

EXECUTIVE NOTE

THE REGULATION OF CARE (FITNESS TO REGISTER, PROVIDE AND MANAGE CARE SERVICES) (SCOTLAND) AMENDMENT REGULATIONS 2009 (SSI 2009/130)

1. This instrument was made in exercise of the powers conferred by section 28(1) of the Regulation of Care (Scotland) Act 2001 (“the Act”). The instrument is subject to the affirmative resolution procedure.

Policy Objectives

2. Care services defined in the Act must be registered with the Care Commission. Potential care service providers apply to the Commission for registration of the services they propose to supply. The purpose of these regulations is to amend the provisions relating to such applications. These are set out in the Regulation of Care (Registration and Registers) (Scotland) Regulations 2002 as amended (SSI 2002/115); and the Regulation of Care (Requirements as to Limited Registration Services) (Scotland) Regulations 2003 (SSI 2003/150).

3. The Commission is required to consider whether the applicant is fit to provide a care service. The relevant regulations render applicants unfit to provide a care service if they have been convicted of an offence resulting in a period of imprisonment of not less than 3 months (whether or not suspended or deferred) without option of a fine. The policy objective is to allow the Care Commission to consider any conviction which the applicant may have and to decide whether that conviction renders the applicant unfit to provide a care service. The Care Commission will produce guidance to assist applicants explaining how the Commission will exercise its discretion.

4. Complementary changes to how fitness is determined for managers and employees of care services are being made under the negative procedure in the Regulation of Care (Miscellaneous Amendments) (Scotland) Regulations 2009 which will be laid in the Scottish Parliament and come into effect at the same time. They are the subject of a separate Executive Note.

Consultation

5. In accordance with the requirements of section 28 of the Act a public consultation was carried out on the proposed regulations. Recipients of the consultation paper included all registered care service providers, local authorities, health boards, umbrella and representative organisations; and the Care Commission. Recipients were invited to bring the paper to the attention of any other interested organisations or individuals that they were aware of. The paper was published on the Consultations section of the Scottish Government website.

Financial Effects

6. There are no additional costs associated with these changes to regulations. Allowing the Care Commission discretion to decide whether a particular conviction is relevant to provision of a care service is expected to deliver a more appropriate response to applications for registration. It was therefore not considered necessary to carry out a regulatory impact assessment

Scottish Government
Primary and Community Care Directorate
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