

EXECUTIVE NOTE

The Regulation of Care (Scotland) Act 2001 (Commencement No. 7 and Transitional Provisions) Amendment Order 2007 SSI/2007/67

The above instrument (“the Amendment Order”) was made in exercise of the powers conferred by section 80(2) of the Regulation of Care (Scotland) Act 2001 (“the Act”). The instrument is subject to negative resolution procedure.

Policy Objectives

1. The Regulation of Care (Scotland) Act 2001 (Commencement No. 7 and Transitional Provisions) Order 2004 (S.S.I. 2006/275) (“the 2006 Order”) brought into force on 20 June 2006, and within the scope of regulation by the Care Commission, adult placement services covered by sections 2(1)(k) and 2(16) of the Act.

2. The 2006 Order made provision for the deemed registration of adult placement services provided immediately before 20 June 2006. The original policy intention, implemented by the 2006 Order, was that deemed registration would, ordinarily¹, last for 9 months and cease on 19 March 2007. Where an application for registration was made before 19 March 2007, deemed registration would continue until, and cease on, 19 December 2007.

3. The Regulation of Care (Scotland) Act 2001 (Commencement No. 7 and Transitional Provisions) Amendment Order 2007 (“the Amendment Order”) will amend the dates in the 2006 Order to extend the deemed registration period so that, ordinarily, it ceases on 19 June 2007 and to provide that if an application is made before that date, deemed registration will (again ordinarily) cease on 19 June 2008. The proposed amendments will give another 3 months for those providers who have not yet applied for registration to conclude their discussions with the Care Commission on the form and number of applications required, which the Care Commission in turn will be able to consider by the end of the further 12 month period for which deemed registration will last.

4. Unless an amendment is made to the 2006 Order, those providers who have not applied before 19 March 2007 will be acting unlawfully if they continue to provide these vital services from that date - under section 21 of the Act, it would be an offence to provide them while unregistered. The Care Commission has informed the Scottish Ministers that it is not certain that all of the applications will have been submitted by that date and that they need a little further time to conclude their discussions with the providers on the form and number of applications required and to consider those applications. On that basis it is considered appropriate to extend the deemed registration period.

¹ Article 3 of the 2006 Order also make 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 2006 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 were not operating immediately before 20 June 2006 were treated as new applications and must be registered before they can begin to provide the service.

Consultation

5. In accordance with section 80(4) of the Act, Ministers consulted on the original proposals to regulate adult placement services in early 2006. That consultation extended to individuals and organisations in the public, private and voluntary organisations with direct involvement or an interest in social services in Scotland (the primary audience was providers/commissioners of adult placement services), including the Care Commission itself. The policy intention behind the Amendment Order is identical to that in the 2006 Order, in that transitional arrangements will still apply. The only difference is that the period for applying and becoming registered will be extended. For the Amendment Order, therefore, it was considered appropriate to consult just the Care Commission. The Care Commission is content with the change.

Financial Effects

6. The instrument is not expected to have a significant impact upon business, charities or the voluntary sector.

7. A Regulatory Impact Assessment (RIA) was carried out in respect of the subordinate legislation required to regulate adult placement services from 20 June 2006 and a note of the RIA was attached to the Executive Note accompanying those instruments when they were made in May 2006. It was not considered necessary to carry out a further RIA for this Amendment Order extending the deemed registration periods.

Scottish Executive Health Department
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