POLICY NOTE

THE COMMUNITY CARE (PROVISION OF RESIDENTIAL ACCOMMODATION OUTWITH SCOTLAND) (SCOTLAND) REGULATIONS 2015

SSI 2015/202

The above instrument was made in exercise of the power conferred by section 5(1) and 23(4) of the Community Care and Health (Scotland) Act 2002. The instrument is subject to negative procedure and is intended to come into force on 24th June 2015.

Policy Objectives

Section 12 of the Social Work (Scotland) Act 1968 ("the 1968 Act") places a duty on Scottish local authorities to provide community care services to those assessed as so in need, who are either living within their area or who are physically present there at the time when their need for community care services arises. Community care services includes, amongst other things, residential accommodation and residential accommodation with nursing.

Section 5 of the Community Care and Health (Scotland) Act 2002 ("the 2002 Act"), as amended by the Care Act 2014, was commenced on 11th May 2015 for the limited purpose of making this instrument and is to be commenced for all remaining purposes on 24th June 2015. 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.

Whilst social care is a devolved matter for Scotland, Schedule 1 to the Care Act 2014 applies to regulate cross border accommodation placements between England, Wales, Scotland and Northern Ireland only - no provision is made to facilitate accommodation placements in any of the Channel Islands or Isle of Man. Fundamentally, Schedule 1 of the Care Act 2014 ("the 2014 Act") specifies that where a local authority ("the placing authority") has arranged the placement of a person into accommodation in a local authority area in another territory, the

placing authority will remain responsible for the management and funding of that individual's care.

The intention of the cross-border framework 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 accommodation in another part of the United Kingdom.

Consultation
The Convention of Scottish Local Authorities has been consulted and have agreed to the policy underpinning these Regulations and the proposed provisions giving effect thereto.

Impact Assessments
An equality impact assessment has been completed for these regulations. The results of the equality impact assessment can be viewed here.

Financial Effects
A Business and Regulatory Impact Assessment (BRIA) has not been completed as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Health and Social Care Integration
20 May 2015