

**Care Inspectorate - Response to Consultation on
proposed changes to the implementing legislation for
the EU Services Directive**

Question 1

Has the need to apply for an additional licence to open up an identical business elsewhere in the UK caused you to reconsider or defer expanding into new areas?

Comments: N/A

Question 2

Please give an indication of costs incurred when applying for any additional licence to operate an identical business in other areas? As far as possible please distinguish between monetary costs and time/resources spent in meeting administrative requirements. If costs vary between competent authorities, please provide a range.

Comments: N/A

Question 3

Do you have any views on the extension to legal powers of competent authorities in the above circumstances? If so, please provide details.

Comments: While we note the proposed “registration” scheme, we are not confident that broadly equivalent “fit and proper person” arrangements in different UK jurisdictions replicate each other exactly with the consequent prospect that the Care Inspectorate might, for example, be bound to “register” a care service provider based in another jurisdiction who would not be granted a “licence” in Scotland. The result might be “jurisdiction-shopping” by providers intent on gaining access by a circuitous route to a market whose national regulator would otherwise not admit them.

We are, in addition, strongly opposed to the proposal that the consideration of complaints should reside with the original licensing body. This would have the (in our view perverse and wholly unacceptable) result that two individuals living in the same street and receiving the same care service, might have recourse to regulators in different jurisdictions in the UK if they had cause to complain about the service they were receiving. Given that the services we regulate are provided to the very young, the elderly and the vulnerable, we would regard the addition of such potential complexity as a significant retrograde step which

would have the effect of frustrating the many ongoing efforts to make accessing the appropriate complaints arrangements easier for vulnerable people.

We consider that there is an important omission from your proposals – namely as to how periodic inspections will be facilitated. The proposed approach to complaints suggests that inspection might also lie with the original licensing authority. That raises the prospect that inspections might require to be carried out across the UK by each individual regulator of social care, with consequent issues as to the jurisdiction of inspectors outwith the territory of the legislature under whose legislation they were appointed, and as to the regulatory regime to be applied. The issue as to whether services should be judged against the legislation of the “licensing” or “operating” jurisdiction arises also in relation to the investigation of complaints.

Question 4

Do you foresee any unintended consequences resulting from this approach to national applicability? If so, please provide details.

Comments: it is our expectation that there is scope for significant dispute as to the “comparability” of licenses granted in different UK jurisdictions.

Question 5

Can you provide a list of personal licences where national applicability would be inappropriate? Please provide reasons and/or evidence.

Comments: In our view, the only areas in which we regulate which will be affected by the proposed changes are parts of the following markets:

Support Services (Care at Home and Housing Support)

Nurse Agencies

Childcare Agencies

Adult Placement Services

We do not regard national applicability of licences as appropriate for any of these areas, for the following reasons:-

- Each of the activities listed above will be subject to national applicability of licences only in part – in that these activities are only partly “caught” by the Directive.
- National applicability and the measures proposed to implement it will create confusion in people who are already vulnerable and who need the greatest possible clarity as to who they can complain to – to introduce an arrangement where individuals living in Scotland may have a right to complain to a regulator in England, Wales or Northern Ireland, is likely to cause them confusion and distress in addition to practical difficulty (eg in attending meetings).
- National applicability will further create confusion in those vulnerable people receiving care services, in that the potential applicability of the regulatory regime for care services outwith the territory enacting them will leave those people unsure as to what rules, regulations and standards they can expect to be observed.
- The prospect of regulators travelling the length and breadth of the UK to inspect care services or investigate complaints is difficult to characterise as an appropriate use of public funds.

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Appendix 1

- The prospect of the facility to “jurisdiction shop” in licensing matters as pointed out in our response to Q3 above, simply panders to the unscrupulous.
- The listed services are provided to people in their own homes and include providing personal care. Adult Placement is similar to fostering and is provided to vulnerable people living in the family homes on a short or long term basis. There has been much publicity recently about the provision of care to people in their own homes, this includes circumstances of poor recruitment of staff, poor practice including staff not turning up to provide care resulting in severe neglect for vulnerable clients. We believe it is imperative that the regulatory authority for each of the four devolved areas of the UK carry out their publicly accountable statutory responsibilities to regulate, including inspection and investigating complaints at a “local” level to mitigate risk in such circumstances.

For all of the foregoing reasons, we would strongly suggest that in the field of social care, and to the limited extent that social care provision is “caught” by the Directive, there is an overriding public interest reason why national applicability of licences should not apply.

Do you have any other comments that might aid the consultation process as a whole?

No.