

Explanatory Memorandum to the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2018

This Explanatory Memorandum has been prepared by the Welsh Government's Health and Social Services department and is laid before the National Assembly for Wales in conjunction with the above Regulations 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) Regulations 2018.

Huw Irranca-Davies

Minister for Children and Social Care

18 January 2018

1. Description

The Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) reforms the regulation and inspection regime for social care in Wales, replacing that established under the Care Standards Act 2000 (“the 2000 Act”).

The 2016 Act 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 put in place a number of items of subordinate legislation through the making of regulations, the publication of guidance and the issuing of codes of practice.

This Explanatory Memorandum relates to the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2018.

These Regulations make necessary amendments to primary legislation as a consequence of commencing provisions within Part 1 of the 2016 Act, on 2 April 2018, through the Regulation and Inspection of Social Care (Wales) Act 2016 (Commencement No. 5, Savings, Transitory and Transitional Provisions) Order 2017¹.

These Regulations also contain one consequential amendment made under the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”). 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 in Wales.

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

No specific matters identified.

3. Legislative background

The powers enabling these Regulations to be made are contained in section 186 of the 2016 Act and section 198 of the 2014 Act. As the amendments are to primary legislation these Regulations may not be made unless they have been laid in draft before, and approved by a resolution of, the National Assembly for Wales. i.e. they are subject to the Affirmative procedure as described in Standing Order 27.5.

Subject to approval by the National Assembly for Wales they will be made by the Minister for Children and Social Care and come into force on 2 April 2018.

¹ <http://www.legislation.gov.uk/wsi/2017/1326/contents/made>

4. Purpose & intended effect of the legislation

These Regulations principally deal with consequential amendments to primary legislation arising from the commencement of the provisions in Part 1 of the 2016 Act which relate to the regulation of care homes, secure accommodation services, residential family centre services and domiciliary support services in Wales. These are examples of what section 2 of 2016 the Act refers to as “regulated services”.

These are all services which have been regulated under Part 2 of the 2000 Act. Many of the amendments within these Regulations therefore remove references to one of the sorts of establishment or agency which were regulated under the 2000 Act and replace them with references to the appropriate sort of “regulated service” under the 2016 Act. These amendments, made using powers within section 186 of the 2016 Act, are necessary to provide clarity and ensure consistency of the law.

The amendment within Regulation 52 is made by virtue of section 198 of the 2014 Act. It removes wording from section 86 of the 2014 Act which implies that accommodation provided, equipped or maintained by the Welsh Ministers for looked after children need necessarily be a children’s home. The purpose is to reflect the wording of the predecessor provision from which section 86 was drawn and without which it could only apply to a children’s home which was both provided by and regulated by the Welsh Ministers.

5. Consultation

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

6. Regulatory Impact Assessment (RIA)

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