

Explanatory Memorandum to the Regulated Services (Notifications) (Wales) Regulations 2017

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's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Regulated Services (Notifications) (Wales) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Rebecca Evans AM
Minister for Social Services & Public Health

3 October 2017

Part 1 – OVERVIEW

1. Description

In 2011 the Welsh Government published the white paper *Sustainable Social Services: A Framework for Action*. This set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales. To achieve this new approach, the Welsh Government made two pieces of primary legislation: *the Social Services and Well-being (Wales) Act 2014* (“the 2014 Act”) and *the Regulation and Inspection of Social Care (Wales) Act 2016* (“the 2016 Act”).

The 2016 Act received Royal Assent on 18 January 2016. It reforms the regulation and inspection regime for social care in Wales and provides the statutory framework for the regulation and inspection of social care services and the social care workforce. It also enables the Welsh Ministers to set out the details of the standards which will apply under the new regime through the making of regulations, the publication of guidance and the issuing of codes of practice.

This Explanatory Memorandum relates to *the Regulated Services (Notification) (Wales) Regulations 2017* which will come into force in April 2018.

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

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

The powers enabling these Regulations to be made are contained in section 39 of the 2016 Act. *The Regulated Services (Notifications) (Wales) Regulations 2017* are being laid under the negative procedure.

Section 39 of the 2016 Act places a duty on the Welsh Ministers to notify all local authorities in Wales and England when certain enforcement actions are taken against a service provider. The 2016 Act sets out a list of actions which will trigger a notification. These are:

- the cancellation of a service provider’s registration,
- the variation of the registration of a service provider by removing from the registration a regulated service or a place at, from or in relation to which the provider is providing a regulated service,
- the making of an order by a justice of the peace under section 23 of the 2016 Act (urgent cancellation or variation by removing a service or place),
- the cancellation of a designation of a responsible individual,
- proceedings brought against a person in respect of an offence, and
- any penalty notices issued.

Section 39 contains two regulation-making powers:

- Section 39(1)(g) allows the Welsh Ministers to expand the list of actions which will trigger a notification; and
- Section 39(2) allows the Welsh Ministers to prescribe the information which is contained in these notifications.

The duty to notify local authorities will be discharged by Care and Social Services Inspectorate Wales (CSSIW). Under the Care Standards Act 2000, CSSIW currently notify local authorities about:

- notice of proposal or decision to cancel registration of a service provider;
- notice of proposal or decision to cease admissions or cap numbers; and
- any urgent action to cancel registration or cease admissions.

CSSIW does not share the actual notice issued to the provider. It normally notifies the local authority either via the head of service or through the Joint Inter-agency Monitoring Panel (JIMP) and Home Operations Support Group (HOSG) process. These are multi-agency groups established to deal with care home failure in a local authority area. CSSIW also shares a draft inspection report where it feels there are safeguarding issues about which commissioners need to be made aware.

4. Purpose & intended effect of the legislation

Local authorities are commissioners of care. They also have statutory duties, under the 2014 Act (in the case of local authorities in Wales) or under the Care Act 2014 (in the case of local authorities in England) to step in when service providers are failing. The intention is that local authorities are notified about relevant issues which may have an impact upon the safeguarding of individuals receiving care and support.

Consultation

A 12 week consultation on these regulations ran between 28 June and 20 September 2016. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2. The consultation summary report and a list of respondents can be found at:

<http://gov.wales/consultations/healthsocialcare/regulation-and-inspection-act/?lang=en>

PART 2 – REGULATORY IMPACT ASSESSMENT

The options considered by the Welsh Government in relation to section 39 of the 2016 Act are as follows:

Options

Option one: proceed with the minimum notification requirements as set out on the face of the 2016 Act

Under this option, there would be a requirement to make notifications as set out in section 39 of the 2016 Act. However, there would be no Regulations setting out the information required in relation to each notification requirement, nor the additional notifications in respect of appeals as set out under option two.

Option two: develop Regulations that prescribe the form of the notifications and enable further notification to be made

Under this option, Regulations would prescribe the information required in respect of each notification requirement. It would also add the following additional notification requirements. These would be:

- notifications in respect of appeals by a service provider in relation to enforcement action taken by CSSIW;
- notifications of the decision of the tribunal in respect of the appeal, and
- notifications in respect of any proceedings brought against a person in respect of an offence under Part 1 of the Act.

Costs

Option one: proceed with the minimum notification requirements as set out on the face of the 2016 Act

There will be a potential cost to Welsh Government, specifically for CSSIW as the service regulator as they will need to modify existing systems to make notifications to local authorities under this option.

CSSIW already make notifications to local authorities in undertaking their responsibilities under the Care Standards Act 2000, which requires the registration authority to notify local authorities in England and Wales of certain actions.

CSSIW would be able to modify their current processes of notifying local authorities, in order to make all the notifications required under this option. Any transitional costs associated with CSSIW modifying their systems to do this would be in terms of staff time. However, these costs are expected to be negligible.

No additional costs to service providers are expected under this option as the requirements to make notifications as set out in section 39 of the 2016 Act are on Welsh Ministers, not service providers.

Option two: develop Regulations that prescribe the form of the notifications and enable further notification to be made

As with option one there will be a potential cost to Welsh Government, specifically for CSSIW as the service regulator as they will need to modify existing systems to make notifications to local authorities under this option.

However, as described under option one, CSSIW already make notifications to local authorities in undertaking their responsibilities under the Care Standards Act 2000.

As per option one, CSSIW would be able to modify current processes to meet the requirements under this option. Any associated transitional costs would be the same as option one. Those costs are expected to be negligible.

There are no additional costs of significance to CSSIW between option one and option two.

As with option one, no additional costs to service providers are expected under this option as the requirements to make notifications as set out in section 39 of the 2016 Act and within the regulations to be developed under this option are on Welsh Ministers, not service providers.

Benefits

Option one: proceed with the minimum notification requirements as set out on the face of the 2016 Act

No particular benefits have been identified in relation to this option.

Option two: develop Regulations that prescribe the form of the notifications and enable further notification to be made

Making regulations to include notifications to be made in relation to appeals, decisions relating to appeals and offences will provide local authorities with additional key information relating to the activity of a service provider. This will give local authorities a better picture of the way in which the service is operating. This will help the local authority make better informed decisions when planning and commissioning services.

Making regulations to prescribe the form of the notification under this option will give clarity, to both CSSIW in what to include in the notification and to local authorities in terms of receiving notifications from CSSIW in a consistent format.

The intention is to keep the notification as concise as possible under this option. This will benefit local authorities as they will not be required to read a lengthy notification.

Risks

Option one: proceed with the minimum notification requirements as set out on the face of the 2016 Act

Not requiring notifications to be made in relation to appeals, decisions about appeals and offences would mean that local authorities would not have a complete picture of important issues relating to regulated services in their area. This could have safeguarding implications, as local authorities are commissioners of care and, therefore, need to be aware of anything that could be a cause for concern. Local authorities will amend their commissioning practices based on intelligence about the services in their area, to ensure people are not placed at risk.

Not prescribing the information required in respect of each notification could mean that too little, or too much, information is shared which would create inconsistencies in the way in which notifications are made. This would be unhelpful both to CSSIW and to local authorities.

Option two: develop Regulations that prescribe the form of the notifications and enable further notification to be made

No particular risks have been identified in relation to option two.

Conclusion

Having analysed the costs, benefits and risks of each option, the preferred option is **option two - develop Regulations that prescribe the form of the notifications and enable further notification to be made.**

Consultation

A 12 week consultation on these regulations ran between 28 June and 20 September 2016. The consultation summary report and a list of respondents can be found at:

<http://gov.wales/consultations/healthsocialcare/regulation-and-inspection-act/?lang=en>

No changes were made to the proposed regulations as a result of the consultation.

Competition Assessment

The 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 regulation, 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 firms?	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 categorised 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

The competition assessment filter test has been completed on the proposed regulation. It has been determined that this regulation will have no detrimental effect on competition.

Post implementation review

CSSIW will monitor the implementation of these Regulations following their coming-into-force date of 2 April 2018.