

Explanatory Memorandum to:

The Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2020.

I am satisfied that the benefits justify the likely costs.

Julie Morgan
Deputy Minister for Health and Social Services
5 May 2020

Part 1 – OVERVIEW

1. Description

The purpose of the Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2020 (“the Amendment Regulations”) is to amend the date by which annual returns must be submitted by registered providers of social care. This amendment is part of the Welsh Government’s response to the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales. The Amendment Regulations amend the Regulated Services (Annual Returns) (Wales) Regulations 2017 (“the Annual Returns Regulations”) made under the Regulation and Inspection of Social Care (Wales) Act 2016¹ (“the 2016 Act”), as amended by the Regulated Services (Annual Returns and Registration) (Amendment) (Wales) Regulations 2019 (“the 2019 Regulations”).

This Explanatory Memorandum relates to the Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2020, which will come into force on 26 May 2020.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

Due to the urgency with which the Amendment Regulations need to be made, the legislative proposal has not been formally consulted upon. However, key stakeholders were notified of the proposal in a related consultation. Details concerning this are at section 5 below.

3. Legislative background

The powers enabling the Amendment Regulations to be made are contained in section 10(4) of the 2016 Act. This allows provision to be made about the dates by which annual returns must be submitted. Section 187(1) allows Welsh Ministers to exercise the power to make regulations under the 2016 Act by statutory instrument, and to make regulations under the 2016 Act which make different provision for different purposes, for different cases and for different areas. Section 48 makes failure to submit an annual return to the Welsh Ministers within the time limit prescribed by section 10(4) an offence.

These draft Regulations are being laid under the negative procedure.

4. Purpose & intended effect of the legislation

The purpose of amending the Annual Returns Regulations, under section 10(4) of the 2016 Act, is to amend the date by which providers of regulated services are required to submit an annual return to the Welsh Ministers (in practice, Care

¹ <http://www.legislation.gov.uk/anaw/2016/2/contents>

Inspectorate Wales, “CIW”) following the end of each financial year during which the provider is registered.

Part 1 of the 2016 Act places requirements on providers of the social care services that are regulated by the Act. They include a requirement in section 10(1) to submit an annual return to the Welsh Ministers. The Annual Returns Regulations provide further details about the annual returns. They also include provision made under section 10(4) about the dates by which the returns must be submitted.

The intended effect of the Amendment Regulations is to amend regulations 9A and 10 of the Annual Returns Regulations in order to require that providers of all types of regulated services must submit annual returns relating to financial years 2018-19, 2019-20 and 2020-21 no later than 26 May 2021. Previously, the policy intention was that service providers who are registered to provide a care home service, a secure accommodation service, a residential family centre service or a domiciliary support service should submit their 2019-20 annual returns no later than 56 days after the end of the 2019-20 financial year, namely 26 May 2020. The provisions by which the 2019 Regulations sought to put this intention into effect are being amended by the Amendment Regulations to achieve the intended effect described above.

The intention of this amendment is twofold. The first intention is to relieve the duty on providers to submit an annual return during this pandemic period by deferring the requirement until 56 days after the end of the 2020-21 financial year. The second intention is to prevent providers from committing an offence under section 48 of the 2016 Act if they do not make returns in respect of 2019-20 by 26 May 2020.

Additionally, the Amendment Regulations provide for the future operation of the annual returns arrangements by stipulating that annual returns relating to financial years subsequent to 2020-21 must be submitted to the Welsh Ministers within 56 days of the end of the financial year to which the return relates.

5. Consultation

This proposal was referenced in a short consultation with key stakeholders on related legislative proposals which was undertaken between 3 and 17 April 2020. Those asked to share their views included:

- Members of the CV-19 Social Care Planning & Response Group, including representatives of:
 - local government (the Welsh Local Government Association and the Association of Directors of Social Services Cymru)
 - social care providers (Care Forum Wales)
 - the voluntary sector (Wales Council for Voluntary Action, British Red Cross)
 - housing providers (Community Housing Cymru and Cymorth Cymru)
 - Social Care Wales; and
 - Care Inspectorate Wales

- The Older People’s Commissioner

- The Deputy Chief Executive, Healthcare Inspectorate Wales
- Directors of Social Services in Wales
- Chief Executives of Local Health Boards

Those stakeholders who chose to comment were favourable towards the intention to defer the deadline for annual returns.

6. Regulatory Impact Assessment

Given the pressing need for these changes, it has not been possible to prepare a Business and Regulatory Impact Assessment within the time available. The needs of, and pressures on, businesses in the social care sector at this time have, however, been the driving concern in the preparation of these Regulations and the nature of the change brought forward is such that it is cost-neutral on providers and will reduce pressure on them during this pandemic period.

Specific impact tests

Welsh Language

There are no positive or adverse impact implications on the Welsh Language.

Children's Rights

No conflict with UNCRC has been identified and there are no negative impacts on children and young people.

Privacy

There are no impact implications on privacy matters.

Justice Impact Assessment (JIA)

These Regulations have been brought forward in order to prevent a provider inadvertently committing the offence of not completing an annual return within the specified timescale.

Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No

Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector categorised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.