

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CARE HOMES AND INDEPENDENT
HOSPITALS) REGULATIONS 2005

2005 No. 2687

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Instrument makes amendments to several sets of social security regulations to change the definitions of “residential accommodation”, “residential care homes” and “nursing homes” to “care home” and “independent hospital”. The terms “care home” and “independent hospital” are defined by reference to the Care Standards Act 2000 and the Regulation of Care (Scotland) Act 2001.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative background

4.1 The Registered Homes Act 1984, the Nursing Homes Registration (Scotland) Act 1938 and the Social Work (Scotland) Act 1968 are used in the definitions of “residential accommodation”, “residential care homes” or “nursing homes” within Social Security legislation. These Acts have been replaced by the Care Standards Act 2000 in England and Wales, and in Scotland by the Regulation of Care (Scotland) Act 2001, from April 2002. These Acts use the terms “care home” and “independent hospital” in England and Wales and in Scotland “care home services” and “independent health care service”.

5. Extent

5.1 This Order extends to England and Wales and Scotland. Equivalent provision will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The policy intent is as far as possible to maintain the status quo for benefit entitlement purposes by ensuring that definitions in Social Security legislation reflect those in the new Acts. In most circumstances these changes will not affect any person's eligibility to or amount of their entitlement to benefit; they are fundamentally a tidying up exercise to replace out of date references with current ones.
- 7.2 However, there is no direct read across between the old and new Acts as the new provisions include homes not previously covered by the old legislation, most notably homes owned or managed by local authority social services.
- 7.2 In respect of England and Wales a definition of independent hospitals has been included as some homes that were mental nursing homes under the Registered Homes Act 1984 fall within the definition of independent hospitals under the Care Standards Act.
- 7.3 In respect of Scotland, most homes now fall within the definition of care home service but some homes may fall within the definition of independent hospital and some within the definition of private psychiatric hospitals. Both of these definitions fall within the definition of independent healthcare service under the Regulation of Care (Scotland) Act 2001.
- 7.4 Therefore the definition of independent hospital in these Regulations includes both independent hospitals in England and Wales and independent hospitals and private psychiatric hospitals in Scotland.
- 7.5 As there is no direct read across between the old and the new legislation the amendments have been developed following discussion with officials from the Department of Health, the Scottish Executive, representatives of the Association of Directors of Social Services, local authority social services and Local Authority Associations.
- 7.6 We have consulted the Local Authority Associations on these amendments. The amendments were supported. The Social Security Advisory Committee has seen the regulations in draft and have agreed that they need not be formally referred to the Committee.

8. Impact

- 8.1 A Regulatory Impact Assessment (RIA) has not been prepared for this instrument, as it has no impact business, charities or voluntary bodies.
- 8.2 There are no public sector impacts.

9. Contact

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Can answer any queries regarding this instrument.

Department for Work and Pensions
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