

Explanatory Memorandum to the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) 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 Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2017.

Rebecca Evans

Minister for Social Services and Public Health

28 September 2017

1. Description

The Social Services and Well-being (Wales) Act 2014 (“the 2014 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, into a single Act. It provides the statutory framework to deliver the Welsh Government’s commitment to focus on well-being, rights and responsibilities.

The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2017 (“the 2017 Regulations”) make consequential amendments to primary legislation which are in addition to amendments made by the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (“the 2016 Regulations”). The 2016 Regulations came into force at the same time as substantial commencement of the 2014 Act on 6 April 2016.

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

No specific matters identified.

3. Legislative background

The powers enabling the 2017 Regulations to be made are contained within section 198 of the 2014 Act.

Regulations under section 198 which amend or repeal any provision of an Act of Parliament or a Measure or Act of the National Assembly for Wales may not be made unless a draft of the Regulations has been laid before, and approved by a resolution of, the National Assembly for Wales (Affirmative procedure).

The proposed coming into force date of the 2017 Regulations is 1 December 2017.

4. Purpose and intended effect of the legislation

Regulation 2 amends the Children Act 1989 (“the 1989 Act”) by disapplying section 25C(2) in relation to Wales. Section 25C of the 1989 Act, which relates to the Independent Reviewing Officer’s functions concerning the referral of children’s cases to a CAF/CASS¹ officer or equivalent in Wales and gives the Lord Chancellor certain regulation making powers in relation to those functions, provides in section 25C(2) that the Lord Chancellor’s regulation making power can only be exercised with the Welsh Ministers’ consent. Section 101 of the 2014 Act restates section 25C for application in relation to Wales. As a result, the regulation making power in section 25C(2) is redundant and requires disapplication in relation to Wales.

¹ The Children and Family Court Advisory Service.

The 2016 Regulations purported to disapply section 25C(2) in relation to Wales. However, the provision², which inserted section 25C into the 1989 Act, had not been commenced in time and therefore the disapplication of section 25C(2) has uncertain legal effect and is inconsistent with the practice adopted in disapplying other uncommenced provisions from the Children and Young Persons Act 2008 which introduced amendments to Part 3 of the Children Act 1989. The Order³ commencing the inserting provision comes into force on the same day as the 2017 Regulations. This will have the effect of commencing section 25C(2) and, at the same time, disapplying it thereby giving effect to the original intention.

Regulation 3 amends section 2(6)(c) of the Local Government and Housing Act 1989 by replacing the reference to “section 6 of the Local Authority Social Services Act 1970” with “section 144 of the Social Services and Well-being (Wales) Act 2014”. This is to update the reference to the 1970 Act with an appropriate reference to the 2014 Act, to provide clarity and ensure consistency of the law.

The Children and Families Act 2014 introduced a “child arrangements order”, replacing residence and contact orders. **Regulation 4** amends the Social Services and Well-being (Wales) Act by replacing references to “residence order” in sections 76 and 81 with “child arrangements order” to reflect this change. This is to provide clarity and ensure consistency of the law.

5. Consultation

No formal consultation has taken place as the 2017 Regulations make consequential technical amendments only.

6. Regulatory Impact Assessment

A regulatory impact assessment has not been prepared in respect of these consequential amendment regulations as they make amendments to statute that do not impose or reduce costs for businesses, charities or voluntary bodies or the public sector.

² Section 10(2) of the Children and Young Persons Act 2008.

³ The Children and Young Persons Act 2008 (Commencement No.9) (Wales) Order 2017