

Explanatory Memorandum to the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2017

This Explanatory Memorandum has been prepared by the Health and Social Services Group 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 Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2017.

Rebecca Evans
Minister for Social Services and Public Health
26 January 2017

1. Description

The Regulation and Inspection of Social Care (Wales) Act 2016 ('the Act') provides a revised and streamlined legislative framework for the regulation and inspection of care and support in Wales. It received Royal Assent on 18 January 2016.

The required transformation of social care in Wales was set out in *Sustainable Social Services: A Framework for Action*¹ published by the Welsh Government in February 2011. This in turn built upon *Fulfilled Lives, Supportive Communities: A Strategy for Social Services in Wales Over the Next Decade*², published four years earlier, and was also a direct response to the work of an independent commission established to review social services in Wales (the Independent Commission on Social Services in Wales, 2010).

The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2017 ('the 2017 Regulations') are made under section 186 of the Act and make amendments to secondary legislation as a consequence of the commencement of Parts 2 to 11 of the Act.

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

No specific matters identified.

3. Legislative background

The National Assembly for Wales ("the Assembly") has the legislative competence to make provision for, and in connection with, social welfare by virtue of Part 4 of the Government of Wales Act 2006 ("the Act"). The relevant provisions of the Act are set out in section 108 and Schedule 7. Heading 15 of Part 1 of Schedule 7 includes, inter alia, the following subjects on which the Assembly may legislate under the heading "Social welfare",

"Social welfare including social services. Protection and well-being of children (including adoption and fostering) [and of young adults]. Care of [children], young adults, vulnerable persons and older persons, including care standards".

The Assembly also has legislative competence to make provisions concerning "Local Government" by virtue of Heading 12 of Part 1 of Schedule 7, which includes, inter alia, the following subjects,

"Powers and duties of local authorities and their members and officers".

The Assembly also has legislative competence to make provision concerning "Public administration" by virtue of Heading 14 of Part 1 of Schedule 7, which includes, inter alia, the following subjects,

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

² <http://gov.wales/topics/health/publications/socialcare/strategies/lives/?lang=en>

“Audit, examination, regulation and inspection of auditable public authorities. Inquiries in respect of matters in relation to which the Welsh Ministers, the First Minister or the Counsel General exercise functions”.

The Assembly also has legislative competence to make provision concerning “Education and training” by virtue of Heading 5 of Part 1 of Schedule 7, which specifies the following subjects,

“Education, vocational, social and physical training and the careers service. Promotion of advancement and application of knowledge”.

The above subjects provided the Assembly with the competence to make the provisions contained in the Regulation and Inspection of Social Care (Wales) Act 2016 which was granted Royal Assent on 18 January 2016.

The powers enabling the 2017 Regulations to be made are contained in section 186 of the Act and sections 9(1), 10 and 140(1) of the Adoption and Children Act 2002. The regulations are subject to the National Assembly for Wales’ negative resolution procedure and will come into force on 3 April 2017.

4. Purpose & intended effect of the legislation

The purpose of the 2017 Regulations is to make a number of consequential amendments to secondary legislation, as a consequence of the commencement of Parts 2 to 11 of the Act on 3 April 2017. This is to ensure that the relevant Welsh law is referred to as appropriate. Additional provision will also be made within the Regulation and Inspection of Social Care (Wales) Act 2016 (Commencement No. 3, Savings and Transitional Provisions) Order 2017 to be laid before the Assembly in February 2017.

Part 3 of the Act (Social Care Wales) provides for the continuation of the body corporate called the Care Council for Wales, which was established by section 54 of the Care Standards Act 2000 to regulate the social care workforce in Wales. It renames that body and restates and modifies the body’s original functions and confers additional functions upon it. The consequential amendments made by the 2017 Regulations are necessary to reflect this change.

Regulation 2 and Schedule 1 of the 2017 Regulations set out the consequential and incidental amendments to secondary legislation required as a consequence of the commencement of Parts 2 to 11 of the Act. Essentially, they provide for relevant references to “the Care Council for Wales” and “the Care Standards Act 2000”, in secondary legislation listed in Schedule 1, to be substituted by relevant references to “Social Care Wales” and “the Regulation and Inspection of Social Care (Wales) Act 2016”.

In addition, Regulation 3 and Schedule 2 of the 2017 Regulations provide for the revocation of relevant Wales-only secondary legislation. These instruments, listed within Schedule 2, have largely been replaced by the following regulations made under the Act, which will come into force on 3 April 2017:

- The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016³
- The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations 2016⁴
- The Social Care Wales (List of Persons Removed from the Register) Regulations 2016⁵
- The Social Care Wales (Content of Register) Regulations 2016⁶
- The Social Care Wales (Constitution of Panels: Prescribed Persons) Regulations 2016⁷
- The Social Care Wales (Proceedings Before Panels) Regulations 2016⁸

Collectively these regulations, together with underpinning rules and procedures developed by Social Care Wales, will give effect to the new system of social care workforce regulation, to be conducted by Social Care Wales, from April 2017.

5. Consultation

No formal public consultation has taken place as the 2017 Regulations simply make consequential technical amendments to secondary legislation. However, in all appropriate cases copies of draft amending provisions were sent to the Whitehall Departments most concerned with the secondary legislation subject to amendment, for their information and comment.

The regulations which provide for the new system of workforce regulation, listed above, were consulted upon from 28 June to 20 September 2016. A consultation summary report has been prepared and published⁹. Prior to this, the Regulation and Inspection of Social Care (Wales) Bill was subject to full scrutiny before being passed by the Assembly in November 2015.

6. Regulatory Impact Assessment (RIA)

A regulatory impact assessment has not been prepared in respect of the 2017 Regulations as they simply make consequential amendments to secondary legislation and do not impose or reduce costs for businesses, charities, voluntary bodies or the public sector.

The regulations which provide for the new system of workforce regulation, listed above, were accompanied by a regulatory impact assessment (included within their Explanatory Memorandum) when laid before the Assembly on 22 November 2016¹⁰.

³ http://www.legislation.gov.uk/wsi/2016/1235/pdfs/wsi_20161235_mi.pdf

⁴ http://www.legislation.gov.uk/wsi/2016/1251/pdfs/wsi_20161251_mi.pdf

⁵ http://www.legislation.gov.uk/wsi/2016/1111/pdfs/wsi_20161111_mi.pdf

⁶ http://www.legislation.gov.uk/wsi/2016/1097/pdfs/wsi_20161097_mi.pdf

⁷ http://www.legislation.gov.uk/wsi/2016/1099/pdfs/wsi_20161099_mi.pdf

⁸ http://www.legislation.gov.uk/wsi/2016/1100/pdfs/wsi_20161100_mi.pdf

⁹ https://consultations.gov.wales/sites/default/files/consultation_doc_files/161122responsesen.pdf

¹⁰ <http://www.assembly.wales/laid%20documents/sub-ld10819-em/sub-ld10819-em-e.pdf>