

SL(5)410 – The Regulated Services (Penalty Notices) (Wales) Regulations 2019

Background and Purpose

The Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) 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 social care workforce.

These Regulations prescribe the details of a penalty notice system, whereby the Welsh Ministers may issue a penalty to providers and responsible individuals of regulated services instead of bringing proceedings for an offence, should certain regulatory breaches occur. These Regulations prescribe the offences for which a penalty notice may be given.

These Regulations will replace the current Regulated Services (Penalty Notices) (Wales) Regulations 2017.

Procedure

Negative.

Technical Scrutiny

Two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 8(1) sets out prescribed offences under the Regulated Advocacy Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019, but states that these are prescribed offences “for the purposes of regulation 12”. Regulation 12 relates to the period during which proceedings may not be instituted. The correct reference should be to section 52(1) of the Act.

2. Standing order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

The Welsh text of the offence “contravention of, or failure to comply with, requirements to have in place specified policies and procedures” in schedules 1 to 5 of these Regulations potentially gives rise to confusion. Due to the way it is drafted, it is not clear whether the failure to comply is in relation to the requirements to have policies and procedures in place, or in relation to the policies and procedures themselves.



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

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

Government Response

1. We acknowledge the incorrect cross-reference in regulation 8(1) and an amendment will be made before these Regulations come into force on 1 July 2019.
2. The Regulations have 5 Schedules, each of which prescribes the offences in respect of which a penalty notice may be issued to providers and responsible individuals of different types of services regulated under the Regulation and Inspection of Social Care (Wales) Act 2016.

Each Schedule is made up of three columns, namely "Provision creating offence" (column 1), "General nature of the offence" (column 2) and "Amount of penalty" (column 3).

Column 1 sets out the statutory provision which created each offence in respect of which a penalty notice may be issued. The text which has been identified as potentially giving rise to confusion is set out in column 2 of each Schedule under the heading "General nature of the offence". However, the text under the column "General nature of the offence" provides only a general outline of the offence as listed in column 1, and is not intended to be a substitute to the reader looking at the specific statutory provision which created the offence.

Therefore, as the prescribed offence is expressly listed in column 1, it is not considered that there will be any confusion as to exactly which offence may lead to the issue of a penalty notice.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 13 May 2019 and reports to the Assembly in line with the reporting points above.

