make every effort to gather all available information to confirm that the person is of good character, and have regard to the matters outlined in Schedule 4, Part 2 of the regulations. It is not possible to outline every character trait that a person should have, but we would expect to see that the processes followed take account of honesty, trust, reliability and respect.
- If a provider discovers information that suggests a person is not of good character after they have been employed, they must take appropriate and timely action to meet this regulation.
- If a provider considers that an applicant is suitable, despite them having information about anything set out in [Schedule 3](#), the provider's reasons should be recorded for future reference.

19(1)(b) have the qualifications, competence, skills and experience which are necessary for the work to be performed by them, and

19(1)(b)

- Where a qualification is required for a role, either by law or by a provider, providers should have the means to enable them to check that employees hold the appropriate qualification(s).
- Providers must have appropriate processes for assessing and checking that people have the competence, skills and experience required to undertake the role. These processes must be followed in all cases and relevant records kept.

- Providers should have systems in place to assess the competence of employees before they work unsupervised in a role. They must provide appropriate direct or indirect supervision until the person is assessed as competent to carry out the role. Competence may include the demonstration of a caring and compassionate approach. It is expected that providers that employ healthcare assistants and social care support workers should follow the Care Certificate standards to assess their competence.
- Providers may consider that a person can be engaged in a role based on their qualifications, skills and experience with the expectation that they will become competent within a specified timeframe once in the role. This means that they may work for the provider and undergo training at the same time in order to become competent.

19(1)(c) be able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the work for which they are employed.

19(1)(c)

- All reasonable steps must be made to make adjustments to enable people to carry out their role. These must be in line with requirements to make reasonable adjustments for employees under the Equality Act 2010. This may include offering alternative roles.
- This aspect of the regulation relates to the ability of individuals to carry out their role. This does not mean that people who have a long-term condition or a disability cannot be appointed.

- When appointing an employee, providers must have processes for considering their physical and mental health in line with the requirements of the role.

19(2) Recruitment procedures must be established and operated effectively to ensure that persons employed meet the conditions in–

(a) paragraph (1), or

(b) in a case to which regulation 5 applies, paragraph (3) of that regulation.

19(2)

- Providers must have effective recruitment and selection procedures that comply with the requirements of this regulation and ensure that they make appropriate checks for both employees and directors.
- Information about candidates set out in Schedule 3 of the regulations must be confirmed before they are employed. The Schedule 3 requirement for a full employment history does not apply to volunteers except where they are service providers, directors or registered managers. This is on the basis that those roles hold a level of responsibility where it is necessary to have a full employment history to ensure a person's suitability and appropriateness of the role.
- Providers may request employment history for volunteers where they consider this is necessary to the role.
- Other checks deemed appropriate by the providers may also be undertaken.

- Selection and interview processes should assess the accuracy of applications and be designed to demonstrate candidates' suitability for the role, while meeting the requirements of the Equality Act 2010 in relation to pre-employment health checks.
- Recruitment and/or checks on candidates may be carried out by a party other than the provider. In this case, providers must assure themselves that all checks are complete and satisfactory.

19(4) Persons employed must be registered with the relevant professional body where such registration is required by, or under, any enactment in relation to–

(a) the work that the person is to perform, or

(b) the title that the person takes or uses.

19(4)

- Providers must have a process to check that staff have appropriate and current registration with a professional regulator or, where applicable, an accredited voluntary register.

19(5) Where a person employed by the registered person no longer meets the criteria in paragraph (1), the registered person must–

(a) take such action as is necessary and proportionate to ensure that the requirement in that paragraph is complied with, and

(b) if the person is a health care professional, social worker or other professional registered with a health care or social care regulator, inform the regulator in question.

19(5)

- Providers must regularly review the fitness of employees.
- Providers must follow robust systems to respond to concerns about a person's fitness after they are appointed to a role. This applies whether the concerns are raised by the provider or others.
- Providers should respond without delay to concerns about a person's fitness or ability to carry out their duties. This includes responding immediately if there is an imminent risk to people working in and using the service.
- The response taken to concerns about a person's fitness should be fair to the person and follow correct procedures.
- Where a person's fitness to carry out their role is being investigated, appropriate interim measures must be taken to minimise any risk to people using the service.
- Providers must inform others as appropriate about concerns or findings relating to a person's fitness and must support any related enquiries and investigations that others have carried out. They may inform bodies such as professional regulators, police, and safeguarding authorities about concerns.

Meeting our requirements of employment for Regulation 19: frequently asked questions
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