

SL(6)434 – The Local Authority Social Services Annual Reports (Prescribed Form) (Wales) (Amendment and Transitional Provision) Regulations 2023

Background and Purpose

The Local Authority Social Services Annual Reports (Prescribed Form) (Wales) Regulations 2017 (“the 2017 Regulations”) prescribe the specific information that must be included in the annual reports of local authorities in respect of their social services functions, and set out the headings under which the required information is to be provided.

These Regulations amend the 2017 Regulations to update the information that must be included in annual reports and headings under which the information required is to be provided. This is being done to ensure alignment with the requirements of the revised Code of Practice (the revised Part 8 Code) that has been issued in relation to the performance and improvement of social services in Wales.

These Regulations also contain a transitional provision which clarifies that the amendments made to the 2017 Regulations will apply to annual reports prepared from and including the 2024/25 financial year onwards.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument:

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 4 makes transitional arrangements in respect of the amendments made by these Regulations. As pointed out in the Explanatory Memorandum:

“Power to make transitional provision is provided under section 196(2)(c) of the 2014 Act.”



However, section 196(2)(c) of the Social Services and Well-being (Wales) Act 2014 is not cited as an enabling provision in the preamble to these Regulations.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

Technical Scrutiny point 1: The Government acknowledges that regulation 4 makes transitional arrangements in respect of the amendments made by these Regulations, but that section 196(2)(c) of the Social Services and Well-being (Wales) Act 2014 is not cited as an enabling provision in the preamble.

However, we would like to share the following observations with the Legislation, Justice and Constitution Committee.

- 1) The specific regulation within the instrument which relies upon section 196(2)(c) confers a benefit on local authorities ("LAs"). This is regulation 4, which merely seeks to provide LAs with clarity on how to apply the Regulations in circumstances where they come into force on 1 April 2024, during a period within which they are still delivering reports for the previous reporting year.
- 2) The Government does not believe that this alters the principal effect of the instrument, which remains intra vires. The Government relies upon the principles set out in *Inco Europe Ltd v First Choice Distribution* [2000] 1 WLR 586 in support of its view. Furthermore, the Welsh Ministers have the power to make the regulation and it is clear from the operative provision of the S.I. that section 196(2)(c) was intended to be specified in the preamble, hence its reference in the Explanatory Memorandum. The principle set out in the *Inco* case, therefore, that the courts can intervene to correct what is clearly a drafting error is relevant to this situation.
- 3) Even if the effect of the omission of citation of section 196(2)(c) in the preamble of the Regulations is to undermine the legal effect of regulation 4, given its purpose is to simply provide clarification to local authorities on the reporting requirements for the relevant period as outlined at 1) above, this would be an interpretation of the Regulations open for LAs to make in any event.

In light of these observations the Government does not consider that any action to amend the Regulations is warranted.

Legal Advisers

Legislation, Justice and Constitution Committee

3 January 2024



Senedd Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
Welsh Parliament
Legislation, Justice and Constitution Committee