

# SL(5)365 – The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) Regulations 2019

## Background and Purpose

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These Regulations amend the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (**the 2017 Regulations**). The 2017 Regulations set out the regulatory requirements which apply to providers of certain services regulated under the Regulation and Inspection of Social Care (Wales) Act 2016 (**the 2016 Act**). These are care home services, secure accommodation services, residential family centre services and domiciliary support services.

The amendments include:

- Regulation 4 makes a number of amendments to regulation 2 of the 2017 Regulations dealing with circumstances when a person is exempted from the requirement to register as the provider of a care home service.
- Regulation 5 amends regulation 3 of the 2017 Regulations to stipulate that nursing care provided by a registered nurse does not come within the scope of activity of a domiciliary support service.
- Regulation 8 adds a requirement to regulation 28 of the 2017 Regulations concerning a service provider's policy and procedures for children's savings.

## Procedure

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Affirmative.

## Technical Scrutiny

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

## Merits Scrutiny

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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 Assembly**

These Regulations are made, partly, under section 27 of the 2016 Act. Section 27(4) of the 2016 Act requires the Welsh Ministers to consult before making regulations under section 27 and requires them to **publish** a statement about the consultation. Section 27(5) further requires the Welsh Ministers to lay a **copy** of that published statement before the Assembly.

We are not aware that a copy of such a statement has been laid before the Assembly. We note that the Explanatory Memorandum provides a link to the summary of consultation responses but providing a link to a document does not amount to laying a document before the Assembly.

We acknowledge that section 27 of the 2016 Act does not specify when a copy of the published statement must be laid before the Assembly, but we would expect it to have been laid at the same time



as the draft Regulations were laid in order to inform both this Committee and the Assembly before the debate and vote in Plenary – we believe that was the intention of the Assembly when it approved the 2016 Act, including section 27(5).

We would welcome clarification from the Welsh Government as to when a copy of the published statement will be laid before the Assembly.

## **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 Assembly**

These draft Regulations are subject to an affirmative resolution procedure, meaning they cannot be made (i.e. signed) unless the draft has been approved by the Assembly.

The signature clause includes the typed name of the Deputy Minister for Health and Social Services (Julie Morgan) who will be making these Regulations. While we have received confirmation that the draft Regulations have not received the wet signature of the Deputy Minister, we believe it to be good legislative practice not to include a name (even a typed name) in the signature clause of draft subordinate legislation, in order to avoid any suggestion that the draft has received a signature.

We note this issue has arisen in several pieces of draft subordinate legislation of late. We would therefore welcome an explanation from the Welsh Government as to why a typed name has been included (when it has not usually been included in draft subordinate legislation the past).

## **Implications arising from exiting the European Union**

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No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

## **Government Response**

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A government response is required to the merits points raised in this report.

### **Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**8 March 2019**

