

Explanatory Memorandum to:

The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before Senedd Cymru 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 (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020.

I am satisfied that the benefits justify the likely costs.

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

Part 1 – OVERVIEW

1. Description

The purpose of the Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020 (“the Amendment Regulations”) is to enable the Welsh Government to manage the effects on the social care sector of the current Covid-19 pandemic. The Amendment Regulations contain measures to amend the Regulated Services (Service Providers and Responsible Individuals) Wales) Regulations 2017 (“the Regulated Services Regulations”) made under the Regulation and Inspection of Social Care (Wales) Act 2016¹ (“the 2016 Act”). The amending provisions will be revoked as soon as they are no longer required.

This Explanatory Memorandum relates to the Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020 which will come into force on 5 June 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 – and their largely temporary nature – the legislative proposals were consulted on with key stakeholders for a period of 2 weeks. Details concerning this period of engagement are at section 5 below.

3. Legislative background

The powers enabling these draft Regulations to be made are contained in sections 2(3), 27(1) and 187 (1)(b) of the 2016 Act. Further details are set out below:

Section 2(3) enables the Welsh Ministers to prescribe, in regulations, things which are not to be treated as a regulated service for the purposes of the 2016 Act.

Section 27 (1) enables Welsh Ministers to impose, in regulations, requirements on a service provider in relation to a regulated service they provide. The Regulated Services Regulations set out the requirements on providers in further detail. Section 187(1)(b) allows Welsh Ministers to make regulations under the 2016 Act, which make different provision for different purposes, for different cases and for different areas.

These draft Regulations are being laid under the affirmative procedure.

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

4. Purpose & intended effect of the legislation

Section 2(3) - Exceptions

This relates to regulations 4 and 5 within the Amendment Regulations

The purpose of amending Part 2 of the Regulated Services Regulations, under section 2(3) of the 2016 Act, is to provide that particular services are not to be treated as regulated services for the purpose of responding to the Covid-19 pandemic.

Care home service exception

The provision of accommodation together with nursing or care, where the accommodation and nursing or care are provided to adults and are needed as a result of the spread of coronavirus, is not to be treated as a care home service.

This exception only applies where:

- the service is provided by a local authority or a Local Health Board, or
- the service is commissioned by a local authority or a Local Health Board and is provided either:
 - by a service provider already registered under the 2016 Act and who provides a care home service wholly or mainly to adults, or
 - by providers of care homes in England who are already registered with the Care Quality Commission.

Domiciliary support service exception

The provision of care and support to adults where the care and support are needed as a result of the spread of the coronavirus, is not to be treated as a domiciliary support service.

This exception only applies where:

- the service is provided by a local authority or a Local Health Board, or
- the service is commissioned by a local authority or a Local Health Board and is provided either:
 - by a service provider already registered under the 2016 Act and who provides a domiciliary support service for adults, or
 - by providers of domiciliary care agencies in England who are already registered with the Care Quality Commission.

In all cases, the Welsh Ministers must be notified in advance of the arrangements.

The broad rationale here is that these providers will already be subject to regulation and inspection in some guise which gives some overall assurance about their governance, systems and understanding of the nature of the care and support services being provided.

Excepting these services from regulation will streamline the processes usually associated with establishing care and support provision so that these services can be established quickly and be available when they are most needed to reduce the

anticipated pressure on hospitals, care homes and domiciliary support services. The exception will also allow for a wider range of premises to be used for emergency residential services, some of which are unlikely to meet the standards required to register with CIW under the 2016 Act.

Section 27 (1) – Requirements on service providers

This relates to regulations 6 and 7 within the Amendment Regulations

Fitness of staff

The purpose of amending regulation 35 of the Regulated Services Regulations is to relax requirements on service providers to undertake pre-employment checks on workers in care home services provided wholly or mainly to adults or domiciliary support services provided for adults. These amendments aim to support measures being taken to address the anticipated need for additional workers during the Covid-19 outbreak.

Part 1 of Schedule 1 to the Regulated Services Regulations sets out the information and documentation that service providers must obtain and hold for each of their employees. These requirements include two written references, documentary evidence of qualifications and evidence of full employment history (including explanation of any gaps in employment). The Amendment Regulations relax the requirement to provide full and satisfactory information or documentation in respect of paragraphs 4, 6, 8 and 9 of Part 1, Schedule 1. If a person cannot reasonably provide full and satisfactory information or documentation (in respect of paragraphs 4, 6, 8 and 9) as a result of the spread of coronavirus and instead provides as full and satisfactory information or documentation as is reasonably practicable, then the requirement is to be treated as if met. This information or documentation provided should also be available at the service for inspection by the service regulator.

These amendments aim to accelerate the process of recruiting temporary staff during the Covid-19 outbreak, recognising that it may not be reasonably practicable for service providers to obtain all of the information required in Part 1 of Schedule 1, in the specified form, at this time.

Shared rooms

The purpose of amending regulation 45 of the Regulated Services Regulations is to relax conditions which limit the number of adults which may be accommodated in shared rooms in care homes for adults. This would enable service providers with unoccupied rooms, or rooms which are not currently in use as bedrooms to increase the maximum capacity within their home where this is needed only as a consequence of the spread of coronavirus. If they wish to do this, the current requirements to apply to CIW for a variation to their maximum numbers will continue to apply. Decisions would be made on a case-by-case basis with the best interests of residents in mind. Turning rooms currently in single occupancy into shared rooms will not be permitted.

5. Consultation

Due to the need to implement the Amendment Regulations urgently, a short consultation with key stakeholders 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

A statement about the consultation and a list of respondents has been prepared. As the Amendment Regulations include requirements made under section 27(1) of the 2016 Act, the statement has been laid before Senedd Cymru, in accordance with section 27(5) of the 2016 Act. It can be found on the 'documents laid' page².

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 businesses in the social care sector at this time have, however, closely informed the preparation of these Regulations and the nature of the changes brought forward is such that they will reduce or eliminate costs and burdens on many providers.

Specific impact tests

Welsh Language

There are no positive or adverse impact implications on the Welsh Language, as the requirement for evidence of satisfactory linguistic ability still stands, albeit modified to recognise that some evidence may be difficult to source during the outbreak.

Children's Rights

No conflict with UNCRC has been identified and there are no negative impacts on children and young people; the majority of provisions impact wholly or mainly on services for adults.

² <https://www.assembly.wales/en/bus-home/Pages/Plenary.aspx?assembly=5&category=Laid%20Document>

Privacy

There are no impact implications on privacy matters.

Justice Impact Assessment (JIA)

Infractions of the requirement to register (for example if a provider persisted in seeking to provide a service which did not fall within the exception) would be dealt with by CIW in the normal way, including consideration of prosecution.

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.