

POLICY NOTE

THE SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND (CANCELLATION OF REGISTRATION AND RELEVANT REQUIREMENTS) ORDER 2024

SSI 2024/45

The above instrument was made in exercise of the powers conferred by sections 64(1)(c) and 91(5)(c) of the Public Services Reform (Scotland) Act 2010. The instrument is subject to negative procedure.

Summary Box

This instrument ensures that the Care Inspectorate (CI) can propose to cancel the registration of a care service under section 64(1) of the Public Services Reform (Scotland) Act 2010 (2010 Act) or report certain local authority provided care services to the Scottish Ministers under section 91(3)(b) of the 2010 Act, following a breach of section 7 and/ or 8 of the Health and Care (Staffing) (Scotland) 2019 Act (2019 Act). The 2019 Act comes into force on 1 April 2024.

Policy Objectives

Social Care and Social Work Improvement Scotland, commonly known as the CI, has statutory responsibility for, among other things, the registration and inspection of care services in Scotland. Requirements on care service providers in relation to appropriate staffing levels and staff training are currently set out in regulation 15 of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (2011 Regulations). In the event of a breach of regulation 15, the CI may give the care service provider an improvement notice. That notice would provide that unless there is a particular significant improvement in the provision of that service, within a certain time period, the CI intends to make a proposal under section 64(1) of the 2010 Act to cancel the registration of the care service, or, in the case of a care service registered under Chapter 4 of Part 5 of the 2010 Act (which provides for the registration of certain services that are provided by local authorities), to make a report to the Scottish Ministers under section 91 of the 2010 Act. Section 92 allows the Scottish Ministers to exercise certain powers (on receipt of a report under section 91 or otherwise) if they are satisfied that such a service has not been carried on, without reasonable excuse, in accordance with relevant requirements.

In such circumstances, the proposal to cancel the registration under section 64(1) would be on the ground set out in paragraph (b) of that section, namely that the service is being, or has at any time been, carried on other than in accordance with the relevant requirements. Relevant requirements is defined in section 64(3).

In relation to care services registered under Chapter 4 of Part 5 of the 2010 Act, in such circumstances, the CI would report to the Scottish Ministers on the basis that it appears to them that that service is being, or has at any time been, carried on other than in accordance with the relevant requirements. Relevant requirements is defined in section 91(5) for the purposes of both sections 91(3)(b) and 92. A breach of regulation 15 of the 2011 Regulations falls within the definitions in each of sections 64(3) and 91(5).

Sections 7 and 8 of the 2019 Act will, from 1 April 2024, replace regulation 15 of the 2011 Regulations. Sections 7 and 8, however, do not fall within the definition of relevant requirements in either section 64(3) or section 91(5) of the 2010 Act. The CI could not, without more, propose to cancel the registration of a care service under section 64(1) on the basis of a breach of section 7 and/or 8, or, in the case of care services which are registered under Chapter 4 of Part 5 of the 2010 Act, make a report to the Scottish Ministers under section 91.

This instrument specifies, for the purposes of section 64(1)(c) of the 2010 Act, new grounds on which the CI may propose to cancel the registration of a care service, namely that the service is being, or has at any time been, carried on other than in accordance with section 7 and/or section 8 of the 2019 Act. It also specifies the requirements imposed by sections 7 and 8 of the 2019 Act as relevant requirements for the purposes of section 91(5)(c) of the 2010 Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

Consultation was carried out with stakeholders during the parliamentary passage of the Health and Care (Staffing) (Scotland) Bill. More recently, working groups were formed to develop draft statutory guidance, including representatives from health boards, local authorities, integration authorities, Healthcare Improvement Scotland, the CI, professional bodies, trade unions and professional regulatory bodies. A public consultation exercise has also now been carried out around the statutory guidance to accompany the 2019 Act. On the basis that the instrument makes provision to ensure the continuity of CI enforcement powers following commencement of the 2019 Act, no further consultation is required.

Impact Assessments

Impact assessments were submitted as part of the Bill process for the 2019 Act. On the basis that the instrument makes provision to ensure continuity of CI enforcement powers following the commencement of the 2019 Act, no further impact assessments have been undertaken.

Financial Effects

The Minister for Social Care, Mental Wellbeing and Sport confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Chief Nursing Officer's Directorate

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