

SL(5)365 – The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) Regulations 2019

Background and Purpose

These Regulations amend the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (**the 2017 Regulations**). The 2017 Regulations set out the regulatory requirements which apply to providers of certain services regulated under the Regulation and Inspection of Social Care (Wales) Act 2016 (**the 2016 Act**). These are care home services, secure accommodation services, residential family centre services and domiciliary support services.

The amendments include:

- Regulation 4 makes a number of amendments to regulation 2 of the 2017 Regulations dealing with circumstances when a person is exempted from the requirement to register as the provider of a care home service.
- Regulation 5 amends regulation 3 of the 2017 Regulations to stipulate that nursing care provided by a registered nurse does not come within the scope of activity of a domiciliary support service.
- Regulation 8 adds a requirement to regulation 28 of the 2017 Regulations concerning a service provider's policy and procedures for children's savings.

Procedure

Affirmative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

These Regulations are made, partly, under section 27 of the 2016 Act. Section 27(4) of the 2016 Act requires the Welsh Ministers to consult before making regulations under section 27 and requires them to **publish** a statement about the consultation. Section 27(5) further requires the Welsh Ministers to lay a **copy** of that published statement before the Assembly.

We are not aware that a copy of such a statement has been laid before the Assembly. We note that the Explanatory Memorandum provides a link to the summary of consultation responses but providing a link to a document does not amount to laying a document before the Assembly.

We acknowledge that section 27 of the 2016 Act does not specify when a copy of the published statement must be laid before the Assembly, but we would expect it to have been laid at the same time



as the draft Regulations were laid in order to inform both this Committee and the Assembly before the debate and vote in Plenary – we believe that was the intention of the Assembly when it approved the 2016 Act, including section 27(5).

We would welcome clarification from the Welsh Government as to when a copy of the published statement will be laid before the Assembly.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

These draft Regulations are subject to an affirmative resolution procedure, meaning they cannot be made (i.e. signed) unless the draft has been approved by the Assembly.

The signature clause includes the typed name of the Deputy Minister for Health and Social Services (Julie Morgan) who will be making these Regulations. While we have received confirmation that the draft Regulations have not received the wet signature of the Deputy Minister, we believe it to be good legislative practice not to include a name (even a typed name) in the signature clause of draft subordinate legislation, in order to avoid any suggestion that the draft has received a signature.

We note this issue has arisen in several pieces of draft subordinate legislation of late. We would therefore welcome an explanation from the Welsh Government as to why a typed name has been included (when it has not usually been included in draft subordinate legislation the past).

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

In respect of the requirement under section 27(5) of the 2016 Act, the Welsh Government has now laid the statement about the consultation before the Assembly, prior to the Regulations being debated in plenary on 26 March and, if passed, being made by the Deputy Minister. This can be viewed at: <http://www.assembly.wales/laid%20documents/gen-ld12401/gen-ld12401-e.pdf>.

The Welsh Government notes the legal adviser's comments on the inclusion of the Deputy Minister's name in the draft of the statutory instrument laid before the Assembly. We do not agree that this is change in practice, as examination of previous draft instruments laid has identified this approach has been taken with some regularity over a number of years without comment. However, for the avoidance of any doubt as to the status of an instrument, the Welsh Government will ensure names are not included in draft instruments laid in the future.

Committee Consideration

The Committee considered the instrument along with the Government response at its meeting on 18 March 2019 and reports to the Assembly in line with the merits reporting points above.

