

SL(5)293 – The Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

Background and Purpose

These Regulations are made under the Regulation and Inspection of Social Care (Wales) Act 2016 and set out the regulatory requirements and related provision for providers of regulated advocacy services and for those persons who are designated as responsible individuals for such services.

These Regulations impose requirements on service providers and responsible individuals in respect of advocacy services. For example, the Regulations require service providers to ensure there are effective arrangements in place for monitoring, reviewing and improving the quality of the advocacy provided and to have policies in relation to, for example, safeguarding and staff discipline.

Procedure

Affirmative.

Technical Scrutiny

Three points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation

If a responsible individual is unable to fulfil their duties, regulation 6(4)(c) requires service providers to ensure there are arrangements in place for the regulated advocacy service to comply with Part 3 to 15 of the Regulations.

However, there are also important requirements in Part 2 of the Regulations. It is unclear why regulation 6(4)(c) does not require compliance with Part 2 of the Regulations.

The same issue arises in respect of regulation 7(3)(c).

2. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation

Regulation 10 places a duty of candour on service providers – service providers must act in an open and transparent way with:

- individuals (i.e. persons for whom the service provider is providing or has provided advocacy, or for whom the service provider may provide advocacy), and
- any representatives of those individuals.

However, there is no duty to act in an open and transparent way with service commissioners (i.e. local authorities which are responsible for making arrangements with a service provider for the provision of assistance to a child or person under section 178(1) of the Social Services and Well-being (Wales) Act 2014).



We ask why there is no such duty.

3. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation

Regulation 15 requires service providers to prepare a written guide to the advocacy service. The guide must then be given to "commissioning authorities" (see regulation 15(2)(d)).

However, there is no definition of "commissioning authorities".

The lack of clarity is of particular concern given that breach of the duty in regulation 15(2)(d) is a criminal offence, and absolute clarity is required when creating criminal offences.

Merits Scrutiny

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

Implications arising from exiting the European Union

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

Government Response

*1. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation
If a responsible individual is unable to fulfil their duties, regulation 6(4)(c) requires service providers to ensure there are arrangements in place for the regulated advocacy service to comply with Part 3 to 15 of the Regulations.*

However, there are also important requirements in Part 2 of the Regulations. It is unclear why regulation 6(4)(c) does not require compliance with Part 2 of the Regulations.

The same issue arises in respect of regulation 7(3)(c).

Government response

Although many of the duties in Part 2 are of a more general overarching nature, and are therefore of more limited application in the context of interim arrangements during the temporary absence of a responsible individual (or individual provider), it is acknowledged that there may be occasions when the duties under part 2 will be of relevance and that the references in regulations 6(4)(c) and 7(3)(c) should refer to parts 2 to 15 of the Regulations. An amendment will be made at the next available opportunity.

*2. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation
Regulation 10 places a duty of candour on service providers – service providers must act in an open and transparent way with:*

-individuals (i.e. persons for whom the service provider is providing or has provided advocacy, or for whom the service provider may provide advocacy), and

-any representatives of those individuals.

However, there is no duty to act in an open and transparent way with service commissioners (i.e. local authorities which are responsible for making arrangements with a service provider for the provision of assistance to a child or person under section 178(1) of the Social Services and Well-being (Wales) Act 2014).

We ask why there is no such duty.

Government response



Specific consideration was given to this issue in the drafting of the regulations and to the fact that for other types of regulated service the duty of candour does apply to a service provider's relationship with service commissioners. However for an advocacy service provider, the service commissioner is also the body against whom the child or young person wishes to make representations. In providing advocacy for a child or young person it is important that the advocacy service provider's prime function is to represent the views of that person to the commissioning local authority. A duty to be open and transparent with the commissioning local authority might conflict with the child or young person's instructions and conflict with this duty. For this reason service commissioners were specifically excluded from the scope of this duty for this particular type of service.

3. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation Regulation 15 requires service providers to prepare a written guide to the advocacy service. The guide must then be given to "commissioning authorities" (see regulation 15(2)(d)).

However, there is no definition of "commissioning authorities".

The lack of clarity is of particular concern given that breach of the duty in regulation 15(2)(d) is a criminal offence, and absolute clarity is required when creating criminal offences.

Government response

Although in the context, this is a term which is likely to be understood because in the overwhelming majority of cases services will be commissioned by local authorities, and although in our view, to the extent that there is uncertainty, a court is overwhelmingly likely to interpret the phrase in the same way, it is accepted that the clarity of the provision would be improved if the phrase "commissioning authorities" was replaced with the phrase "service commissioners". The phrase "service commissioner" is defined in regulation 2. An amendment will be made at the next available opportunity.

Legal Advisers

Constitutional and Legislative Affairs Committee

7 January 2019

