

## **The Explanatory Memorandum to the Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2022**

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.

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

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2022.

Julie Morgan  
**Deputy Minister for Social Services**  
**27 April 2022**

## **PART 1**

### **1. Description**

The Regulation and Inspection of Social Care (Wales) Act ('the 2016 Act') provides the statutory framework for the regulation and inspection of social care services and the regulation of the social care workforce in Wales. To help achieve this it provides the Welsh Ministers with a range of regulation-making and other subordinate legislation powers.

This Explanatory Memorandum relates to *the Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2022* ("the Amendment Regulations 2022") which make changes to *the Regulated Services (Annual Returns) (Wales) Regulations 2017* ("the Annual Returns Regulations 2017").

The purpose of the Amendment Regulations 2022 is to delay, until 31 October 2022, the requirement for providers of regulated services to submit an annual return in respect of each of the financial years 2018-19, 2019-20, 2020-21 **and** 2021-22, during which they have been registered under the 2016 Act, to the Welsh Ministers (in practice, Care Inspectorate Wales). They also have the effect of reducing the content required for the 2021-22 annual returns, in line with requirements for previous years.

Regulated services include care home, secure accommodation, residential family centre, adoption, fostering, adult placement, regulated advocacy and domiciliary support services.

The Amendment Regulations 2022 are being laid before the Senedd under the negative procedure and will come into force on 20 May 2022.

### **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

No specific matters have been identified.

### **3. Legislative background**

Section 10 of the 2016 Act requires all providers of regulated services to submit an annual return to the Welsh Ministers (in practice Care Inspectorate Wales ("CIW")). These annual returns must be published by the Welsh Ministers (in practice this is done by CIW). The purpose of annual returns is to provide objective, transparent, and comparable information to the public about regulated services.

The Amendment Regulations 2022 are made under powers in section 10(4) of the 2016 Act which enables the Welsh Ministers to specify the time limit for submitting annual returns.

The Amendment Regulations 2022 are also made under section 187(1) of the 2016 Act, which specifies that regulations made under the 2016 Act are to be made by statutory instrument and allows the Welsh Ministers to make regulations which make different provision, for different cases and for different areas. They are subject to the negative resolution procedure.

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

The purpose of the Amendment Regulations 2022 is to defer, until 31 October 2022, the requirement for providers to submit an annual return to the Welsh Ministers (in practice CIW) for each year that they have been registered, in order to alleviate pressure on regulated services during the pandemic.

The Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2021 (“the Amendment Regulations 2021”) – made in March 2021 – disapply a number of requirements within the Annual Returns Regulations 2017 in relation to annual returns for any of the financial years 2018-19, 2019-20 and 2020-21.

The regulations of the Annual Returns Regulations 2017 Regulations that are disapplied are regulations 3, 4, 5, 6 and Schedule 1. In summary, regulation 3 makes provision about training; regulation 4 makes provision about workforce planning; and regulations 5, 6 and the Schedule require the provision of additional types of information relevant to the provision of care home services, secure accommodation services, residential family centre services and domiciliary support services.

This created a reduced annual return requirement in respect of those financial years.

The addition of the annual return for 2021-22 to regulation 3 of the Amendment Regulations 2022 has the effect of reducing the required content of the annual return for 2021-22, in line with those for previous years. The table within the Regulatory Impact Assessment sets out more detail about the information required for a full return compared with a reduced return.

#### **5. Consultation**

A public consultation was not undertaken on these Amendment Regulations.

## PART 2 – REGULATORY IMPACT ASSESSMENT

The Regulated Services (Annual Returns) (Wales) (Amendment) (Coronavirus) Regulations 2022 (“the Amendment Regulations 2022”)

Two options have been considered in the analysis of the costs, benefits and risks for the Amendment Regulations 2022. The options are:

- **Option one:** Do nothing – do not make new amendment regulations and require providers to submit a full annual return for 2021-22 by 26 May 2022, along with reduced annual returns for each previous year they have been registered under the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”).
- **Option two:** Make new amending regulations to further delay the date for submission of all annual returns, from no later than 26 May 2022 to 31 October 2022 **and** to reduce the required content of the 2021-22 annual return, in line with requirements for previous years.

### Option one: Do nothing

#### Costs

Providers will face additional time costs if they have to complete and submit a full annual return for 2021-2022 in addition to completing the reduced returns for previous years they have been registered with Care Inspectorate Wales (“CIW”) under the Regulation and Inspection of Social Care (Wales) Act 2016 by 26 May 2022.

A full annual return will take providers much longer to complete due to the additional classes and detail of the information required which cannot be pre-populated by CIW’s online system. This will create an additional cost in staff time, which could be spent on more pressing matters relating to the running of the service. Providers remain under extreme pressure dealing with the effects of the pandemic, which is exacerbating workforce issues.

The below table compares information required for a full annual return against the requirements for a reduced return. A **full return** must contain the information prescribed within the Schedule to the Annual Returns Regulations 2017 as well as the information set out within Section 10 of the 2016 Act. A **reduced return** must only contain the level of detail required to meet the legal requirements of Section 10 of the 2016 Act.

The time it will take providers to complete each type of annual return will vary based on their size, the number of services they provide and their record

keeping arrangements. However, estimates of the time it will take providers to complete annual returns have been provided by CIW within the below table:

<b><u>Reduced Annual Return</u></b>	
<b>Requirements on service providers within Section 10 of the Regulation and Inspection of Social Care (Wales) Act 2016</b>	
<b>10 Annual return</b>	
(1)	A service provider must submit an annual return to the Welsh Ministers following the end of each financial year during which the provider is registered.
(2)	An annual return must contain— (a) the following information— (i) the regulated services that the service provider is registered to provide [pre-populated from CIW's database] (ii) the places at, from or in relation to which the provider is registered to provide those services; [pre-populated from CIW's database] (iii) the name of the responsible individual registered in respect of each such place; [pre-populated from CIW's database] (iv) the date on which the provider's registration took effect in respect of each such regulated service and place; [pre-populated from CIW's database] (v) details of any other conditions imposed on the service provider's registration; [pre-populated from CIW's database] (vi) details of the number of persons to whom the provider provided care and support during the year in the course of providing each such service; [between 5 and 45 minutes] (vii) such information about training offered or undertaken in relation to each such service as may be prescribed; [not included in the reduced return] (viii) such information about workforce planning as may be prescribed; [not included in the reduced return] (ix) such other information as may be prescribed [not included in the reduced return] and (b) a statement setting out how the service provider has complied with any regulations made under section 27(1) specifying the standard of care and support that must be provided by a service provider (see section 27(2)). [reduced to a set of 4 statements which providers can choose as most relevant for their service]
(3)	An annual return must be in the prescribed form.
(4)	An annual return must be submitted to the Welsh Ministers within the prescribed time limit.

- (5) The Welsh Ministers must publish each annual return submitted under subsection (1).

**Total time estimated to complete and check: between 10 and 50 minutes**

### Full Annual Return

#### **Requirements on service providers within the Schedule to the Regulated Services (Annual Returns) (Wales) Regulations 2017**

##### **General information**

1. Contact details [pre-populated from CIW's database]

##### **Information about the responsible individual**

2. The name of the responsible individual. [pre-populated from CIW's database]

##### **Information about staffing**

3. The name of the manager. [pre-populated from CIW's database]
4. The total number of full time equivalent posts (including filled and vacant posts). [30 minutes]
5. The number of filled and vacant posts in each of the following categories—
- (a) manager;
  - (b) deputy Manager;
  - (c) other supervisory staff;
  - (d) nursing care staff;
  - (e) registered nurses;
  - (f) senior social care staff providing direct care;
  - (g) other social care staff providing direct care;
  - (h) domestic staff;
  - (i) catering staff;
  - (j) other types of staff not listed above.
- [45 minutes]
6. If the number of staff employed includes staff of a type not listed in paragraph 5(a) to (i), details of the type or types of such staff. [30 minutes]
7. The rate of staff turnover [automatic calculation]
8. The types of contractual arrangements on which staff are employed and the number of staff employed on each type of contractual arrangement in each of the categories listed in paragraph 5. [30 minutes]
9. The qualifications of staff employed in each of the categories listed in paragraph 5. [30 minutes]

10. Details of any relevant training which has been undertaken by staff employed in each of the categories listed in paragraph 5 during the period in which they have been employed by the service provider [1.5 hours]

**Information about the service provision**

11. Details of the scale of charges payable by service users during the last financial year [30 minutes]
12. Details of the languages used in providing the service [pre-populated from CIW's database]
13. Details of any non-verbal communication methods used [20 minutes]
14. The total number of formal complaints made during the last financial year and the proportion of those complaints which were not upheld, partially upheld and upheld [45 minutes]
15. Details of the arrangements made for consulting service users about the operation of the regulated service [45 minutes]

**Additional information where the service involves the provision of accommodation**

16. The typical shift patterns of staff employed, showing the number of staff in each of the categories listed in paragraph 5(d), (e), (f) and (g) who are on duty during each shift [1 hour]
17. The number of single bedrooms and shared bedrooms [10 minutes]
18. The number of bedrooms with en suite facilities. [10 minutes]
19. The number of communal lounge/dining rooms. [10 minutes]
20. The number of bathrooms which have assisted bathing facilities. [10 minutes]
21. Details of any outside space to which the residents have access. [10 minutes]
22. Details of any other facilities to which the residents have access. [10 minutes]

**PLUS THE REQUIREMENTS SET OUT UNDER SECTION 10 OF THE ACT:**

- such information about workforce planning as may be prescribed; [45 minutes]
- a statement setting out how the service provider has complied with any regulations made under section 27(1) specifying the standard of care and support that must be provided by a service provider (see section 27(2)) [2 hours]

- Other requirements set out in first section (above) [10 to 50 minutes]

**Total estimated time for providers to complete annual returns:**

- **9 hours– 9 hours 50 mins (if the provider has no accommodation)**
- **11 hours – 11 hours 50 minutes (if the provider has accommodation)**

There will also be additional costs to CIW under option one. In preparing full annual returns there is a risk of providers submitting personal information about individuals using their services which could breach UKGDPR regulations.

As the Welsh Ministers are responsible for publishing the annual returns the responsibility for compliance with UKGDPR requirements lies with the Welsh Government. This would mean all annual returns would need to be read and checked before publication, which would be very resource intensive. The Welsh Government does not consider it to be proportionate to divert inspector capacity for these purposes at the time that inspections of regulated services are required, which would detract from CIW's efforts to support the sector to recover and rebuild.

This will not be an issue for reduced annual returns as most of the information within these reports will be automated from CIW's system and there will be no scope for providers to add free text which could inadvertently contain personal information.

### **Risks**

Under option one, there is a risk that service providers will not have the capacity and time to complete, by 26 May 2022, full annual returns for 2021-22 and reduced returns for previous years. This could result in increased stress for managers in undertaking an exercise that is likely, by necessity, to be less of a priority than the day to day management of a service that is still recovering from the effects of the pandemic.

It may result in managers submitting annual returns which contain errors and inadvertent personal information which would take CIW inspectors more time to identify and review.

If, due to these pressures, providers were not to comply with the requirement, this would in turn create additional work and time burden for CIW to manage and respond appropriately, in accordance with its Securing Improvement and Enforcement policy.

### **Benefits**

Requiring providers to submit a full annual return for 2021-22 by 26 May 2022 as well as reduced annual returns for previous years will provide useful information to the public, Social Care Wales, CIW and Welsh Ministers about

key aspects of regulated services in Wales, particularly in relation to the social care workforce.

Having more detailed, publicly available information about a service, earlier in the year, may be beneficial to people currently choosing a suitable service for themselves or their loved ones.

The workforce data for 2021-22 could be useful as part of the Welsh Government's policy making and understanding of workforce capacity and pressures, as well as for Social Care Wales.

## **Option two: Make new amending Regulations**

### Costs

There are no additional financial costs associated with making the Amending Regulations 2022, as these Regulations simply delay and reduce the existing requirements for submitting annual returns.

### Benefits

The Welsh Government considers that deferring the requirement for providers to submit annual returns for a further 5 months, until 31 October 2022, is a proportionate approach to ease the administrative burden on providers during a time of exceptional pressure as a result of managing this transitional period from emergency COVID response, back to business as usual.

This option also seeks to lessen the administrative burden on providers by removing, within the annual return for 2021-22, the additional classes of information that the Annual Returns Regulations 2017 currently require. This approach brings the period 2021-22 in line with the requirement for earlier financial years.

CIW has engaged with Care Forum Wales, which represents social care providers across Wales, about this proposed approach, which has been supported.

### Risks

There is a small reputational risk to the Welsh Ministers in implementing this option. Whilst the Welsh Government considers it necessary at this time of immense pressure on service providers to delay the submission of all annual returns by a further 5 months and reduce the information requirements for 2021-22, there is a risk of criticism due to further delaying the submission of annual returns, considering the time that has elapsed since some providers registered their services under the 2016 Act.

This option may also attract some criticism that the reduced annual returns have been so pared back that they are valueless. The Welsh Ministers have a duty

under section 10(4) of the 2016 Act to publish the returns, this means that this solution will be visible to the public.

There is also a risk that important information about a service, which would have been required by the Annual Returns Regulations 2017, will not be submitted to CIW. This may be perceived as a risk in relation to the oversight of regulated services. However, CIW has the power to request information from providers, such as their six-monthly quality of care reviews, and does so as part of its inspection process. Providers are also required to notify CIW (and relevant others) about changes or incidents which may have an impact on the safety of their services or safeguarding of individuals receiving care and support.

Considering that the purpose of annual returns is to provide objective, transparent, and comparable information to the public about regulated services, there is a risk that further delaying the requirement to submit annual returns and reducing the information requirements for the 2021-22 returns will create a larger gap in the provision of information to the public about regulated services. This will be mitigated in part by the public launch of the Carehomes.wales website, later in the year, which provides helpful information to the public about care home services, including vacancy information.

### Conclusion

Considering that service providers remain under immense pressure as a result of the COVID-19 pandemic and are focussed on managing the transition from emergency response to business as usual, it is proportionate and pragmatic to further delay the introduction of annual returns for 5 months and to reduce the information requirements for the 2021-22 returns, in line with previous years. This will demonstrate a willingness to listen to and support the care sector at an extremely difficult time, ensuring that managers prioritise care and support for people. We intend for full annual returns to be submitted for 2022-23 by 26 May 2023.

### **Competition Assessment**

The competition filter test	
<b>Question</b>	<b>Answer yes or no</b>
<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 regulation will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

We do not consider it necessary to undertake a competition assessment for these Regulations since they will not affect the business sector in any significant way.