

## EXECUTIVE NOTE

### Overview

1. This Executive Note addresses the following statutory instruments:
  - **The Regulation of Care (Scotland) Act 2001 (Commencement No. 7 and Transitional Provisions) Order 2006 (“the Commencement Order”) SSI/2006/275 (C.26)**
  - **Regulation of Care (Requirements as to Care Services) (Scotland) Amendment Regulations 2006 (“the Amending Regulations”) SSI/2006/274**
  - **The Regulation of Care (Applications and Provision of Advice) (Scotland) Amendment Order 2006 SSI/2006/272**
  - **The Regulation of Care (Fees) (Scotland) Amendment Order 2006 SSI/2006/273**
2. Other than the Commencement Order, which is not subject to Parliamentary procedure, each instrument is subject to negative resolution procedure. All of them come into force on 20th June 2006.
3. Together they bring adult placement services within the scope of regulation by the Scottish Commission for the Regulation of Care (“the Care Commission”) under the Regulation of Care (Scotland) Act 2001 (asp 8) (“the Act”). The Amending Regulations also amend the requirements on providers of independent healthcare services.
4. A note on the policy objectives follows immediately below. The individual instruments are then discussed in more detail after that.

### General Policy Objectives

5. A range of the care services defined in the Act has been regulated by the Care Commission since 1 April 2002. The Care Commission is gradually taking over responsibility for the remainder. For some services, regulation commenced from April 2003, with others following in December 2003, April 2004 and April 2005. The next to be regulated, from 20th June 2006, are adult placement services. Details about independent healthcare services are contained in paragraphs 7 and 8 below.

#### *Regulation of adult placement services*

6. “Adult placement services” are defined in section 2(4) of the Act as:

*‘...a service which consists of, or includes, arranging for the provision of accommodation for an adult (that is to say for a person who has attained the age of eighteen years) together with –*

  - (a) personal care;*
  - (b) personal support; or*
  - (c) counselling, or other help, provided other than as part of a planned programme of care,*

*by reason of the person’s vulnerability or need by placing the person with a family or individual, but a service may be excepted from this definition by regulations’*

### *Independent healthcare services*

7. Independent health care services in Scotland are regulated under the Act by the Care Commission. The term is defined in section 2(5) of the Act and covers: independent hospitals, private psychiatric hospitals, independent clinics and independent medical agencies. Regulation of independent hospitals, private psychiatric hospitals and hospices commenced in April 2002. With the exception of some clinics that that were regulated under the previous regime as nursing homes before the Act came into force, regulation of independent clinics and independent medical agencies has not yet commenced.

8. The purposes of the Amending Regulations in respect of independent healthcare is to substitute a new Regulation 15 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 (S.S.I. 2002/114). Regulation 15 of those Regulations is specific to independent healthcare services.

### **The instruments**

#### ***(1) The Regulation of Care (Scotland) Act 2001 (Commencement No7 and Transitional Provisions) Order 2006***

9. This instrument is made under section 81(2) to (4) of the Act, and is not subject to Parliamentary procedure.

10. Section 2(1)(k) of the Act includes adult placement service within the definition of “care service”. Section 2(16) of the Act defines what “adult placement service” means, and is noted above. Article 2 of the Commencement Order brings section 2(1)(k) and (16) of the Act into force on 20th June 2006, and so brings the service within the scope of regulation by the Care Commission from that date.

11. Article 3 of the Commencement Order sets out transitional provisions. Adult placement services already operating immediately before 20th June 2006 are deemed to be registered on that date until 19th March 2007 to allow an application for registration to be made. If an application is made before 19th March 2007, deemed registration will then continue until 19th December 2007 at the latest, by which time the Care Commission must have considered all applications and granted or refused registration.

12. Article 3 of the Commencement Order also makes provision for deemed registration of those adult placement services to end earlier than the specified dates. This is set out in more detail in the Explanatory Note to the Commencement Order, and includes matters such as registration of the service, and where the sheriff grants an application by the Care Commission under section 18 of the Act for urgent cancellation of the adult placement service. Services which are not operating immediately before 20<sup>th</sup> June 2006 are treated as new applications and must be registered before they can begin to provide the service.

## ***(2) The Regulation of Care (Requirements as to Care Services) (Scotland) Amendment Regulations 2006***

13. The Amending Regulations are made under section 29(1), (2)(c) and (e) and (7)(c) and (o) of the Act. They are subject to negative resolution procedure, and amend the Regulation of Care (Requirements as to Care Services) (Scotland) Order 2002 (SSI/114), (“the Principal Regulations”).

14. There is a statutory requirement on the Scottish Ministers under section 29(12) of the Act to consult such persons, or groups of persons, as they consider appropriate when using these enabling powers. Details of the consultation are set out at paragraphs 23 and 24 below.

15. The Principal Regulations set out the requirements for those persons seeking to register a care service. These include provision for fit persons to provide, manage and work in the service, requirements how the service is to be managed, operated, staffed and equipped, and measures promoting the health and wellbeing of service users and good employment practice. Amendments to the Principal Regulations made by these regulations can be divided into two heads.

### *Adult placement services*

16. The Amending Regulations make a number of amendments to the Principal Regulations in their application to adult placement services.

17. Regulation 2(3) of the Amending Regulations amends regulation 1(5) of the Principal Regulations to alter the application of the definition of “employee” in regulation 1(3). This is done to apply the provisions relating to fitness of employees in regulation 9 of the Principal Regulations to persons who are introduced by an adult placement service. The effect is that providers of an adult placement service should not introduce service users to any person who is unfit in terms of regulation 9. Regulation 19(2)(a) to (d) of the Principal Regulations is similarly applied by the same amendment, so that providers of an adult placement service must keep relevant records of persons introduced to the service user by the placement service.

18. The Amending Regulations insert a new regulation 11A into the Principal Regulations. A provider of an adult placement service must not place any service user in premises in which there is any person living who is unfit to be in the proximity of the service user.

19. The Amending Regulations also disapply regulation 19(3)(h), (j) and (k) for adult placement services. This regulation sets out what records a care service provider must keep. Regulation 19(3)(h), (j) and (k) relate to infection control and control of medication. Adult placement services are an agency type service and they do not provide direct care. It is therefore not necessary for these services to keep such records.

### *Independent healthcare services*

20. In relation to independent healthcare services the Amending Regulations substitute a new requirement. It requires service providers to ensure that the care and treatment they provide meets the needs of the person using the service. Providers are also required to have

in place a system which manages risk and reviews the quality of care and treatment and other services that are provided. A written record of the review must be kept and made available to the Care Commission and those who use the services.

### ***(3) The Regulation of Care (Applications and Provision of Advice) (Scotland) Amendment Order 2006***

21. This Order is made under sections 7(2)(a) and 14(3) of the Act. It is subject to negative resolution procedure.

22. It amends the Regulation of Care (Applications and Provision of Advice) (Scotland) Order 2002 (S.S.I. 2002/113) which specifies the information which must be provided by a person who is applying for registration of a care service or for variation or removal of a condition of registration. The amendment removes the need for adult placement services to provide details in any application of employee to service user ratios during the day and night. Disapplying this requirement will bring adult placement services into line with other agency type services such as fostering services.

### ***(4) The Regulation of Care (Fees) (Scotland) Amendment Order 2006***

23. This Order is made under section 24 of the Act and is subject to negative resolution procedure. The Order amends the Regulation of Care (Fees) (Scotland) Order 2005 (S.S.I. 2005/97), and prescribes the maximum fees which the Care Commission can charge in respect of adult placement services. Within these maximum levels, and taking into account its reasonable expenses, the Care Commission has discretion to remit the fee completely or charge a lower fee if it considers that appropriate. The maximum fees for adult placement services are set at the same level as those for fostering services.

## **Consultation**

### *Adult Placement Services*

24. Two consultation papers were issued, one on the legislation required, the other on maximum fee levels. These were sent to organisations in the public, private and voluntary sectors with direct involvement or an interest in adult placement services in Scotland. They were also published on the Scottish Executive website and the Care Commission provided links from its own website. The Orders and Amendment Regulations reflect the outcome of those consultations.

### *Independent healthcare services*

25. A consultation paper was issued on the proposed changes to the requirements set out in Regulation 15. Those consulted included independent healthcare service providers registered with the Care Commission, professional organisations such as the Royal College of Nursing, umbrella bodies such as the Scottish Independent Hospitals Association and the Care Commission. The responses to the consultation were generally supportive of the proposed amendment and welcomed clarity about what is expected of independent healthcare service providers

## **Financial Effects**

### *Adult Placement Services*

26. The expected impact of commencing regulation of adult placement services on business, charities and the voluntary sector is explained in the Regulatory Impact Assessment attached.

### *Independent healthcare services*

27. The requirements being introduced by this amendment reflect what is accepted as good practice in delivering independent healthcare services and should not result in any additional administrative or operational costs. None of the responses received during the consultation raised the issue of financial implications. It was not therefore considered necessary to carry out a Regulatory Impact Assessment.

## **Consolidation of Regulations**

28. The Executive is aware of the need to consolidate the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations and the Regulation of Care (Applications and Provision of Advice) (Scotland) Regulations and will consider doing so at an appropriate time in the future.

Scottish Executive Health Department  
May 2006

## Regulatory Impact Assessment

### Title of Proposal

1. Commencement of regulation of adult placement services by the Scottish Commission for the Regulation of Care (the Care Commission)

### Purpose and intended effect

2. This suite of subordinate legislation is required to enable the Care Commission to regulate adult placement services. Regulation of these services by the Care Commission will provide protection to those who use the services and encourage further improvement in the quality of services.

### Objectives

3. The subordinate legislation commences regulation of adult placement services by the Care Commission with effect from 20 June 2006. It also sets out the requirements which will have to be met in order to provide an adult placement service, and details the maximum fees that the Care Commission can charge for regulating these services.

### Background

4. The Regulation of Care (Scotland) Act (the Act) requires any person seeking to provide a care service as defined in the Act to apply to the Care Commission for registration of that service. A range of the care services defined in the Act has been regulated by the Care Commission since 1 April 2002. The Care Commission is gradually taking over responsibility for regulating the remainder. For some, regulation commenced from April 2003, with others following in December 2003, April 2004 and April 2005.

5. Adult placement services are defined in the Act as '*a service which consists of, or includes, arranging for the provision of accommodation for an adult (that is to say for a person who has attained the age of eighteen years) together with –*

*(a) personal care;*

*(b) personal support; or*

*(c) counselling, or other help, provided other than as part of a planned programme of care,*

*by reason of the person's vulnerability or need by placing the person with a family or individual.'*

### Rationale for government intervention

6. The policy on regulating care services is well established and most of the care services defined in the Act are already being regulated by the Care Commission. The focus of regulation is on continuous improvement in the quality of care services. If adult placement services are not regulated by the Care Commission there will be no redress in the event that something goes wrong. Regulated services are also covered by the Care Commission's complaints procedure which ensures that complaints about services are investigated and

problems addressed. The regulatory framework including the establishment of the Care Commission ensures consistent, independent scrutiny of care services across Scotland.

## **Consultation**

7. Consultation was carried out on the proposed maximum fees to be charged by the Care Commission and the proposals for which regulations would apply to those providing adult placement services. The consultation papers were issued to all those with an interest in adult placement services including providers, user groups and umbrella organisations. They were also published on the Scottish Executive website and the Care Commission provided links from its own website.

8. There were 35 responses in total to the consultations, 15 of these responses related to the maximum regulatory fees and 20 to the proposed regulations that will apply to adult placement services. The great majority of these responses came from local authorities and there was a general view that the maximum fees being set were too high. Some concern was also expressed about dual registration for services where adult placement was only one part of the service being provided.

9. The fees set by Scottish Ministers are maximum fees. Within these maximum levels, and taking into account its reasonable expenses, the Care Commission has discretion to remit the fee completely or charge a lower fee if it considers that appropriate. Under the terms of the Act each service which meets one of the definitions in the Act must be registered. The Care Commission is developing an integrated fees scheme by which providers applying to register more than one service pay a reduced integrated registration fee which reflects the integrated approach taken by the Care Commission to the regulatory processes.

## **Options**

10. Option 1 – Commence regulation of adult placement services by the Care Commission. This option meets the policy intention of regulating all care services defined in the Act. Adult placement services are provided to people who require care because of their vulnerability. The regulation of adult placement services offers the same protection and assurance of quality care to those using the service as is afforded to those who use services that are already regulated by the Care Commission.

11. Option 2 – Do not commence regulation. This option would mean that the policy intention of the Act would never be met. Not commencing regulation of these services would maintain the status quo. These services would not be subject to any independent scrutiny and the safety and welfare of vulnerable adults could be at risk.

## **Sectors and groups affected**

12. The National Association of Adult Placement Services Scotland (NAAPS Scotland) carried out a survey on behalf of the Scottish Executive to establish the extent of adult placement services in Scotland at 31 December 2005. The survey established that there are around 15 schemes operating in Scotland providing services to about 1130 vulnerable adults. The survey identified that adult placement services are provided mainly by local authorities with some independent schemes.. Services often focus on particular service users groups such

as people with learning disabilities or older people. Adult placements are most commonly used for short breaks.

## Benefits

### Option 1

13. Many of the benefits associated with regulation of services are difficult to measure such as providing reassurance to vulnerable people and their carers that someone is looking after their interests. It is in the best interests of service users that they receive high quality care that is delivered to agreed standards regardless of where they live in Scotland. An independent regulator is best placed to ensure that this is delivered.

### Option 2

14. There are no benefits to the service users of not regulating these care services. Service providers will benefit in that they would not have to commit resources to the delivering the requirements of the regulatory process. Neither would they have to pay registration or annual licence to operate fees.

## Costs

### Option 1

15. The costs associated with regulation are a legitimate part of the cost of delivering high quality services and are part of the total cost of providing a care service. That cost should therefore fall to providers in the first instance, so that it can be taken into account in setting charges for the service.

16. The fees for regulation of adult placement services are as follows

Service	Application for registration £	Annual continuation £	Variation or removal of condition £	Cancellation of registration £
Small AP service*	2112	1250	328	328
Medium AP service*	3516	3126	328	328
Other AP service*	4449	4372	328	328

\*Small adult placement service is a service which does not employ more than three whole-time equivalent persons to provide and manage the service; a medium adult placement service is a service which employs more than three whole-time equivalent persons but does not employ more than fifteen whole time equivalent persons to provide and manage the service; and an other adult placement service is a service which employs more than fifteen whole-time equivalent persons to provide and manage the service

17. In addition providers will have administrative costs associated with the regulatory process. They will have to provide the information set out in subordinate legislation in their application to register the service. In subsequent years an annual return will need to be completed and submitted to the Care Commission.



18. There is no cost to the Executive for commencing regulation of these services. Administrative costs for regulating adult placement services will be borne by the Care Commission. This will be met from the fees charged to service providers to register their services. Continuation fees are charged in each subsequent year by the Care Commission.

## **Option 2**

19. If these services are not regulated there will be no costs for the Executive, the Care Commission or adult placement service providers

## **Small/Micro firms Impact test**

20. Adult placement services are mainly provided by local authorities. Schemes employ on average around 5 people. The NAAPS Scotland survey identified 5 independent schemes operating in Scotland all of which are registered charities. These 5 providers were included in the consultations but none offered any comments on either the proposed regulations or the proposed fees.

21. The impact on these schemes as a result of commencing regulation is the same as for all regulated services - regulatory fees and the administration costs associated with regulation. Providers are charged a fee to register with the Care Commission initially and an annual continuation fee thereafter. The service will be required to complete the paperwork for registration with the Care Commission and, in each year an annual return. The forms that will be used are being developed by a working group involving key stakeholders (paragraph 22 refers). The group will take on board the experience of previous working group and to ensure that the bureaucracy associated with the regulatory process does not place unnecessary financial or administrative pressure on providers.

## **Test run for Business Forms**

22. The Care Commission will develop the appropriate forms to administer regulation of adult placement services and will test these with services that have volunteered to take part in a pilot exercise

## **Enforcement, sanctions and monitoring**

23. Once regulation has commenced it is illegal for a care service to operate unless it is registered with the Care Commission. Existing services operating immediately before 1 June will be 'deemed' registered from that date. They will then have 9 months to submit an application for registration along with the appropriate fee to the Care Commission. Services which are not operating immediately before 1 June 2006 are treated as new applications and must be registered before they can begin to provide the service. Operating a regulated care service without being registered with the Care Commission is a criminal offence and anyone doing so will be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.

24. The Care Commission has statutory powers to register and inspect care services and to take enforcement action. Adult placement services must be inspected by the Care Commission at least once a year.

25. The Care Commission is a non-departmental public body. Its Management Statement and Financial Memorandum set out its operating planning and financial framework. The Care Commission must agree and publish a 3 year Corporate plan with Ministers, and publish an Annual Report and Accounts which reports progress against targets and budget set in the Plan. Ministers meet the Care Commission twice per year. Among the topics discussed are progress against targets and spending against the profile agreed for the year. The Annual Report and Accounts for 2004/05 are available on the Care Commission's website as is its Corporate Plan for 2005/08.

**Implementation and Delivery Plan**

26. The Care Commission will plan and manage the registration of those services that meet the definition of an adult placement service in the Act and ensure that such services are registered within the timescales set out in the subordinate legislation. The information gathered in the NAAPS Scotland survey will be available to the Care Commission to allow it to contact adult placement services operating in Scotland.

**Post -implementation review**

Maximum fees for care services are reviewed every year by Scottish Ministers.

**Summary and recommendation**

27. Regulation of adult placement services has not been commenced. The options are to maintain this situation or to commence regulation of these services by the Care Commission. Not commencing regulation does not achieve the policy intention of regulating all the care services defined in the Act. The focus of regulation is on continuous improvement in the quality of care services. The benefits of commencing regulation of adult placement services relate to protecting vulnerable service users and ensuring that quality services are provided no matter who provides them or where they are provided. The costs of regulation as set out above must be balanced against these benefits. It is therefore recommended that regulation of adult placement services is commenced

**Declaration**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

**Signed by the responsible Minister.....**

**Date .....**