

SL(5)381 – The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019

Background and Purpose

These Regulations make amendments to the Regulation and Inspection of Social Care (Wales) Act 2016 (the 2016 Act) relating to the regulation of social workers and social care managers in Wales. Amendments are also made to the 2016 Act relating to exclusions to the scope of regulated advocacy services, to amend references to European Lawyers, and to the Mental Health Act 1983.

These amendments are required in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union without an agreement.

Procedure

Affirmative (uplifted from proposed negative on the recommendation of the Committee, after scrutiny under Standing Order 21.3B).

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(i) - that there appears to be doubt as to whether it is intra vires

As stated in the Explanatory Memorandum: “these Regulations revoke sections in the 2016 Act which relate to temporary and occasional service provision in Wales by social care professions, as they rely on reciprocal arrangements with the EEA which will no longer apply once the UK leaves the EU”.

This appears to be removing a reciprocal arrangement of a kind mentioned in section 8(2)(c) or (e) of the European Union Withdrawal Act 2018 (the 2018 Act). If that is the case, paragraph 4 of Schedule 2 to the 2018 Act says that the Welsh Ministers have no power to make the Regulations unless they have consulted the Secretary of State.

There is no indication that such consultation has taken place, neither in the preamble to the Regulations nor in the Explanatory Memorandum. Therefore, we have little option but to question whether the Welsh Ministers can make these Regulations.

We ask the Welsh Government to confirm:

- (a) whether the Regulations remove a reciprocal arrangement of a kind mentioned in section 8(2)(c) or (e) of the 2018 Act, and
- (b) if they do, whether the Welsh Ministers have consulted with the Secretary of State.

Merits Scrutiny

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



Implications arising from exiting the European Union

In our report on these Regulations during the sifting stage, we raised a concern about the impact these Regulations could have on the provision of social care in Wales.

We welcome the Welsh Government's response to this concern as set out in paragraph 2.4 of the Explanatory Memorandum, which states:

"The Committee's concerns about the potential impact of the Regulations are noted but assurance is provided that any impact has been assessed as being very limited. No European workers have ever been registered on the visiting social care workforce registers maintained by Social Care Wales (SCW) which relate to the provision of temporary and occasional services by social workers and social care managers. It should also be noted that as at February 2019 there were fewer than 100 EU nationals registered as social workers or social care managers with SCW. Those who are already registered with SCW will be continue to be so registered post- exit day, and new applicants for registration from the EEA or Switzerland will be able to make the same application for registration as currently applies to international social care professionals."

Government Response

A government response is required to the technical scrutiny point raised in this report.

Legal Advisers

Constitutional and Legislative Affairs Committee

12 March 2019

