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SCOTTISH STATUTORY INSTRUMENTS

2018 No. 42

SOCIAL CARE

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

| | | |
|--|---------|--------------------------|
| <i>Made</i> | - - - - | <i>6th February 2018</i> |
| <i>Laid before the Scottish Parliament</i> | - - - - | <i>8th February 2018</i> |
| <i>Coming into force</i> | - - | <i>2nd April 2018</i> |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 5(1) and 23(4) of the Community Care and Health (Scotland) Act 2002⁽¹⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Amendment (No. 2) Regulations 2018 and come into force on 2nd April 2018.

Amendment of the Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Regulations 2015

2.—(1) The Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Regulations 2015⁽²⁾ are amended as follows.

(2) In regulation 2 (meaning of appropriate establishment)—

(a) in paragraph (2)—

(i) in sub-paragraph (a), omit “and Wales”;

(ii) at the end of sub-paragraph (a), omit “and”; and

(1) [2002 asp 5](#). Section 5 was amended by paragraph 3(4) of schedule 1 of the Care Act 2014 ([c.23](#)). Paragraph 10(2) of schedule 1 of that Act makes further amendments to section 5 which are not yet in force.

(2) [S.S.I. 2015/202](#).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(iii) after sub-paragraph (a), insert—

“(aa) as respects Wales, a place at which a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016⁽³⁾, is provided wholly or mainly to persons aged 18 or over; and”;

(b) in paragraph (3)—

(i) in sub-paragraph (a), omit “and Wales”;

(ii) at the end of sub-paragraph (a), omit “and”;

(iii) after sub-paragraph (a), insert—

“(aa) as respects Wales, a place at which a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016, is provided wholly or mainly to persons aged 18 or over; and”.

Revocation

3. The Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Amendment Regulations 2018⁽⁴⁾ are revoked.

St Andrew’s House,
Edinburgh
6th February 2018

SHONA ROBISON
A member of the Scottish Government

⁽³⁾ 2016 anaw 2. A “care home service” is defined in paragraph 1 of schedule 1 of that Act.

⁽⁴⁾ S.S.I. 2018/16. These Regulations are revoked before they come into force.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Regulations 2015 (“the 2015 Regulations”).

Section 5(1) of the Community Care and Health (Scotland) Act 2002 (“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 2016 (“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.

Regulation 3 revokes the Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Amendment Regulations 2018.