

**Explanatory Memorandum to:
The Regulated Services (Annual Returns) (Wales) Regulations 2017**

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation 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 Regulated Services (Annual Returns) (Wales) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Rebecca Evans
Minister for Social Services & Public Health

2 October 2017

Part 1 – OVERVIEW

1. Description

In 2011 the Welsh Government published the white paper, *Sustainable Social Services: A Framework for Action*. This set out an ambitious plan to create a new integrated and person-centred approach to social services provision in Wales. To achieve this new approach, the Welsh Government made two pieces of primary legislation: *the Social Services and Well-being (Wales) Act 2014* (“the 2014 Act”) and *the Regulation and Inspection of Social Care (Wales) Act 2016* (“the 2016 Act”)

The 2016 Act received Royal Assent on 18 January 2016. It reforms the regulation and inspection regime for social care in Wales and provides the statutory framework for the regulation and inspection of social care services and the regulation of the social care workforce. It also enables the Welsh Ministers to set out the details of the standards which will apply under the new regime, through the making of regulations, the publication of guidance and the issuing of codes of practice.

This Explanatory Memorandum relates to *the Regulated Services (Annual Returns) (Wales) Regulations 2017* which will come into force in April 2018.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

The powers enabling these draft Regulations to be made are contained in section 10 of the 2016 Act. These draft Regulations are being laid under the affirmative procedure.

Section 10 of the 2016 Act places a requirement on service providers to submit an annual return to the Welsh Ministers. Section 10(2)(a) sets out the information to be included in the annual return. Regulation-making powers in the 2016 Act allow the Welsh Ministers to prescribe further information to be included in these returns.

There are five regulation-making powers in section 10:

- Section 10(2)(a)(vii) allows the Welsh Ministers to prescribe information on training offered or undertaken in relation to each service;
- Section 10(2)(a)(viii) allows the Welsh Ministers to prescribe information about workforce planning to be included in the annual return;
- Section 10(2)(a)(ix) allows the Welsh Ministers to prescribe other information to be included in the annual return;
- Section 10(3) allows the Welsh Ministers to prescribe the form of the annual return; and
- Section 10(4) allows the Welsh Ministers to prescribe the time limit for the submission of the annual return.

4. Purpose & intended effect of the legislation

One of the key objectives of the 2014 Act is to ensure that individuals have a genuine voice in, and control over, the care and support they receive. To exercise this voice and control, it is recognised that citizens must have access to accurate, up to date and comparable information.

The existing system does not provide citizens with comparable information about the quality of care and support services. The lack of comparable information does not enable citizens to assess or challenge the performance of service providers. To address this, Section 10 of the 2016 Act states that service providers must submit an annual return to the Welsh Ministers following the end of the financial year which must contain certain key information about the service. Powers in Section 10 enable Welsh Ministers to prescribe additional information about training for staff, workforce planning information about the service provision, the form of the annual return and the time limit for submission of the annual return.

Regulation-making powers under section 10 of the 2016 Act allow the Welsh Ministers to prescribe:

- information about training offered to, or undertaken by, staff;
- information about workforce planning;
- additional information to be included in the annual return;
- the form of the annual return; and
- the time limit for providers to return the form to the Welsh Ministers.

Providers' annual returns will be available to the public. They will be published on the website of the service regulator – the Care and Social Services Inspectorate Wales (CSSIW) - alongside the relevant inspection report. This will help citizens in accessing relevant, accurate and comparable information about regulated care and support services. Whilst many providers offer information about their services in their own format, such as glossy brochures, this system will enable a fairer comparison between providers based on key facts about the service.

5. Consultation

A 12 week consultation on these draft Regulations ran between 28 June and 20 September 2016. Further details on the consultation process are set out in the Regulatory Impact Assessment in Part 2.

The consultation summary report and a list of respondents to the consultation can be found at:

<http://gov.wales/consultations/healthsocialcare/regulation-and-inspection-act/?lang=en>

PART 2 – REGULATORY IMPACT ASSESSMENT

Annual Returns

The options considered by the Welsh Government in relation to section 10 of the 2016 Act are as follows:

Options

Option one: proceed with the minimum annual return requirements as set out on the face of the 2016 Act

Under this option, an annual return would still be mandatory due to the requirements on the face of the 2016 Act (section 10). However, regulations would not be developed to prescribe the information required in respect of the following matters within section 10:

- information about training offered or undertaken;
- information about workforce planning;
- additional information to be included in the annual return;
- the form of the annual return; and
- the time limit for providers to submit the form to the Welsh Ministers.

Option two: develop Regulations which detail the information to be included in, the form and timing of annual returns

Under this option, regulations would prescribe the information to be included in the annual return about the matters specified under section 10 of the 2016 Act, namely:

- a description of the arrangements in place for identifying, planning and meeting the training needs of staff in relation to the regulated services the service provider is registered to provide;
- information about workforce planning undertaken, specifically a description of the arrangements in place for the recruitment and retention of staff employed by the service provider in relation to the regulated services the service provider is registered to provide;
- additional information to be included in the annual return, specifically contact details, staffing arrangements and information about the service provision;
- the form of the annual return, namely specifying that it must be in the form of an on-line return accessed from the Welsh Government's website; and
- the time limit for service providers to return the form to the Welsh Ministers, namely requiring the annual return to be submitted to the Welsh Ministers within 56 days of the end of the financial year to which it relates

Under this option, the majority of information required by the Regulations will be quantitative.

Costs

Option one: proceed with the minimum annual return requirements as set out on the face of the 2016 Act

There will be a potential cost to Welsh Government, specifically for CSSIW as the service regulator as they will need to operate a system to process the annual returns required under this option.

This is a new requirement under the 2016 Act. However, CSSIW currently operate a comparable system for processing service providers 'Self Assessment of Service Statement (SASS). . This involves online submission of information by providers together with telephone and e mail support from CSSIW.

CSSIW support costs in this area are primarily in respect of responding to calls and emails from providers. In 2016 there were 1,949 enquiries over 35 working days (an average of 55 calls/emails per day), dealt with by 4 members of staff: 1 x Management Band 1 grade, 1 x Management Band 2 grade and 2 x Management Band 3 grade (at about 60% of each staff member's time). The salary scales for these grades are listed below:

Management Band 1 £37,600 - £43,950

Management Band 2 £29,100 - £34,750

Management Band 3 £23,400 - £26,400

CSSIW intends to adapt the existing process in order to process the annual returns required under this option. This would include handling telephone calls and emails from providers described above. Any transition costs related to this would be in terms of staff costs to CSSIW, however, these costs should be negligible. Therefore there would be no additional costs of significance to CSSIW compared with their current process.

There will also be a cost to service providers to complete the annual returns required under this option. However assessing the precise cost of this option for service providers is problematic as it will vary greatly depending on the size of the service provider and their current organisational practices and processes.

Nevertheless, some comparison can be made with the cost of service providers completing their SASS and their Quality of Service Annual Reports under the current system. An estimate of the costs to providers for completing these was completed as part of the RIA for the 2016 Act when it was at Bill stage¹. :

Specifically, section 7.31 of the RIA sets out that the United Kingdom Home Care Association (UKHCA) has estimated that it would take a small independent service provider around 24 working hours to complete the self-assessment, which would normally be undertaken by the manager of the establishment or agency. The estimated cost of producing a SASS is £565.90. Thus, the total cost to the 946 independent service providers to complete the 1,562 self-assessments is estimated to be approximately £883,900 per annum.

Section 7.32 sets out that UKHCA has suggested that it would take a small service provider approximately four working days to collect and analyse the data required for

¹[http://www.assembly.wales/laid%20documents/pri-ld10106-em%20-%20regulation%20and%20inspection%20of%20social%20care%20\(wales\)%20bill/pri-ld10106-em-e.pdf](http://www.assembly.wales/laid%20documents/pri-ld10106-em%20-%20regulation%20and%20inspection%20of%20social%20care%20(wales)%20bill/pri-ld10106-em-e.pdf)

the quality of service annual report. This would include, for example, collecting and analysing administrative and survey data.

The estimated costs to providers described above would also be similar to completing the comparable CSSIW process under this option. Therefore, no additional costs to providers are expected.

Option two: develop Regulations which detail the information and the form of annual returns

Annual returns are a new requirement under the 2016 Act. Therefore, as with option one, there will be a potential cost to Welsh Government, specifically for CSSIW as the service regulator as they will need to operate a system to process the annual returns required under this option.

Under this option however, Regulations will state, amongst other things, that an annual return must be in the form of an online return accessed from the Welsh Government's website.

In order to address the annual return requirements on the face of the 2016 Act, and the additional information required in Regulations under this option, CSSIW will develop a process as part of a wider project to update their ICT system.

CSSIW's ICT system is being updated to respond to a number of changes being made as a result of the 2016 Act. This includes:

- the online management and publication of provider annual returns;
- an online and publicly available register of service providers;
- online processes to support inspection and enforcement activity;
- online processes to support the administration of the new system of regulation and inspection – for example, provider notifications, notices, documents, for example; and
- online storage of records for previous registrations under the Care Standards Act 2000.

The system is not however being updated purely on the basis of the *Regulated Services (Annual Returns) (Wales) Regulations 2017* as described under this option.

The overall cost of the ICT system is £790,000. This is broken down, as follows:

Registration	£240,000
Data Collection	£120,300
Regulation and Inspection model	£203,500
Notifications and Variations	£136,200
Communications	£90,000
Total	£790,000

It is not possible to isolate the cost of developing the online form for the annual returns required under this option from the overall costs as it is only a small part of the overall system development.

In terms of other costs to CSSIW, the current process of handling calls and emails from providers in respect of their SASS would also be adapted to process the annual returns required under this option. CSSIW's costs in respect of SASS are listed under option one.

Under this option, this level of support from CSSIW would likely be similar to the current support arrangements for SASS (as described under option one), for the first year of annual returns being submitted. However, in subsequent years, this level of support would potentially reduce as service providers become used to the new guidance in this specific area (they will already be used to submitting online).

There would be a transitional cost to service providers to familiarise themselves with the new requirements and processes, however, this is also the case in the 'Do Nothing' option and so this does not represent an additional cost associated with the Regulations under this option.

Costs to service providers in submitting the annual return under this option are anticipated to be comparable to the submission of the SASS under the current system. As with option one, an estimate of the costs to providers for completing their SASS was completed as part of the RIA for the 2016 Act when it was at Bill stage. The relevant sections of that RIA are between 7.28 and 7.33 – a link is attached below:

[http://www.assembly.wales/laid%20documents/pri-ld10106-em%20-%20regulation%20and%20inspection%20of%20social%20care%20\(wales\)%20bill/pri-ld10106-em-e.pdf](http://www.assembly.wales/laid%20documents/pri-ld10106-em%20-%20regulation%20and%20inspection%20of%20social%20care%20(wales)%20bill/pri-ld10106-em-e.pdf) The estimated costs to providers described above would also be similar to completing the comparable CSSIW process under this option. Therefore, no additional costs to providers are expected.

Benefits

Option one: proceed with the minimum annual return requirements as set out on the face of the 2016 Act

No specific benefits have been identified under this option.

Option two: develop Regulations which detail the information and the form of annual returns

Making regulations to require providers to submit the annual return purely via an online form will save time for both CSSIW and service providers compared with having to submit written forms. It will also give service providers a user-friendly template which will set out clearly what and how much information is required. Having an online form will also make collating and publishing the annual returns easier for CSSIW, as they will all be in one place.

Making regulations to state the time limit for submitting the annual return will give clarity to providers and help CSSIW when collating and publishing the returns, as they will know when to expect them. It will also ensure citizens can access up to date information about a service.

Making regulations to prescribe specific information about training offered to staff and information about workforce planning, as well as any other information, ensures that providers submit information that is relevant and comparable across services.

Making regulations to require the majority of information to be provided in annual returns is quantitative will ensure that there is greater consistency in the way annual returns are presented. It will also enable information to be provided that is as objective and unequivocal as possible, further aiding citizens and the regulator in comparing information across services.

Finally, making regulations under this option will reduce the burden on providers as the requirements in the Regulations have been aligned as far as possible with the information they provide to the regulator for other purposes, such as registration with CSSIW.

Risks

Option one: proceed with the minimum annual return requirements as set out on the face of the 2016 Act

Not making regulations would create a risk of not fulfilling the intention set out in the 2016 Act, which is to have accurate, relevant and comparable information available to the public across all services. By not making regulations, there would be no requirement as to the form of the annual return, the timescale within which to submit the return, or the details to be included regarding information about staffing, workforce and other matters. This could lead to inconsistencies in the annual returns across regulated services. This could be unhelpful to the public and may have reputational consequences for the Welsh Government.

Option two: develop Regulations which detail the information and the form of annual returns

No significant risks have been identified in relation to this option. As with all new ICT systems there is a small risk that there may be technical issues. However, the funding that has been made available for the system, detailed in the costs section for this option, covers ICT support and maintenance costs.

Conclusion

Having analysed the costs, benefits and risks of each option, the preferred option is **option two - develop Regulations which detail the information and the form of annual returns**.

Consultation

A 12 week consultation on these draft Regulations ran between 28 June and 20 September 2016. The consultation summary report and a list of respondents can be found at:

<http://gov.wales/consultations/healthsocialcare/regulation-and-inspection-act/?lang=en>

Following the consultation, the time limit for submitting an annual return was changed from 28 days to 56 days after the end of the financial year. This will ensure that smaller providers do not suffer undue pressure compared with larger providers. This is consistent with the policy intention of ensuring the requirements are proportionate and reasonable.

Within the schedule of information to be included in the annual return, the categories of staff have been amended to include details of registered nurses as well as nursing care staff to reflect the important role of registered nurses in the staffing of a care home service which provides nursing care.

The additional information requirements within the regulation will also now apply to each 'place' for accommodation-based services and to each 'area' for domiciliary support services. This will enable citizens to compare information about the services provided at a particular location, or the services provided in relation to a particular area.

Finally, for clarity, the name of the responsible individual is now required for each place or area.

Competition Assessment

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

The competition assessment filter test has been completed on the proposed Regulation. It has been determined that this regulation will have no detrimental effect on competition.

Post implementation review

CSSIW will monitor the implementation of these Regulations following their coming-into-force date of April 2018.