

EXPLANATORY MEMORANDUM
SI 2004 No. 1770

Title of the Instrument

1. The Care Standards Act 2000 (Establishments and Agencies) (Miscellaneous Amendments) Regulations 2004.

Laying Authority and Purpose

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

Description

5. This Instrument amends various Care Homes, Domiciliary Care Agencies and Nurses Agencies regulations to enable providers to employ new staff before they have received their CRB Disclosure. As from 26th July 2004, those checks will include a check against the Protection of Vulnerable Adults list (“the POVA scheme”) which is to be maintained by the Secretary of State for Health under section 81 of the Care Standards Act. It also introduces new requirements to ensure new staff are adequately trained and supervised while awaiting their Disclosure and while undergoing induction training.

Matters of special interest to the JCSI

6. This memorandum explains the failure to observe the “21 day rule” in respect of the Care Standards Act 2000 (Establishments and Agencies) (Miscellaneous Amendments) Regulations 2004 (“ the Regulations”). These regulations form part of a package of measures being introduced alongside the implementation of POVA to improve the protection of vulnerable adults while ensuring providers are able to recruit the staff they need to meet the needs of service users.
7. A Commencement Order has already been made bringing the provisions of the Act which relate to the POVA scheme into force on 26th July. Extensive consultation has been undertaken in relation to the POVA scheme and an expectation has been created (both among the public generally and amongst care professionals) that the scheme will come into force on that date. In particular, Ministers have made both public and Parliamentary announcements to that effect, and in the Government’s response to the Health Select Committee’s inquiry into elder abuse (Command 6270), it is stated that the POVA scheme will be implemented as from 26th July. Other official announcements have been made, and the Criminal Records Bureau (CRB) has prepared its computer systems for this date.

8. However, the Report of the Bichard Inquiry (on the events at Soham Village College) was submitted to the Home Secretary on 14th June 2004. The Department of Health, together with other government departments, had to take time and consider, in the light of the Report's recommendations, whether it was appropriate to make the amendments in the Regulations.
9. The Department, in close consultation with other Government departments, has completed the consideration referred to in paragraph 4 with the result that the Regulations can now be signed and laid. As it is essential that the Regulations come into force on the same day that the POVA scheme becomes operative, it is therefore necessary to breach the 21 day rule which the Department greatly regrets.

Legislative Background

10. This Instrument is being made in response to the difficulties social care providers are experiencing in recruiting new staff and to ensure that new staff employed before receiving a satisfactory Disclosure are adequately supervised, and that new staff receive appropriate induction training, so that service users are protected.

Extent

11. This Instrument applies only in England.

European Convention on Human Rights

12. In the views of Ministers this Instrument is compatible with the European Convention on Human Rights.

Policy Background

13. The policy objective is to ensure that social care providers are able to recruit the staff they need to meet the assessed needs of service users while also ensuring that service users are properly protected.
14. The size of the problem varies across the country depending on local employment conditions. Providers made vigorous representation to the Department about their difficulties. There are no exact figures but estimates from certain area offices of the Commission for Social Care Inspection suggest that 10 per cent of new staff may need to be recruited before they receive their CRB Disclosure for providers to meet their legal obligations to employ sufficient staff to meet service users needs.
15. Public interest in social care provision is concerned with on the one hand the lack of services which services users need, it is often suggested in the media that over regulation by Government is a factor in the loss or restriction of services. On the other hand the public is concerned about high profile cases of abuse against children and vulnerable adults employed as carers.

16. It is important that these changes are made to ensure care providers are able to employ sufficient staff while protecting vulnerable adults.

Impact

17. The Regulatory Impact assessment is attached.

Contact

18. CRB easements: Alan Probett, room 233 Wellington House, Tel: 020 7972 4033.
POVA: Raymond Warburton, room 217 Wellington House, Tel: 020 7972 4286.

9th July 2003

Department of Health