

Explanatory Memorandum

1. (i) The Care Standards Act 2000 (Extension of the Application of Part 2 to Adult Placement Schemes) (England) Regulations 2004 No. 1972

1. (ii) Laying authority and responsible department

This explanatory memorandum is laid before Parliament by Command of Her Majesty. The Memorandum contains information for the Joint Committee on Statutory Instruments. The memorandum is the responsibility of the Department of Health.

2. Description

This Statutory Instrument will apply various provisions of the Care Standards Act 2000 (i.e. provisions which give regulation making powers) to adult placement schemes (as defined in the regulations) with the modifications set out. The purpose of this instrument is to enable the minister to make regulations governing adult placement schemes. The substantive regulations will be laid shortly after the coming into force of this instrument.

3. Matters of special interest

The Care Standards Act 2000 (Extension of the Application of Part 2 to Adult Placement Schemes) (England) Regulations 2004 will come into force earlier than 21 days after they are made. These regulations provide for certain provisions (i.e. regulation making powers) of the Care Standards Act to apply to prescribed persons with modifications. These regulations enable the regulation making powers in Part 2 of the Care Standards Act 2000 to be used to make regulations to regulate adult placement schemes. These regulations need to be in force before the minister can make the substantive regulations which will set out the regulatory scheme for adult placement schemes. Unfortunately the need to make these regulations prior to the substantive regulations was not appreciated until the final vetting procedures for the regulations was done (the point at issue is a technical one). The reason the Department is breaching the 21 day rule is because it gave a commitment to the Minister to have the regulations governing adult placement schemes in place during the summer of this year. There is strong support for having such a regulatory scheme in place quickly. Evidence shows that the existing regulatory regime is having a detrimental effect on the Adult Placement Carers and consultation showed strong support for the reforms proposed. The regulations which set out the substance of the regulatory scheme (that is the regulations made under the powers referred to above as modified) will lay before Parliament for the full 21 days.

4. Legislative background

The Care Homes Regulations 2001 (SI 2001 No. 3965) (which are made under powers in the Care Standards Act 2000) included, at Regulations 45 and 46,

particular provision in respect of adult placements. This was in recognition of the particularly flexible and domestic nature of adult placements. These Regulations placed responsibility with the Adult Placement Carer (AP Carer) as the registered person to meet the requirements of regulation. The Care Homes (Adult Placements) (Amendment) Regulations 2003 (SI No. 1845) made changes to the original Regulations. These comprised of certain easements to the requirement to register and other changes intended to ensure that they are even more relevant to AP Carers who provide this valuable service to the community and, at the same time, continue to promote quality services and provide appropriate protection for the vulnerable people they look after.

Despite this approach, the Department continued to receive strong representations from within and outside the sector that AP Schemes rather than AP Carers should be registered. Reasons included the significant loss of AP Carers, the danger of an increasingly unregulated sector, and inconsistent standards of performance among AP Schemes leaving some service users unprotected. These included representations from the interested organisations.

5. Extent

The Regulations apply solely to adult placement schemes in England.

6. European Convention on Human Rights

These regulations do apply to the European Convention on Human Rights

7. Policy background

Adult placement offers short or long-term accommodation and/or care or support provided to a maximum, at any one time of three adults, by an AP Carer who is approved and supported by an AP Scheme.

Adult Placement services include accommodation with care or support in or outside the AP Carer's home, day services or respite care, and kinship' or 'outreach' support in the community. Provided by ordinary individuals and families in the community, adult placements have proved to be a highly valuable service option, giving the people who use them access to family and community life. There are approximately 130 AP Schemes in England with a workforce of more than 600 people supporting about 5000 AP Carers in 3644 carer households who provide services to more than 6500 vulnerable adults.

The Government wishes Adult Placement to continue to expand as an option available to those who may benefit from this type of service, and believes that the best way to achieve this aim is through rigorous and appropriate regulation of Adult Placement Schemes rather than of the carers themselves.

Under the current regulatory system, the Commission for Social Care Inspection (CSCI) – previously the National Care Standards Commission (NCSC) – register and inspect individual AP Carers. A survey of AP Schemes in 2003-04, however, confirmed that a significant proportion (441) of AP Carers had cancelled their registration in the 12 months preceding the survey, and about one-third of these

had left schemes altogether; only 32% of AP Carers are currently registered. The burden of regulatory requirements was cited by schemes as the most common reason for problems in recruiting and retaining carers. The majority of unregistered carers are not subject to any external regulation. The standard to which AP Schemes work currently is not consistent across England.

In December 2003 a Consultation Document was issued, together with new Regulations and National Minimum Standards, setting out the Department's proposals for moving the focus of regulation from individual AP Carers to AP Schemes. These proposals were created in conjunction with an Adult Placements Project Management Group including representatives from Government departments and other interested parties.

The responses to the consultation were overwhelmingly positive, with almost all respondents explicitly or implicitly supporting the proposals to regulate AP Schemes rather than individual AP Carers.

The proposed changes are in keeping with the main purpose of the Care Standards Act 2000 to reform the regulatory system of care services. The proposed regulation of Adult Placement Schemes brings the regulatory framework for adult placements in line with the regulation of fostering and domiciliary care agencies. It will ensure that the Regulatory burden is appropriately placed with the scheme rather than with the carer.

8. These regulations do not impact on the private or voluntary sector.

9. Contact

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