

SL(5)648 – The National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2020

Background and Purpose

These Regulations amend the National Health Service (Performers Lists) (Wales) Regulations 2004 (“the principal Regulations”), specifically Part 4 of the principal Regulations relating to dental performers lists, to reflect the change to the employment position of foundation dentists.

The principal Regulations currently require that for the purposes of undertaking foundation training, a foundation dentist must be employed under a contract for services with an approved trainer, which for the purposes of the principal Regulations is a dentist.

From 1 September 2020, foundation dentists (“FDs”) no longer hold a contract of employment with an approved trainer. Their contract of employment will instead be with Velindre University NHS Trust under the direction of the NHS Wales Shared Services Partnership (“NWSSP”) committee who will act as a single lead employer for all foundation dentists in Wales.

These Regulations amend the principal Regulations to align the applicable legislative provisions with the change to policy.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

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

Merits Scrutiny

The following 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 Senedd



We note there has been no formal consultation on these Regulations. In particular, we note the following paragraphs in the Explanatory Memorandum:

"The 2020 Regulations will not be subject to public consultation. The Statutory Instrument concerns the principle of amending operational procedures which affect a small number of key stakeholders who have participated in the development of the proposal with HEIW from its inception.

Key stakeholder representatives were invited by HEIW to discuss and develop the draft proposal with the finally agreed proposal published inviting colleagues with an interest across Wales to provide their comments.

The British Dental Association (Wales) have noted the introduction of the amending Regulations."

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 Senedd

We note there has been no regulatory impact assessment prepared in relation to these Regulations. The Explanatory Memorandum explains that:

"On this occasion, a Regulatory Impact Assessment has not been carried out. The 2020 Regulations support an administrative change and not a change in policy. There are no additional costs associated with the 2020 Regulations with no impact on the private, local government or third sector foreseen."

However, on its face, the Regulations would appear to support a change in policy by ensuring that the contract of employment for FDs is with a single lead employer, rather than with any other approved trainer. It is also noted that the "Purpose & intended effect of the legislation" section of the Explanatory Memorandum states that:

*"The Principal Regulations allow NWSSP to accept FDs onto the Performer Lists subject to a 3 months 'grace period' but currently require the FD to have a contract of employment with an approved training practice. The Regulations will make the required amendments to the Principal Regulations to facilitate FDs full inclusion to the Dental Performers List from 1 December 2020 and to align the applicable legislative provisions with the **change to policy**."* [emphasis added]

The Explanatory Note to the Regulations also states that:

*"These Regulations amend the principal Regulations to align the applicable legislative provisions with the **change to policy**."* [emphasis added]

Further clarification is therefore sought as to the justification for the absence of a regulatory impact assessment.

Implications arising from exiting the European Union

None.



Welsh Government response

Given the current circumstances regarding coronavirus, a Welsh Government response is required as soon as is reasonably practicable in relation to the second merits point.

Legal Advisers

Legislation, Justice and Constitution Committee

9 November 2020



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee