

## **Explanatory Memorandum to the Coronavirus Act 2020 (Early Expiry: Local Authority Care and Support) (Wales) Regulations 2021**

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Deputy Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Coronavirus Act 2020 (Early Expiry: Local Authority Care and Support) (Wales) Regulations 2021.

Julie Morgan  
Deputy Minister for Social Services

22 June 2021

## **PART 1**

### **1. Description**

The Coronavirus Act 2020 (Early Expiry: Local Authority Care and Support) (Wales) Regulations 2021 expire early the operation of Part 2 of Schedule 12 to the Coronavirus Act 2020 Act (powers and duties of local authorities in Wales) and section 15 of the Coronavirus Act 2020 (local authority care and support), so far as it relates to Part 2 of Schedule 12 (the relevant provisions).

The relevant provisions of the Coronavirus Act 2020 (the 2020 Act) modify certain duties of local authorities in relation to adult social care under Parts 3 and 4 of the Social Services and Well-being (Wales) Act 2014 (the 2014 Act).

The early expiry of the operation of these provisions means that they no longer have effect in Wales. Regulations suspending Part 2 of Schedule 12 and section 15 so far as it relates to the relevant provisions, came into force on 22 March 2021<sup>1</sup>.

### **2. Matters of special interest to Senedd Cymru**

None.

### **3. Legislative background**

These Regulations are made under the powers conferred by section 90(1) of the 2020 Act which provide that a relevant national authority, may by regulations bring forward the date upon which the relevant provisions in the 2020 Act expire.

These Regulations are subject to the draft affirmative procedure.

### **4. Purpose & intended effect of the legislation**

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 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.

The purpose of these Regulations is to early expire the operation of the relevant provisions in the 2020 Act, so far 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.

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<sup>1</sup> The Coronavirus Act 2020 (Suspension: Local Authority Care and Support) (Wales) Regulations 2021 (S.I. 2021/316 (W. 81)).

The effect of the Regulations is to remove the option to draw on the modifications (which were suspended by the Welsh Ministers on 22 March 2021).

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

The Regulations will come into force on 1 August 2021 and early expire the provisions of Part 2 of Schedule 12 apart from paragraphs 30 and 33 and 35. These paragraphs form part of the savings and transitional provisions within the 2020 Act and they are specifically excluded from the power to expire “provisions” by section 89(2)(r) and cannot, therefore be expired. 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. Local authorities in Wales have all confirmed that they did not in fact operate 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.

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.

## **5. Consultation**

Welsh Ministers stated intention was always that the modifications would be time-limited and would move as soon as possible to a position to remove the modifications.

The Regulations suspending the relevant provisions were preceded by a four-week rapid review and on-line response form was published on the Welsh Government’s website between 5 October and 2 November 2020. Officials also wrote to stakeholders across the social care sector inviting contributions to the suspension or retention of the relevant provisions.

Recipients included:

- Assoc. of Directors of Social Services Cymru
- Care Forum Wales
- Care Inspectorate Wales
- Chair of Age Alliance (includes unpaid carers bodies)
- Chairs, Vice Chairs and Leads of Regional Partnership Boards
- Children's Commissioner for Wales
- Disability & Equality Forum Members
- Directors of Social Services
- Equality & Human Rights Commission Wales
- National Independent Safeguarding Board
- Older People's Commissioner for Wales
- Safeguarding Board Business Managers
- Social Care Wales
- Wales Council for Voluntary Action
- Welsh Local Government Association

There was clear support (65%) for the suspension of the operation of the relevant provisions. Although there was a low level of support for retaining the operation of the provisions, suspension responded positively to reports and recommendations from a wide range of stakeholders. A number of responses also pressed for the repeal or early expiration of the provisions. These reflected similar representations including from Senedd Cymru's Equalities, Local Government and Communities Committee<sup>2</sup>. The consultation summary is published on the Welsh Government website<sup>3</sup>.

## 6. Regulatory Impact Assessment

The need for the Regulations has arisen as part of the Welsh Ministers' response to the national contingency planning arrangements to address the spread of Covid-19.

A Regulatory Impact Assessment has not been produced. The 2014 Act sets out local authorities' duties to assess and meet the needs for social care and support for people within their boundaries. The purpose of these Regulations is to remove the potential for local authorities to operate under modifications to those existing duties contained within the 2020 Act and will therefore not result in additional costs or burdens. Any adjustments or revisions required to working practices will relate to the re-establishment of pre-pandemic practice, unmodified by wider public health restrictions such as social distancing. Regulatory Impact Assessments for the 2014 Act, together with the associated regulations and codes of practice were published to accompany that 2014 Act.

The needs of businesses in the social care sector have been considered in the preparation of these Regulations and no additional burdens or costs identified.

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<sup>2</sup> [Report Into sharp relief inequality and the pandemic](#)

<sup>3</sup> [Coronavirus Act 2020 and social care in Wales](#)

## 7. Specific impact tests

### Welsh Language

There are no positive or adverse impact implications on the Welsh Language.

### Children's Rights

No conflict with UNCRC has been identified and there are no negative impacts on children. The Welsh Ministers chose to limit the potential modifications provided by the Coronavirus Act 2020 Act to only of the adult provisions of the Social Services and Well-being (Wales) Act 2014. A Children's Rights Impact Assessment (CRIA) for the 2014 Act was published to accompany that Act and associated products.

### Privacy

There are no impact implications on privacy matters.

### Competition Assessment

The competition filter test	
Question	Answer
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector categorised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The filter test shows that it is not likely that the Regulations will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.