

Draft Regulations laid before Senedd Cymru under section 187(2)(b) and (f) of the Regulation and Inspection of Social Care (Wales) Act 2016, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

SOCIAL CARE, WALES

**The Regulated Services (Service
Providers and Responsible
Individuals) (Wales) (Amendment)
(Coronavirus) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under powers given to the Welsh Ministers by the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) (“the Act”). They amend particular requirements placed on registered providers of social care under the Act, and are made in response to the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in Wales.

Part 1 of the Act sets out the social care services to which the Act applies, and defines them as “regulated services”. Section 2(3) gives the Welsh Ministers power to provide in regulations that particular services are not “regulated services”.

Section 27 of the Act gives the Welsh Ministers power to impose, in regulations, requirements on service providers in relation to the services they provide. The Welsh Ministers have exercised this power to make the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 (S.I. 2017/1264 (W. 295)) (“the Regulated Services Regulations”).

Regulations 2 to 7 amend the Regulated Services Regulations. **Regulation 4** is made under section 2(3) of the Act and amends regulation 2 (care home services) of the Regulated Services Regulations. The effect of the amendment is that the provision of accommodation together with nursing or care, where

the accommodation and nursing or care are provided to adults and are needed as a result of the spread of coronavirus, is not a “care home service” and is not, therefore, a “regulated service” under the Act. This exception only applies where the service is provided by a local authority or a Local Health Board, or is commissioned by a local authority or a Local Health Board and is provided either by a service provider already registered under the Act and who provides a care home service wholly or mainly to adults, or by providers of care homes in England who are already registered with the Care Quality Commission. In all cases, the Welsh Ministers must be notified in advance of the arrangements.

Regulation 5 is also made under section 2(3) of the Act. It makes a similar amendment to regulation 4, but in relation to the provision of care and support for adults.

Regulation 6 is made under section 27(1) of the Act and amends regulation 35 of the Regulated Services Regulations (fitness of staff). Regulation 35(2)(d) of those Regulations requires a person who works for the provider of a regulated service to give the provider full and satisfactory information in respect of particular matters. The effect of the amendment is that in some circumstances, the regulation 35(2)(d) requirement is treated as being met even if a person who works for a provider of a care home service wholly or mainly for adults or a domiciliary support service to adults does not provide full and satisfactory information about some of those matters. If the person cannot reasonably provide full and satisfactory information as a result of the spread of coronavirus, the requirement will be treated as being met if the person provides as full and satisfactory information as is reasonably practicable and the information is available for inspection by the service regulator.

Regulation 7 is also made under section 27(1) of the Act. It amends regulation 45 of the Regulated Services Regulations (single occupancy and shared rooms – adults). Regulation 45 provides that, subject to limited exceptions, the provider of a care home service must ensure that all adults are accommodated in single rooms. The amendment broadens the exceptions to allow, in limited circumstances, adults to be accommodated in shared rooms where the accommodation needs to be provided as a result of the spread of coronavirus.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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2020 No. (W.)

SOCIAL CARE, WALES

**The Regulated Services (Service
Providers and Responsible
Individuals) (Wales) (Amendment)
(Coronavirus) Regulations 2020**

Made

Coming into force

05 June 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 2(3), 27(1) and 187(1)(b) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”)(1).

The Welsh Ministers have consulted such persons as they think appropriate, as required by sections 2(4) and 27(4)(a) of the Act, and published a statement about the consultation as required by section 27(4)(b) of the Act. The Welsh Ministers have laid a copy of the statement before Senedd Cymru as required by section 27(5) of the Act.

A draft of these Regulations was laid before Senedd Cymru under section 187(2)(b) and (f) of the Act and has been approved by a resolution of Senedd Cymru(2).

(1) 2016 anaw 2; *see* the definition of “prescribed” in section 189.

(2) The references in sections 27(5) and 187(2) to the National Assembly for Wales now have effect as references to Senedd Cymru, by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).

Title and commencement

1.—(1) The title of these Regulations is the Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) (Coronavirus) Regulations 2020.

(2) These Regulations come into force on 5 June 2020.

Amendments to the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

2. The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017⁽¹⁾ are amended in accordance with regulations 3 to 7.

Interpretation

3. In regulation 1(3) (title, commencement, application and interpretation), at the appropriate places insert—

““Care Quality Commission” (“*y Comisiwn Ansawdd Gofal*”) means the body established under section 1 of the Health and Social Care Act 2008⁽²⁾;”;

““coronavirus” (“*coronafeirws*”) means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);”.

Exception from scope of care home services

4. In regulation 2(1) (care home services)—

(a) at the end of sub-paragraph (j), for the full stop substitute “;”;

(b) after sub-paragraph (j) insert—

“(k) the provision of accommodation, together with nursing or care, where the accommodation and nursing or care are provided to adults and are needed as a result of the spread of coronavirus,

But this exception does not apply unless—

(i) the accommodation and nursing or care are—

(aa) provided by a local authority,

(bb) provided by a Local Health Board, or

⁽¹⁾ S.I. 2017/1264 (W. 295), amended by S.I. 2019/757 (W. 142) and S.I. 2020/389 (W. 87).

⁽²⁾ 2008 c. 14.

- (cc) commissioned by a local authority or Local Health Board and provided either by a service provider who is registered to provide a care home service and provides that service wholly or mainly for adults, or by a person who is registered with the Care Quality Commission under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of a care home in England within the meaning of Part 1 of the Care Standards Act 2000⁽¹⁾, and
- (ii) the person providing the accommodation and nursing or care has first notified the Welsh Ministers using a form provided by the Welsh Ministers.”

Exception from the scope of domiciliary support services

5. In regulation 3(1) (domiciliary support services)—

- (a) at the end of sub-paragraph (i), for the full stop substitute “;”;
- (b) after sub-paragraph (i) insert—
 - “(j) the provision of care and support for adults where the care and support is needed as a result of the spread of coronavirus,

But this exception does not apply unless—

- (i) the care and support is—
 - (aa) provided by a local authority,
 - (bb) provided by a Local Health Board, or
 - (cc) commissioned by a local authority or Local Health Board and provided either by a service provider registered to provide a domiciliary support service, or by a person registered with the Care Quality Commission under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in

⁽¹⁾ 2000 c. 14.

respect of a domiciliary care agency within the meaning of Part 1 of the Care Standards Act 2000, and

- (ii) the person providing the care and support has first notified the Welsh Ministers using a form provided by the Welsh Ministers.”

Fitness of staff

6. In regulation 35 (fitness of staff)—

- (a) in paragraph (2)(d), before the opening words, insert “subject to paragraph (9A) of this regulation,”;

- (b) after paragraph (9) insert—

“(9A) Where the service provider provides a care home service wholly or mainly for adults or a domiciliary support service to adults, the requirement in paragraph (2)(d) is to be treated as being met despite the person mentioned in that paragraph failing to provide full and satisfactory information or documentation in respect of any of the matters specified in paragraphs 4, 6, 8 and 9 of Part 1 of Schedule 1 if—

- (a) the person cannot reasonably provide full and satisfactory information or documentation in respect of those matters as a result of the spread of coronavirus,
- (b) the person provides as full and satisfactory information or documentation in respect of those matters as is reasonably practicable, and
- (c) the information or documentation provided is available at the service for inspection by the service regulator.”

Shared rooms

7. In regulation 45 (single occupancy and shared rooms – adults)—

- (a) after paragraph (2) insert—

“(2A) The condition in paragraph (2)(d) will continue to be met despite the number of adults accommodated in shared rooms on or after 5 June 2020 exceeding 15% of the total number of adults accommodated by the service where the limit is exceeded only as a consequence of accommodation which is needed as a result of the spread of coronavirus being provided in

rooms which were unoccupied immediately before 5 June 2020.”;

- (b) in paragraph (3)(c), for “were sharing a room with another adult at the relevant time.” substitute—

“—

- (i) were sharing a room with another adult at the relevant time, or
- (ii) were provided with the accommodation on or after 5 June 2020 in rooms that were unoccupied immediately before 5 June 2020 and the accommodation is needed as a result of the spread of coronavirus.”

Name

Deputy Minister for Health and Social Services under authority of the Minister for Health and Social Services, one of the Welsh Ministers

Date