

POLICY NOTE

THE CARE HOMES EMERGENCY INTERVENTION ORDERS (CORONAVIRUS) (SCOTLAND) REGULATIONS 2020

SSI 2020/201

The above instrument was made in exercise of the powers conferred by section 65B of the Public Services Reform Act 2010. The instrument is subject to affirmative procedure.

Purpose of the instrument.

The purpose of this instrument is to make further provision in connection with emergency intervention orders.

Policy Objectives

The Coronavirus (Scotland) (No.2) Act makes provision to enable Scottish Ministers to make an application to the Court of Session or Sheriff Court for an emergency intervention order in a care home. An application may be made where, for a reason relating to coronavirus, there is a serious risk to the life, health or wellbeing of an individual in the home. An emergency intervention order grants Scottish Ministers the power to authorise a nominated officer to take specified steps in relation to the care home for the duration of the Order. Scottish Ministers can exercise the powers that would be available under an emergency intervention order prior to making an application to the Court where they are satisfied that it is essential to do so for a reason relating to coronavirus, to prevent an imminent and serious risk to the life or health of persons at the care home. In such circumstances, Scottish Ministers must make an application within 24 hours of exercise of these powers. An emergency intervention order can last for such period of up to 12 months as may be specified in the order and may be extended for a further period of up to 6 months. The Court may make any incidental provision in an order as the Court thinks fit.

The instrument makes clear that where an officer of a Local Authority or Health Board is appointed nominated officer, they are acting on behalf of the Local Authority or Health Board respectively. It is likely that the Chief Social Work Officer (CSWO) of the Local Authority will be appointed as nominated officer due to their existing statutory responsibilities for adult social care. The Scottish Government will consult with the Local Authority Chief Executive and Chief Social Work Officer ahead of making an application to the Court.

The nominated officer continues to be accountable to Scottish Ministers regarding the ongoing progress and required action in the care home where an intervention is made. Arrangements for reporting by the nominated officer to Scottish Ministers will be made by agreement or included in the application for the emergency intervention order to allow reporting to be specified in the Court Order.

The nominated officer can delegate to other individuals, for example to carry out day to day tasks within the care home. Where additional staff are required and where they are delegated tasks to operate the day to day running of the home, they will require to be suitably qualified.

The nominated officer will continue to be accountable for action taken in pursuance of the Order.

It is recognised that a range of professionals from across the health and social care sector are involved with the care and support of those who use care home services. Where an emergency intervention order is granted and a nominated officer appointed, it will be important that the nominated officer works with professionals across health and social care to ensure appropriate care and support to those in care homes. Our expectation is that partners across the system, Local Authorities, Health Boards and the Care Inspectorate, will work with the nominated officer as appropriate.

In order to consider the exercise of these powers, Scottish Ministers will need to be fully informed, with relevant information from the appropriate bodies. The instrument provides that the Scottish Ministers may require Local Authorities, Health Boards (including Healthcare Improvement Scotland), the Care Inspectorate, Police Scotland, the Registrar of nurses and midwives, Scottish Social Services Council and the Mental Welfare Commission to provide relevant information.

The Scottish Government will be monitoring risk to life, health and wellbeing across care homes and will seek additional relevant information from the public bodies specified above where they identify a potentially serious risk to the life, health and wellbeing of care home residents.

Where an emergency intervention order is made, the provider of the care home service remains liable for all outgoings. Where any additional costs are incurred by the nominated officer, those costs can be recovered from the provider.

An additional cost would be any resources which the delivery organisation would not have incurred if they had not been required to intervene to ensure the continued delivery of safe and high quality care in line with Care Inspectorate standards and regulations i.e. additional staff, deep cleaning, repairs, additional equipment.

At the outset of an intervention being made, it will be for the nominated officer together with the Scottish Government, Care Inspectorate, the Local Authority and the Health Board, as relevant, to hold early discussions to establish what additional support may be required. Close co-operation would continue for the duration of the Order.

The instrument provides that no right of action arises in respect of loss, injury or damage incurred by a person due to the Scottish Ministers exercising or failing to exercise their functions under section 65A of the 2010 Act. Nothing in this instrument prevents an individual from raising proceedings on the ground that an act is incompatible with any of the Convention rights.

Consultation

This instrument is being made urgently in order to ensure necessary and appropriate provision is made in response to coronavirus. The pace of the work has meant limited consultation but in preparing this instrument, the Scottish Government has consulted the following stakeholders: Chief Social Work Officers, COSLA, SOLACE, Scottish Care,

CCPS, the convener of Adult Support Protection Committee, Social Work Scotland and members of the Care Home Rapid Action Group, including Health Boards Chief Executives.

Impact Assessments

A Data Protection Impact Assessment has been prepared and placed in the Directorate for Community Health and Social Care, St Andrew's House, Edinburgh, EH1 3DG.

It is not considered that the policy will be discriminatory on the basis of age, disability, race, religion or belief, sex, sexual orientation or gender reassignment. There is no negative impact on children's rights and wellbeing and we do not consider there to be any impacts on privacy or the environment.

Financial Effects

No BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Mental Health and Social Care Directorate

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