

Explanatory Memorandum to the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016

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 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 Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016.

Mark Drakeford

Minister for Health and Social Services

9 February 2016

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. These Regulations amend primary legislation that currently underpins the provision of care and support for people and support for carers in Wales.

The Schedule to the Regulations contains transitional and saving provisions in connection with the amendments made by the Regulations. These transitional provisions set out the steps that will apply to people currently receiving care and support within the framework of the existing system of social services to move across to the new framework that is set up through the commencement of the 2014 Act. Additional provision can be found in the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016 and The Social Services and Well-being (Wales) Act 2014 (Commencement No. 3, Savings and Transitional Provisions) Order 2016.

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 198 of the Social Services and Well-being (Wales) Act 2014.

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 Regulations will come into force on 6 April 2016.

4. Purpose and intended effect of the legislation

Parts 2 to 6 of the 2014 Act make provision about improving the well-being outcomes for people in Wales who need care and support and carers who need support. These Regulations amend primary legislation that currently underpins the provision of care and support for people and support for carers in Wales.

In general, the primary legislation to be amended which relates to the provision of care and support for adults and carers (“the current community care legislation”) applies only

in relation to Wales. The amendments made in these Regulations will mean that the current community care legislation is repealed, or (to the extent that it continues to apply in relation to England) that it will no longer apply in relation to Wales but will continue to apply in relation to England.

In general, the primary legislation to be amended which relates to the provision of care and support to children and their families is contained in Part 3 of the Children Act 1989 (“the 1989 Act”). The amendments made in these Regulations will mean that Part 3 of the 1989 Act will no longer apply in relation to Wales but will, however, continue to apply in relation to England.

Part 7 of the 2014 Act makes provision about safeguarding of vulnerable adults and children, including the establishment of Safeguarding Boards for adults and children. These Regulations amend the Children Act 2004 (“the 2004 Act”) to remove the current requirements for the establishment of Local Safeguarding Children Boards in Wales.

Part 8 of the 2014 Act makes provision for social services functions. It introduces Schedule 2, which specifies the social services functions of local authorities. It also makes provision for the appointment of directors of social services, for the making of codes about the exercise of social services functions and for intervention by the Welsh Ministers where a local authority is failing to exercise its social services functions properly. Provision for these matters is currently contained in the Local Authority Social Services Act 1970 (“the 1970 Act”). These Regulations amend the 1970 Act so that it will no longer apply in relation to Wales but will continue to apply in relation to England.

Part 10 of the 2014 Act makes provision for complaints and representations about social services provided or arranged by local authorities. Provision for complaints is currently contained in Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”) and provision for representations in relation to children is contained in the Part 3 of the 1989 Act. These regulations will amend the 2003 Act and the 1989 Act to remove the provision for these matters in so far as they relate to Wales.

These Regulations also make consequential and incidental amendments to other primary legislative provisions which refer, for various purposes, to the current community care legislation, the 1989 Act, the 2004 Act, the 1970 Act or the 2003 Act. These amendments make, in respect of Wales, provision which reflects the new provisions in the 2014 Act.

9. In addition, the Regulations make a number of amendments to the 2014 Act itself, including amendments which are considered necessary or expedient for the purpose of giving full effect to provisions of the 2014 Act or are in consequence of such provision. This includes the insertion of Schedule A1 into both the English and Welsh versions of the 2014 Act, to correct the insertion of Schedule A1 by section 75 of the Care Act 2014 into only the English version.

5. Consultation

No formal consultation has taken place as these Regulations make consequential technical amendments. However, a draft copy of the Regulations has been made

available on the Welsh Government website for comment and notified to key stakeholders since 18 December 2015. No comments were received.

6. Regulatory Impact Assessment

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.