

POLICY NOTE

The Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Amendment (No. 2) Regulations 2018

SSI 2018/42

The above instrument was made in exercise of the powers conferred by section 5(1) and 23(4) of the Community Care and Health (Scotland) Act 2002(a) (the “2002 Act”). The instrument is subject to negative procedure.

This instrument revokes The Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Amendment Regulations, made on 16 January 2018.

Policy Objectives

These Regulations amend the Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Regulations 2015 (“the 2015 Regulations”), and are made under the Community Care and Health (Scotland) Act 2002 (“the 2002 Act”).

Section 5(1) of the 2002 Act enables local authorities in Scotland to make arrangements for the provision of residential accommodation in an appropriate establishment outwith Scotland in fulfilment of their duties under section 12 or 13A of the Social Work (Scotland) Act 1968 or under section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

Regulation 2 of the 2015 Regulations defines what is meant by an “appropriate establishment” for the purposes of section 5(1) and (3) of the 2002 Act in respect of England, Wales and Northern Ireland. As regards England and Wales, “appropriate establishment” is defined by reference to a care home within the meaning of section 3 of the Care Standards Act 2000 (“the 2000 Act”).

The Regulation and Inspection of Social Care (Wales) Act (“the 2016 Act”) establishes a new legal basis for the regulation and registration of, among other things, care home services in Wales. This replaces the existing regime applying in respect of Wales under the 2000 Act.

In light of this, regulation 2 of these Regulations amends the 2015 Regulations to reflect that, as respects Wales, an “appropriate establishment” for the purposes of section 5(1) and (3) of the 2002 Act is a place at which a care home service, within the meaning of Part 1 of the 2016 Act, is provided wholly or mainly to persons aged 18 or over. This amended definition of “appropriate establishment” is necessary to ensure local authorities in Scotland retain their current ability to make placements into residential care in Wales.

Consultation

The Cabinet Secretary for Health and Sport’s agreement to amending the 2015 regulations was received on 7 December 2017.

Impact Assessments

There are no equality or privacy impact issues.

Financial Effects

The Cabinet Secretary for Health and Sport, Ms Shona Robison, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Health and Social Care Integration Directorate

5 February 2018