

## EQUALITY IMPACT ASSESSMENT – RESULTS

<b>Directorate/Division/</b>	Directorate for Health & Social Care Integration  Integration & Reshaping Care Division
<b>Title of Policy</b>	The Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Regulations 2015
<b>Completion of EQIA</b>	Date: 12 May 2015

### Executive Summary

To enable Scottish local authorities to make cross-border placements we have commenced section 5 of the Community Care and Health (Scotland) Act 2002 on 11th May 2015 for the limited purpose of making this instrument and it is to be commenced for all remaining purposes on 24th June 2015. Section 5 also contains a regulation making power to introduce the detail of the process to be followed before a cross-border placement is made by Scottish local authorities.

Section 5 of the 2002 Act enables Scottish local authorities to make a residential accommodation or residential accommodation with nursing placement in an “appropriate establishment” outwith Scotland in fulfilment of their duties under section 12 or 13A of the 1968 Act or section 25 of the Mental Health (Care and Treatment) Scotland Act 2003. These Regulations provide what an “appropriate establishment” is in which a person can be provided by a Scottish local authority with accommodation, or accommodation with nursing, in England, Wales and Northern Ireland. The Regulations provide that an “appropriate establishment” in England and Wales, for both accommodation and accommodation with nursing care, is a care home, and in Northern Ireland, a residential care home or, where nursing care is required, a nursing home.

The instrument further imposes a requirement on local authorities where it appears that a person, for whom they are arranging residential accommodation under section 5 of the 2002 Act, may also be in need of health services administered by the health authority of the area in which they are ordinarily resident, or of the area in which the residential accommodation is located. The requirement is that the local authority must notify the health authority of the person's need for health services, and request information from the health authority about what health services are likely to be made available to the person by that health authority. The local authority must then take any information provided in response to that request into account in making the accommodation arrangements.

## **Background**

The policy intention of the cross-border placement arrangements is to ensure an appropriate division of financial and operational responsibility where local authorities in one part of the United Kingdom place adults for whom they have a responsibility under legislation into residential care in another part. It is also the intention of this policy to make it easier for eligible individuals to move cross-border where they so choose.

Schedule 1 to the Care Act 2014 provides the statutory framework for cross-border placements at UK level. In broad terms, the placing authority will remain responsible for the individual's care for as long as the person continues to have care needs that require them to stay in that kind of accommodation. This creates a requirement for equitable arrangements for cross border placements and allows Scottish local authorities to better plan and manage their local care budgets.

## **Stakeholder input**

The Scottish Government has received support from COSLA, local authorities and third sector organisations as part of the Ordinary Residence and Cross-border Working group ("working group") to understand the potential impact of the framework for ordinary residence on those accessing health and social care services.

Membership of the working group is made up of representatives including:

- Alzheimer Scotland
- COSLA
- Local authorities
- NHS/Joint Improvement Team

Discussions at this working group did not highlight any significant equality concerns relevant to these Regulations.

A variety of information sources were used in compiling the assessment with research and statistical data obtained by analytical colleagues.

We have also received feedback from individuals and organisations or groups via the consultation process for the additional components to the ordinary residence framework which are also relevant to the regulations covered by this EQIA.

Scottish Government officials from various departments have also provided input including analytical services, the Carers Unit, Mental Health Unit, Integration and Reshaping Care team. Officials have provided advice on the approach to EQIA, evidence gathering, the potential impacts for specific groups and the need to include Human Rights as part of the assessment.

We will continue to engage with internal colleagues and the working group as part of the cross-border framework implementation.

## **Key Findings**

### **Potential impacts identified via the consultation process**

The Consultation report published on the cross-border<sup>1</sup> and provider failure<sup>2</sup> regulations<sup>3</sup> demonstrates that stakeholders welcome the introduction of the framework. All responses

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1 The Care and Support (Cross-border Placements and Business Failure: Temporary Duty) (Dispute Resolution) Regulations 2014/2843

2 The Care and Support (Cross-border Placements) (Business Failure Duties of Scottish Local Authorities) Regulations 2014 (Statutory Instrument 2014/2839)

3 <http://www.gov.scot/Publications/2014/11/1877>

received stated that they supported the overall policy intent and principles of the cross-border placement framework. Some expressed the view that the regulations required amendments to ensure that an equitable approach is being achieved. This is emphasizing the principle of reciprocity being fully implemented across the UK.

A number of respondents requested an amendment to the language used in regulation 5(1)(b) of The Care and Support (Cross-border Placements) (Business Failure [Duties]) (Scotland) Regulations 2014, “persons who are or appear to be in need of such accommodation by reason of infirmity, age, illness or mental disorder ... by any deformity or disability.” However, this language is derived from the Social Work (Scotland) Act 1968 and an amendment cannot be made using these regulations.

The rest of this section provides details of the potential impacts raised via the consultation process including the human rights aspects.

## **AGE**

In terms of age, these regulations cover the needs of adults and apply universally to all eligible adults. Children’s needs are addressed under a different framework and they are not deemed to be disadvantaged by the introduction of these Regulations. The use and access to services is not limited due to age and we will update local authorities on these Regulations to then share and engage with service users via their social work departments. These Regulations do not alter the social welfare services received by individuals in Scotland.

## **DISABILITY**

These Regulations provide a formal route for local authorities to make residential placements outwith their area. Accordingly, they do not create a disparity, thus aiming to achieve a positive impact, as far as reasonably practicable to allow individuals to live in a care home in their community.

## **GENDER**

No impact was specifically identified in regard to these Regulations.

## **SEXUAL ORIENTATION AND GENDER REASSIGNMENT**

No impact was specifically identified in regard to these Regulations.

## **RACE**

Discussions have taken place about the levels of health and social care service uptake from minority ethnic communities. Current evidence indicates the numbers of minority ethnic people accessing services is low.

No impact was specifically identified in regard to these Regulations.

## **RELIGION**

There is a potential negative impact if appropriate services are unavailable or are inadequate or if resources are not appropriately allocated between health and social care, and primary and secondary care, and outcomes do not reflect rights protections. However out of area placements allow local authorities to explore the availability of services beyond their locality.

No impact was specifically identified in regard to these Regulations.

## **Conclusion**

The EQIA has confirmed that the provisions of the regulations will not directly or indirectly discriminate on the basis of age, disability, gender, gender reassignment, sexual orientation or race and belief. The aims of the regulations are to define what is an “appropriate establishment” for the purpose of enabling Scottish local authorities to make out of area placements and to allow Scottish local authorities to fulfil their duties in this context, thus ensuring that the welfare of the individual is paramount.