

Explanatory Memorandum to the Adult Protection and Support Orders (Authorised Officer) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Department for Health and Social Services 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 Adult Protection and Support Orders (Authorised Officer) (Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Mark Drakeford

Minister for Health and Social Services

4 June 2015

Part 1 – OVERVIEW

Description

1. The Social Services and Well-being (Wales) Act 2014 ('the Act') brings together local authorities' duties and functions in relation to improving the well-being of people who need care and support and carers who need support in a single Act. The Act provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities.
2. These Regulations place restrictions upon the person or category of person who may be authorised by a local authority to apply for an Adult Protection and Support Order where access is required to an individual suspected of being an adult at risk of abuse or neglect.

Matters of special interest to the Constitutional and Legislative Affairs Committee

3. There are no matters of special interest to be brought to the attention of the Constitutional and Legislative Affairs Committee.

Legislative background

4. The powers enabling these Regulations to be made are contained in section 127(9) of the Social Services and Well-being (Wales) Act 2014 which enables the Welsh Ministers to make regulations to set restrictions on the persons or categories of persons who may be authorised by a local authority to apply for an Adult Protection and Support Order.
5. This instrument is subject to the affirmative resolution procedure.

Purpose and intended effect of the legislation

6. The purpose of these Regulations is to ensure that local authorities should authorise a person to apply for an Adult Protection and Support Order who has relevant experience of working within the field of social care with adults who are, or may be, at risk, has completed training appropriate to enable a person to undertake the functions of an authorised officer and is an officer of the authorising local authority.
7. Where it is not practicable to authorise a person who is an officer of the authorising authority, a person may be authorised who is an officer of a local authority within the relevant Safeguarding Board area, or failing that, of a local authority in Wales. In both instances, the requirement for the officer to have relevant experience and to have completed appropriate training remains.

8. The implementation of the legislation will enable individuals who are suspected to be adults at risk to have greater voice and control over their situation. The Adult Protection and Support Order will allow entry to any premises specified in the Order, so that the authorised officer and any other persons accompanying the officer can speak to an individual suspected to be at risk in private so that they can determine whether the person is an adult at risk and is making decisions freely.
9. 'Sustainable Social Services for Wales: a Framework for Action', published by the Welsh Government in February 2011¹, proposed the introduction of a more robust statutory framework for adult protection in Wales. It further proposed, in line with the Law Commission report on adult social care law, that the Welsh Government would consider where other changes to strengthen adult safeguarding in Wales can be achieved, taking into account the experience of the Adult Support and Protection (Scotland) Act 2007.
10. It is intended that the inclusion of the requirement for the authorised officer to have completed appropriate training and have relevant experience will assist decision making.
11. The intended outcome is that applications to a Justice of the Peace for an Adult Protection and Support Order are made only after all alternative actions to speak in private with the individual have been exhausted before resorting to the use of the legal process.

Consultation

12. A 12 week consultation on these Regulations ran between 6 November 2014 and 2 February 2015. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

¹ <http://gov.wales/topics/health/publications/socialcare/guidance1/services/?lang=en>

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option 1: Do nothing

1. In the event of Regulations not being made there would be no statutory restriction on the person or category of persons who may be authorised by a local authority (“an authorised officer”) for the purposes of making an application for an Adult Protection and Support Order.

Option 2: Bring Regulations into Force

2. Making the Regulations as proposed will provide clarity that an authorised officer for the purposes of applying for an Adult Protection and Support Order must have relevant experience, have completed appropriate training and be an officer of a local authority in Wales.

Costs and benefits for Option 1

3. There would be no costs associated with not making this legislation. However, this option would weaken proposals for a coherent safeguarding framework under the Act for adults at risk. The Act allows for an authorised officer to make an application to a Justice of the Peace for an Adult Protection and Support Order. If there is no statutory restriction on the category of persons who may be an authorised officer this would give rise to the possibility of inconsistent approaches being taken and consequent difficulties both in the application process and the use of such orders.

Costs and Benefits for Option 2

4. It is intended that Adult Protection and Support Orders will be an action of last resort after all other avenues have been exhausted. Local authorities previously had powers (under section 47 of the National Assistance Act 1948) to apply for a court order to remove persons in need of care and attention from home to hospitals or other places. There is little evidence of the exercise of these powers and they are repealed in relation to Wales under section 129 of the Social Services and Well-being (Wales) Act 2014.
5. Experience in Scotland, where more extensive powers are available, suggests that orders are rarely sought – the existence of the power is often enough to ensure co-operation. In addition, the Scottish experience is that the existence of powers has led to greater preventative work. It is reasonable to assume that the experience in Wales will be similar.
6. Any additional resource implications for local authorities are therefore considered to be minimal, limited solely to the co-ordination of information and evidence to support the application for an Order, and the cost of the Order itself, through the relevant court fee. However, it should be noted that these costs arise from the existence of the power to seek an Adult Protection and Support Order, not from

the placing of restrictions on the category of person who may be authorised to apply for one, and are therefore unaffected by these Regulations.

7. Training and guidance for those undertaking the role of authorised officer will be commissioned by the Welsh Government and delivered prior to implementation of the provisions in April 2016. We anticipate that between 44 and 66 individuals will require training across Wales.
8. Guidance will also be provided for Her Majesty's Courts and Tribunal Service (HMCTS) on procedures for making and granting of these orders. This will be substantially similar in nature to guidance produced for local authority authorised officers.
9. Discussions are ongoing with the Wales Office, Home Office and HMCTS to make detailed arrangements for implementation.

Consultation

10. A 12 week consultation on these regulations ran between 6 November 2014 and 2 February 2015.
11. The Report and a list of respondents can be found at:

<http://gov.wales/consultations/healthsocialcare/part7/?status=closed&lang=en>

12. While there was clear overall support for the proposals, several respondents made suggestions to expand, clarify or further restrict the categories of persons who could be authorised officers. In the main, we propose to maintain the ability of local authorities to retain some degree of flexibility to authorise officers in accordance with the circumstances of the individual case. Statutory guidance to support the exercise of this function was consulted upon at the same time as the Regulations.
13. In addition to this formal consultation, the Safeguarding Advisory Panel was appointed in July 2013 by the then Deputy Minister for Social Services to engage with stakeholders to strengthen the safeguarding proposals in the Social Services and Well-being (Wales) Bill. The Safeguarding Advisory Panel liaised with a range of statutory independent and third sector agencies while developing the Regulations and Statutory Guidance. This engagement included:
 - 17 September 2013 - workshop regarding proposed adult protection legislation including proposed Adult Protection and Support Orders;
 - 19 February 2014 - agenda item presented at the Wales Public Protection Unit Leads quarterly meeting in Llandrindod Wells;
 - 25 March 2014 - focus group to consider Adult Protection and Support Orders including two senior staff from North Wales Police representing the four Wales Police services.

14. Once developed, the draft Regulations and Statutory Guidance were discussed at two Welsh Government consultation events held on 26 November 2014 and 9 December 2014.

Competition Assessment

15. Competition Assessment

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 regulations 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 businesses/organisations?	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 characterised 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

16. 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.
17. We do not consider it necessary to undertake a competition assessment for these Regulations since they will not affect the business sector in any significant way.

Post-implementation Review

18. The Social Services and Well-being (Wales) Act 2014 contains provisions to allow the Welsh Ministers to monitor functions of the Act carried out by local authorities and other bodies. The Welsh Ministers may require these bodies to report on their duties in implementing these Regulations.

19. Additionally, the Welsh Government will continue to monitor the impact of the Regulations on areas such as the Welsh language, equality, tackling poverty and the United Nations Principles for Older Persons.
20. As required by the Rights of Children and Young Persons (Wales) Measure 2011, the Welsh Ministers will have due regard to the United Nations Convention on the Rights of the Child when exercising relevant functions under the Act.