

EXECUTIVE NOTE

SSI 2011/121

The above instrument was made in exercise of the powers conferred by sections 132 and 133(1)(c) of the Public Services Reform (Scotland) Act 2010 “the 2010 Act”. The instrument is subject to negative resolution procedure.

Policy Objectives

The purpose of the instrument is to prescribe the manner in which the transition is made on 1 April 2011 from the current system of registration under the Regulation of Care (Scotland) Act 2001 (“the 2001 Act”) to the system of registration provided for social services under the 2010 Act and for independent healthcare services under the National Health Service (Scotland) Act 1978 (the “NHS Act”) (as amended by the 2010 Act).

It also provides for the completion after 31 March 2011 of inspections started under the 2001 Act and the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006 (the “2006” Act).

The policy intention is that all services currently registered with the Scottish Commission for the Regulation of Care (the Care Commission) should be deemed to be registered with either Social Care and Social Work Improvement Scotland (SCSWIS) or Healthcare Improvement Scotland (HIS) on 1 April 2011 making the transition as smooth as possible for providers. Any inspections of services under way at 31 March 2011 will be completed and followed-up by the new bodies and some provisions in the 2001 Act are saved to enable this. Legal proceedings ongoing on that date will also be completed, either by the relevant provisions in the 2001 Act being saved or by transferring over to be dealt with under the appropriate provisions in the 2010 Act.

Care Services (excluding independent healthcare services)

All care services currently registered with the Care Commission (except those where an urgent cancellation notice is in force) will be deemed to be registered with SCSWIS under Part 5 of the 2010 Act from 1 April 2011. Limited registrations and registration under section 33 of the Act (local authority, adoption and fostering services, etc) will also convert to registration with SCSWIS under the 2010 Act.

Any condition or improvement notice which has been issued to a care service by the Care Commission under the provisions of the 2001 Act will be deemed to be a notice issued by SCSWIS under the 2010 Act and will continue to apply to the service until appropriate action is taken to resolve the issue.

Where a cancellation notice issued by the Care Commission for a care service under section 12 of the 2001 Act is still in effect on 1 April 2011 that notice is treated as if it had been issued by SCSWIS under the 2010 Act and will continue to apply until the appropriate action has been completed. For such notices, any reference to an offence or a requirement in section 64(1) of the 2010 Act is to be treated for these purposes as if it were a relevant offence or requirement as defined the section 12 of the 2001 Act.

Where before 1 April 2011 a care service has applied to the Commission for the removal or variation of a condition in force or the cancellation of the registration and the application has not been concluded then the application will be treated as if it had been made to SCSWIS under the 2010 Act.

Any person registered with the Scottish Social Services Council under section 44(1)(b) of the 2001 Act as a Care Commission employee who is also authorised to inspect services under sections 25 and 27 of the 2001 Act will be treated as a person authorised to conduct inspections under the 2010 Act.

The National Care Standards published by Scottish Ministers under the 2001 Act will continue to apply to care services and independent healthcare services as if published under the 2010 and NHS Acts.

Where on 31 March 2011 the Care Commission is dealing with a complaint about a care service, an independent health care services or against the Commission itself, SCSWIS will be responsible for completing the investigation of that complaint.

Independent healthcare services

All independent health care services currently registered with the Care Commission (except those where an urgent cancellation notice is in force) will be deemed to be registered with HIS under the NHS Act on 1 April 2011.

Any condition or improvement notice which has been issued by Care Commission under the provisions of the 2001 Act before 1 April 2011 will be deemed to be a notice issued by HIS under the NHS Act and will continue to apply to the service until action is taken to resolve the issue.

Where a cancellation notice issued by the Care Commission under section 12 of the 2001 Act for an independent healthcare service is still in effect on 1 April 2011 that notice is treated as if it had been issued by HIS under the NHS Act and will continue to apply until the appropriate action has been completed. Any reference to an offence or a requirement in section 64(1) of the 2010 Act is to be treated for these purposes as if it were a relevant offence or requirement as defined in section 12 of the 2001 Act.

Where before 1 April 2011 an independent healthcare service has applied to the Commission for the removal or variation of a condition in force or the cancellation of the registration and the application has not been concluded then the application will be treated as if it had been made to HIS and will be processed under the NHS Act.

Applications

Where, immediately before 1 April 2011, any new care service or independent healthcare service is in the process of being registered with the Care Commission the process will be continued by SCSWIS under the provisions of the 2001 Act. The registration certificate when issued will indicate that the service is registered with SCSWIS under the 2010 Act or the NHS Act, as appropriate. Where any new independent healthcare service is in the process of being registered with the Care Commission, SCSWIS will complete the registration process under the 2001 Act but the registration certificate when issued will indicate that the service is registered with HIS under section 10P of the NHS Act.

Inspections

Where any inspections by the Care Commission (including follow-up inspections and integrated inspections jointly with HMIE) have started by 31 March 2011 these will continue from 1 April 2011 under the provisions of the 2001 Act. The appropriate bodies, SCSWIS, HIS or HMIE, will complete the inspection, publish the inspection reports and liaise with service providers about following up any recommendations.

Other provisions

Urgent Cancellation and Appeals

Any application for urgent cancellation of a care service or an independent healthcare service which is in process at 31 March 2011 will continue to be processed by SCSWIS under the provisions of section 18 of the 2001 Act which is being saved for this purpose. The care service will not be deemed to be registered under the 2010 Act until the proceedings are complete and only if the registration is not cancelled. The independent healthcare service will not be deemed to be registered under the NHS Act until the proceedings are complete and only if the registration is not cancelled. (There is no similar procedure for urgent cancellation by way of summary application to the sheriff under the 2010 Act. The emergency cancellation procedures under the 2010 Act which will be used in similar circumstances by SCSWIS and HIS follow a different procedure.)

Appeals

Any appeal under section 17(3) of the 2001 Act against a decision by the Care Commission to grant an application for a care service (including an independent healthcare service) with conditions not resolved by 31 March 2011 will continue but treated as being made under the provisions of the 2010 Act.

Offences

Where criminal proceedings are on-going on 31 March 2011 in relation to an offence under sections 21, 22, 23 or 40 of the 2001 Act those sections will continue in force until the conclusion of the proceedings. In addition if an offence is committed before 1 April 2011 under those sections of the 2001 Act it may be prosecuted under those provisions.

Regulations

Two sets of regulations made under section 2 and 29 of the 2001 Act are to remain in force despite the repeal of those sections. These regulations place specific requirements on providers of care services and are retained to ensure continuity (notwithstanding the similar regulations on requirements placed on service providers being made under the 2010 and NHS Acts. The regulations retained are

- the Regulation of Care (Fitness of Employees in relation to Care Services) (Scotland) (No. 2) Regulations 2009 (SSI 2009/118 as amended by SSIs 2009/349 and 2010/413);
- regulations 19 to 24 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 (SSI 2002/114 as amended by SSIs 2003/149, 2003/572, 2004/94, 2006/274) and such other provisions of those Regulations as are necessary for the purposes of regulations 19 to 24.

Inspections

Where any inspections are being conducted at 31 March 2011 under the provisions of the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006 (joint inspections and SWIA inspections of social work services) these will continue from 1 April 2011 under the provisions of that Act which are being saved for this purpose. SCSWIS will complete the inspection, publish the inspection report and liaise with the service providers about following up any recommendations.

Consultation

There was no statutory requirement to consult on this Order. The Care Commission, SWIA, HMIE and NHS QIS have been consulted during the preparation of the instrument in order to ensure that the transitional arrangements work in practice and the transition is as smooth as possible for the bodies and the service providers involved.

Financial effects

The Order does not have any new financial effects that were not anticipated when the 2010 Act was enacted. The purpose of this Order is to make transitional provision for the application of provisions of the 2010 Act and to set out circumstances in which existing legislation will continue to apply after the coming into force of the 2010 Act. The Order has been prepared to ensure the smoothest possible transition from the old to the new system. It therefore has no additional financial impact on the Scottish Executive, local government or on business. As a result a Regulatory Impact Assessment is not required.

These consequential modifications are not expected to have any financial effects in themselves. The financial effects of the creation of the new bodies and the dissolutions which have necessitated this order were covered in the [Financial Memorandum](#) accompanying the Bill, starting at page 56.

Scottish Government
Directorate of Health and Social Care Integration
February 2011