

Explanatory Memorandum to the Regulated Services (Annual Returns and Registration) (Amendment) (Wales) Regulations 2019

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/Deputy 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 Regulations 2019.

Julie Morgan

Deputy Minister for Health and Social Services

13 February 2019

PART 1

1. Description

The Regulation and Inspection of Social Care (Wales) Act ('the 2016 Act') received Royal Assent on 18 January 2016. It provides the statutory framework for the regulation and inspection of social care services and the regulation of the social care workforce in Wales. To help achieve this it provides the Welsh Ministers with a range of regulation-making and other subordinate legislation powers.

This Explanatory Memorandum relates to Regulations that will come into force in April 2019 – the Regulated Services (Annual Returns and Registration) (Amendment) (Wales) Regulations 2019 ('the amendment regulations'). These regulations make changes to the substantive Regulated Services (Registration) (Wales) Regulations 2017 ('the 2017 Registration Regulations') and The Regulated Services (Annual Returns) (Wales) Regulations 2017 ('the 2017 Annual Returns Regulations').

The 2017 Registration Regulations came into force on 1 February 2018 and were made under Sections 6 and 11 of the 2016 Act. The 2017 Annual Returns Regulations came into force on 2 April 2018 and were made under section 10 of the 2016 Act.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No specific matters have been identified.

3. Legislative background

These amendment regulations are made under powers within sections 6, 10, 11 and 187 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('The 2016 Act').

Sections 6 and 11 relate to the application for registration in order to provide a regulated care and support service and to the application to vary an existing registration. Section 10 places requirements on service providers to submit an annual return to the Welsh Ministers, and enables the Welsh Ministers to prescribe further information to be included in these returns. Section 187(1) specifies that a power to make regulations under the 2016 Act is exercisable by statutory instrument.

These amendment regulations are being laid before the National Assembly under the negative procedure.

4. Purpose and intended effect of the legislation

The purpose of the amendment regulations is to make a series of amendments to the substantive 2017 Registration Regulations and annual returns

regulations, in order to make them fit for both Phase 2 and Phase 3 services.

The original 2017 Registration Regulations provide further detail - beyond what is stated in the 2016 Act itself - on the requirements for, and process of, registration to provide a regulated service with Care Inspectorate Wales ('CIW'). Likewise the original '2017 Annual Returns Regulations set out further detail (including the information to be provided) in respect of the annual returns that service providers will need to make to CIW. The regulations have been in force in respect of Phase 2 services (care home services, domiciliary support services, residential family centres and secure accommodation services) since 2 April 2018.

Given the amendments in the amendment regulations cover a number of different areas, the purpose of each amendment is set out in turn below:

Amendments made to the 2017 Registration Regulations

Information to be provided by an applicant

Regulation 3 of the 2017 Registration Regulations deals with the information to be provided by an applicant wishes to provide a regulated services and regulation 3 (c) applies specifically to Phase 3 services (an adoption service, a fostering service, an adult placement service or an advocacy service).

The amendment regulations substitute the wording of regulation 3(c) so that instead of requiring those services to provide a statement of purpose 'for each place **from** which the service is to be provided', they instead are required to provide a statement of purpose for in place **in relation to** which the service provided. The rationale for this change is that non-residential services will not be provided from a specific place or even a specific office therefore we consider that the wording of the regulation needed amending to reflect the nature of these services which may also be delivered across an area – for example a regional partnership footprint or even across Wales – in order to provide greater clarity. Similar amendments have been made to regulation 6(c) and regulation 7(c) for the same purpose.

Information about the service to be provided

Schedule 1 to the 2017 Registration Regulations specifies the information required by an applicant for registration or variation of registration. In order to be consistent with the requirements in place in respect of Phase 2 services, a corresponding requirement has been made in the schedule for Phase 3 services to provide the date on which it is intended to begin providing the service in relation to each place specified in their applications.

Information required to be contained in a statement of purpose

In order to be consistent with the requirements in place in respect of domiciliary support services, and to reflect the nature of Phase 3 services which may be delivered across an area, a corresponding requirement has been made in schedule 2 for Phase 3 services to provide:

- (i) the name of the service;
- (ii) the area in relation to which the service is provided;
- (iii) the addresses of the office or offices from which the service will be provided;
- (iv) the addresses of any other office or offices which are used in connection with the provision of the service.

Amendments made to the 2017 Annual Returns Regulations

Coming into force date

Our original policy intention was that the requirement for an annual return to be submitted would not come into force until all regulated services had re-registered with CIW under the 2016 Act and had been operating under the new regulatory system for ideally at least a year. However, the coming into force date of 2 April 2018 in the Regulations (necessary for the timely operation of the other provisions) has created an unintended consequence by which the first annual returns for Phase 2 services are required by 31 May 2019 (within 56 days of the end of the 2018-19 financial year). The complexity here is that even if services have been re-registered under the 2016 Act they will not have been operating under the new regulatory system for any meaningful period, primarily due to the necessary period of time it has taken to determine their registration.

The amendment regulations therefore amend the 2017 Annual Returns Regulations by requiring the submission of the first annual returns to be in 2020 for Phase 2 services and in 2021 for Phase 3 services.

Other information

In order to be consistent with the requirements in place in respect of domiciliary support services, and to reflect the nature of Phase 3 services which may be delivered across an area, regulation 6 of the annual returns regulations has been amended so the requirement for an annual return to contain the additional information specified in the Schedule also applies to each of the Phase 3 services.

Paragraph 5 of the schedule has also been amended to reflect the nature of Phase 3 services. Therefore, the following categories of filled and vacant posts are not required in respect of Phase 3 services :

- nursing care staff;
- registered nurses;
- domestic staff;
- catering staff.

These categories should not apply to Phase 3 services as the nature of those services means that they are unlikely to employ the types of staff listed above.

5. Consultation

A public consultation was not undertaken on these amendment regulations. This is because the changes are of a minor, technical nature and are either intended to clarify and fulfil the original agreed policy intent, or apply requirements consistently to both Phase 2 and Phase 3 services. A full 12 week consultation was undertaken at Phase 2, in relation to the substantive regulations.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these regulations.

Detailed regulatory impact assessments were completed for the substantive 2017 annual returns and registration regulations. These are available at:

<http://senedd.assembly.wales/documents/s66823/SL5132%20-%20EM%20The%20Regulated%20Services%20Annual%20Returns%20Wales%20Regulations%202017.pdf> (2017 Annual Returns Regulations)

<http://www.assembly.wales/laid%20documents/sub-ld11204-em/sub-ld11204-em-e.pdf> (2017 Registration Regulations)