

# Statutory Instruments with Clear Reports

## 12 July 2021

### SL(6)016 – The Coronavirus Act 2020 (Early Expiry: Local Authority Care and Support) (Wales) Regulations 2021

#### Procedure: Affirmative

The Coronavirus Act 2020 (Early Expiry: Local Authority Care and Support) (Wales) Regulations 2021 (“the Regulations”) are made under section 90(1) of the Coronavirus Act 2020 (“the 2020 Act”).

Part 2 of Schedule 12 to, and section 15 of, the 2020 Act (in so far as it relates to Part 2 of Schedule 12), enable local authorities in Wales to streamline assessment arrangements and prioritise adult social care, where necessary, more effectively than they could do under their existing duties under the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”) in its un-modified form. The modifications were intended to enable local authorities to provide urgent and acute care without delay during exceptional times. Notwithstanding the modifications made by the 2020 Act, various safeguards remained in place within the 2014 Act. The relevant provisions were commenced on 1 April 2020 and were suspended on 22 March 2021 by the Coronavirus Act 2020 (Suspension: Local Authority Care and Support) (Wales) Regulations 2021.

The purpose of the Regulations is to early expire the operation of the relevant provisions in the 2020 Act, insofar as they relate to adults and adult carers receiving social care in Wales.

Section 89 of the 2020 Act provides for the automatic expiry of the relevant provisions on 25 March 2022, unless they are extended or expired early by the Welsh Ministers. The effect of the Regulations is to remove the option to draw on the modifications (which are in any event suspended).

The Explanatory Memorandum to the Regulations states that the Regulations will not have any practical impact on local authorities, adults receiving care or adult carers as no local authority in Wales delivered services in accordance with the modified provisions of the 2014 Act when the relevant provisions of the 2020 Act were in force.

It is intended that the Regulations will come into force on 1 August 2021 so that on that date Part 2 of Schedule 12 will expire, save for paragraphs 30 and 33 and 35. Section 89(2) of the 2020 Act specifically provides that these paragraphs cannot be expired early. This reflects the transitional nature the provisions may play after any “emergency period”, including after the 2020 Act ceases to have effect.

Paragraph 31(1) clarifies that an “emergency period” is any period during which the modifications provided by Part 2 of Schedule 12 have effect. The Explanatory Memorandum



to the Regulations notes that local authorities in Wales have all confirmed that they have not operated in accordance with the modified provisions during the “emergency period”.

Paragraph 30 provides that a local authority may retrospectively undertake a financial assessment and charge for needs met using the modified provisions during the “emergency period” where no or a reduced charge has been made. Paragraph 33 makes similar provision for retrospective action in relation to duties under the 2014 Act relating to the portability of care and support.

Paragraph 35 provides that the Welsh Ministers can issue statutory guidance and direct local authorities to have regard to that guidance about how they are to exercise functions under the 2014 Act where the 2020 Act modifications to the existing social care duties under the 2014 Act are in operation.

The Explanatory Memorandum states that as no services were provided under the modified duties when the relevant provisions were in force, no adverse impact or disadvantage for individuals receiving care and support is expected as a result of the exclusion of paragraphs 30, 33 and 35 from the expiry effected by these Regulations.

**Parent Act:** Coronavirus Act 2020

**Date Made:**

**Date Laid:** 22 June 2021

**Coming into force date:** 31 July 2021

## **SL(6)017 – The Care Planning, Placement and Case Review (Wales) (Amendment) Regulations 2021**

### **Procedure: Affirmative**

These Regulations amend the Care Planning, Placement and Case Review (Wales) Regulations 2015 (“the 2015 Regulations”) in consequence of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 amending section 83 of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”).

The effect of these Regulations is to continue the existing position regarding (a) the looked after children who are required to have a personal education plan, and (b) the list of information that must be included in a personal education plan.

Regulation 6 of these Regulations removes the requirement in the 2015 Regulations that a care and support plan include a personal education plan, as that requirement has been inserted into section 83 of the 2014 Act.



Regulation 5 prescribes the categories of looked after children for whom no personal education plan is to be prepared as part of their care and support plan. The categories prescribed are those for whom a personal education plan was not required by the 2015 Regulations. They are:

- any child who has been placed for adoption under the Adoption and Children Act 2002, unless the child falls within regulation 56 (which is where a child is (i) remanded to local authority accommodation, (ii) remanded to youth detention accommodation, or (iii) detained);
- any child who is looked after by the local authority for short breaks (within the circumstances set out in regulation 62(2));
- any child who is looked after only by reason of being remanded to youth detention accommodation.

These Regulations come into force on 1 September 2021.

**Parent Act:** Social Services and Well-being (Wales) Act 2014

**Date Made:**

**Date Laid:** 22 June 2021

**Coming into force date:** 01 September 2021

