



## Proposed Changes to Regulations Implementing the EU Services Directive

**Report to:** Strategy & Performance Committee  
**Date:** 5 March 2013  
**Report by:** Kenneth McClure, Head of Legal Services  
**Report No:** SP-11-2013  
**Agenda Item:** 14

### PURPOSE OF REPORT

To make the Committee aware of proposed changes to the Regulations implementing the EU Services Directive and the Care Inspectorate's response to the consultation being undertaken thereon by the Department of Business, Innovation and Skills, and to seek the Committee's views as to whether any significant changes to the Care Inspectorate's response are necessary.

### RECOMMENDATIONS

That the Strategy and Performance Committee:

1. Notes the terms of the Consultation and the Care Inspectorate's proposed response.
2. Advises of any significant changes it wishes in the Care Inspectorate's response to the Consultation.

**Version Control and Consultation Recording Form**

Version	Consultation	Manager	Brief Description of Changes	Date
	Senior Management	ET		
	Legal Services	N/A		
	Resources Directorate			
	Committee Consultation (where appropriate)			
	Partnership Forum Consultation (where appropriate)			

**Equality Impact Assessment**

To be completed when submitting a new or updated policy (guidance, practice or procedure) for approval.

Policy Title:

Date of Initial Assessment:

EIA Carried Out

YES

NO

If yes, please attach the accompanying EIA and briefly outline the equality and diversity implications of this policy.

If no, you are confirming that this policy will have no negative impact on people with a protected characteristic and a full Equality Impact Assessment is not required.

Name: K. McClure

Position: Head of Legal Services

Note: The matters referred to in this paper are not a policy and therefore do not require an EIA.

Authorised by Director

Name: K Anderson

Date: 11 February 2013

Version: 2.0

Status: *Final*

Date: 14/03/2013

## 1.0 BACKGROUND

Corporate Plan references: Outcomes 1 and 3 respectively:

“The quality of services in Scotland is improving”

“The Care Inspectorate performs effectively and efficiently as an independent, scrutiny and improvement body and works well in partnership with other bodies”

In 2009 the EU Services Directive (Directive 2006/123/EC) (“the Directive”) came into force. Its aim was to make it easier for businesses in one member state to obtain the necessary licences to provide services in other member states. It provided that applications for licences must be capable of being made in full, by electronic means. It also provided, subject to certain exceptions that licence applications not concluded within the period specified by the granter would be deemed granted, and that licences granted within one part of a member state should be valid throughout that member state. The exceptions to the provisions of the directive allow the Care Inspectorate to be exempted from the deeming provisions referred to above on the basis that there are overriding reasons for that related to the public interest. In relation to the provision referred to above which requires that a licence granted in one part of a member state should be valid throughout that state, the Regulations which implemented the Directive allowed for territorial licences in the different jurisdictions which make up the UK – so that, for example, it was possible for a licence (registration) granted by the Care Inspectorate to apply to Scotland only. The most important exceptions to the applicability of the Directive operate to exclude certain business activities from its scope. The result of those exceptions is to leave only the following regulated care services falling within the scope of the Directive:-

1. Privately (not provided by the state, or statutory or voluntary providers) provided support services;
2. School care Accommodation provided by independent schools;
3. Nurse Agencies and Childcare Agencies (in so far as they provide “introductions”);
4. Privately (not provided by the state, or statutory or voluntary providers) provided Adult Placement Services;
5. Childminding;
6. Privately (not provided by the state, or statutory or voluntary providers) provided day care of children

The European Commission has now taken the view that allowing licences to

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be effective in only part of a Member State is not acceptable in terms of the Directive, and has effectively required that the UK Government address this.

The consultation attached at Annex A sets out how the UK Government intends to achieve this

## **2.0 SERVICE TYPES AFFECTED BY THE PROPOSED CHANGES**

It is acknowledged by the European Commission that a licence granted to carry on a particular activity in one part of a Member State cannot apply throughout the Member State where it relates to particular premises which are located within one part of the Member State for example, the grant of registration for a nursery in Inverness, can only be authority to operate that nursery.

As a result, the changes proposed will only relate to the following regulated care service types:-

1. Privately (not provided by the state, or statutory or voluntary providers) provided support services (care at home and housing support);
2. Nurse Agencies and Childcare Agencies (in so far as they provide “introductions”);
3. Privately (not provided by the state, or statutory or voluntary providers) provided Adult Placement Services;

The range of services potentially affected by these proposed changes is therefore limited.

## **3.0 THE SUBSTANCE OF THE PROPOSED CHANGES**

It is proposed for services “caught” by the proposed changes, that once licensed in one part of the UK, the provider, if wishing to provide a service in another part of the UK would apply to the appropriate regulator for “registration”. “Registration” in this context would not be a process of assessment of suitability, but one of checking and noting the existing licence and issuing a similar licence in the “new” jurisdiction.

It is proposed that the investigation of complaints would remain with the original licensing authority wherever in the UK the service was provided. It is suggested that this has the potential to be extremely confusing for those receiving the service in a jurisdiction other than the one where the service is registered – for example, service users in Scotland might have to complain to the English or Welsh regulator about a care service provided in Scotland.

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This proposal appears less than practicable – as presumably the right to inspect would have to follow the right to investigate complaints. This raises the prospect of cross-border inspection, and creates doubt as to the applicable legal regime for services operating in a jurisdiction other than the jurisdiction of registration.

It is also proposed that when being registered in a “new” jurisdiction, the provider of a service would be licensed only to the extent that the “new” licensing authority can grant an equivalent licence. It is not clear how this might operate in practice, but it is suggested that there is scope for a great deal of dispute as to the comparability of “licences” granted in different UK jurisdictions both in the sphere of social care and elsewhere.

#### **4.0 BENEFITS FOR PEOPLE WHO USE SERVICES AND THEIR CARERS**

As suggested in paragraph 3.0 above, it is doubtful whether the proposed changes can be associated with any potential benefits to people who use the services likely to be affected, and their carers. There are, however, aspects of these proposals which seem clearly detrimental to them

#### **5.0 CONCLUSION**

While it is necessary that the UK complies with its obligations under the Directive, the means by which it is proposed that it does so raise serious concerns as to how some services registered or provided within Scotland may be regulated in future. The Committee is invited to consider and comment on the Care Inspectorate’s draft response to this consultation.

### **LIST OF APPENDICES**

**Appendix 1 -** Final Consultation Response

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