EXECUTIVE NOTE

The Regulation of Care (Miscellaneous Amendments) (Scotland) Regulations 2009 (SSI 2009/32)

1. This instrument was made in exercise of the powers conferred by section 29(1) of the Regulation of Care (Scotland) Act 2001 ("the Act"). It is subject to the negative resolution procedure.

Policy Objectives

2. The purpose of these regulations is to amend the provisions relating to fitness to apply to register a care service with the Care Commission and fitness of care service managers and employees and to ensure consistent terminology is used throughout the relevant regulations The provisions are set out in the Regulation of Care (Requirements as to Care Services)(Scotland) Regulations 2002 as amended (SSI 2002/114); the Regulation of Care (Registration and Registers)(Scotland) Regulations 2002 as amended (SSI 2002/115); and the Regulation of Care (Requirements as to Limited Registration Services) (Scotland) Regulations 2003 (SSI 2003/150).

3. Care service providers are required to consider the fitness of potential managers and employees to work in the care service. The relevant regulations render applicants unfit to manage a care service if they have been convicted of an offence resulting in a period of imprisonment of not less than 3 months (whether or not suspended or deferred) without option of a fine. In respect of employees, the regulations make no specific provision regarding convictions.

4. The Commission's role is to ensure that providers meet the requirements in the regulations through safe recruitment procedures. The policy objective is to allow the provider to consider any convictions which the applicant may have and to decide whether such a conviction renders the applicant unfit to manage or be employed in a care service. The amending regulations give providers that discretion.

5. The terminology used in the relevant regulations in relation to fitness is currently inconsistent. Some of the regulations use the term 'unfit' and other use the term 'not fit' The amending regulations ensure consistency in the terminology describing fitness requirements for providers, managers and employees of care services.

6. Complementary changes about how fitness to apply to provide a care service is determined are being made under the affirmative procedure in the Regulation of Care (Fitness to Register, Provide and Manage Care Services) (Scotland) Amendment Regulations 2009 which will be laid in the Scottish Parliament and come into effect at the same time. They are the subject of a separate Executive Note.

Consultation

7. In accordance with the requirements of section 29 of the Act a public consultation was carried out on the proposed regulations. Recipients of the consultation paper included all registered care service providers, local authorities,

health boards, umbrella and representative organisations; and the Care Commission. Recipients were invited to bring the paper to the attention of any other interested organisations or individuals that they were aware of. The paper was published on the Consultations section of the Scottish Government website. Responses were overwhelmingly in favour however, as a result of comments included in those responses, some technical changes were made to the draft regulations to clarify their intent.

Financial Effects

8. No additional costs are associated with these changes to regulations. The effect of clarifying the terminology is expected to make the regulatory process and the respective roles of all parties more easily understood. The Care Commission already requires registered care services to have policies on and procedures for safe recruitment. These include obtaining and considering enhanced disclosures, taking up references and checking registration with professional bodies where appropriate. It was therefore not considered necessary to carry out a regulatory impact assessment

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